

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0866
Proposed development:	Demolition of Existing Structures & Construction of Two (2) Storey & 80 Place Child Care Centre including Basement Car Parking
Property address:	170 Derby Street, PENRITH NSW 2750
Property description:	Lot 2 DP 109053
Date received:	21 December 2020
Assessing officer	Lauren Van Etten
Zoning:	SEPP WSA - Affected by Obstacle Limitation Zone R3 Medium Density Residential - LEP 2010
Class of building:	Class 9b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the construction of a child care centre at 170 Derby St, Penrith. The subject site is zoned R3 – Medium Density Residential under the provisions of Penrith Local Environmental Plan 2010. The proposal is a permissible land use in the R3 zone with consent.

Key issues identified for the proposed development and site included:

- Incompatible front setback treatment with excessive hardstand areas relative to the established residential area;
- Inadequate side setbacks with poor landscape opportunities and incompatible bulk and scale;
- Accessibility concerns given the level differences between the proposal and the existing footpath levels;
- Unsatisfactory tree loss;
- Non-compliant on site detention basin;
- Non-compliant water sensitive urban design measures;
- Waste management issues;
- Incompatible signage given the proximity to a heritage item.

An amended design was provided, along with associated documents, and is considered satisfactory. In brief this included a reduction in capacity from 95 to 80 children, a greater landscaped setback to the street and side boundaries with minimal ramping, greater deep soil opportunities, a reduction in the number of solar arrays on the roof, a heritage impact statement and associated facade changes, compliance with Council's OSD and WSUD requirements and waste management solutions.

Pursuant to the requirements of Council's Community Participation Plan, the application was notified and advertised to adjoining and nearby residences and publicly exhibited from 18 January to 2 February 2021. No submissions were received.

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

Site & Surrounds

The site has a rectangular shape with a northern frontage to Derby Street of 23.645m, an eastern side boundary of 54.740m, a western side boundary of 52.285m, and a southern rear boundary of 23.655m. The site has a total area of 1,296m². The site has a gentle slope of approximately 2.6m from the rear south-western corner of the site to the street frontage (north-western corner).

The site contains a single-storey brick and clad cottage with tile roof, which has a commercial use as medical consulting rooms. The site frontage comprises two driveway openings. At the eastern part of the frontage is a driveway providing Access to 7 parking spaces within the site frontage. At the western side of the site frontage is a second driveway providing access to the rear of the site and accommodates a further 3 cars in a tandem arrangement. A bus zone is located between the two driveway openings at the site frontage.

The surrounding area is characterised by one and two storey dwellings, townhouses and properties converted to alternative uses (dentist, health centre and the like). Immediately to the west is No.172 Derby Street which comprises a two storey detached dwelling. To the east is No.168 Derby Street which comprises a two storey townhouse complex, with two separate buildings to the front and rear with driveway hardstand and turning areas in between. Private open space for the front building is located along the eastern boundary and for the rear building is located along the rear southern boundary.

To the rear (south), the subject site shares a boundary with No. 56 Evan Street (a detached dwelling with shed close to shared boundary) and 23 Tornaros Avenue (villa complex). Opposite the site, across Derby Street at Nos.161 and 163 Derby Street are single storey buildings used as a medical centre and dental surgery respectively. No 163 Derby Street is a cottage with local heritage significance.

During the assessment of the development application, the palm trees within the front setback, including a date palm, were removed without consent. Council's Compliance Team were notified of this for investigation and action (DC21/0695).

The site is approximately 200m north-west of Spence Park, 320m south west of Penrith High School and 1km south east of Penrith railway Station and CBD.

Proposal

The proposed development, as amended, includes:

- Demolition of existing structures;
- Construction of a child care centre including basement parking, landscaping and associated drainage works;
- Hours of operation 7:00am to 6:00pm, Monday to Friday;
- 80 children with the occupancy rate of each age group:
 - 0-2 years: 16 children
 - 2-3 years: 24 children
 - 3-6 years: 40 children
- Up to 13 staff;
- 21 car parking spaces, including one accessible space;
- Two single width, one way driveways are proposed at either side of the frontage to enable forward egress and efficient basement circulation;
 - Stormwater drainage is proposed via a pit and pipe system and on-site detention (OSD) tank below the porch, partially above ground;
- The removal of 3 existing trees of high value and planting of 13 replacement trees;
- An acoustic fence 1.8m high along side and rear boundaries and along the upper floor outdoor play areas, varying in height from 1.6m-2.1m, setback 1.5m-2m from the side boundaries and 14m from the rear boundary. The acoustic fence along the boundaries is to be of solid construction with no gaps (such as lapped-and-capped timber or precast concrete) and on the upper floor they are to be glazed panels (minimum thickness of 6.38 mm laminated) behind the masonry planter boxes (800mm);
- Solar panels are proposed flush on the roof.

Pre-Lodgement Background

In 2020, a prelodgement meeting was held for a child care centre for 95 children (PL20/0061). Key issues discussed related to character, heritage and amenity impacts, hardstand areas/site coverage, landscape buffers, wastewater management, stormwater, acoustic and tree impacts.

Within the prelodgement meeting, it was noted that two driveways were proposed however this is in fact reflective of the existing arrangement on the site and is also reflective of other properties within Derby Street. Further, Council's Development Engineer preferred this arrangement to allow efficient access to the basement. The pre-lodgement advice noted that a dual driveway arrangement, albeit atypical, could be considered if the building was lowered further to allow level access from the street and remove the need for either a chair lift or ramp.

Key Amendments during the Development Application Assessment

After the development application was lodged, Council undertook works to the bus stop and footpath, lowering these levels, resulting in a level difference between the subject site and the existing verge that was even greater than it was at the prelodgement stage. A meeting was held between Council staff and the applicant during the assessment of the application to discuss various options to address the level difference. Ultimately the building was lowered as much as possible although a ramp was still required in order to appropriately balance OSD and the building positioning. In light of the other changes that were made i.e. reducing capacity from 95 to 80 children, greater landscaped setbacks and greater deep soil opportunities, the minimal ramping was considered supportable as was the dual driveway arrangement.

