



July 2018



STATEMENT OF ENVIRONMENTAL EFFECTS
TO CONSTRUCT A NEW CENTRE-BASED CHILD CARE FACILITY TO CATER FOR
31 CHILDREN, CAR PARKING AND LANDSCAPING AT 64 DONCASTER AVENUE,
CLAREMONT MEADOWS



PROJECT: To construct a new 31 place Centre-based Child Care Facility with associated car parking and landscaping

ADDRESS: 64 Doncaster Avenue, Claremont Meadows

COUNCIL: Penrith City Council

AUTHOR: Paul Lemm Planning

CLIENT: Mr and Mrs S Bains

Date	Purpose	Reviewed	Authorised
03/07/2018	Draft Issue	PAL/JLL	PAL
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Paul Lemm – Director
03/07/2018

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1.0 EXECUTIVE SUMMARY

This Statement of Environmental Effects (SoEE) has been prepared for Mr. and Mrs Bains to accompany a Development Application to Penrith City Council for a 31 place Centre-base Child Care Facility at 64 Doncaster Avenue Claremont Meadows.

The site of the proposed Child Care Facility is vacant, cleared of vegetation and forms part of a recently approved subdivision. The proposal is for a 31 place Child Care Facility, a freestanding single storey skillion roof building, a driveway and eight car parking spaces, outdoor play area, associated landscaping and drainage works. The development site is within 300m from bus stops that provide regular services to Penrith, St Marys, Mt Druitt. The proposal is consistent with State Government policy and Council's policies and objectives in relation to the site. The proposal seeks a variation to development standard outlined in Penrith Local Environmental Plan 2010 in Clause 7.15(3)(c)(iii) for a 20m setback from the rear boundary. A Clause 4.6 variation request supports this SoEE. The Section 88B Restriction on Use in accordance with the Conveyancing Act 1919 is also requested as part of the proposal. Both these requests are considered reasonable and have been granted to other sites in close proximity.

This report describes the subject site and proposal in detail and undertakes an assessment of the proposal against the provisions of the statutory framework relevant to the proposal. The proposed development is assessed in regard to the relevant aims, objectives and development provisions of relevant State Environmental Planning Policies (SEPPs), Council's Local Environmental Plans (LEPs) and Development Control Plans (DCPs). The assessment has found that the proposed development is consistent with the statutory requirements, which seek to achieve qualitative outcomes by ensuring some measure of quantitative controls are met.

The site is suitable for the development due to its location, serviceability and its design. The site is well positioned for this type of development as the site is of a suitable size and close to key transport routes.

The development will result in the following outcomes;

- Is compliant with planning controls and objectives for the site;
- Is of a modest scale;
- Will service the immediate area;
- Is modern and contemporary but suited to its setting;
- Is suitably located on the property and provides good private open space;



- Is located in an area with good public transport facilities;
- Is not inconsistent in terms of rear setback from adjoining properties;
- Provides suitable vehicular access; and
- In the public interest.

