

Statement of Environmental Effects

SECTION 4.55(2) MODIFICATION-
DA19/0890

CHILD CARE FACILITY
19 TODD ROW,
ST CLAIR

15 DECEMBER 2021

QUALITY ASSURANCE

PROJECT: *Child Care Facility – S4.55*

ADDRESS: *19 Todd Row, St Clair*

COUNCIL: *Penrith City*

AUTHOR: *Think Planners Pty Ltd*

Date	Purpose of Issue	Rev	Reviewed	Authorised
December 2021	Draft issue for client	Draft	JW	JW
15 December 2021	S4.55 Submission	Final	JW	JW

Integrated Development (under S4.46 of the EP&A Act). Does the development require approvals under any of the following legislation?

Fisheries Management Act 1994	No
Heritage Act 1977	No
Mine Subsidence Act 1992	No
Mining Act 1992	No
National Parks and Wildlife Act 1974	No
Petroleum (Onshore) Act 1991	No
Protection of the Environment Operations Act 1997	No
Roads Act 1993	No
Rural Fires Act 1997	No
Water Management Act 2000	No
Concurrence	
SEPP 1- Development Standards	No
SEPP 64- Advertising and Signage	No
SEPP Coastal Management 2018	No
SEPP (Infrastructure) 2007	No
SEPP (Major Development) 2005	No
SREP (Sydney Harbour Catchment) 2005	No

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EXECUTIVE SUMMARY

This Statement of Environmental Effects has been prepared in support of a Section 4.55(2) Modification in relation to DA19/0890 for a child care facility at 19 Todd Row, St Clair.

The original DA was approved on 29 May 2020 for demolition of the existing structures and construction of a 53 place child care centre over basement parking for 14 vehicles.

The amendments proposed incorporate adjustment to the basement design to provide for 16 parking spaces and the provision of a small play room and outdoor play area at the first floor with consequent changes to the first floor footprint. The outcome is an additional 10 placements in the 3-5 year old age bracket.

The extent of amendments and changes are broadly referenced below.

Child Care Facility

The following age ratios are proposed:

- 0-2 years: 8 places;
- 2-3 years: 15 places; and
- 3-5 years: 40 places (+ 10 places)

The following breakdown of the number of teachers required are provided below:

- 0-2 years: 2 teachers
- 2-3 years: 3 teachers
- 3-5 years: 1 teacher (+ 1 teacher)

Parking

The development proposes parking within a basement level with a total of 16 places (+ 2 spaces) that includes 9 staff spaces and 7 visitor spaces.

The facility will be run by 9 staff and the operating hours are proposed to be 7am to 6pm Monday – Friday (excluding public holidays).

It is noted that the site is immediately adjacent to the Holy Spirit Primary School and the first floor play areas are oriented towards the school site such that there are limited impacts to the adjoining properties arising from the changes.

The site is zoned R2 Low Density Residential under the Penrith Local Environmental Plan 2010, noting child care facilities continues to be permissible with Council consent within the R2 zone.

The development proposal is appropriately defined as substantially the same development as the original consent, with the proposal continuing to operate as a child care facility, with the facility having the capacity to increase child care numbers through the plan amendments and as such is seeking Council consent to increase the overall child care placements to meet demand in the area.

After a review of the amended plans and consideration of the relevant planning controls, it is recommended that Council grant consent to the modification application with appropriate amendment to consent conditions – namely condition 1 of consent to reflect the amended plans.

SITE AND LOCALITY

LEGAL DESCRIPTION

The subject site is legally described as Lot DP though more commonly known as No. 19 Todd Row, St Clair.

SUBJECT SITE

Situated within an established low density residential area, the development site neighbours a local educational establishment known as Holy Spirt Catholic Primary School. The development site is also within proximity to the Great Western Highway, St Marys Commercial Centre and Train Station, an industrial precincts, churches and local schools. The proposal is also within a short car trip to Nepean Hospital, University of Western Sydney Campus and Penrith City Centre.

The development site itself can be best described as a predominantly regular shaped mid-block land parcel with a frontage of 25.5m to Todd Row, an average site depth of 43m, resulting in a total site area of 926.5m².

The subject land parcel currently accommodates a single storey dwelling and associated structures. This is demonstrated by the photograph below.

Photograph 1: Shows the subject site as viewed via Todd Row



BUILT FORM ANALYSIS

Residing within an established residential area, the built form character within the immediate locality comprises of a mix of one and two storey residential dwellings of mixed architectural design, size and form. The development proposes a contemporary two storey built form that will not only increase valuable child care service to the local community but provides an appropriate building form that will be compatible and also complement the existing low density built form character along Todd Row.

The proposal has also been designed and sited to maximise amenity for future children and staff in terms of privacy and solar access whilst minimising amenity impacts including privacy, acoustic and overshadowing to neighbouring properties.

The aerial map extract below shows the subject site and the immediate context.

Figure 1: Aerial Map Extract of Subject Site (Six Maps)

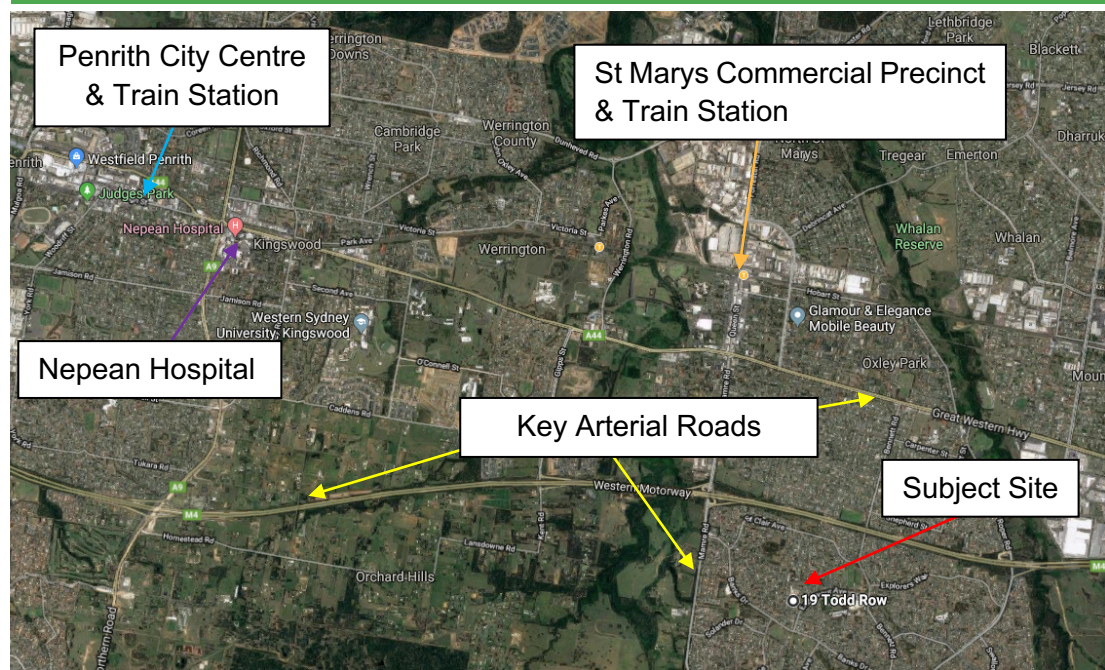


Subject Site

BROADER LOCALITY ANALYSIS

The development site is within a short car trip to Nepean Hospital, University of Western Sydney Campus and Penrith City Centre and Train Station. The broader locality is serviced by key road networks including The Northern Road, The Great Western Highway and Dunheved Road. An aerial map extract provided in the following page illustrates the development site within its broader context.

Figure 2: Aerial Map of the Broader Subject Area (Source: Google Maps)



The site is ideal to accommodate a child care facility due to its proximity to essential services within the town centre educational establishments and employment opportunities via local industrial precincts.

The development seeks to utilise the land in accordance with the zoning and take advantage of its proximity to public transport and services. The development also aims to provide an attractive two storey building that not only addresses its frontage but is also designed to be compatible with the low density residential character within the immediate locality whilst playing a positive role in increasing valuable child care places within St Clair and the wider Penrith area.

Photographs provided overleaf gives context to the locality and also the relationship of the development site with adjoining developments.

Photograph 2: Shows the relationship to the adjoining school site.