Education and Care Services National Regulations

It is noted that the proposed 13 staff is based on the requirements of the Regulations, more specifically as detailed in Part 4.4, Clause 123:

- (a) for children from birth to 24 months of age—1 educator to 4 children; (therefore 4 staff are required for the 16 children proposed);
- (b) for children over 24 months and less than 36 months of age—1 educator to 5 children; (therefore 5 staff are required for 24 children proposed);
- (c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children; (4 staff are required for the 40 children proposed); and
- (d) for children over preschool age, 1 educator to 15 children.

Plans that apply

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

• Section 7.12 - Developer Contributions

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

1% x \$3,300,342 (cost of construction works) = \$33,003

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

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

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

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

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

The proposal complies with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations. The proposal also complies with the outdoor space requirements under regulation 108 (outdoor unencumbered space requirements). The proposal provides 282m² of indoor unencumbered space (260m² is required) and provides 608m² of unencumbered outdoor space (560m² is required). Accordingly, in this instance Clause 22 does not apply to the proposal and concurrence of the Regulatory Authority is not required.

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

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

Child Care Planning Guideline (August 2017)

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

Child Care Planning Guideline August 2017		
Section	Objectives	Proposed
3.1 Site Selection and Location	To ensure that appropriate zone considerations are assessed when selecting a site;	- The proposed use is a permitted land use in the zone with Council consent, - The site is considered suitable for the development for the following reasons: - The site is not identified as being affected by flooding, land slope, bushfires, coastal hazards and other environmental hazards.

	• To ensure that the site selected for a proposed child care facility is suitable for the	• The site is not located along a major collector road. • Located near a school, parks and neighbourhood shops, the proposal is near compatible social uses. • The site fronts a bus stop served by routes 774 (Mount Druitt to Penrith via Nepean Hospital), 775 (Swansea Heads to St Marys Gateshead), 776
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	use. • <i>To ensure the site for child care facilities are appropriately located;</i> • <i>To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.</i>	(Mount Druitt to Penrith via St Clair) and 789 (Luddenham to Penrith). • The site, which has an area of 1296m² is of a sufficient size and width to accommodate the proposed centre-based child care facility. • The application has demonstrated that the site is suitable in respect to environmental impacts, specifically acoustic, privacy and excavation impacts, and does not incur risks from environmental hazards i.e. contamination.
3.2 Local Character, Streetscape and the Public Domain Interface	• <i>To ensure that the child care facility is compatible with the local character and surrounding streetscape;</i> • <i>To ensure clear delineation between the child care facility and public spaces;</i> • <i>To ensure front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</i> • <i>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.</i>	• The proposal provides an appropriate design response within the R3 Medium Density Residential zone, and contributes to the local area by being designed in character with the locality and existing streetscape. • The pitched and recessive roof form is reflective of the residential character of the street. The development includes a covered porch structure at ground floor level as a cue from the heritage item at No.163 Derby Street (across the road) and other nearby buildings. • The proposed palette of materials includes brickwork with warm/grey and off white render, standing seam roofing/wall cladding and timber cladding, all of which is compatible with the style of residential properties seen in the wider area. • The proposal complies with the prescribed height control under the LEP and provides front and rear setbacks consistent with the surrounding development. The design was also amended, as Council requested, to increase the front setback and increase the landscape embellishment therein. • Regarding the side setbacks, the centre's capacity was reduced from 95 to 80 kids in order to scale back the building and provide greater setbacks to allow for adequate landscaping. • The proposed front boundary fence is consistent with the material and type of fence within this block of Derby St while allowing for surveillance of the street. • Clear delineation between the facility and the street is provided through the front fence, along with a clear access path from the street to the legible entry. • The proposed landscaping within the front setback results in appropriate opportunities for landscaping. • The location and design of parking areas (within a basement) is consistent with the character of the locality in which parking areas are located predominately behind the primary building line. • While a modern fence is proposed it is of a neutral colour and transparent and necessary for safety reasons. A recommended condition of consent, however, will require the fence to be timber rather than metal.

3.3 Building Orientation, Envelope and Design	• <i>To respond to the streetscape, while optimising solar access and opportunities for shade;</i> • <i>To ensure that child care facilities are designed to be accessible by all potential users;</i> • <i>To ensure that buildings are designed to create safe environments for all users.</i> • <i>Considers heritage within the local neighbourhood including identified heritage items and conservation areas.</i> • <i>Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath</i>	• As aforementioned, the built form responds to the predominant built form, height and landscaped setbacks in the area to respond to the streetscape quality. • The proposal responds to the site with minimal fill and sensitive design to minimise overshadowing to the neighbouring residential properties. Refer to the earthworks clause of the LEP discussion for further details. • The proposed 6.5m setback within the front portion of the lot provides appropriate separation to the streetscape . • The proposed tree species within the front and rear yards are likely to result in shade opportunities. • The facility is oriented to the north, including the external play area to maximise solar access. • Where possible play equipment is located away from common boundaries, noting landscape embellishment works and fencing are situated along the site's side and rear boundaries. The Operational management mechanisms within the Acoustic report will further manage outdoor play times and the number of children accessing outdoor areas at any one time to minimise acoustic impacts. • Refer to Clause 5.10 of this report for further discussion regarding the impacts upon heritage items within the vicinity of the site. • As an Access Report was submitted and Council's Building Surveyor raised no objections, the design will be accessible by all potential users. The building cannot be lowered further following significant investigation of options in order to appropriately balance OSD and the building positioning. Access can, however, still be achieved via the ramps proposed. • Given the front setback increased, there is additional room for landscaping to soften the necessary ramping and the elevated section of the porch. Ramping is considered minimal in the revised plan. • Solar panels are proposed on the roof facing the streetscape and this is consistent with the principle for sustainability in Part 2 of the guidelines. It is also noted that the heritage item across the street also has solar panels in view from the street. However, the number of arrays is considerable and visible. Therefore a recommended condition will halve the number of arrays and confine them to the lower portion of the roof to reduce visibility.
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3.4 Landscaping	• <i>To provide landscape design that contributes to streetscape and amenity.</i> • <i>Use the existing landscape where feasible to provide a high quality landscaped area by:</i> - <i>reflecting and reinforcing the local context</i> - <i>incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping</i>	• The proposal was amended to provide a greater landscaped setback along the front boundary, increasing from 5.8m to 6.6m. • Canopy trees are included within the front setback and a recommended condition will ensure they are of a species that will reach a mature height of 10 metres to soften the built form and contribute to the streetscape. • Species detrimental to children with allergies have been removed. • The driveways were amended and straightened to accommodate additional landscaping alongside them, within the eastern and western corners of the front setback. • The landscape plan was also altered so that proposed trees will be located a minimum setback of 1.2m-1.5m to ensure root growth does not disrupt adjoining properties. • An additional 3 trees have been provided within the rear yard, including 2 trees located away from the property boundaries. • In considering the existing streetscape and future desired character, this landscaping is sufficient to screen the proposal and improve the amenity of the site via high quality landscaping that incorporates local vegetation.
3.5 Visual and Acoustic Privacy	• <i>To protect the privacy and security of children attending the facility;</i> • <i>To minimise impacts on privacy of adjoining properties;</i> • <i>To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.</i>	• The proposed development has been designed to minimise direct overlooking of indoor rooms and outdoor play spaces from public areas via appropriate site and building layout, blank walls for sections of the side boundaries, locating suitable windows and doors and the use of fencing and landscape works to side boundaries. • The development proposes appropriate fencing along the site's side boundaries to minimise acoustic impacts to neighbouring properties as well as measures in the operational management mechanisms within the acoustic report aforementioned.