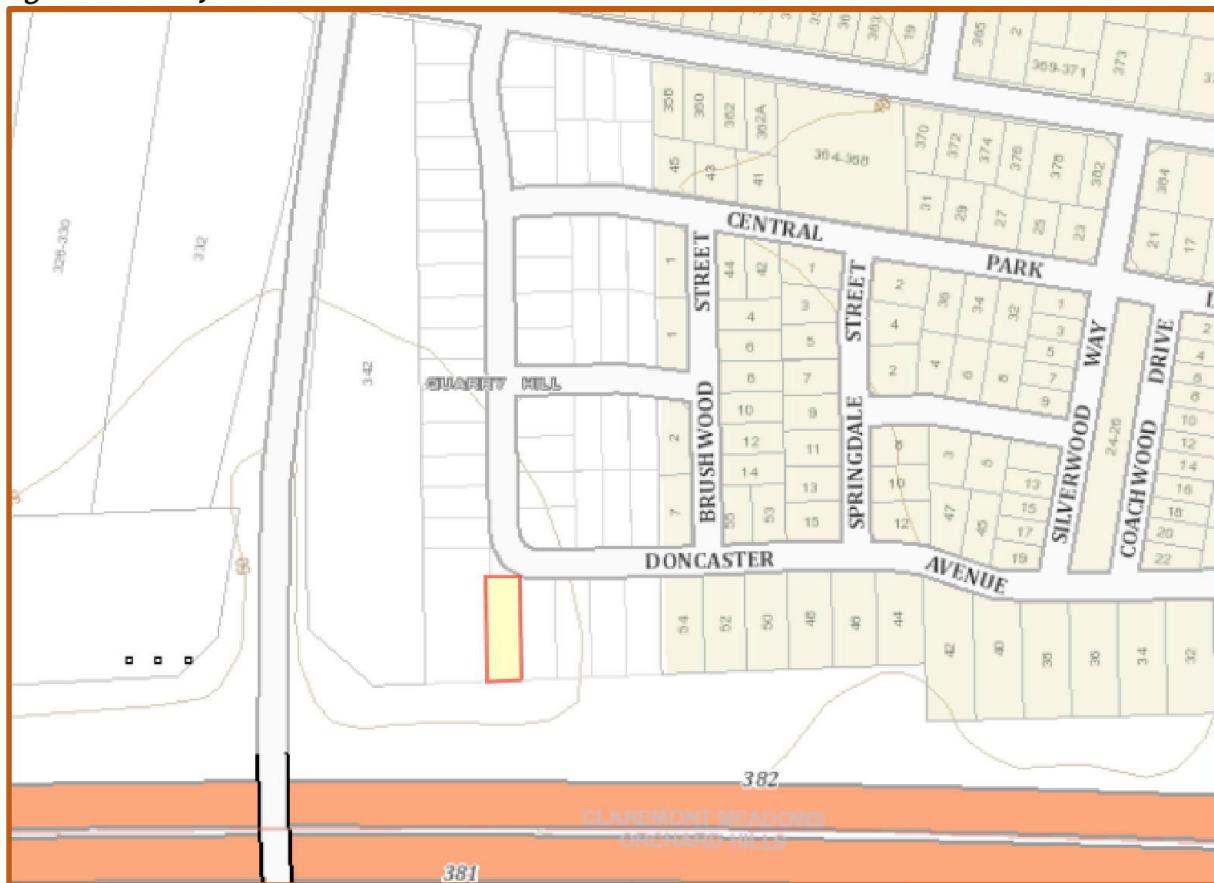
Having regard for the public benefits of the proposal and considering that the development will not result in adverse environmental impacts, the proposal is deemed suitable for the site and submitted to Council for assessment. Approval of the application is recommended with appropriate conditions.



2.0 SITE AND LOCALITY

The site is located within a new 51 lot residential subdivision that was approved in 2016. The site is rectangular in shape with a width of 17.7m and depth of 53.4m and 53.8 on the eastern and western boundaries respectively. The area of the site is 952m². The site is identified as 64 Doncaster Avenue, Claremont Meadows and is legally described as Lot 34 in DP 1224294.

Figure 1 - Locality Plan



The site is part of a recent subdivision of land and located of the bend in Doncaster Avenue. The site is less than 300m from the intersection of Doncaster Avenue and Caddens Road which will provide access to Motorway via Kent Road or to the Great Western Highway via Gipps Street. The site is within close proximity to bus routes 774 and 778 which provide access to Penrith, St Marys and Mt Druitt.

The site is relatively flat and drains to the rear and clear of any vegetation. A drainage system has been constructed as part of the subdivision which drains the rear of the site to



the front. The site has existing noise attenuating fibro fencing along its rear boundary to a height of 1.8m. The site setback at least 20m from the carriageway of the off ramp to the M4 Motorway.

