

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0675
Proposed development:	Child Care Centre x 31 Place and Associated Car Parking, Landscaping and Drainage Works
Property address:	64 Doncaster Avenue, CLAREMONT MEADOWS NSW 2747
Property description:	Lot 34 DP 1224294
Date received:	11 July 2018
Assessing officer	Lucy Goldstein
Zoning:	Zone R2 Low Density Residential - LEP 2010
Class of building:	Class 9b
Recommendations:	Refuse

Executive Summary

Council is in receipt of an Integrated Development Application for the construction of a 31x Place Child Care Centre with car parking, landscaping and drainage works at 64 Doncaster Avenue, Claremont Meadows.

The application is to be reported to the Local Planning Panel, as the proposal seeks a variation greater than 10% to the development standard under Clause 7.15(3)(c)(iii).

Under Penrith Local Environmental Plan 2010, the proposal is defined as a Centre-Based Child Care Facility. The subject site is zoned R2 Low Density Residential and the proposal is a permissible land use in the zone with Council consent.

In accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979 (The Act 1979), the proposed works are defined as Integrated Development, requiring authorisation under Section 100B of the Rural Fires Act 1997 in respect of bush fire safety for development of land for special fire protection purposes. The application was referred to NSW Rural Fire Service on 18 July 2018. In their response dated 25 September 2018, the NSW RFS issued General Terms of Approval, and Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. The recommended conditions provided relate to Asset Protection Zones, water utilities, evacuation and emergency management, design and construction, and landscaping.

In accordance with the requirements under Penrith Development Control Plan 2014, the application has been notified to adjoining properties and exhibited between 27 July 2018 and 10 August 2018. No submissions were received.

Key issues identified during the assessment of the application include:

- **Impact on streetscape and character of surrounding area**
The proposal does not provide an appropriate design response to the R2 Low Density Residential zone, and does not contribute to the local area by being designed in character with the locality and existing streetscape. Specifically, the proposal provides eight (8) at grade car parking spaces within the front setback, resulting in excessive hardstand area within the front setback and minimal opportunities for meaningful landscaping. This is further exacerbated by the lot frontage which is 17.7m, which is non-compliant with the required lot frontage for a child care centre of 22m under Penrith Development Control Plan 2014. The location and design of 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.

- **Air Quality Impacts**

The application has not demonstrated that the site is suitable in respect to environmental impacts, specifically air quality impacts. The proposed outdoor children's play area is located at the rear of the lot, and is set back less than 20m from the M4 Motorway. It is noted that the application has not provided an Air Quality Assessment report to demonstrate that the location of the children's outdoor play area in proximity to the M4 Motorway is appropriate in respect to air quality.

- **Noise Impacts**

As part of the assessment of the application, the proposal was referred to Council's Environmental Management Officer who raised a number of concerns in respect to the detail and assumptions of the acoustic assessment contained within the accompanying Acoustic Report. While some of the concerns raised have been resolved through the assessment process, the issue of noise levels measured at the outside play area, which exceed the acceptable noise level criteria by 3.81dBA is not resolved. This matter was raised with the applicant, and in response a letter prepared by Envirotech dated 16 August 2018 was submitted to Council. This letter confirmed that a 1.5m high glass sound proofing fence is to be provided, to achieve a dBA reduction of a minimum 9 decibels. However, the letter was not supported by calculations demonstrating the required noise reduction can be achieved, nor amended plans showing the 1.5m glass barrier fence provided. Through verbal confirmation from the acoustic consultant, it was confirmed the 1.5m glass barrier fence is to be located approximately 2.0m from the existing 1.8m noise attenuating fencing at the rear boundary which is not a suitable outcome, creating an inaccessible strip of land reinforcing concerns that the site is not suitable for this form and scale of development.

- **Clause 4.6 Variation**

The application proposes a variation (17.4%) to the development standard under Clause 7.15(3)(c)(iii) of Penrith Local Environmental Plan 2010 requiring a 20m setback of dwellings and substantial structures to the M4 Motorway Road reserve. The variation is not supported as outlined in the body of this report.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal, as key issues raised in the assessment of the application remain unresolved.