3.6 Noise and Air Pollution	• <i>To adopt design solution to minimise the impacts of noise on the children;</i> • <i>To ensure that outside noise levels on the facility are minimised to acceptable levels</i>	• The subject site is not located near major roads, rail lines, beneath flight paths or other noisy environments. • Appropriate design measures have been undertaken including appropriate setbacks, use of landscaping and acoustic fencing to minimise acoustic impacts to neighbouring properties. • The site is not located close to any major roads or industrial areas and is therefore not exposed to major sources of air pollution.
3.7 Hours of Operation	• <i>Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.</i>	• Proposed operating hours are considered appropriate, being Monday to Friday 7:00am to 6:00pm,.
3.8 Traffic, Parking and Pedestrian Circulation	• <i>To provide parking that satisfies the needs of users and demand generated by the centre;</i> • <i>To provide vehicle access from the street in a safe environment that does not disrupt traffic flows;</i> • <i>To provide a safe and connected environment for pedestrians both on and around the site.</i>	• Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. • The development proposes to employ 13 staff and provide for 80 children requiring 21 car spaces be provided on site. The proposal complies with this requirement with 21 parking bays (13 staff and 8 visitor bays) being provided. • A separate pedestrian access path is provided from the street to the main entry and is also provided within the basement parking area to the lift.

State Environmental Planning Policy No 55—Remediation of Land

SEPP 55 aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7 of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and is satisfied that the land is suitable (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A Detailed Site Investigation (DSI) has been carried out at the site by Geotechnical Consultants Australia to ascertain if any contaminants are present on the site. The DSI found the site is suitable for the proposed development and land use, providing the recommendations within Section 10 of the report are undertaken.

The report recommends:

- *Any soils requiring excavation, onsite reuse and/or removal must be classified in accordance with "Waste Classification Guidelines Part 1: Classifying Waste" NSW EPA (2014);*
- *All structures on the site should have a HMS conducted by a qualified occupational hygienist and/or environmental consultant for the site prior to any demolition or renovation works in accordance with relevant Australian Standards, SafeWork NSW codes of practice and any other applicable requirements;*
- *The demolition of any structures and excavation activity on site be undertaken in accordance with relevant Australian Standards, SafeWork NSW codes of practice and any other applicable requirements;*
- *A site specific 'Unexpected Finds Protocol' is to be made available for reference for all occupants and/or site workers in the event unanticipated contamination is discovered, including asbestos;*
- *If any unexpected occurrence happens on the site, all work activity should be ceased temporarily and an environmental consultant should be notified immediately.*

Furthermore, a Hazardous Materials Survey was carried out by Geotechnical Consultants Australia and no asbestos was identified at the site.

Council's Environmental Management Officer reviewed the proposal and raised no objection, subject to recommended conditions. As such, the development is acceptable and the site is suitable for the proposed development, consistent with Clause 7 of the SEPP.

State Environmental Planning Policy No 64—Advertising and Signage

Schedule 1 Assessment Criteria

1. Character of the area

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?

Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?

The proposed sign is located on the upper level of the front facade and is proposed on an aluminium screen 1.7m x 12m, covering the majority of the upper floor as viewed from the street. Council's Heritage Advisor has advised its size is incompatible with the general built environment and surrounding character of the area. Subsequently, the sign and aluminium screen will be removed from the stamped approved plans in red and a recommended condition of consent will require an amended signage plan to be submitted prior to the issue of a Construction Certificate for a facade sign of a reduced scale which does not detract from the materials and finishes or alternatively a freestanding sign within the front garden.

2. Special areas

Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?

The proposed sign detracts from the visual quality of the adjacent heritage items as detailed further under Clause 5.10 of this report.

3. Views and vistas

Does the proposal obscure or compromise important views?

Does the proposal dominate the skyline and reduce the quality of vistas?

Does the proposal respect the viewing rights of other advertisers?

The sign will not compromise or obscure important views or vistas. However, as the proposed sign is mounted to the fascia of the upper floor front facade, it will dominate as viewed from the streetscape.

4. Streetscape, setting or landscape

Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

Does the proposal contribute to the visual interest of the streetscape, setting or landscape?

Does the proposal reduce clutter by rationalising and simplifying existing advertising?

Does the proposal screen unsightliness?

Does the proposal protrude above buildings, structures or tree canopies in the area of the locality?

Does the proposal require ongoing vegetation management?

The proposed sign is an unsatisfactory scale, proportion and form and is not in keeping with the character of the streetscape. A recommended condition will require an alternative signage design to be provided to contribute to the visual interest of the building and the local area, subject to detailed design being provided prior to the issue of a Construction Certificate in accordance with Council's Heritage Advisor's requirements.

5. Site and building

Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?

Does the proposal respect important features of the site or building, or both?

The proposed aluminium screen the signage is mounted upon is incompatible with the building's characteristics by way of size, location, features and appearance.