Photograph 3: Shows the existing streetscape along Todd Row looking southwards

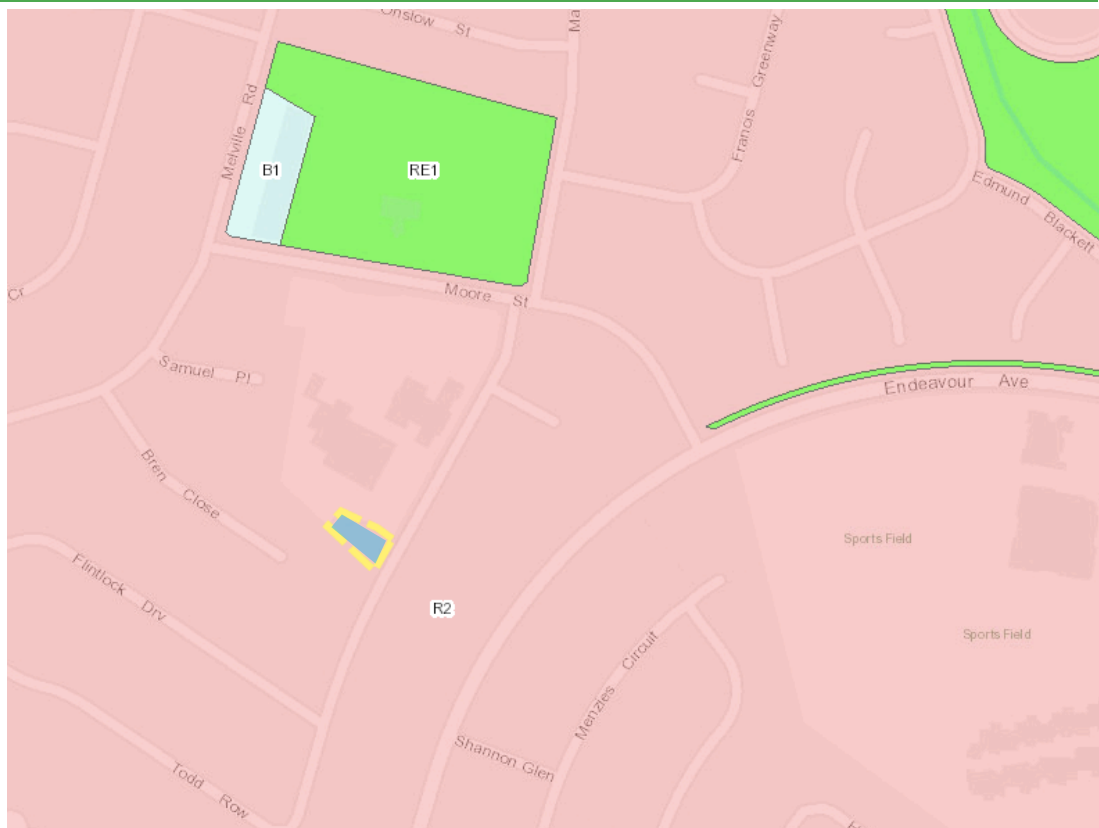


ZONING CONTROL

As demonstrated below, via zoning map extract, the subject site is zoned R2- Low Density Residential under the Penrith Local Environmental Plan 2010, with a maximum building height of 8.5m.

'Centre-Based Child Care Facilities' are permissible with consent in the R2- Low Density Residential Zone.

Figure 3: Zoning Map Extract (Source: Penrith LEP 2010)



 Subject Site

DESCRIPTION OF PROPOSAL

This application is for a Section 4.55(2) Modification in relation to DA19/0890 for a child care facility at 19 Todd Row, St Clair. The original DA was approved on 29 May 2020 for demolition of the existing structures and construction of a 53 place child care centre over basement parking for 14 vehicles.

The amendments proposed incorporate adjustment to the basement design to provide for 16 parking spaces and the provision of a small play room and outdoor play area at the first floor with consequent changes to the first floor footprint. The outcome is an additional 10 placements in the 3-5 year old age bracket.

The extent of amendments and changes are broadly referenced below.

Child Care Facility

The following age ratios are proposed:

- 0-2 years: 8 places;
- 2-3 years: 15 places; and
- 3-5 years: 40 places (+ 10 places)

The following breakdown of the number of teachers required are provided below:

- 0-2 years: 2 teachers
- 2-3 years: 3 teachers
- 3-5 years: 1 teacher (+ 1 teacher)

Parking

The development proposes parking within a basement level with a total of 16 places (+ 2 spaces) that includes 9 staff spaces and 7 visitor spaces.

The facility will be run by 9 staff and the operating hours are proposed to be 7am to 6pm Monday – Friday (excluding public holidays).

It is noted that the site is immediately adjacent to the Holy Spirit Primary School and the first floor play areas are oriented towards the school site such that there are limited impacts to the adjoining properties arising from the changes.

Internal Unencumbered Play Space

The amended child care facility will provide a minimum unencumbered indoor play space of 3.25m² per child in accordance with the Children's (Educational and Care Services) Supplementary Provisions Regulation 2012. It is noted that the first floor play room is for 10 children and there is 3.5m² of play space per child which exceeds the standard.

External Unencumbered Play Space

Minor modification to the approved unencumbered outdoor play area through the first floor play area. This area is for 10 children and is 88m² which exceeds the 1 per 7m² standard.

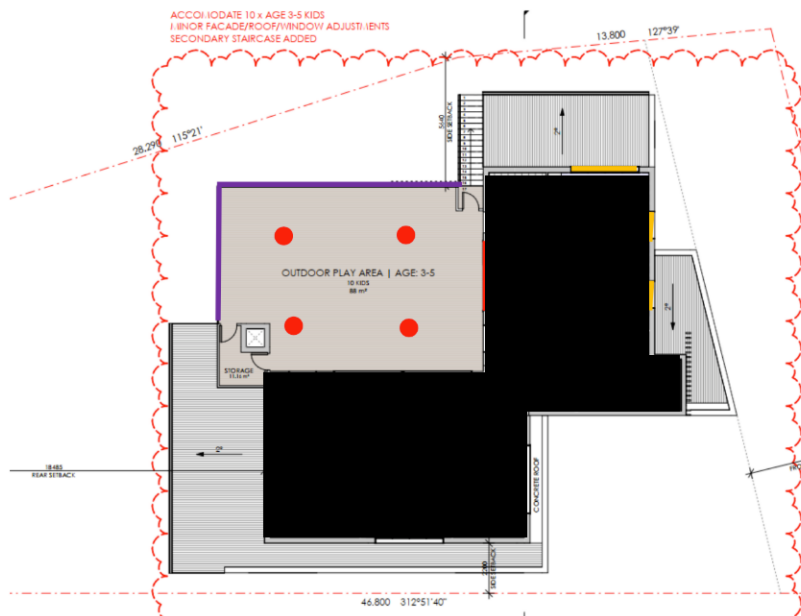
Acoustic Barriers

The proposal incorporates the following acoustic barrier which are limited to standard fencing height with the exception of the small portion identified in yellow which is 2.1m (300mm on top of standard fencing). The first floor is to contain a 1.5m barrier. An extract of the play arrangements and barriers is provided below.

Figure 2-2 Proposed Child Care Centre Layout – Ground Floor



Figure 2-3 Propose Child Care Centre Layout – First Floor



Supporting Documents

The relevant architectural plans for the proposal have been prepared by Bains Design while supporting reports and documents have been prepared by relevant sub consultants dealing with matters such as traffic and parking, noise, drainage and landscaping.

The facade has been designed to resemble an attractive contemporary architectural design in order to ensure a compatible streetscape presentation and to align with the evolving built form within the subject area. As such, the development is considered a compatible and appropriate built form within a context to the streetscape.

PLANNING CONTROLS

S.4.55(2) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Pursuant to S.4.55(2) of the Act, Council may consider an application to amend a development consent provided that, inter alia:

*(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

(a) it is satisfied that the proposed modification is of minimal environmental impacts, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The application is substantially the same as the approved development, with the development concept continuing to incorporate a child care facility. The amendment seeks to amend the basement to provide 2 additional car spaces, and the first floor to provide a play room for 10 children with associated outdoor play noting the overall form and presentation is comparable to that approved particularly as viewed in the streetscape.

Land and Environmental Court Judgements

The question as to whether a modified proposal is 'substantially the same' as that originally approved has been an ongoing issue dealt with in the Land and Environment Court. It is also important to note that the Court has consistently described the Section 4.55-modification provision of the Act as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; "It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision" (see *North Sydney Council v Michael Standley & Associates Pty Limited* [1998]).