Site & Surrounds

The subject site, legally described as Lot 34 DP 1224294, commonly known as 64 Doncaster Avenue Claremont Meadows is located on the southern side of Doncaster Avenue, approximately 280m from its intersection with Caddens Road. The site is located within an existing subdivision created under Development Application DA15/0968 for Torrens Title Subdivision to create 51x Residential Lots and Public Road, approved by Penrith City Council on 5 August 2016.

The site is rectangular in shape with a width of approximately 17m and depth of 53m. The site is currently vacant, cleared land with no existing vegetation.

The surrounding locality consists of predominately low scale residential development. The site backs onto the M4 Motorway, and the adjoining lots to the east and west are currently vacant lots. The site has an existing noise attenuating fence of 1.8m height located along the rear boundary of the lot.

Council's Records indicate that the previous applications apply to the site:

DA15/0968 - Torrens Title Subdivision to create 51x Residential Lots and Public Road, approved on 5 August 2016.

PL18/0021 - Prelodgement for a Proposed Child Care Centre. The Prelodgement advice issued by Council raised a number of concerns relating to streetscape impacts, engineering matters, waste collection, and environmental impacts. In particular, the following advice was issued, and these matters remain unresolved with the current proposal:

- *The design has a large hardstand area for car parking in the front setback with limited scope for landscaping. The building alignment is not in keeping with the established building setbacks in the street. Consideration should be given to reducing the front setback and incorporating the car parking within or behind the building design.*
- *The proposed design does not incorporate planting of the 20m conservation area at the rear of the site (see 88B Restriction).*
- *There is a building encroachment into the 20m of the rear of the site (see 88B Restriction).*
- *Compatibility of the proposed development with surrounding land uses and any impacts from surrounding uses may have on the proposed development will need to be demonstrated. This includes consideration of acoustic performance of the use on adjoining land uses and noise impacts from the M4 Motorway on the proposed use. The acoustic attenuation measures will be subject to assessment for compatibility with the character of the low-density residential area.*

Proposal

The application seeks consent for the following development:

- Construction of a 31x place Centre-based Child Care Facility. The facility is proposed to accommodate
 - four (4)x children aged 0-2 years
 - five (5)x children aged 2-3 years
 - twenty-two children (22)x aged 3-5 years, and
 - four (4)x staff members.
- Operating hours of Monday to Friday, 7:00am to 6:30pm;
- Provision of associated eight (8) car parking spaces; and
- Associated landscaping and drainage works.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

• Section 4.46 - Integrated development

In accordance with Section 4.46 of The Act 1979, the proposed works are defined as integrated development, requiring authorisation under section 100B of the Rural Fires Act 1997 in respect of bush fire safety for development of land for special fire protection purposes. The subject site is mapped as Bushfire Prone Land, and Clause 100B(6) identifies a child child care centre as a special fire protection purpose.

The application was referred to NSW Rural Fire Service on 18 July 2018. In their response dated 25 September 2018, the NSW RFS issued General Terms of Approval under Division 4.8 of The Act 1979, and Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. The recommended conditions provided relate to the establishment of Asset Protection Zones, Water Utilities, Evacuation and Emergency Management, Design and Construction, and Landscaping. However, given that the application is not supported, these conditions will not be required.

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

As assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Infrastructure) 2007 and the application is unsatisfactory for the following reasons:

- **Clause 101 Development with frontage to classified road**

The site backs onto a classified road, being the M4 Motorway. The proposal is considered inconsistent with the objective of Clause 101(b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads*. As the application has not demonstrated that the outdoor play area at the rear of lot, being in close proximity to the M4 Motorway is appropriate in respect to noise and air quality impacts.

Further, Clause 101(2) states that *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

(ii) the emission of smoke or dust from the development, or

Comment: The application has not provided an Air Quality Assessment to demonstrate that the location of the child care facility, specifically the outdoor play area, is appropriate in respect to air quality impacts.

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment: The proposal, being for a child care centre is considered a sensitive land use. The proposal has not demonstrated that the proposed development is suitable in respect to traffic noise and air quality impacts.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy No 55—Remediation of Land, and in this regard the proposal is considered satisfactory as summarised below:

The subdivision of the site, approved under Development Application DA15/0968 was supplemented with a Phase 1 contamination assessment which concluded that the land (including the lot subject to the proposed works) is suitable for residential purposes. It is also noted that conditions of consent for DA15/0968 required only clean, validated fill material to be used on the site. Further to this, a review of aerial photographs show the site has been vacant land and as such does not involve a change of use from the original subdivision of the land.