6. Associated devices and logos with advertisements and advertising structures

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?

A revised proposed business identification sign will display the name of the company that runs the child care facility. The detailed design will be provided to Council prior to the issue of a Construction Certificate.

7. Illumination

Would illumination result in unacceptable glare?

Would illumination affect safety for pedestrians, vehicles or aircraft?

Would illumination detract from the amenity of any residence or other form of accommodation?

Can the intensity of the illumination be adjusted, if necessary?

Is the illumination subject to a curfew?

No illumination is proposed.

8. Safety

Would the proposal reduce the safety for any public road?

Would the proposal reduce the safety for pedestrian and cyclists?

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

It is envisioned that the proposed sign will not reduce the safety to roads, pedestrians or cyclists during the installation process and in perpetuity. However, the sign will not be approved for the reasons discussed

above.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

Local Environmental Plan 2010

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.1 Earthworks	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

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

Clause 2.3 Zone objectives

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

Clause 5.10 Heritage conservation

The proposed development is adjacent to heritage items, in particular the Victorian Cottage opposite, being Item No. 698. Therefore a Statement of Heritage Impact (HIS) was requested throughout the assessment process, with options discussed for the site in a heritage context as per Clause 5.10(5)(c) of Penrith Local Environmental Plan 2010. A HIS was subsequently provided by Weir Phillips Heritage and Planning. The HIS stated that the proposal will have a minimal and acceptable impact on the item, as detailed within this extract from the HIS below:

"The proposed new child care centre will have an acceptable impact on the setting of the heritage item because it is sufficiently separated from the item and will not block view corridors to and from the items or have any impact on its fabric. The proposed building is well-designed and will sympathetically relate to the style of the period while reading as contemporary in its materiality. The building will be unobtrusive in the setting of the item due to its neutral, plain colours and vegetation that will help integrate it into the streetscape. The proposed works fulfil the aims and objectives of the Penrith LEP 2010 and the Penrith DCP 2014 by improving the quality and diversity of childcare options in Penrith while respecting the heritage significance of the area in which it lies."

Council's Heritage Advisor reviewed the proposal and noted that the overall bulk and scale were acceptable from a heritage perspective, with the design of the proposal supported, subject to the following recommendations:

- *The detailing should be fine-tuned with the front facade material to be long lasting pure-zinc, window geometry refined, e.g. full height and set deeper into facade etc;*
- *Verandah detailing shall be provided with clean stainless steel post base junctions;*
- *Signage – The current full-length sign is out of keeping with the residential area. Further options are to be developed, e.g. a separate sign off the facade in front garden, or a sign on the facade which is reduced and fine-tuned, e.g. individual letters being delicately placed away from the facade on discrete pins; and*
- *Cladding to be timber instead of artificial timber, e.g. western red cedar.*

Recommended conditions have been provided in this regard and it is considered that the proposal is consistent with Clause 5.10 of the LEP.

Clause 7.1 Earthworks

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

Stormwater details submitted demonstrate no adverse impact as a result of the proposed earthworks. The basement is a single level, which is common for development in the area. It is considered that standard construction practices will ensure soil stability. The earthworks enable redevelopment of the site and will have no detrimental impact on the future use or redevelopment potential of the land. Any excavated soil will be disposed of in accordance with Council requirements and will be consistent with all state and national requirements.

Regarding cut and fill, the Child Care Planning Guidelines states cut and fill should be minimised. The basement does result in substantial cut and a level difference at the rear of the proposed outdoor play area which is 1.4m lower than natural ground level. However, there is negligible fill at the front where the finished floor level proposed is 40.5m which matches the existing natural ground level. The building only appears elevated as viewed from the street because there is an existing slope within the front setback, falling from 40.5m down to 39.7m at the verge, where the bus stop upgrade works and footpath works were recently undertaken.

Discussions were held between Council and the applicant, as aforementioned, as to whether the building could be lowered further. The building cannot be lowered further following significant investigation of options in order to appropriately balance OSD and the building positioning. There is no option for a level access from the street to the building if OSD is to be accommodated and OSD is required. It would also not be of benefit to lower the building further given the cut within the rear is already providing a 1.4m difference, resulting in 1.4m high retaining walls within the landscaped beds along the side and rear boundaries. Overall the transitions are softened within the front setback and along side and rear boundaries with landscape buffers, thus minimizing any visual impacts. Further, accessibility is provided via a ramp at the front and the rear is level within the play area. Therefore there are no adverse impacts anticipated from the proposed earthworks which are reasonable given a basement is proposed.

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

Clause 7.4 Sustainable development

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

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

The proposed landscaping is adequate to contribute to the amenity of the site and surrounds with compensatory trees proposed. The design does facilitate cross ventilation and solar panels are also proposed. In addition, the driveways are shown with a light brown colour and a recommended condition will ensure this given the absence of this detail in the external finishes.

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

Draft State Environmental Planning Policy (Remediation of Land) 2018

The proposal has been assessed against the applicable provisions of Draft State Environmental Planning Policy (Remediation of Land) 2018 and the associated guideline document, and is considered to be acceptable. Refer to the discussion under State Environmental Planning Policy No. 55 - Remediation of Land for detail.

Draft State Environmental Planning Policy (Environment) 2017

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

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

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

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

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

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

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

Development Control Plan 2014

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

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

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

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

Council's Building Surveyor reviewed the proposal relevant to the regulations and the proposal complies with the requirements of the Regulations subject to conditions.

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

Context and Setting

The proposed building has been designed to respect the location and siting of the surrounding residential area. The development provides a modest, stepped first floor component, materials that take cues from the adjoining built forms and a combination of architectural features that reflect both the residential dwellings and heritage character of the area. In addition to the building's scale, the setbacks are also compatible to the adjoining residential dwellings. Appropriate landscaping has been provided along the front boundary which will provide a visual screen and is consistent with the surrounding locality.

The acoustic fence proposed is 1.8m in height along the eastern and western (side) and southern (rear) boundaries. Along the upper floor it is generally 1.6m in height and only 2.1m in height along 5m of the upper floor, setback behind masonry planter boxes and landscaped side setbacks. The acoustic report states the fence will be made of lapped and capped timber at ground floor and glazed panels (minimum thickness of 6.38 mm laminated) above the masonry planter boxes on the upper floor. It is noted no objections were received from the neighbours in relation to the proposed fence.

