Penrith Local Planning Panel

Determination and Statement of Reasons

DATE OF DETERMINATION	19 December 2018
PANEL MEMBERS	Jason Perica (Chair) John Brunton (Expert) Mary-Lynne Taylor (Expert) Geoff Martin (Community Representative)
APOLOGY	Nil
DECLARATIONS OF INTEREST	N/A
LISTED SPEAKER(S)	Nelish Munot (Shobha Designs) – Applicant Paul Lemm (Paul Lemm Planning) – Town Planner

Public Meeting held at Penrith City Council on Wednesday 19 December 2018, opened at 3:00pm.

Matter Determined pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

Development Application 18/0675 at 64 Doncaster Avenue, Claremont Meadows– Child Care Centre x 31 Place and Associated Car Parking, Landscaping and Drainage Works.

Panel Decision

The Panel favours the refusal of the development application. However there is sufficient uncertainty in whether the 20m setback control in Penrith LEP 2010, Clause 7.15 is a development standard.

Therefore, the Panel requests internal legal advice to address this matter. In the event that legal advice confirms that a Clause 4.6 request is required, the Panel determines to refuse the application for the reasons outlined below.

In the event that a clause 4.6 is not required, this means that the Panel is not then determining authority and then Council officers are to determine the application.

Reasons for Refusal (Where the Panel is the determining Authority)

Reasons recommended by Council officers subject to the following amendments: -

- Reason No. 2 be amended to ensure that the DCP references are consistent with Clause 26 of the SEPP (Educational Establishments and Child Care Centre) 2017.

- Reason No. 4 be amended to state “the site is not suitable for the proposal development due its size (being too small for the proposal), proportions, setbacks and potential adverse impacts from surrounding land and infrastructure.

- Reason No. 5 be amended to include the following additional sentence: It is appropriate to apply a precautionary principle in relation to potential adverse noise and air quality impacts, particularly given the nature of the proposed use and the adjoining motorway.

- A new / amended reason as per Memo from Council officers dated 19 December 2018 relating to the above SEPP provisions and Child Care Planning Guideline.

In terms of considering community views, the Panel noted there was no submissions received from the public exhibition of the Development Application.

Votes

The decision was unanimous.

Jason Perica – Chair Person 	John Brunton – Expert 
Mary-Lynne Taylor - Expert 	Geoff Martin– Community Representative 

MEMORANDUM

Reference: DA18/0675

To: Penrith City Council Local Planning Panel

From: Lucy Goldstein, Development Assessment Planner

Date: 19 December 2018

Subject: **Child Care Centre x 31 Place and Associated Car Parking, Landscaping and Drainage Works at 64 Doncaster Avenue, Claremont Meadows**

I refer to the above matter scheduled for determination with the Penrith City Council Local Planning Panel on Wednesday 19 December 2018 and a request for clarification from The Local Planning Panel dated 19 December 2018. Please find below the following advice and recommended amendments to reasons for refusal;

LPP comment	Assessment Officer Comment
Childcare Guideline	The following additional reason for refusal is recommended:- The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with Clause 23 '*Centre based child care facility – matters for consideration by consent authorities'* of State Environmental Planning Policy (Educational Establishments and Child Care Centre) 2017 which requires the consent authority to consider applicable provisions of the Child Care Planning Guidelines. The application is not satisfactory in respect to the following provisions of the Child Care Planning Guideline dated August 2017: *Section 3.1 Site Selection and Location* • The proposed front and rear setbacks are inconsistent with existing setback pattern; and • The application has not demonstrated the site is suitable for the proposed works in respect to environmental impacts, specifically air quality and noise impacts on the development. Further, the application has not demonstrated that the type of adjoining road is appropriate and safe for the proposed use. *3.2 Local Character, streetscape and the public domain interface* • The location and design of car parking areas is inconsistent with the character of the locality in which car parking areas are located predominately behind the primary building line or suitably screened for reasonable landscaping. *Section 3.3 Building orientation, enveloped and design* • The proposed 0.6m landscaped setbacks within the front portion of the site does not provide appropriate separation between adjoining properties. • The Child Care Planning Guideline states that building envelopes are determined by the permissible building height and setbacks. The proposal does not comply with Clause 7.15 of Penrith Local Environmental Plan 2010 which requires a 20.0m setback from the M4 Motorway.
Clause 4.6	For the purpose of this application the provisions under Clause 7.15(3)(c)(iii) of Penrith Local Environmental Plan 2010 are considered consistent with the definition of a development standard as specified under

PENRITH

MEMORANDUM

	the Environmental Planning and Assessment Act 1979, provided and embolden below: *development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being* ***provisions by or under which requirements are specified*** *or standards are fixed* ***in respect of any aspect of that development****, including, but without limiting the generality of the foregoing, requirements or standards in respect of:* *(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or* ***the distance of any land, building or work from any specified point****,* *(b) the proportion or percentage of the area of a site which a building or work may occupy,* *(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,* *(d) the cubic content or floor space of a building,* *(e) the intensity or density of the use of any land, building or work,* *(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,* *(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,* (h) the volume, nature and type of traffic generated by the development, (i) road patterns, (j) drainage, (k) the carrying out of earthworks, (l) the effects of development on patterns of wind, sunlight, daylight or shadows, (m) the provision of services, facilities and amenities demanded by development, (n) the emission of pollution and means for its prevention or control or mitigation, and (o) such other matters as may be prescribed. Further to the above, Clause 4.6(8) identifies a number of clauses in which Clause 4.6 cannot be applied. It is noted that Clause 7.15 is not specified in this list.
Potential Contamination or dust issues	To the north of the site clearing occurred as part of original subdivision application DA15/0968. In respect to dust, assessment has raised issue that application has not addressed air quality impacts on the development.
DCP References	Refusal reason No. 2 is reccomended to be amended to retain reference to DCP objectives and delete reference to DCP standards/numerical requirements.
Fence	In the letter titled '*Response to Penrith Council RFI dated 15/08/2018*', prepared by Envirotech, dated 16 August 2018, the applicant confirms the proposal includes a 1.5m height acoustic fence located at the rear of the site. However, it is unclear whether this represents a total top of wall height. It is further noted that amended plans have not been provided showing the specific height and location of the fence.

Lucy Goldstein
Development Assessment Planner