In considering the above, the proposal is considered satisfactory in respect to the requirements of State Environmental Planning Policy No 55—Remediation of Land.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application, subject to conditions is considerable capable of complying.

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

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

- **Clause 22 Centre-based 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 for the building or place under regulation 108 (outdoor unencumbered space requirements of the Education and Care Services National Regulations. The proposal provides 104.51m² of indoor unencumbered space (required to provide 100.75m²) and provides 225.37m² of unencumbered outdoor space (required to provide 217m².) Accordingly, in this instance Clause 22 does not apply to the proposal and concurrence of the Regulatory Authority is therefore 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 centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline. Accordingly, an assessment was undertaken against the provision of the Child Care Planning Guideline dated August 2017, and non-compliances are summarised below:

Child Care Planning Guideline August 2017		
Section	Objectives	Proposed
3.1 Site Selection and Location	<ul style="list-style-type: none">• To ensure that appropriate zone considerations are assessed when selecting a site;• To ensure that the site selected for a proposed child	<ul style="list-style-type: none">• Whilst it acknowledged that the proposed use is a permitted land use in the zone with Council consent, the site is considered unsuitable for the development for the following reasons:• The proposed front and rear setbacks are inconsistent with the existing setback pattern;• The application has not demonstrated that the site is suitable in respect to environmental impacts, specifically air quality impacts. The proposed outdoor play area is located at the rear of the lot, setback less than 20m from the M4 Motorway reserve. It is noted that the application has not provided an Air

	<p>care facility is suitable for the use.</p> <ul style="list-style-type: none"> • To ensure the site for child care facilities are appropriately located; • To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards. 	<p>Quality Assessment report to demonstrate that the location of the children's outdoor play area in proximity to the M4 Motorway reserve is appropriate in respect to air quality.</p> <ul style="list-style-type: none"> • With consideration to the above, the application has not demonstrated that <i>the type of adjoining road (classified) is appropriate and safe for the proposed use.</i>
<p>3.2 Local Character, streetscape and the public domain interface</p>	<ul style="list-style-type: none"> • <i>To ensure that the child care facility is compatible with the local character and surrounding streetscape;</i> • <i>To ensure clear delineation between the child care facility and public spaces;</i> • <i>To ensure front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</i> 	<ul style="list-style-type: none"> • The proposal does not provide an appropriate design response with the R2 Low Density Residential zone, and does not contribute to the local area by being designed in character with the locality and existing streetscape. Specifically, the proposal provides eight (8) at grade car parking spaces within the front setback, resulting in excessive hardstand area within the front setback and minimal opportunities for meaningful landscaping. The location and design of parking areas is inconsistent with the character of the locality in which parking areas are located predominately behind the primary building line or suitably screened by reasonable planting opportunities.

3.3 Building Orientation, envelope and design	<ul style="list-style-type: none"> • <i>To respond to the streetscape, while optimising solar access and opportunities for shade;</i> • <i>To ensure that child care facilities are designed to be accessible by all potential users;</i> • <i>To ensure that buildings are designed to create safe environments for all users.</i> 	<ul style="list-style-type: none"> • The proposed front and rear setbacks are inconsistent with the surrounding development. • The proposed 0.6m landscaped setbacks within the front portion of the lot does not provide appropriate separation between adjoining properties, and is likely to result in adverse amenity impacts, such as vehicle light disturbance from users entering/exiting the child care car park. • The Child Care Planning Guideline states that the building envelope is determined by the permissible building height and site 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 Road Reserve.
3.4 Landscaping	<ul style="list-style-type: none"> • <i>To provide landscape design that contributes to streetscape and amenity.</i> 	<ul style="list-style-type: none"> • The location of the car parking within the front setback results in a poor presentation to the street, with the frontage being dominated by hardstand area. • The proposal provides 2.0m of landscaping along the front boundary, comprising: <ul style="list-style-type: none"> - 12x shrubs of a maximum height of 0.3m; - 7x medium trees of a maximum height of 8.0m. In considering the existing streetscape and future desired character, this landscaping is not sufficient to screen the proposed eight (8) car parking spaces and associated driveway areas.
3.5 Visual and Acoustic Privacy	<ul style="list-style-type: none"> • <i>To protect the privacy and security of children attending the facility;</i> • <i>To minimise impacts on privacy of adjoining properties;</i> • <i>To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.</i> 	<ul style="list-style-type: none"> • It is noted that the adjoining properties are currently vacant land. However, in considering the zoning of the adjoining lots and the surrounding uses, it is reasonable to expect these lots will be future residential lots. The proposal provides 0.6m wide landscaping along the side boundaries (eastern and western boundaries), which is insufficient to mitigate amenity impacts on adjoining lots, for example disturbance by vehicle light of customers entering/exiting the child care car park. Further, the minimal landscaping along the side boundaries results in the development having poor integration with surrounding development and streetscape.