Figure 2 - Plan of Subdivision which includes the Site

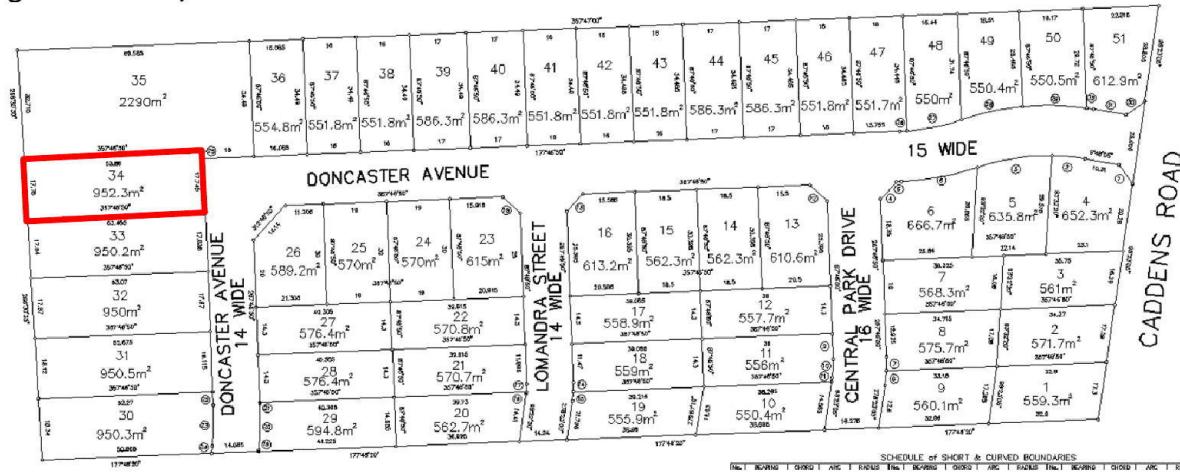
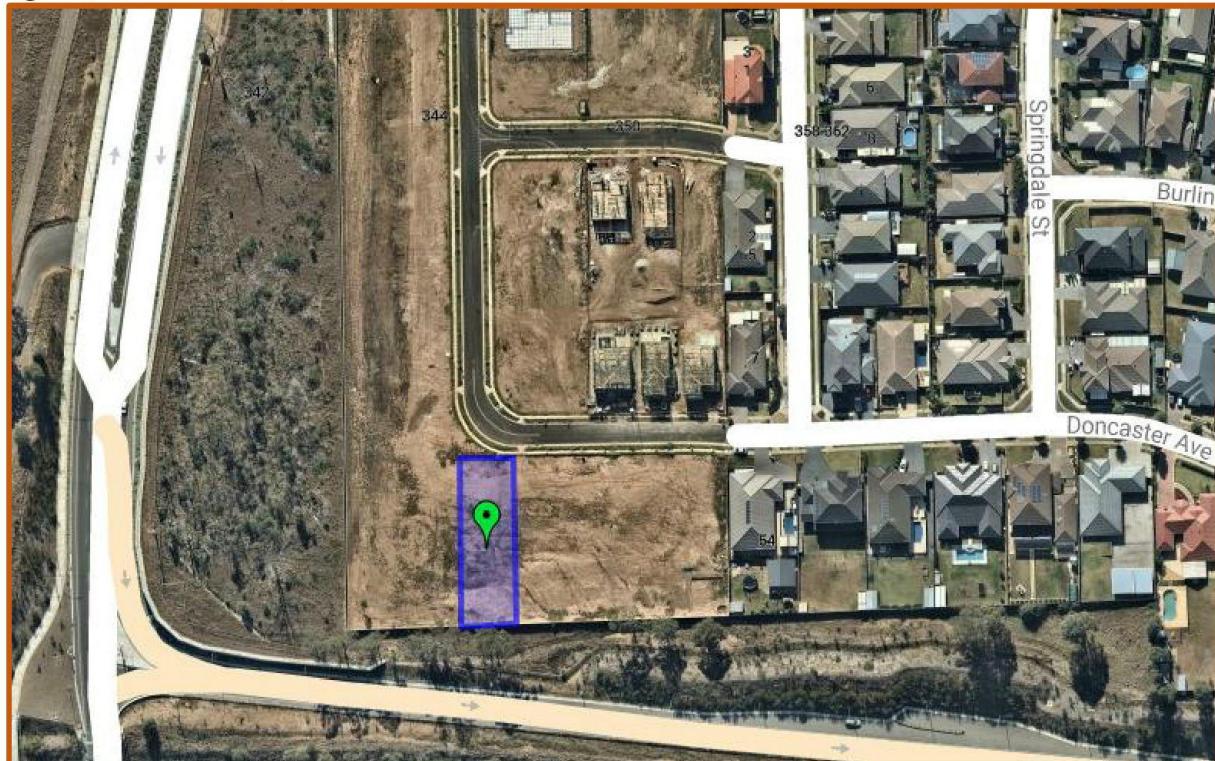


Figure 3 - Aerial View of the Site





3.0 PRE-LODGEMENT DISCUSSIONS

A Pre-DA meeting was held with Council on the 15th March 2018 in relation to the proposed development for the site. The plans submitted for comment have now changed and the comments made have been taken into account. The key issues raised from the Pre-DA Meeting are outlined below.