Tree Impacts

The application was supported by an Arboricultural Impact Assessment due to the proposal involving the removal of one (1) Lemon Scented Gum tree and one (1) Forest Red Gum tree along with 19 other trees that are exempt, inappropriate for a childcare centre and/or of low retention value.

It is noted at pre-lodgement stage the design responded to and intended to retain the brush box within the street however Council subsequently removed this tree as part of bus stop upgrade works.

In addition at pre-lodgement stage the design also retained the lemon scented gum in the rear (Tree 4). However, the advice within the pre-lodgement was to lower the ground floor to provide level access at the front of the site. Consequentially the applicant stated that the existing tree in the rear garden cannot realistically be retained given the level difference at the rear is approximately 1.4m between the natural ground level and the lower proposed level of the outdoor area. To retain tree T4, the surrounding ground level will have to be retained approx. 1.4m higher than the proposed outdoor level. As the tree falls within 0-2's and 2-3's outdoor play area, large level difference/terracing is not achievable to negotiate this level change. The tree roots may suffer over time and the tree may be impacted due to lowering the surrounding ground levels and is unlikely to survive.

The proposal and report were referred to Council's Tree Management Officer who acknowledged the issues for Tree 4 due to the level differences. Quality replacement trees have been provided within the landscape design setback from the side and rear boundaries to ensure room for growth. Council's Tree Management Officer reviewed all additional information and raised no objections subject to adequate compensatory planting and the recommendations within the arborist report regarding retention of the trees in the adjoining property to the north.

It is also noted that a special condition is recommended which requires an additional two trees to that proposed in the landscape plan, one of which is required to have a 1,000 litre pot size. This is deemed necessary given the date palm tree that was to be retained as part of the proposal was removed in an unauthorised manner during the assessment of the proposal. This was the sole tree to be retained and therefore requires two trees in its place, one of which has an advanced pot size, as adequate compensatory tree planting.

Noise Impacts

The application was accompanied by an Acoustic Impact Assessment that concluded that the noise

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

Traffic, Access and Parking

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

The development proposes to provide 21 parking spaces (13 staff and 8 visitor bays) including one accessible parking space complying with the rates specified in Penrith Development Control Plan 2014. The dimensions of the parking bays and circulation aisle comply with Australian Standards.

Council's Traffic Engineer reviewed the proposal and advised that no adverse traffic generation impacts are expected from the development and that the local road network has adequate capacity to cater for the traffic volumes generated by the development.

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

The site is suitable for the following reasons:

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

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Participation Plan, the application was advertised and notified to adjoining and nearby residences, and exhibited between 18 January and 2 February 2021. No submissions were received in response.

Referrals

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

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

Waste Services

Council's Waste Officer did not support the proposal, primarily on the basis that waste collection will not occur on the site. However, it is not considered appropriate on safety, amenity and urban design grounds for a waste truck to access the basement of the proposed child care centre. Refer to the appendix of this report for further discussion regarding the waste management aspects of the proposal.

Section 4.15(1)(e)The public interest

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

Conclusion

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

Recommendation

That DA20/0866 for the demolition of existing structures and construction of an 80 place Child Care Centre, including related car parking, fencing, tree removal, landscaping, drainage and site works at 170 Derby Street, Penrith, be approved.

General

1 A001

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

Drawing Title	Drawing No	Prepared By	Dated
Basement Plan	DA06A	Cullen Feng	26/04/21
Ground Floor Plan	DA07A	Cullen Feng	26/04/21
First Floor Plan	DA08A	Cullen Feng	26/04/21
Roof Plan	DA09A	Cullen Feng	26/04/21
Long and Cross Section	DA10A	Cullen Feng	26/04/21
Elevations	DA11A & DA12A	Cullen Feng	26/04/21
Waste Management Plan	-	Dickens Solutions Pty Ltd	May 2021
Stormwater Concept Plans	D00- D09	Smart Structures Australia	13/05/21
Erosion and Sediment Control Plans	D10-D11	Smart Structures Australia	07/12/20

Supporting Documentation:

- Geotechnical Investigation Report prepared by Geotech Consultants Australia, dated 15 December 2020
- Arborist Report and additional letter prepared by Bradshaw Consulting Arborists, dated 17 December 2020 and 12 May 2021, respectively
- Acoustic Report prepared by The Acoustic Group, dated 15 December 2020
- Traffic Report prepared by Varga Traffic Planning, dated 15 December 2020
- Plan of Management prepared by Daniella Assad - Montessori Academy, dated 12 April 2021
- Stormwater Quality Report, prepared by Smart Structures Australia, dated 13 May, 2021

2 A019 - Occupation Certificate

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

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

3 A021 - Business Registration

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

4 A026 - Advertising sign (not for residential)

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

5 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The approved operating hours are from 7am to 6pm, Mondays to Fridays. Delivery and service vehicles generated by the development are limited to:

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

6 A046 - Obtain Construction Certificate before commencement of works

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

7 A Special (BLANK)

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

8 **A Special (BLANK)**

The elevation and section drawings shall be amended to include a roof ridgeline RL which is no higher than 8.5m above existing ground level. The elevation and roof drawings shall also be amended to halve the number of solar arrays as indicated in red on the stamped approved plans. These plans are to be included in the application for a Construction Certificate to the satisfaction of the Certifying Authority.

9 **A Special (BLANK)**

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

10 **A Special (BLANK)**

A maximum of 80 children (16 x aged 0-2; 24 x aged 2-3; 40 x aged 3-6) are to be enrolled to attend the premises at any one time.

11 **A Special (BLANK)**

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

12 **A Special CPTED Requirements**

The following community safety and crime prevention through environmental design (CPTED) requirements are to be implemented prior to the issue of an Occupation Certificate and/or in perpetuity, as applicable:

(a) Lighting

- All outdoor/public spaces throughout the development, in particular the entry/exit points, must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

(b) Basement Car Parking

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

(c) Building Security & Access Control

- Intercom, code or card locks or similar must be installed for all entries to the building.
- Australian Standard 220 door and window locks must be installed throughout the centre.
- The side access points (gates) must be secured.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- A monitored alarm system must be installed.