As demonstrated below the change to an approval can be substantial without the amended proposal failing the ‘substantially the same’ test. By way of example, and relevant to the current proposal, the following cases were considered in the Court and found to be substantially the same development, with this extract contained in a Gadens Publication dated 17 June 2012:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Bassett and Jones Architects Pty Limited v Waverley Council (No 2) [2005]: The modification application sought an additional storey to the approved front building of a mixed commercial and residential development, which would alter the building from three- storeys to four-storeys; and the provision of a zero side setback for a part of the external side walls at all three levels. This resulted in an increase in floor space of 112 square metres, **being a 20 per cent increase in floor space, and a 28 per cent increase in height (both of which exceeded the applicable council controls).**

The Court found that the test was satisfied albeit only on “a very fine balance”. The Court noted however that the modified design might give rise to privacy impacts that may warrant refusal of the application when the merits of the change are assessed. The application was later refused on its merits, but not before passing the “substantially the same” threshold test.

Davi Developments Pty Ltd v Leichardt Council [2007]: A modification application sought to change consent for a seven storey residential flat building with two levels of basement parking. There was to be a reduction of one floor, but an increase in the main parapet height by 900mm, and the substantial reconfiguration of the unit mix such that the numbers reduced from 42 to 30, with a rearrangement of the car park plan such that it was “entirely different”.

The Court nevertheless considered that the fundamental characteristics and essence of the building would remain essentially the same.

Bathla Investments Pty Limited v Blacktown City Council [2008]: The original approval was for eight townhouses presenting as four, single-storey buildings. Some of the townhouses were attached.

The modification application sought to change some of the townhouses to two storeys, and also sought to separate the dwellings and made changes to the garage designs and parking layout. The Court noted that there were “numerous differences” between

the schemes, however, the townhouse development presented as materially and essentially the same development.

Marana Developments Pty Limited v Botany City Council [2011]: *The original approval was for the construction of five residential flat buildings (with basement car parking) comprising a total of 76 units. The modification application sought ‘significant changes to the external appearance and layout of the buildings’ including an increase in unit numbers from 76 up to 102, and an additional level of basement car parking.*

This also involved a changed unit mix. Despite significant internal changes, the minimal change to the external floor plates and layout was of great significance and the test was satisfied.

Boyd v Bega Valley Council [2007]: *It was proposed to add a second storey to a single storey dual occupancy development. Although the application was unsuccessful on merit grounds reasons (visual impact from the waterway caused by poor architectural design), the Court was satisfied that the increase from a single storey to a two storey dwelling satisfied “substantially the same” test.*

The application is substantially the same as the approved development, with the development concept continuing to incorporate a child care facility. The amendment seeks to amend the basement to provide 2 additional car spaces, and the first floor to provide a play room for 10 children with associated outdoor play noting the overall form and presentation is comparable to that approved particularly as viewed in the streetscape.

It is anticipated that the development application will be notified to adjoining property owners and a discussion against the relevant planning controls is provided further in this statement.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

This was considered in the prior DA and does not warrant reconsideration.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

This was considered in the prior DA and does not warrant reconsideration.

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

The SEPP Educational Establishments and Child Care Facilities and associated Child Care Planning Guidelines were gazetted on the 1st of September 2017.

The SEPP has been introduced to facilitate the effective delivery of educational establishments and early education and care facilities across the State of NSW.

The table below provides discussions against the relevant provisions of the SEPP.

SEPP	Comment
3 Aims of Policy The aims of this Policy are as follows: (a) improving regulatory certainty and efficiency through a consistent planning regime for educational establishments and early education and care facilities, and (b) simplifying and standardising planning approval pathways for educational establishments and early education and care facilities (including identifying certain development of minimal environmental impacts as exempt development), and, (c) establishing consistent State-wide assessment requirements and design considerations for educational establishments and early education and care facilities to improve the quality of infrastructure delivery and to minimise impacts on surrounding areas, and (d) allowing for the efficient development, redevelopment or use of surplus government-owned land (including providing for consultation with communities regarding educational establishments in their local area), and	<p>The proposal will result in an addition of valuable child care places within the wider Penrith catchment.</p>

(e) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and

(f) aligning the NSW planning framework with the National Quality Framework that regulates early education and care services,

(g) ensuring that proponents of new developments or modified premises meet the applicable requirements of the National Quality Framework for early education and care services, and of the corresponding regime for State regulated education and care services, as part of the planning approval and development process, and

(h) encouraging proponent of new development or modified premises and consent authorities to facilitate the joint and shared use of the facilities of educational establishments with the community through appropriate design.

5 Interpretation

***centre-based child care facility* means:**
a building or place used for the education and care of children that provides any one or more of the following:

long day care,
occasional child care,
out-of-school-hours care (including vacation care)
preschool care, or
an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW),

but does not include:

- a building or place used for home-based child care or school-based child care, or an office of a family day care services (within the meanings of the Children (Education and Care Services) National Law (NSW), or

- a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or

The proposed centre-based child care facility is consistent with the definition contained within the SEPP.

- a child-minding service that is provided in connection with - a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or

- a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or

- a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.

Part 3 Early education and care facilities – specific development controls

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

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

Applicable provisions under the Child Care Planning Guidelines has been addressed further within this statement.

25 Centre-based child care facility – non-discretionary development standards

The objective of this clause is to identify development standards for particular matters relating to a centre-based child care facility that, if complied with, prevents the consent authority from requiring more onerous standards for those matters.

The following are non-discretionary development standards for the purpose of section 79C (2) and (3) of the Act in relation to the carrying out of development for the purpose of a centre-based child care facility:

location

the development may be located at any distance from an existing or proposed early education and care facility,

There are no restrictions relevant to the proposed development.

indoor or outdoor space for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies – the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies – the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,

Indoor play space required = 3.25m² for each child
Outdoor place space required = 7m² for each child

site area and site dimensions – the development may be located on a site of any size and have any length of street frontage or any allotment depth,

colour of building materials or shade structures – the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.

26 Centre-based child care facility – development control plans
A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to age, age ratios, grouping, numbers of the like, of children) does not apply to development for the purpose of a centre-based child care facility: operational or management plans or arrangements (including hours of operation), demonstrated need or demand for child care services, proximity of facility to other early childhood education and care facilities, any matter relating to development for the purpose of a centre-based child care facility contained in:

The centre-based child care facility provides 3.36m² of unencumbered indoor play space and 7.28m² of unencumbered outdoor play space which is consistent with the indoor and outdoor unencumbered space requirements of the Education and Care Service National Regulations.

Penrith DCP prescribes a minimum site frontage of 22m.

Clause 25 of the Environmental Establishment and Child Care Facility SEPP 2017 stipulates that a child care facility can be located on a site of any size and have any length of street frontage or any allotment depth. As such minimum site frontage does not apply.

The DCP requires proposed child care facilities in excess of 40 children to demonstrate that services to be provided meets an unmet need in the community.

Clause 26(b) of the Environmental Establishment and Child Care Facility SEPP 2017 stipulates that any provision of a development control plan that needs to demonstrate need or demand for child care services does not apply to the development for the purpose of a center-based child care facility.

the design principles set out in Part 2 of the *Child Care Planning Guidelines*, or the matters for consideration set out in Part 2 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).

CHILD CARE PLANNING GUIDELINE

Under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, the *Child Care Planning Guideline* is to be taken into consideration when undertaking a development for a centre-based child care facility.

The planning guideline also takes precedence over a *Development Control Plan*, with some exceptions, where the two overlap in relation to a child care facility.

The table below provides detail on the relevant development standards relevant to the current amended proposal.

SEPP	Comment
Objectives The planning objectives of this Guidelines are to:	
<ul style="list-style-type: none"> promote high quality planning and design of child care facilities in accordance with the physical requirements of the National Regulations 	The development results in a high quality centre-based child care facility designed to comply with the requirements of the National Regulations.
<ul style="list-style-type: none"> ensure that child care facilities are compatible with the existing streetscape, context and neighbouring land uses 	The centre-based child care facility has been designed to appear as a large two storey built form to be consistent with the existing low density character within the subject area.
<ul style="list-style-type: none"> minimise any adverse impacts of development on adjoining properties and the neighbourhood, including the natural and built environment 	The development has been designed to minimise adverse impacts on neighbouring properties in terms of privacy, acoustic and overshadowing. In particular the proposal is designed to orient the first floor towards the school site and the large hall style building such that there are no meaningful amenity impacts to the adjoining properties arising from the proposal.