3.6 Noise and Air Pollution	<ul style="list-style-type: none"> • <i>To ensure that outside noise levels on the facility are minimised to acceptable levels</i> • <i>To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution.</i> 	<ul style="list-style-type: none"> • The application has not demonstrated that the site is suitable in respect to environmental impacts, specifically air quality impacts. The proposed outdoor play area is located at the rear of the lot, setback less than 20m from the M4 Motorway reserve. It is noted that the application has not provided an Air Quality Assessment report to demonstrate that the location of the children's outdoor play area in proximity to the M4 Motorway reserve is appropriate in respect to air quality.
3.7 Hours of Operation	<ul style="list-style-type: none"> • <i>To minimise the impact of the child care facility on the amenity of neighbouring residential developments.</i> 	<ul style="list-style-type: none"> • Proposed operating hours are considered appropriate, being Monday to Friday 7:00am to 6:30pm,.
3.8 Traffic, Parking and Pedestrian Circulation	<ul style="list-style-type: none"> • <i>To provide parking that satisfies the needs of users and demand generated by the centre;</i> • <i>To provide vehicle access from the street in a safe environment that does not disrupt traffic flows;</i> • <i>To provide a safe and connected environment for pedestrians both on and around the site.</i> 	<ul style="list-style-type: none"> • Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. The application seeks consent for 31x children including 4x staff, requiring to provide 7.1 car parking spaces, rounding up to eight car parking spaces. The proposal provides eight (8) car parking spaces and as such the quantum of parking is satisfactory.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.15 Claremont Meadows	Does not comply - See discussion

Clause 2.3 Zone objectives

The proposal is considered inconsistent with the objectives of the R2 Low Density Residential zone, specifically:

- *To promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens; and*
- *To enhance the essential character and identity of established residential areas.*

The location and design of the car parking within the front setback results in a poor presentation to the street, with the frontage being dominated by hardstand area.

The proposal provides 2.0m of landscaping along the front boundary, comprising 12x shrubs of a maximum height of 0.3m and 7x medium trees of a maximum height of 8.0m. In considering the existing streetscape and future desired character, this landscaping is not sufficient to screen the proposed eight (8) car parking spaces and associated driveway areas.
- *To ensure a high level of residential amenity is achieved and maintained.*

Within the front portion of the site, where the car parking area is located, the proposal provides a 0.6m landscape buffer between adjoining lots to the east and west. Whilst the adjoining lots are currently vacant, in considering the zoning and surrounding land uses it is reasonable to anticipate these lots will be used for residential purposes. The proposed 0.6m wide landscaping provides minimal separation of the car parking area with adjoining lots, and are likely to result in adverse amenity impacts for adjoining lots, such as vehicle light disturbance from users entering/exiting the child care car park.

Clause 4.6 Exceptions to development standards

Pursuant to Clause 4.6, development consent may be granted for development even though the development contravenes a development standard imposed by an environmental planning instrument, excluding development standards that are expressly excluded within the Clause.

The objectives of Clause 4.6 are:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The application seeks a variation to the development standard under Clause 7.15(3)(c)(iii) of Penrith LEP, which requires a proposal to 'provide a minimum setback of 20m from the M4 Motorway reserve to any dwelling or substantial structure'. The proposal does not meet this requirement, providing a building setback of 16.5m from the M4 Motorway reserve, representing a variation to the development standard by 17.4%. It is further noted an 88B restriction applies to the lot, requiring no structures to be constructed within the rear 20m of the lot without prior consent from the Authority Benefited. Penrith City Council is the Authority Benefited and any variation to the restriction would require approval of Council.