(d) Graffiti/Vandalism

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

(e) Landscaping

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

Demolition

13 **B001 - Demolition of existing structures**

The existing structures on the subject site are to be demolished as part of the approved work.

14 **B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE**

All demolition works are to be conducted in accordance with the provisions of AS 2601-2001 "The Demolition of Structures" and the 'Hazardous Materials Survey' (E20160-1) for 170 Derby Street, Penrith prepared by Geotechnical Consultants Australia dated 9/11/2020. **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

15 **B003 - ASBESTOS**

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

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

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

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

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

16 **B004 - Dust**

Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

17 **B005 - Mud/Soil**

Mud and soil from vehicular movements to and from the site must not be deposited on the road.

18 **B006 - Hours of work**

Demolition works shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

In the event that the demolition relates to works inside the building that does not involve external walls or the roof and does not involve the use of equipment that emits noise, then the demolition works are not restricted to the hours stated above.

The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to all construction works.

Heritage/Archaeological relics

19 **C Special BLANK**

In order to respect the heritage item nearby, **prior to the issue of a Construction Certificate**, the following design amendments are to be incorporated into the plans and approved by Council:

- The front facade material is to be long lasting pure zinc.
- The front facade is to have refined window geometry - i.e. full height windows, set deeper into the facade.
- The verandah detail shall include clean stainless steel post base junctions.
- The upper floor cladding is to be timber instead of artificial timber - e.g. western red cedar.
- Alternative signage is to be provided, either as a separate small scale sign within the front garden, or via a small scale sign on the front facade - e.g. individual letters placed away from the facade via discrete pins.

Environmental Matters

20 **D001 - Implement approved sediment& erosion control measures**

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

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

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until the land, that was subject to the works, has been stabilised and grass cover established**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

21 **D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill operations)**

No fill material shall be imported to the site until such time as a Validation Certificate(with a copy of any report forming the basis for the validation) for the fill material has been submitted to, considered and approved by Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

{Note: An appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

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

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

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

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

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

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

24 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the 'Acoustical Assessment Proposed Child Care Centre' (50.5426.R1B:MCC) for 170 Derby Street, Penrith prepared by The Acoustic Group, dated 15/12/2020. The recommendations provided in the approved acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

25 **D014 - Plant and equipment noise**

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

26 **D Unexpected Finds Protocol**

An Unexpected Finds Protocol (the Protocol) is to be developed by an appropriately qualified environmental consultant. Prior to the issue of the Construction Certificate, the Protocol is to be submitted to Council and approved. If Council is not the certifying authority for this development, the report is required to be provided to Penrith City Council for approval.

The Protocol is to address, at minimum, the management of any contamination found on the site during the excavation/construction phase of the development, including at minimum, contaminated soils, groundwater, buried building materials, asbestos, odour and staining.

The above Protocol is to be complied with at all times during the excavation/construction phase of the development.

BCA Issues

27 **E001 - BCA compliance**

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

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

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

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

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

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

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

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

29 **E Special (BLANK)**

Prior to the issue of a Construction Certificate, the Accessibility Report shall be revised to reflect the approved design and submitted to and approved by Council. The report shall detail the development's compliance with the Building Code of Australia, Disability (Access to Premises - Buildings) Standards 2010, AS 1428 and AS 4299 and any relevant requirements of the Discrimination Disability Act 1992.

Health Matters and OSSM installations

30 **F001 - General Fitout**

The construction, fit out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 *Design, Construction and Fitout of Food Premises*.

31 **F Special (BLANK)**

Detailed plans for the kitchen and bottle preparation area showing the information below must be submitted to and approved by Council prior to the issue of the Construction Certificate:

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

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

Utility Services

32 **G002 - Section 73 (not for**

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

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

33 **G004 - Integral Energy**

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

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

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

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

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

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

Construction

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

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

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

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

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

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

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

Prior to the commencement of construction works:

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

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

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

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

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

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

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

37 **H036 - Rainwater Tank (Also impose H037, H038, H039, G005 & Q010)**

The rainwater tank(s) is to be:

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

Additionally, the following are to be provided:

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

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

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

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

38 **H037 - Safe supply of water from catchment areas (Also impose H036, H038 & H039)**

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

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

39 **H038 - Connection of rainwater tank supply (Also impose H036, H037 & H039)**

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

40 **H039 - Rainwater tank pumps (Also impose H036, H037 & H038)**

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

41 [H041 - Hours of work \(other devt\)](#)

Construction works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

Other construction works carried out inside a building/tenancy and that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to all construction works.

Engineering

42 [K101 - Works at No Cost to Council](#)

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

43 [K201 - Infrastructure Bond](#)

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

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

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

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

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

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

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

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

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- Separate approval may be required from Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

45 **K210 - Stormwater Management**

The stormwater management system shall be consistent with plan/s lodged for development approval, prepared by Smart Structures Australia, reference number 200325, revision B, dated 13 May 2021.

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

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

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

Prior to the issue of any Construction Certificate, the Certifier shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3 Plumbing and Drainage – Stormwater Drainage.

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

Prior to the issue of any Construction Certificate, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with Penrith City Council's Development Control Plan, AS 2890.1, AS 2890.2 and AS 2890.6.

48 **K226 - Basement Geotechnical Testing**

Prior to the issue of a Construction Certificate, a geotechnical investigation report and strategy shall be submitted to the Certifier to ensure the stability of any adjoining Council owned infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Roads and Maritime Services.

49 **K228 - Dilapidation Report**

The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifier for the development then the dilapidation report shall be submitted to Council prior to the issue of any Construction Certificate and then updated and submitted prior to the issue of any Occupation Certificate confirming no damage has occurred.

50 **K405 - Turf to Verge**

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

51 **K501 - Penrith City Council Clearance - Roads Act / Local Government Act**

Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that all works associated with a Section 138 Roads Act approval have been inspected and signed-off by Penrith City Council.