Part 3 Early education and care facilities – specific development controls

3.1 Site selection and location

C1 – For proposed development in or adjacent to a residential zone, consider:

- | | |
|--|--|
| <ul style="list-style-type: none"> the acoustic and privacy impacts of the proposed development on the residential properties | <p>An Acoustic Report has been prepared which demonstrates that the acoustic impact of the development on adjacent properties.</p> <p>Furthermore, the proposal is designed to minimise privacy impacts to neighbouring properties. This is achieved via the use of blank walls in sections to its side boundaries, landscaping, fencing and the strategic placement of play areas, orientating majority of play areas towards the rear or towards the school.</p> |
| <ul style="list-style-type: none"> the setback and siting of buildings within the residential context | <p>Both the ground and first floor, a side setback of 900mm is provided to the western and eastern boundaries.</p> <p>Complies predominantly with setback requirements under the DCP.</p> |
| <ul style="list-style-type: none"> traffic and parking impacts of the proposal on residential amenity | <p>Parking is provided within a basement level to minimise impact to the streetscape, with a Traffic Report prepared which demonstrates that the development will not result in unacceptable traffic and parking impacts on the amenity of neighbouring properties.</p> |

C2 – When selecting a site, ensure that:

- | | |
|---|--|
| <ul style="list-style-type: none"> the location and surrounding uses are compatible with the proposed development or use | <p>Centre-based child care facilities are a permissible and compatible land use within the R2 – Low Residential Density.</p> |
| <ul style="list-style-type: none"> the site is environmentally safe including risk such as flooding, land slip, bushfires, coastal hazards | <p>Site is not identified as being affected by flooding, land slope, bushfires, coastal hazards and other environmental hazards.</p> |
| <ul style="list-style-type: none"> there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous material remediation is needed | <p>The site has been used for residential purposes.</p> |
| <ul style="list-style-type: none"> the characteristics of the site are suitable for the scale and type of development proposed having regards to: | <p>The site, which has an area of 925.6m², can be described as an irregular shaped land parcel that is of a sufficient size and width to accommodate the proposed centre-based child care facility.</p> |

<ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - Number of shared boundaries with residential properties - will have no adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas - where the proposal is to occupy or retrofit an existing premise, the interior and exterior spaces are suitable for the proposed use - there are suitable drop off and pick up areas, and off and on street parking - the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use - not located closely to incompatible social activities and uses such as restricted premises, injection rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises 	<p>The development site is not located within a sensitive environmental or cultural area and will not result in adverse environmental impacts on surrounding areas.</p> <p>N/A. Development proposes to undertake the development of a new centre-based child care facility.</p> <p>The development provides car parking spaces in-accordance with the DCP, noting appropriate car parking spaces are provided to permit the drop off and pick up of children.</p> <p>The site bounds Toad Row which has the capacity to accommodate the 63 place child care facility. Refer to attached Traffic Report for detail.</p> <p>Subject site not located closely to incompatible social activities and uses.</p>
<p>C3 – A child care facility should be located;</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like 	<p>Located near St Clair Shopping centre, the subject site is located in wider proximity to educational establishments parks and places of public worship.</p> <p>Subject site is near St Clair Commercial Precinct and large industrial precincts.</p>

C4 – A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:

- proximity to
 - heavy or hazardous industry, waste transfer depots or landfill sites
 - LPG tanks or service stations
 - water cooling and water warming systems
 - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses
 - extractive industries, intensive agriculture, agricultural spraying activities
- any other identified environmental hazard or risk relevant to the site and/or existing buildings within the site

The subject site is not located within proximity to any identified environmental hazard.

The site has been used for residential purposes and as such no PSI is considered warranted.

3.2 Local character, streetscape and the public domain interface

C5 – The proposed development should:

- contribute to the local area by being designed in character with the locality and existing streetscape
- reflect the predominant form of surrounding land uses, particularly in low density residential areas
- recognise predominant streetscape qualities, such as building form, scale, materials and colours
- include design and architectural treatments that responds to and integrate with the existing streetscape
- use landscaping to positively contribute to the streetscape and neighbouring amenity
- integrate car parking into the building and site landscaping design in residential areas

The centre-based child care facility proposes a two storey building that will be consistent and compatible with the existing low density characteristics of the subject area, noting the development complies with the prescribed height control under the LEP.

The revised plans propose a softer colour scheme and façade design, making it more consistent with a 2-storey residential dwelling and therefore more compatible with the streetscape. However, the use of colour within the design continues to provide an intriguing learning environment for children in order to enhance engagement and creativity.

Appropriate landscaping is to be provided between the building and the street edge.

C6 – Create a threshold with a clear transition between public and private realms, including:

- **fencing to ensure safety for children entering and leaving the facility**
The proposal incorporates built elements, fencing and landscaping that clearly distinguishes between the public and private domain.
- **windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community**
The proposed development incorporates an active façade that will permit casual surveillance to Todd Row.
- **integrating existing and proposed landscaping with fencing**
Proposed landscaping works seek to soften the built form and fencing and also seek to integrate the development with the site's residential context.

C7 – On sites with multiple buildings and /or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitor and children by changes in materials, plant species and colours

The site does not contain multiple buildings or entries; The primary entry point is designed to be clearly visible and legible from Todd Row.

C9 – Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:

- **clearly defined street access, pedestrian paths and building entries**
The subject site does not adjoin a public park, open space or bushland. As such, the development provides clearly defined street access, pedestrian paths and building entries.
- **low fences and planting which delineate communal/private open space from adjoining public open space**
Fencing and landscape works will contribute towards delineating communal/private open space from the public domain.
- **minimal use of blank walls and high fences**
The development incorporates architectural features and articulation to provide an attractive double storey-built form that appropriately addresses Todd Row.

<p>C9 – Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p>Development proposes appropriate fencing that is consistent with fencing within the precinct and with comparable child care facility within the wider Penrith Local Government Area.</p> <p>Subject site is not listed as a heritage item and is not within a conservation area.</p>
<p>C10 – High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p>	<p>The development proposes appropriate fencing that is consistent with fencing within the subject area and with comparable child care facility within the wider Penrith Local Government Area.</p> <p>Refer to attached Acoustic Report for detail.</p>
<p>3.3 Building orientation, envelope and design</p>	
<p>C11 – Orient a development on a site and design the building layout to</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by; - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries within residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties 	<p>The proposed double storey centre-based child care facility has been designed and sited to address Todd Row and designed to comply with prescribed setback controls under the Penrith DCP and the Child Care Planning Guidelines to minimise privacy impacts on neighbouring properties.</p> <p>Where possible play equipment is located away from common boundaries, noting landscape embellishment works and fencing are situated along the site's side and rear boundaries combined with the Operational Management Plan which is to manage outdoor play times and the number of children accessing outdoor area at any one time will contribute towards minimise acoustic impact to neighbouring properties. Finally, an Acoustic Report accompanies the development application demonstrating that the acoustic impact of the development on adjoining properties is satisfactory.</p> <p>The centre-based child care facility is oriented to the north, including the external play area to maximise solar access.</p> <p>The proposed two storey centre-based child care facility has been designed to reduce the potential for overshadowing of neighbouring properties, including compliance with setback provisions.</p>

<ul style="list-style-type: none"> • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climate conditions 	<p>It is considered that appropriate solar access is to be provided on site and for neighbouring properties and this is supported by the attached shadow diagrams.</p> <p>Development proposes an attractive contemporary two storey building designed to adequately address its frontage to Todd Row.</p> <p>The first floor play area is appropriately protected from wind and other climate conditions through the recession of the play area into the building envelope, and the provision of a 1.5m acoustic fence.</p>
<p>C12 – The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character 	<p>Development proposes a two storey building that is consistent and compatible with the existing low density built form character within the subject area.</p> <p>Development is consistent with setback requirements under the Penrith DCP 2014 and the Child Care Planning Guidelines.</p>
<p>C13 – Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres.</p>	<p>Proposal has been designed to comply with prescribed setback controls under the Penrith DCP.</p>
<p>C14 – On land in a residential zone, side and rear boundary setbacks should observe the prevailing setback required for a dwelling house.</p>	<p>The development has been designed to comply with setback requirements under the Penrith DCP 2014 which requires child care facilities within residential zones to achieve setback prescribed for dwelling houses in-order to be consistent with the dominant built form pattern in established residential estates.</p>
<p>C15 – The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • respect and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage 	<p>The purpose centre-based child care facility has been designed to appear as a large modern 2 storey set within a landscape setting to be consistent with the existing low density character of the subject residential area. Landscape embellishment works is to be undertaken within the front setbacks to minimise the impact of the</p>

- contributes to the identity of the place
- retains and reinforces existing built form and vegetation where significant
- considers heritage within the local neighbourhood including identified heritage items and conservation areas
- responds to its natural environment including local landscape setting and climate
- contributes to the identify of place

carpark entry and its subsequent hard surfaces to the streetscape.

Subject site is not listed as a heritage item or is it within a conservation area, nor are there any heritage items within close proximity to the development site.