A written request under Clause 4.6 of Penrith Local Environmental Plan 2010 accompanied the application. The applicant has provided the following justification in the submitted written request:

'notwithstanding the noncompliance with the development standard, the proposed development:

- *achieves each of the applicable objectives of Clause 7.15 'Claremont Meadows' additional local provisions of the PLEP*

- *does not give rise to any adverse environmental impacts'*
- *Is in the public interest'*

However, the justification provided to vary the development standard is not supported for the following reasons:

- **Clause 4.6(3)** *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment: The proposal is considered inconsistent with objectives of 7.15 to ensure that housing (or development) located in the vicinity of a major road takes account of the constraints imposed by noise and visual impact. In addition, the applicant's justification has not demonstrated that compliance with the standard is reasonable or unnecessary.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: The application has not demonstrated that the location of the children's outdoor play area within the reduced setback is appropriate in respect to air quality impacts, and noise impacts.

- **Clause 4.6(4)** *Development consent must not be granted for development that contravenes a development standard unless:*

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment: As detailed above, the proposal has not satisfactorily demonstrated the proposal meets the objectives of 7.15 or is appropriate in respect to noise and air quality impacts.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Comment: The proposal in its current form is not considered in the public interest for the following reasons:

- The proposed car parking design does not meet the zone objectives of the land, specifically to enhance the essential character and identity of established residential areas, and ensure a high level of residential amenity is achieved and maintained;
- The proposal has not demonstrated that the site is suitable for the proposed works in respect to noise impacts and achieving satisfactory noise levels for child care purposes;
- The proposal has not demonstrated that the site is suitable for the proposed works in respect to air quality impacts particularly within the outdoor play area, given the site's proximity to the M4 Motorway road.

(b) the concurrence of the Secretary has been obtained.

The proposed variation to development standard exceeds 10%, and such is to be determined by the Local Planning Panel.

Clause 7.15 Claremont Meadows

The proposal is non-compliant with Clause 7.15(3)(c)(iii) which requires development within 100m of the M4 Motorway road reserve 'to provide a minimum setback of 20 metres from the M4 Motorway reserve to any dwelling or substantial structure.' The application seeks a variation to development standard under the provision of Clause 4.6 of Penrith Local Environmental Plan 2010. Refer to discussion in this report under 'Clause 4.6 Exceptions to Development Standards'.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	N/A
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	Does not comply - 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
E2 Claremont Meadows Stage 2 controls	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iv) The provisions of the regulations

Whilst the application in its current form is not supported, the proposed works subject to conditions are considered capable of complying in respect to the Regulations.

Section 79C(1)(b)The likely impacts of the development

Context and Setting

The proposal does not provide an appropriate design response to the R2 Low Density Residential zone, and does not contribute to the local area by being designed in character with the locality and existing streetscape. Specifically, the proposal provides eight (8) at grade car parking spaces within the front setback, resulting in excessive hardstand area within the front setback and minimal opportunities for meaningful landscaping. The location and design of parking areas is inconsistent with the character of the locality in which parking areas are located predominately behind the primary building line.

Acoustics

As part of the assessment of the application, the proposal was referred to Council's Environmental Management Officer who raised a number of concerns in respect to the detail and assumptions contained within the submitted Acoustic Report. The below issue remains outstanding:

- Road noise measured in the outside play areas was 58dBA. This represents an exceedance of 3.81dBA.

This matter was raised with the applicant, and in response a letter prepared by Envirotech dated 16 August 2018 was submitted to Council. This letter confirmed that a 1.5m high glass sound proofing fence will be provided, to achieve a dBA reduction of a minimum 9 decibels. However, the letter was not supported by calculations demonstrating the required noise reduction can be achieved, and amended plans showing the 1.5m glass barrier fence have not been provided.

Residential amenity

The proposed 0.6m wide landscape buffer located in the front portion of the site along the side boundaries provides insufficient separation between adjoining lots and is likely to result in adverse amenity impacts for adjoining lots, such as vehicle light disturbance from users entering/exiting the child care car park.