52 **K503 - Works As Executed - Stormwater Management**

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

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

53 **K504 - Stormwater Compliance**

Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the stormwater management systems (including on-site detention and water sensitive urban design):

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent;
- Have met the design intent with regard to any construction variations to the approved design; and
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

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

Prior to the issue of any Occupation Certificate, a restriction on the use of land and positive covenant relating to the stormwater management systems (including on-site detention and water sensitive urban design) shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Specification for Building Developments - Appendix F.

55 **K510 - Entry and Exit signage**

Prior to the issue of any Occupation Certificate, entry and exit signage which is clearly visible from the public road shall be placed within the development site.

The signage shall indicate that the eastern vehicular access is to be used for ingress purposes only and appropriately signposted "Entry Only". The western vehicular access is to be used for egress purposes only and appropriately signposted "No Entry".

56 **K511 - Directional Signage**

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

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

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

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

58 **K Special (BLANK)**

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

59 **K Special (BLANK)**

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

60 **K Special (BLANK)**

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

61 **K Special (BLANK)**

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

62 **K Special (BLANK)**

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

63 **K Special (BLANK)**

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

Landscaping

64 **L001 - General**

All landscape works are to be constructed in accordance with the landscape plans approved by conditions within this consent and the relevant provisions of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

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

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

65 **L002 - Landscape construction**

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

66 **L003 - Report requirement**

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

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

67 **L005 - Planting of plant**

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

68 **L006 - Aust Standard**

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

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

69 **L008 - Tree Preservation Order**

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

70 **L Special (BLANK)**

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

- Revised tree species and quantities as per Condition 71;
- Any front fencing shall be timber for compatibility with the character of the area;
- The driveway colour is to be a medium to light brown to reduce heat absorption; and
- The materials proposed for any shade structures and the proposed slide shall be included in accordance with AS 4685 'Playground equipment and surfacing', Part 0: Development, installation, inspection, maintenance and operation.

71 **L Special (Replacement of trees)**

The applicant is to plant a minimum of fifteen (15) replacement trees as required in the approved Landscape Plan and as specifically outlined below:

- Five (5) trees known to attain a minimum height of 10m at maturity in the front setback of the site.
- Ten (10) trees known to attain a minimum height of 10m at maturity in the rear setback of the site.
- Endemic tree species are to be used and are not to include any of the exempted plant species listed under Chapter C2 Vegetation Management of Penrith Development Control Plan 2014.
- One (1) replacement tree is to have a minimum container size of 1,000 litres and the remainder are to have a minimum container size of 600 litres. They shall comply with NATSPEC "Specifying Trees: A Guide to Assessment of Tree Quality" (2003) or Australian Standard AS 2303 – 2015 Tree Stock for Landscape Use.
- All new plantings shall be located so future growth will not conflict with electricity wires. Consideration should be given to the location of new electricity poles and wires so that space is provided.

The replacement trees are to be planted prior to the issue of an Occupation Certificate and the trees shall be maintained for the life of the development.

72 **L Special (Tree protection)**

Prior to the commencement of any works, a project arborist with a minimum AQF (Australian Qualification Framework) Level 5 shall be engaged to prepare a Tree Protection Plan (Specification) and Drawing in accordance with AS 4970 - 2009 to appropriately retain and protect Trees 8, 11 and 12.

The completed Tree Protection Plan (Specification) and Drawing is to be provided to the Manager of Development Services for approval prior to the commencement of any works.

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

73 L Special 1

At a minimum, the Tree Protection Plan (Specification) and Drawing shall:

- identify key stages where monitoring and certification will be required as outlined in AS 4970–2009, Section 5;
- provide a requirement that all contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site;
- require the project arborist to supervise any work within or directly adjacent to the Tree Protection Zone;
- nominate whether trunk and branch protection will be required to be installed on the tree and at what stages this may be required;
- permit the project arborist to alter/adjust the Tree Protection Zone or measures providing that reasons for this are clearly documented, justifiable, undertaken under the supervision of the project arborist and that those changes will not cause detriment or damage to the tree;
- require the project arborist to undertake site inspections not less than weekly to ensure that tree protection measures are in place;
- require the project arborist to keep a written record (e.g. field notes and photos) to provide evidence of site attendance and compliance with the approved conditions of consent;
- require the project arborist to forward a copy of the written record of inspection to the Principal Certifying Authority within 1 week of that inspection occurring;
- require the project arborist to identify whether there is a breach of the Tree Protection Plan. If a breach is identified the project arborist must report this to the Principal Certifying Authority and specify any remedial works and the timeframe in which these works must be completed. If an inspection reveals that there has been a significant breach of the Tree Protection Plan (Specification), inspections from then on must be carried out twice weekly.

Note: Minimum Tree Protection measures shall include:

- ensuring that the trees on the neighbouring property (Trees 8, 11 and 12) are adequately retained and protected. The site boundary fence shall remain in place for the duration of approved works to prevent physical damage to the neighbouring trees and ground protection provided as their Tree Protection Zones (TPZs) intrude into the subject site. Protection measures are to be in accordance with AS 4970 - 2009, Protection of Trees on Development Sites, Section 4.3;
- ensuring all trees to be retained and protected shall be clearly shown on all demolition and construction plans;
- providing for weather resistant signage in prominent locations on the tree protection fence that indicates access into the Tree Protection Zone is not permitted. The sign shall be a minimum dimension of 500mm high x 400mm wide of similar design and layout as per Appendix C, AS 4970 - 2009, Protection of Trees on Development Sites;
- requiring the project arborist to supervise any work within or directly adjacent to the Tree Protection Zone;
- requiring the project arborist to undertake regular inspections to ensure the fence and other tree protection measures are intact, comply with the above standard, are installed to the appropriate dimensions and provide effective protection for the trees to be retained;
- ensuring the Tree Protection Zone (TPZ) is maintained as per AS 4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering and weed control;
- ensuring building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone or that the Tree Protection Zone is not downstream of any washdown areas;
- providing a contingency should tree roots be exposed during approved works, to permit roots with a diameter less than 25mm to be pruned cleanly using sharp hand tools and not torn or ripped by machinery and require tree roots greater than 25mm in diameter to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent - before any pruning work is undertaken.

74 L Special 2

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

Development Contributions

75 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 7.12 Development Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$33,003 is to be paid to Penrith City Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 plan.