C16 – Entry to the facility should be limited to one secure point which is:

- located to allow ease of access, particularly for pedestrians
- directly accessible from the street where possible
- directly visible from the street frontage
- easily monitored through natural or camera surveillance
- not accessible through an outdoor play area

The proposed centre-based child care facility provides a primary entry point from Todd Row.

The pedestrian entry point is visible from the street frontage, permits ease of access and directly accessible from Todd Row.

C17 – Accessible design can be achieved by:

- providing accessibility to and within the building in accordance with all relevant legislation
- linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry
- providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible
- minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath.

Development has been designed to be accessible to and within the building in accordance with all relevant legislation, with direct equitable pedestrian access provided via Todd Row. Furthermore, lift core provides access to all levels from the basement.
Designed to comply.

Development provides appropriate continuous path of travel to and within the building, including access between the street entry and main building entrance

3.4 Landscaping

C18 – Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.

The development is to remove identified trees/vegetation in-order to accommodate the proposed child care facility, noting appropriate landscape embellishment works within the existing low density residential estate is proposed.

Use the existing landscape where feasible to provide a high quality landscaped area by:

- reflecting and reinforcing the local context
- incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping

The landscaping plan incorporates planting that is indigenous to the immediate area and will be utilised as part of learning programmes within the centre to assist with attending children understanding the benefits of utilising local native plantings. Refer to attached Landscaping Plan for detail.

C19 – Incorporate car parking into the landscape design of the site by:

- planting shade tree in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings
- taking into account streetscape, local character and context when siting car parking areas within the front setback
- using low level landscaping to soften and screen parking areas

Development proposes all car parking within a basement level, nevertheless the development proposes appropriate landscape embellishment works that will improve and enhance the subject site whilst helping to integrate the proposal within the context of the site and its residential surroundings. Refer to attached Landscaping Plan for detail.

3.5 Visual and acoustic privacy

C20 – Open balconies in mixed use development should not overlook facilities nor overhang outdoor play spaces.

The proposal is not part of a mixed-use development. Not applicable

C21 – Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:

- appropriate site and building layout
- suitable locating pathways, windows and doors
- permanent screening and landscape design

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, and largely limiting indoor and outdoor play areas to the ground floor.

It is noted that the first floor play area is oriented to the school to minimise visual privacy impacts and there is a 1.5m barrier to this area which can also serve to mitigate both acoustic privacy and visual privacy impacts.

C22 – Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:

- appropriate site and building layout
- suitable locating pathways, windows and doors
- permanent screening and landscape design

Complies, the centre-based child care facility is designed to minimise direct overlooking of main internal living areas and private open space in adjoining developments. This is achieved via providing blank walls to sections of the side boundaries, limiting indoor and outdoor play areas to the ground floor, locating suitable windows and doors and the use of fencing and landscape works to side and rear boundaries.

It is noted that the first floor play area is oriented to the school to minimise visual privacy impacts and there is a 1.5m barrier to this area which can also serve to mitigate both acoustic privacy and visual privacy impacts.

C2 – A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:

- provide an acoustic fence along any boundary where the adjoining property contains a residential use (An acoustic fence is one that is a solid, gap free fencing)
- ensure that mechanical plant or equipment is screened by soil, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure

The development proposes appropriate fencing along the site's side boundaries to minimise acoustic impacts to neighbouring properties.

An Acoustic Report accompanies the application and demonstrates that the acoustic impact of the development on adjoining properties is satisfactory subject to the provision of suitable barriers.

3.6 Noise and air pollution

Child care facilities located near major roads, rail lines, and beneath flight paths are likely to be subject to noise impacts. Other noisy environments such as industrial areas and substations may impact on the amenity and well-being of the children and staff. The location of child care facilities should be selected to avoid or minimise the potential impact of external sources of significant noise.

C25 – Adopt design solution to minimise the impacts of noise, such as:

- creating physical separation between buildings and the noise source
- orienting the facility perpendicular to the noise source and where possible buffered by other uses
- using landscaping to reduce the perception of noise
- limiting the number and size of opening facing noise sources
- using double or acoustic glazing, acoustic louvers or enclosed balconies (wintergardens)
- using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits
- locating cot rooms, sleeping areas and play areas away from external noise sources

The subject site is not located near major roads, rail lines, beneath flight paths or other noisy environments. It is noted that appropriate design/ measures have been undertaken including appropriate setbacks, use of landscaping and acoustic fencing to minimise acoustic impacts to neighbouring properties.

An Acoustic Report accompanies the development application demonstrating that the acoustic impact of the development on adjoining properties is satisfactory.

C26 – An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:

- on industrial zoned land where an ANEF contours is between 20 and 25, consistent with AS 2021 – 2000
- along a railway or mass transit corridor, as defined by *State Environmental Planning Policy (Infrastructure) 2007*
- on a major or busy road
- other land that is impacted by substantial external noise

The subject site is not located on industrial land, where an ANEF contours is between 20 and 25, along a railway or mass transit corridor, on a major or busy road or other land that is impacted by substantial external noise.

It is noted that appropriate design/measures have been undertaken including appropriate setbacks, use of landscaping and fencing to minimise acoustic impacts to neighbouring properties.

	An Acoustic Report accompanies the development application demonstrating that the acoustic impact of the development on adjoining properties is satisfactory.
C27 – Locate child care facilities on sites which avoid or minimise the potential impact of external source of air pollution such as major roads and industrial development	Complies.
C28 – A suitable qualified air quality professional should prepare an air quality assessment report to demonstrate that the proposed child care facilities close to major roads or industrial development can meet air quality standards in accordance with relevant legislation and guidelines.	The subject site is not located near a major road or industrial development. Refer to attached Traffic Report for detail.
3.7 Hours of operation	
C29 – 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	The child care facility is to operate between 7am to 6pm Monday to Friday.
C30 – Within mixed use areas or predominantly commercial areas, the hours of operation of each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses	Subject site is not located within a mixed-use are. Not applicable.
3.8 Traffic, parking and pedestrian circulation	
C31 – Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rate: In other areas: <ul style="list-style-type: none"> 1 space per 4 children 	The Development has regard with the car parking requirements under the Penrith Development Control Plan 2014.
C32 – In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicular movement or potential conflicts with truck and large vehicles.	Site not located within a commercial or industrial zone. Not applicable.

<p>C33 – A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised and demonstrate that</p> <ul style="list-style-type: none"> • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network 	<p>Traffic Report has been prepared that demonstrates that development will not result in unacceptable traffic and parking impacts on the amenity of neighbouring properties.</p>
<p>C34 – Alternate vehicular access should be provided where child care facilities are on site fronting;</p> <ul style="list-style-type: none"> • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials <p>The alternate access must have regard to the prevailing traffic conditions</p> <ul style="list-style-type: none"> • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic 	<p>Not applicable as the site does not front a classified road or a road which carries freight traffic or transport dangerous goods or hazardous materials.</p>
<p>C35 – Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the sider locality in times of emergency.</p>	<p>Development site is not within a cul-de-sac or narrow lanes or road. Not applicable.</p>
<p>C36 – The following design solutions may be incorporated into a development to help provide a safe pedestrian environment;</p> <ul style="list-style-type: none"> • separate pedestrian access from the car park to the facility • defined pedestrian crossings including within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities 	<p>The development provides separate pedestrian and vehicular access.</p> <p>Vehicles can enter and exit the site in a forward direction.</p>

- vehicles can enter and leave the site in a forward direction

C38 – Car parking design should:

- include a child safe fence to separate car parking areas from the building entrance to play areas
 - provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards
 - include wheelchair and pram accessible parking
- Car parking area is sufficiently separated from the building entrance and outdoor play area.
- Accessible car parking space designed in accordance with Australian Standard is clearly marked and situated near the entry point.

Part 4 Applying the National Regulations to development proposals

4.1 Indoor space requirements

Regulation 107

Education and Care Services National Regulations

Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.

The proposal provides 3.3m² of indoor play space per child. The play space has been calculated in accordance with the unencumbered guidelines of this Guideline.

Design Guidance

Verandas as indoor space

For a veranda to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.

No veranda is to be included as unencumbered indoor space. Not applicable.

Design Guidance

Storage

It is recommended that a child care facility provide;

- a minimum of 0.3m³ per child of external storage space
- a minimum of 0.2m³ per child of internal storage space

The proposal provides appropriate internal and external storage areas.

4.2 Laundry and hygiene facilities

Regulation 106

Education and Care Services National Regulations

There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering.

On site laundry facilities are provided.

Laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.

Designed to comply.

Child care facilities must also comply with the requirements for laundry facilities that are contained in the *National Construction Code*.