Traffic and Car Parking

The application was accompanied by a Traffic and Car Parking Assessment report prepared by ML Traffic Engineers dated June 2018. The report concludes that the nearby intersections have capacity to accommodate additional traffic generated from the proposed development. It further notes the site is located in proximity to public transport. Based on Council's Traffic Engineer assessment of the proposal, the following comments are provided:

- The report estimates that the child care centre will generate 25 am period trips and 22 pm peak period trips which is described as modest. The local road network has capacity to cater for this additional traffic,
- Concern was raised regarding the waste collection pickup location on the street, as the double barrier line marking at the bend prohibits all vehicles parking/stopping on this bend. It is noted that this issue has been resolved, as the application proposes the use of a private contractor using an 8.0m truck, which could be accommodated on site.

Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. The application seeks consent for 31x children, including 4x staff, requiring to provide 7.1 car parking spaces, rounding up to eight car parking spaces. The proposal provides eight (8) car parking spaces and such is satisfactory in this regard.

Accessibility

The proposal provides one (1) accessible car parking and associated shared space which is considered appropriate.

Section 79C(1)(c)The suitability of the site for the development

Whilst it is acknowledged that the site is zoned to permit with consent a Centre Based Child Care Facility, the proposed design and scale of development is not suitable for the site, and does not appropriately consider the existing constraints of the site.

- In its current form, the proposed design does not provide an appropriate design response with the R2 Low Density Residential zone, and does not contribute to the local area by being designed in character with the locality and existing streetscape.
- The application has not demonstrated that the development achieves satisfactory noise levels, specifically in regards to the outdoor play area.
- The proposal includes the erection of a 1.5m acoustic fence at the rear of the site, in order to mitigate noise levels generated by the M4 Motorway. This design response is not appropriate, as the 1.5m acoustic fence essentially blocks off the landscaping provided at the rear of the lot from the remainder of the site, resulting in landscaping that is poorly integrated into the site, and creating unusable, dead space on the site.
- The application has not demonstrated that the site is suitable in respect to environmental impacts, specifically air quality impacts. The proposed outdoor play area is located at the rear of the lot, setback less than 20m from the M4 Motorway reserve. It is noted that the application has not provided an Air Quality Assessment report to demonstrate that the location of the children's outdoor play area in proximity to the M4 Motorway reserve is appropriate in respect to air quality.

Section 79C(1)(d) Any Submissions

Community Consultation

Community consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents. Council notified fifteen (15) residences in the area, with the public exhibition occurring between 27 July 2018 and 10 August 2018. Council received no submissions.

External Referrals

The application was referred to NSW Rural Fire Service on 18 July 2018, requiring authorisation under section 100B in respect of bush fire safety for development of land for special fire protection purposes. In their response dated 25 September 2018, the NSW RFS issued General Terms of Approval under Division 4.8 of The Act 1979, and Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. The recommended conditions provided relate to the establishment of Asset Protection Zones, Water Utilities, Evacuation and Emergency Management, Design and Construction, and Landscaping.

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 - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	Not supported
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Social Planning	No objections

Section 79C(1)(e)The public interest

The proposal in its current form is not considered in the public interest for the following reasons:

- The proposed car parking design does not meet the zone objectives of the land, specifically to enhance the essential character and identity of established residential areas, and ensure a high level of residential amenity is achieved and maintained;
- The proposal has not demonstrated that the site is suitable for the proposed works in respect to noise impacts and achieving satisfactory noise levels for child care purposes;
- The proposal has not demonstrated that the site is suitable for the proposed works in respect to air quality impacts particularly within the outdoor play area, given the site's proximity to the M4 Motorway road.

Conclusion

In assessing this application against the relevant environmental planning policies, being State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, Penrith Local Environmental Plan 2010, and Penrith Development Control Plan 2014, the proposal does not satisfy the aims, objectives and provisions of these policies.

The application has not demonstrated that the site is suitable for the proposed scale and form of development. Further, the proposed design is not site responsive, does not comply with key development standards, and is not in the public interest.

Therefore, the application is recommended for refusal for the attached reasons.

Recommendation

1. That Development Application DA18/0675 for the construction of a 31 place child care centre with car parking, landscaping and drainage works be a refused for the following reasons; and
2. That the submitted SEPP 1 or variation to a development standard under clause 4.6 of the standard instrument not be supported.