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

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

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

Certification

76 [Q01F - Notice of Commencement & Appointment of PCA2 \(use for Fast Light only\)](#)

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

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

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

Information to accompany the Notice of Commencement

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

77 [Q06F - Occupation Certificate \(Class 2 - 9\)](#)

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

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

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

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

C1 Site Planning and Design Principles

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

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

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

Maximising Access and Adaptability

The proposal has been assessed as acceptable having regard to the seven principles of the section including equitable access, flexibility in use and simple and intuitive use. The development provides for one accessible parking space within the car park. An Access Report was provided with the application and Council's Building Surveyor raised no objections subject to conditions of consent in this regard.

C3 Water Management

Water Quality

Section 3.1 of Council's Water Sensitive Urban Design (WSUD) Policy requires certain developments to have an 80% on-site water reuse. Initially, a WSUD strategy and MUSIC Model was not submitted. As part of an amended package these documents were provided. The development will comply with Council's WSUD Policy with a 20KL rainwater tank connected for landscaping and toilets and filter cartridges contained within the OSD tank. Given the scale of the development, Council's Waterways Officer noted the rainwater tank is appropriate in terms of complying with the water conservation targets.

Water Quantity

Initially, the proposed design of the On-Site Stormwater Detention (OSD) system did not fully comply with Council's 'Stormwater Drainage Specification for Building Developments' Policy. Council's Development Engineer requested the following matters be addressed:

- *The location of the OSD storage tank is partly under the front porch and partly under the lobby area. Council policy does not permit tanks under any habitable floors or any building slabs.*
- *The OSD tank internal depth shall be a minimum of 900mm to facilitate access for maintenance and cleaning.*
- *A minimum of two grated access points (900mm x 900mm) shall be provided on opposite sides of the tank to facilitate ventilation.*
- *The OSD storage volume shall be provided independent of rainwater tanks or Water Sensitive Urban Design measures required for the development.*
- *The OSD calculations have not been provided on the drawings. As such, detailed calculations of the required OSD volume, discharge rate and orifice diameter is to be included on the drawings.*

A revised design was submitted to position the OSD tank outside of the building footprint so no part of the tank is accessed from within the building. The OSD tank was also redesigned to be at least 900mm deep and include two grated access points to each end of the OSD tank to facilitate ventilation. The OSD volume was also calculated independent to the rainwater tank and WSUD. Lastly, calculations were provided and shown on the amended drawings. Drains and MUSIC models were also supplied.

Council's Development Engineer reviewed the amended proposal and raised no objections subject to conditions of consent.

C5 Waste Management

Waste storage at ground floor is required and was provided. However, Council's Traffic Engineer raised concern that kerbside commercial waste collection at a bus stop cannot be supported due to the large bin sizes (660L) being collected simultaneously (in this case 2 x 660L bins) and the frequency of collection at multiple times during the week. The applicant was requested to provide on-site storage for smaller bins and propose a waste management plan where no more than 3 or 4 bins are placed at the kerbside at any one time, on the departure side (i.e. western side) of the bus stop boarding pad (and clear of the boarding pad, and placed at back of kerb only). This was provided within the revised design and the revised waste management plan and found to be satisfactory by Council's Traffic Engineer.

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

C6 Landscape Design

Council requires that all landscape designs promote best practice Environmentally Sustainable Development Principles such as the use of low maintenance, drought tolerant native or endemic species and the use of drip irrigation or the like, to reduce water consumption. Council's Landscape Architect reviewed the proposal and noted that initially there was inadequate room within the front and side setbacks for planting however the revised proposal with greater setbacks was supported, as were the species proposed.

C9 Advertising and Signage

The application does include signage however it is not supported for heritage reasons, as detailed within the discussion against SEPP 64 in this report. A recommended condition will require revised signage details to be provided to Council prior to the issue of a Construction Certificate to the requirements prescribed by Council's Heritage Advisor.

C10 Transport, Access and Parking

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

Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. The development proposes to employ 13 staff and provide for 80 children, thus requiring 21 car spaces be provided on site. The proposal complies with this requirement with the provision of 21 parking bays (13 staff and 8 visitor bays).

Given the footpath and bus stop levels fronting the site were altered and lowered after the application was lodged, a long section of the basement ramps was requested to demonstrate compliance with AS 2890.1, Section 3.3 Gradients for Access Driveways. The long section was requested to extend from the pavement centre line in Derby Street to the basement level and

include the verge area, vehicular crossover, kerb and gutter. A check for vehicle ground clearance was also to be demonstrated.

A driveway section was provided in the architectural plans and an additional Traffic Statement was provided to confirm the entry and exit ramps comply with AS 2890.1.

Council's Development Engineer reviewed the amended design and information and found it to be satisfactory for the proposed driveway levels to stay as proposed.

D2 Residential Development

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

D2.1.2 Setbacks and Building Envelope

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

The proposed side setback varies across the levels proposed. The basement is 1.2m-1.8m setback, the ground floor is predominantly 2m setback with a portion setback 1.5m and the first floor is 1.5m setback. The upper level outdoor play area is setback 1.5m- 2m from side boundaries to a planter box with the play area setback a further metre. These setbacks numerically comply and allow for adequate landscaping to blend with the area and maintain amenity for neighbours.

In accordance with 2.1.2 B 1. e), the minimum rear setback for a single storey building (or any single storey component of a building) is 4m and the minimum rear setback for a two storey building (or any two storey component of a building) is 6m. Rear setback areas are to be used predominantly for the provision of a landscaped area. The rear setback to the basement is 6.68m to the ground level stairwell to the basement, 11m to the ground level pergola and 14m to the upper floor. These generous setbacks ensure there is appropriate room for landscaping.

D5 Other Land Uses

D5.2 Child Care Centres

It is noted that the controls within this section are overridden by the Educational Establishments and Child Care Facilities SEPP and associated Child Care Planning Guideline, other than those concerning building height, side and rear setbacks and car parking rates. These matters have been discussed elsewhere in this appendix under Section C10 Transport, Access and Parking (car parking rates) and Section D2 Residential Land Uses (side and rear setbacks) and under Clause 4.3 Height of Buildings of Penrith LEP 2010.