Laundry designed to comply with relevant requirements under the National Construction Code.

Design Guidance

On site laundry

On site laundry facilities should contain:

Designed to comply.

- a washer or washers capable of dealing with heavy requirements of the facility
- a dryer
- laundry sinks
- adequate storage for soiled items prior to cleaning
- an on-site laundry cannot be calculated as usable unencumbered play space for children

4.3 Toilet and hygiene facilities

Regulation 109

Education and Care Services National Regulations

Adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

Toilet facilities for both the children and staff are provided.

Child care facilities must comply with the requirements for sanitary facilities that are contained in the *National Construction Code*.

Sanitary facilities designed to comply with relevant requirements under the National Construction Code.

4.4 Ventilation and natural light

Regulation 110

Education and Care Services National Regulations

Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.

The proposed facility has been designed to achieve cross ventilation, receive and have adequate natural light and be temperature controlled to avoid extremes in temperature.

Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the *National Construction Code*. Ceiling height requirements may be affected by the capacity of the facility.

Light and ventilation and minimum ceiling heights designed to comply with relevant requirements under the National Construction Code.

Design Guidance

Natural light

When designing child care facilities consideration should be given to:

- providing windows facing different orientations
- using skylights as appropriate
- ceiling heights

The development provides windows facing different orientation with the proposed ceiling heights are proportional to the room size to ensure natural lighting is available to activity spaces.

4.5 Administrative space

Regulation 111

Education and Care Services National Regulations

Services must provide adequate area or areas for the purpose of conducting the administrative functions of the services, consulting with parents of children and conducting private conversations.

Adequate space for administrative tasks being conducted on site are proposed within the office, staff and meeting rooms.

4.6 Nappy change facilities

Regulation 112

Education and Care Services National Regulations

Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing.

Nappy change facilities are provided for the facility for kids aged between 0-2.

All nappy changing facilities should be designed and located in an area that prevents unsupervised access to children.

Complies.

Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the *National Construction Code*.

Nappy changing, and bathing facilities designed to comply with relevant requirements under the National Construction Code.

Design Guidance

In circumstances where nappy change facilities must be provided, design considerations could include;

- Properly constructed nappy changing bench or benches
 - A bench type baby bath within one metre form the nappy change bench
 - The provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area
 - A space to store steps
- positioning to enable supervision of the activity and play areas

Designed to comply.

4.7 Premises designed to facilitate supervision

Regulation 115

Education and Care Services National Regulations

Centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regards to the needs to maintain their right and dignity.

The proposed layout ensure that hidden corners are avoided and that supervision views are maximised throughout the development.

Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the *National Construction Code*.

Comply.

4.8 Emergency and evacuation procedures

Regulations 97 and 168

Education and Care Services National Regulations

Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.

The proposed child care facility has been designed and incorporate features that provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.

Regulation 97 sets out the detail for what those procedures must cover including;

- instructions for what must be done in the event of an emergency
- an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit
- a risk assessment to identify potential emergencies that are relevant to the service

An Emergency and Evacuation Plan will be prepared in accordance with Regulation 97 and design guidance contained within this Guideline prior to operations commencing.

Design Guidance

An emergency and evacuation plan should be submitted with a DA and should consider:

- the mobility of children and how this is to be accommodated during an evacuation
- the location of a safe congregation / assembly point, away from the evacuated building, busy road and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings
- how children will be supervised during the evacuation and at the congregation/assembly, relative to the capacity of the facility and governing child-to-staff ratios

An Emergency and Evacuation Plan will be prepared in accordance with Regulation 97 and design guidance contained within this Guideline prior to operations commencing.

4.9 Outdoor space requirements

Regulations 108

Education and Care Services National Regulations

Every child being educated and cared for within a facility must have a minimum of 7.0m² of unencumbered outdoor space.

The proposal provides 7.3m² of unencumbered outdoor play space per child. The play space has been calculated in accordance with the unencumbered guidelines of this Guideline. Exploration and leaning within the outdoor play area will be maximised with the use of facilities such as the outdoor play equipment.

A veranda that is included within indoor space cannot be included when calculating outdoor space and vice versa.

Not applicable.

Design Guidance

Calculating unencumbered space for outdoor areas should not include areas of dense hedges or planting along boundaries which are designed for landscaping purpose and not for children's play.

Complies, no areas of dense hedges or planting along boundaries are used to calculate unencumbered space for outdoor areas.

4.10 Natural environment

Regulations 113

Education and Care Services National Regulations

The approved provider of a centre-based service must ensure that the outdoor space allow children to explore and experience the natural environment

Exploration and leaning within the outdoor play area will be maximised with the use of facilities such as the outdoor play equipment.

Design Guidance

Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:

- are known to be poisonous, produce toxins or have toxic leave or berries
- have seed pods or stone fruit, attract bees, have thrones, spikes or prickly foliage or drop branches

Noted, refer to attached landscape plan for detail.

The outdoor space should be designed to:

- provide a variety of experience that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment
- Assist supervision and minimise opportunities for bullying and antisocial behaviour
- enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitates interaction
- sand pits and water play areas
- furniture made of logs and stepped logs
- dense indoor planting and green vegetated walls
- climbing frames, walking and/or bike tracks
- vegetable gardens and gardening tubs.

The outdoor space has been designed to provide a variety of experience that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment.

4.11 Shade

Regulations 114

Education and Care Services National Regulations

The approved provider of a centre-based service must ensure that the outdoor space includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.

Appropriate natural and built shade structures are incorporated into the design of the child care facility that will contribute towards protecting children from overexposure to ultraviolet radiation from the sun.

4.12 Fencing

Regulations 104

Education and Care Services National Regulations

Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.

Development proposes appropriate fencing that is consistent with fencing within the subject area and with comparable child care facility within the wider Penrith Local Government Area.

This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age.

Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the *National Construction Code*.

Designed to comply.

Design Guidance

Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding areas. In general, fencing around outdoor play areas should:

- prevent children climbing over, under or through fencing
- prevent people outside the facility from gaining access by climbing over, under or through the fencing
- not create a sense of enclosure.

Development proposes appropriate fencing that is consistent with fencing within the subject area and with comparable child care facility within the wider Penrith Local Government Area.

Design consideration for side and rear boundary fences could include:

- being made from solid prefinished metal, timber or masonry
- Having a minimum height of 1.8m
- having no rails or elements for climbing higher than 150mm from the ground

Designed to comply.

Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines.

Fencing and gates designed to comply with relevant requirements under the Australian Standards and Roads and Maritime Services Traffic Management Guidelines.

Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems. Designed to comply.

4.13 Soil assessment

Regulations 25

Education and Care Services National

Regulations

Subclause(d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purpose as part of an application for serviced approval.

The development site has historically been utilised for residential purposes with no known potential contamination activities being conducted on site. A PSI has been carried out.

SYDNEY REGIONAL ENVIRONMENTAL PLAN (SREP) NO. 20 HAWKESBURY NEPEAN RIVER

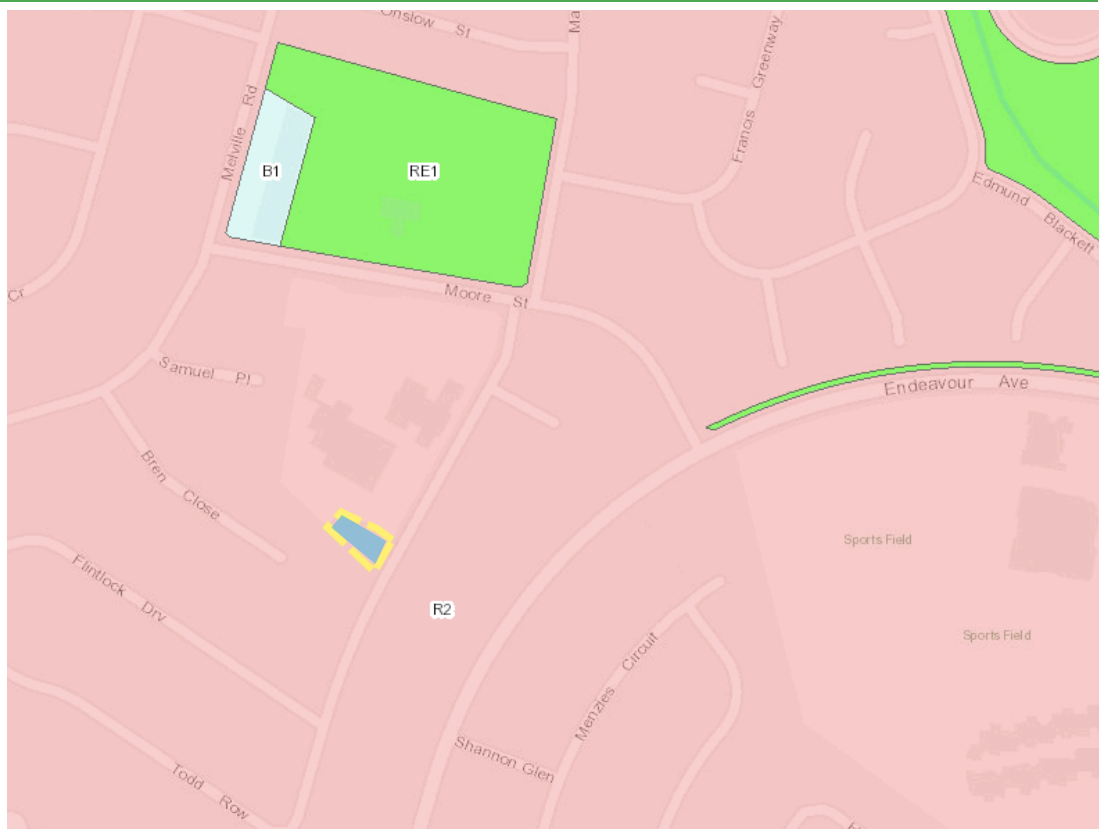
The development proposal incorporates an amended drainage concept that demonstrates that stormwater can be adequately conveyed to the existing street network. It is noted that the proposal meets the recently adopted WSUD measures required to achieve appropriate water quality for stormwater discharge.