Refusal

1 [X Special 02 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

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 the following provisions:

State Environmental Planning Policy Educational Establishments and Child Care Centre) 2017

- Clause 23 *Centre based child care facility- matters for consideration by consent authorities.*
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
 - Section 3.2 Local Character, streetscape and the public domain interface
 - Section 3.3 Building orientation, envelope and design

State Environmental Planning Policy (Infrastructure) 2007

- Clause 101(2)(ii) *Development with frontage to classified road*
- Clause 101(2)(c) *Development with frontage to classified road*

Penrith Local Environmental Plan 2010:

- Clause 2.3 *Objectives of the zone*
- Clause 7.15(3)(c)(iii) *Claremont Meadows*

2 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

Chapter 6 Landscape Design

B Objectives

a) *To promote landscape design and planning as part of a fully integrated approach to site development*

The proposed landscaping at the rear of lot is poorly integrated with the remainder of the site. As a result of the proposed 1.5m acoustic barrier located at the rear of the lot, the landscape provided at the rear of the lot is essentially segregated from the site, creating an unusable, and inaccessible portion of the site.

e) *To ensure landscape design adequately complements the proposed built form and minimises the impacts of scale, mass and bulk of the development in its context*

In considering the existing streetscape and future desired character of the surrounding area, the landscaping provided within the front setback is not sufficient to screen the proposed car parking and associated driveway areas.

f) *To encourage landscape design that can be effectively maintained to a high standard for the life of that development*

The proposed 1.5m acoustic fence located at the rear of the lot prevents ongoing maintenance of the landscaped area at the rear of the site, as access will be prevented due to the acoustic barrier.

Chapter D.5 Other Uses, Section 5.2 Child Care Centres

B. Objectives

b) *To ensure that child care centres are located and designed to minimise any impact on the amenity of the surrounding area, particularly from noise and traffic;*

d) *To ensure the provision of safe, convenient and attractive car parking areas*

e) *To ensure child care centres are not adversely affected by safety hazards;*

The application has not demonstrated that the location of the outdoor play area at the rear of the lot, setback less than 20m from the M4 Motorway reserve is suitable in respect to air quality and noise impacts.

C. Controls

Part 3, Design, Scale and Site Frontage

a) *The scale and character of the development shall be compatible with surrounding development*

The proposed front and rear setbacks are inconsistent with the existing setback pattern.

Chapter E2 Claremont Meadows Stage 2, Section 2.2.3 Large Lot Residential Adjacent to the M4 Motorway

B. Controls

2) *That vegetated buffer of 20m depth shall:*

c) *remain free of all structures including garages, carports, swimming pools, tennis courts, gazebos and the like.*

The proposed building location provides a building setback from the M4 Motorway less than 20m.

3 X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality, including:

- The application has not demonstrated that the development is suitable in respect to air quality impacts for those attending the facility.
- The application has not demonstrated that the development is satisfactory in regards to achieving acceptable noise levels.

4 [X Special 08 \(Refusal under Section 79C\(1\)\(c\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as it has not been sufficiently demonstrated that the site is suitable for the proposed development due to its size (being too small for the proposal), proportions, setbacks and potential adverse impacts from surrounding land and infrastructure.

5 [X Special 10 \(Refusal under Section 79C\(1\)\(e\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 as the proposal is not considered to be in the public interest. 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

The proposal is considered inconsistent with the aims and objectives of Chapter C.1 of Penrith Development Control Plan 2014, as summarised below:

- In accordance with the Planning Principle set out in Project Venture Developments v Pittwater Council (2005) NSW LEC 191 the following tests apply in determining whether development is compatible with surrounding development:
Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites. Is the proposal's appearance in harmony with the buildings around it and the character of the street?
- In its current form, the proposed design is incompatible with the character of the locality. Specifically, the location of the car parking within the front setback results in a poor visual outcome being in conflict with the surrounding development which predominately locates car parking behind primary building lines.