PENRITH LOCAL ENVIRONMENTAL PLAN 2010

As outlined in the following page, the subject site is zoned R2- Low Residential Density under the provisions of the Penrith Local Environmental Plan 2010.

The current application is made pursuant to the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

Figure 5: Zoning Map Extract (Source: Penrith LEP 2010)



Subject Site

'Centre-Based Child Care Facilities' are permissible with consent within the R2 Zone, with the site subject to a maximum building height of 8.5m as per the LEP.

centre-based child care facilities means:

- (a) a building or place used for the education and care of children that provides any one or more of the following:
 - (i) long day care,
 - (ii) occasional child care,
 - (iii) Out-of-school-hours care (including vacation care),

- (iv) *Preschool care, or*
- (b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW),*
but does not include
- (c) *a building or place used for home-based child care or school-based child care, or*
- (d) *an office of a family day care services (within the meaning of the Children (Education and Care Services) National Law (NSW), or*
- (e) *a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) *a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) *a service that is concerned primarily with providing lesson or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) *a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.*

The development proposal is also consistent with the prescribed zone objectives which are stipulated as:

- *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 identify 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 proposed development provides a centre-based child care facility that will provide valuable child care services and employment opportunities to people who live and work in the local area.

The centre-based child care facility has incorporated a contemporary design that achieves good presentation to Todd Row and the facade of the building will resemble a modern two storey form set within a landscape setting to ensure compatibility with the existing residential character of the locality.

The use as a centre-based child care facility will foster a sense of community given the nature of such community-based land uses.

The table in the following page provides details on the development standards relevant to the current proposal as well as other relevant LEP provisions.

Penrith Local Environmental Plan 2010 – Compliance Table			
Clause	Controls	Comments	Complies
Zoning	R2- Low Density Residential	'Centre Based Child Care Facilities' are permissible with Council consent in the R2 – Low Density Zone.	Yes
Part 2 Permitted or Prohibited Development			
2.3	Zone objectives and land use table	The proposal is consistent with the zone objectives of the R2 – Low Density Residential Zone and will provide valuable child care services and employment opportunities to people who live and work in the local area.	Yes
2.6	Subdivision – consent requirements	No subdivision is proposed.	N/A
2.7	Demolition requires consent	Council consent is sought for the demolition of the existing structures on site in accordance with the submitted Demolition Plan.	N/A
Part 4 Principal Development Standards			
4.3	Height of building – 8.5m	<p>Penrith Local Environmental Plan 2010 Height of Building Map Sheet indicates that the maximum building height within the subject site is 8.5m.</p> <p>The development proposes a two-storey building with no part of the proposed child care facility to encroach 8.5m in height and as such is compliant with Clause 4.3.</p> <p>Refer to attached architectural plans for detail.</p>	Yes
4.4	Floor space ratio	No FSR control applies to the subject site. Not relevant.	N/A
Part 5 Miscellaneous Provision			
5.10	Heritage conservation	The site is not identified as a heritage item, it is not located within proximity of any heritage items, nor is it located within a heritage conservation area.	N/A

Clause	Controls	Comments	Complies
		As a result, the subject site will not have any associated heritage restrictions and any heritage investigation is not required.	
Part 7 Additional Local Provisions			
7.1	Earthworks	<p>This application seeks Council consent for minor excavation of the site as per the attached plans noting the basement parking area. It is considered that the proposed excavation will have minimal adverse environmental or amenity impact.</p> <p>The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.</p> <p>The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.</p> <p>The proposed excavation work is consistent with the current and future use of the land and will develop the site into context with its surrounds and in accordance with Councils current and proposed planning strategies.</p> <p>A detailed site investigation prepared by Geotechnical Consultants Australia is provided with this application.</p>	Yes
7.2	Flood planning	The site is not identified as being flood prone.	N/A
7.3	Development on natural resources sensitive land	The subject site is not identified on the Natural Resources Sensitive Map. Not applicable.	N/A
7.4	Sustainable Development	<p>The proposal satisfies the LEP in that:</p> <p>(a) conserving energy and reducing carbon dioxide emissions,</p> <p>(b) embodied energy in materials and building processes,</p> <p>Proposal incorporates design elements to increase energy efficiency and reduce the consumption of natural resources.</p> <p>(c) building design and orientation,</p> <p>(d) passive solar design and day lighting,</p> <p>(e) natural ventilation,</p>	Yes

Clause	Controls	Comments	Complies
		<p>(f) <i>energy efficiency and conservation,</i></p> <p>(g) <i>water conservation and water reuse,</i></p> <p>Proposal incorporates appropriate design features including window size and location that will permit adequate solar penetration as well as natural ventilation to the proposed child care facility.</p> <p>(h) <i>waste minimisation and recycling,</i></p> <p>Waste management and recycling can be addressed through waste management plan.</p> <p>(i) <i>reduction of vehicle dependence,</i></p> <p>Proposal is within proximity to local bus routes.</p> <p>(j) <i>potential for adaptive reuse.</i></p> <p>Given the zoning of the site as R2 there is limited adaptive re-use potential on the site.</p>	
7.5	Protection of Scenic Character and Landscape Values	The site is not identified on the Land with Scenic and Landscape Values Map. Not applicable.	N/A
7.6	Salinity	Due to the nature and location of the site it is not likely to be affected by Saline Soils. Not applicable.	N/A
7.7	Servicing	The development site is well serviced by water and sewer and the required utility clearances will be obtained prior to works commencing on site.	Yes

PENRITH DEVELOPMENT CONTROL PLAN 2014

All relevant Council controls have been identified and considered in the following compliance table, noting the nature of the changes to the scheme means a substantial number of controls are of limited relevance to the proposal and only the key provisions are addressed in the table below.

Penrith Development Control Plan 2014 Compliance Table			
Clause	Controls	Comments	Complies
C10 Transport, Access and Parking			
10.5	Parking, Access and Driveways Parking Rates 1 space per 10 children plus 1 employee $6.3 + 9 = 15.3$	<p>The proposed dimensions for car parking spaces are consistent with Council controls. See plan for detail.</p> <p>The development proposes the construction of a 53 place child care facility with a total of 8 staff.</p> <p>Penrith Development Control Plan 2014, stipulates the following requirements for off-street parking for childcare centres</p> <ul style="list-style-type: none"> - 1 car space per 10 children or part thereof for parents and visitors, plus - 1 car space per employee plus provision for any dwelling <p>The facility proposes the following:</p> <p>16 x car parking spaces with the following breakdown:</p> <ul style="list-style-type: none"> - 9 staff parking spaces - 7 Visitor Parking spaces (including 1 accessible space). <p>The development therefore complies.</p>	Yes
D5 Other Land Uses			
5.2	Child Care Centers	<u>1) Work Based Child Care Centers</u> The development site is not located within a business or industrial area.	N/A

Clause	Controls	Comments	Complies
		<u>2) Location</u>	
		a) The DCP requires proposed child care facilities in excess of 40 children to demonstrate that services to be provided meets an unmet need in the community.	Yes - SEPP
		Clause 26(b) of the Environmental Establishment and Child Care Facility SEPP 2017 stipulates that any provision of a development control plan that needs to demonstrate need or demand for child care services does not apply to the development for the purpose of a center-based child care facility.	
		b) The development site is within close proximity to St Marys Commercial Precinct, Penrith City Centre and educational establishments.	Yes
		c) Vehicle access to the site is to be provided from Todd Row which is suitable as per the submitted traffic report.	Yes
		d) Access to the site is not located in a cul-de-sac, at an intersection or on a major residential road and the facility will not create traffic conflict or have an adverse impact on the amenity of the locality.	Yes
		Refer to attached Traffic Report for detail.	
		e) The development site is not located within an 85m radius of an existing or approved service station, or on land in a specific radius of an existing/approve flammable storage area under the State Environmental Planning Policy No 22 Hazardous and Offensive Development.	Yes
		f) The subject site is not located opposite or adjacent to an existing and lawful sex service premises and/or restricted premises.	Yes
		g) The subject site is not adjacent to an electricity transmission easement, mobile phone tower or similar structures.	Yes
		h) The subject site is not identified as being flood prone land under the Penrite LEP 2010.	Yes
		<u>3) Design, Scale and Site Frontage</u>	
		a) The development proposes a modern two story built form that is designed to be compatible within the existing low density residential context, noting compliance to maximum height control under the Penrith LEP 2010.	Yes

Clause	Controls	Comments	Complies
		The development complies with maximum height and setback controls that apply to the site under Penrith LEP 2010/DCP 2014. Given the double storey nature of the proposal and the incorporation of fencing and landscaping the development will not unacceptably reduce privacy level to an adjoining residential property.	
		b) The design of the proposal has taken into account nearby traffic generations, street design and the existing environment for pedestrians and cyclists.	Yes
		c) The site, which has an area of 926.5m ² and a frontage of 25.5m to Todd Row, is of sufficient size to accommodate the proposed 63 place child care facility, basement level and traffic maneuvering areas.	Yes
		d) The DCP prescribes a minimum site frontage of 22m. The subject site has a frontage >22m. However, Clause 25 of the Environmental Establishment and Child Care Facility SEPP 2017 stipulates that a child care facility can be located on a site of any size and have any length of street frontage or any allotment depth. As such minimum site frontage does not apply.	N/A - SEPP
		e) Safe sight distance is to be provided for all points of access to the site.	Yes
		<u>4) Built Form</u>	
		The child care facility has been designed to satisfy the requirements of all relevant provision including the recently published State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, Penrith Local Environmental Plan 2014, Penrith Development Control Plan 2014, Child Care Planning Guidelines and Children's (Education and Care Services) Supplementary Care Provisions 2012.	Yes
		b) The facility has been designed to be sympathetic to the existing 2 storey built form character within an existing low density residential zone.	Yes
		With the development site residing within a R2 zoned residential area, the child care facility has been designed to be consistent with the building pattern and as such has been designed to comply with the setback provision under the Penrith DCP for dwelling houses, as it is the dominant built form within the subject area.	

Clause	Controls	Comments	Complies
		<p>The DCP requires a minimum front setback of 5.5m.</p> <p>The proposal provides a primary front setback of 5.5m from the primary building line to Todd Row.</p> <p>The DCP also prescribe a side setback of 900mm.</p> <p>Development provides a minimum side setback of 900mm to its side boundaries.</p> <p>The development demonstrates that the proposed two storey child care facility is consistent in form, bulk and scale with the general built form character and pattern within the subject area.</p> <p>d) The proposed outdoor areas are located on the ground floor. The proposal has provided appropriate acoustic fencing and landscape embellishment works along boundaries which reduces any potential impacts.</p> <p><u>5) Vehicle Access, Circulation and Parking</u></p> <p>The vehicle circulation and car parking areas within the basement level has been designed to allow safe drop-off and collection of children as well as the safe movement and parking of staff, parents and visitors.</p> <p>The proposal complies with the provisions in accordance with the parking section of the Penrith DCP 2014. See section 10.5 above for detail.</p> <p>Driveways, access ways and car parking spaces are to be appropriately dimensioned in accordance with Council controls.</p> <p>Furthermore, the driveway permits the safe movement and parking of vehicles on site and allow vehicles to enter and leave the site in a forward direction. See attached plans and Traffic Report for detail.</p> <p>It is also noted that separate vehicle and pedestrian access is provided to the site, noting the provision of basement carparking contributed towards minimising paved areas within the front setback and increases landscape opportunities.</p>	<p>Yes</p> <p>Yes</p>

Clause	Controls	Comments	Complies
		<p><u>6) Noise</u></p> <p>An Acoustic Report accompanies the application that outlines mitigation measures both to the construction of the building and the operation of the facility to minimise the impact of the proposal on adjoining residential properties.</p>	Yes
		<p><u>7) Shade</u></p> <p>Appropriate shade structures are provided within the outdoor play area. See attached plans for detail.</p>	Yes
		<p><u>8) Landscaping</u></p> <p>Appropriate landscaping will be provided on site to enhance the visual setting and accentuate the design qualities of the building form.</p> <p>Where appropriate, the proposal incorporates landscape setting to mitigate privacy impacts, provide a landscape setting, and to provide a landscape setting, and to provide well sized open space for children in child care.</p> <p>It is noted that childproof fencing and gates is to be incorporated around the outdoor play areas, to the entrance to the child care facility and other appropriate areas.</p>	Yes

EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2012 (NATIONAL REGULATIONS)

In preparing this development application and in the design development of the proposal, regard has been had to not only the relevant Penrith City Council controls and guidelines, but also to the Education and Care Services National Regulations 2012 (National Regulations).

It is noted that the National Regulations provide exhaustive controls and requirements in addition to that of local government and includes: -

- licensing and approvals processes, including documentation requirements;
- facilities and equipment requirements;
- staffing requirements;
- child number requirements;
- operational requirements;
- administrative requirements;
- probity check requirements; and
- various miscellaneous requirements.

Those provisions relevant to the current proposal are addressed in the table within the following page.

Clause	Controls	Comment	Complies
Part 3 Facilities and Equipment Requirements			
28 (1)	Space requirements	(a) An administration room is located within the proposed Child Care Facility.	Yes
		(b) A staff room is located within the proposed Child Care Facility.	Yes
		(c) A Cot Room that is used only for children under 2 years of age has been provided within the proposed Child Care Facility.	Yes
28 (2)	Adequate unencumbered indoor play space	The proposed centre-based child care facility provides the minimum 3.25m ² of unencumbered indoor play space per child as shown on the submitted plans.	Yes
28 (4)	Adequate unencumbered outdoor play space	The proposed centre-based child care facility provides the minimum 7m ² of unencumbered outdoor play space per child.	Yes
28 (6)	Shading	The proposed centre-based child care facility has provided adequate shading. See attached plans for detail.	Yes

29	Laundry	A laundry facility is available on the premises of the proposed centre-based child care facility.	Yes
30	Craft preparation facilities	Craft preparation areas are provided in the centre-based child care facility.	Yes
31	Food preparation facilities	A kitchen facility is provided by the proposed centre-based child care facility.	Yes
32	Toil and washing facilities	Appropriate toilet and washing facilities are provided.	Yes
33	Nappy change facilities	A nappy changing facility is provided by the proposed centre-based child care facility.	Yes
34	Sleeping facilities	The proposed centre-based child care facility has appropriate sleeping facilities with a separate cot room provided for 0 - 2 year old.	Yes
35	Storage facilities	The proposed centre-based child care facility has provided adequate storage facilities.	Yes
45	Fencing	Appropriate outdoor play area fencing will be provided by the proposed centre-based child care facility.	Yes
Part 3 Staffing Requirements			
52	Staff to child ratio	<p>The proposed centre-based child care facility will require the following minimum staff requirements:</p> <p>0-2 Years – 1 employee per 4 children 2-3 Years – 1 employee per 5 children 3-5 Years – 1 employee per 10 children</p> <p>The breakdown of children ratio within the proposed centre-based child care facility is as follows:</p> <p>0-2 Years – 8 children (2 staff) 2-3 Years – 15 children (3 staff) 3-5 Years – 40 children (4 staff)</p> <p>Total: 9 staff. The development provides a total of 9 staff. Complies</p>	Yes

CONCLUSION

Following a review of the relevant planning controls, it is concluded that the proposed modification application is an appropriate outcome on site and remains consistent with the design intent of the original proposal.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, the application is submitted to Council for assessment and granting of development consent. Think Planners Pty Ltd recommends the approval of the modification including the amendment of relevant conditions identified previously in this statement.