C6 Landscape Design

The proposed landscape design does not meet the objectives of Chapter C.6 of Penrith Development Control Plan 2014, as summarised below:

- *To promote landscape design and planning as part of a fully integrated approach to site development*
As a result of the proposed 1.5m acoustic barrier located at the rear of the lot, setback approximately 2.0m from the existing 1.8m noise attenuating fencing, the landscape provided at the rear of the lot will essentially be blocked off from the remainder of the site. It is understood that the landscape strip at the rear of the lot will be behind the 1.5m acoustic barrier, resulting in this landscaped area being poorly integrated into the site, creating unusable, dead-space.
- *To encourage landscape design that can be effectively maintained to a high standard for the life of that development*
Further to the above, concern is raised regarding the ongoing maintenance of the landscaped area at the rear of the site, as access will be blocked due to the 1.5m acoustic barrier.
- *To ensure landscape design adequately complements the proposed built form and minimises the impacts of scale, mass and bulk of the development in its context.*
The proposal provides 2.0m of landscaping along the front boundary, comprising 12x shrubs of a maximum height of 0.3m, and 7x medium trees of a maximum height of 8.0m. In considering the existing streetscape and future desired character, this landscaping is not sufficient to screen the proposed eight (8) car parking spaces and associated driveway areas.

C12 Noise and Vibration

As part of the assessment of the application, the proposal was referred to Council's Environmental Management Officer who raised a number of concerns in respect to the detail and assumptions contained within the submitted Acoustic Report. The below issue remains outstanding:

- Road noise measured in the outside play areas was 58dBA. This represents an exceedance of 3.81dBA.

This matter was raised with the applicant, and in response a letter prepared by Envirotech dated 16 August 2018 was submitted to Council. This letter confirmed that a 1.5m high glass

sound proofing fence will be provided, to achieve a dBA reduction of a minimum 9 decibels. However, the letter was not supported by calculations demonstrating the required noise reduction can be achieved, nor amended plans showing the 1.5m glass barrier fence have not been provided.

D5 Other Land Uses

An assessment of the application has been undertaken against the relevant criteria of D.52 Child Care Centres of Penrith Development Control Plan 2014, and the proposal inconsistent with the following objectives and controls:

B. Objectives

b) *To ensure that child care centres are located and designed to minimise any impact on the amenity of the surrounding area, particularly from noise and traffic; and*

d) *To ensure the provision of safe, convenient and attractive car parking areas*

- The proposed design results in unacceptable visual impacts. The proposal in its current form does provide an appropriate design response with the R2 Low Density Residential zone, and does not contribute to the local area by being designed in character with the locality and existing streetscape. Specifically, the proposal provides eight (8) at grade car parking spaces within the front setback, resulting in excessive hardstand area within the front setback and minimal opportunities for meaningful landscaping. The location and design of parking areas is inconsistent with the character of the locality in which parking areas are located predominately behind the primary building line.

e) *To ensure child care centres are not adversely affected by safety hazards;*

- *The application has not demonstrated that the site is suitable in respect to environmental impacts, specifically air quality impacts. The proposed outdoor play area is located at the rear of the lot, setback less than 20m from the M4 Motorway reserve. It is noted that the application has not provided an Air Quality Assessment report to demonstrate that the location of the children's outdoor play area in proximity to the M4 Motorway reserve is appropriate in respect to air quality.*

C. Controls

Section 3

a) *The scale and character of the development shall be compatible with surrounding development*

- The proposed front and rear setbacks are inconsistent with the existing setback pattern
- The location and design of parking areas is inconsistent with the character of the locality in which parking areas are located predominately behind the primary building line.

d) *To ensure the safe operation of car parking areas the amenity of neighbouring residents, site shall have a minimum frontage of 22.0m.*

- The site has a frontage of 17.7m and therefore does not meet the minimum frontage of 22.0m.

E2 Claremont Meadows Stage 2

An assessment has been undertaken of the relevant objectives, aims and controls of Chapter E2 Claremont Meadows of Penrith Development Control Plan. The proposed non-compliances are summarised below:

Section 2.2.3

Controls

2) That vegetated buffer of 20m depth shall

- a) be maintained along the boundary of lots parallel to the M4 Motorway and be vegetated with regard to the requirements for an Asset Protection Zone;
- b) be planted with species appropriate to the area given the presence of Cumberland Plain Woodland;
- c) remain free of all structures including garages, carports, swimming pools, tennis courts, gazebos and the like.

The proposed building location provides a rear setback from the M4 Motorway of 16.5m.