Table 1 - Pre DA-Issues

Issues	Comment
Carparking needs to comply with AS2890.1.	The carparking layout has been amended. The application is supported by a Traffic and Parking Assessment and a Certification for compliance with the Australian Standards and Council policies.
Encroachment into the 20m setback Restriction as to User in the rear of the site.	This aspect of the proposal is acknowledged and a request to vary and modify this restrictive covenant will be provided in this SoEE. Section 5.2
The proposal does not propose landscaping in the rear 20m of the site	A Landscape Plan has been prepared that provides for a mixture of plans that will achieve a green edge to the site and create screening.
The building alignment is not in keeping with existing setbacks in the area.	The building has been setback further from the street alignment.
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.	An Acoustic Report has been prepared to assess both the proposed development and the M4 Motorway.
The application is to address all relevant requirements under State Environmental Planning Policy (SEPP) No.55 - Remediation of Land (SEPP 55).	This is addressed in Section 6.1.2 of this SoEE.
A Waste Management Plan will need to be provided to address the waste produced during the demolition, construction and operational phases of the development.	A Waste Management Plan accompanies the development application.
An Acoustic Report is required to be submitted as a part of the development application to	An Acoustic Report has been prepared to assess both the



Issues	Comment
<p>demonstrate that the proposed childcare centre will not have any impact on nearby sensitive receivers. This report is to be prepared by a suitably qualified acoustic consultant.</p>	<p>proposed development and the M4 Motorway.</p>
<p>Stormwater</p> <ul style="list-style-type: none">• Stormwater drainage for the site must be in accordance with the following: o Council's Development Control Plan,<ul style="list-style-type: none">○ <i>Stormwater Drainage Specification for Building Developments</i> policy, and○ <i>Water Sensitive Urban Design Policy and Technical Guidelines</i>.• A stormwater concept plan, accompanied by a supporting report and calculations, shall be submitted with the application	<p>A Stormwater Management Plan has been provided and incorporates the Water Sensitive Urban Design requirements.</p>
<p>Traffic</p> <ul style="list-style-type: none">• The application shall be supported by a traffic report prepared by a suitably qualified person addressing, but not limited to, traffic generation, access, car parking, and manoeuvring.• The application must demonstrate that access, car parking, and manoeuvring details comply with AS2890 Parts 1, 2 & 6 and Council's Development Control Plan.• The application shall be supported by turning paths in accordance with AS2890 clearly demonstrating satisfactory manoeuvring on-site and forward entry and exit to and from the public road.	<p>A Traffic and Carparking Assessment has been undertaken that addresses the access and parking arrangements.</p>
<p>Waste Collection</p> <p>Commercial developments are to provide on-site collection infrastructure in accordance with section 3.5.2 Waste Collection Rooms of the 'Residential Flat Building Guideline' document. Room size to be built in accordance with the</p>	<p>An onsite waste collection area is provided for both waste streams. The size of the bins has considered the generation rates as outlined in the DCP. See Section 6.2 of this SoEE.</p>



Issues	Comment
generation rates outlined in the 'Commercial Waste Generation Rates Guideline' document.	

4.0 THE PROPOSED DEVELOPMENT

The proposed development is to construct a new Centre-based Child Care Facility on the site for up to 31 child places. The development incorporates the following components.

Table 2 - Details of the Proposal

Details of the Proposal	
Access and Car parking	<ul style="list-style-type: none">Access from Doncaster Avenue from a central driveway 6.250m wide;8 car parking spaces along the western boundary 2.4m x 5.5m in size;1 accessible car parking space along the eastern boundary;A 1.2m wide pedestrian access path along the eastern boundary;A 1m wide pathway at the front of the building to its western side;Access to the building through an entry foyer in the eastern corner of the building;A 1:14 access ramp to the rear of the building.
Siting of the Building	<ul style="list-style-type: none">The building is set back 19.8m from the front property boundary and 16.5m from the rear boundary;A verandah that varies in width from 2.0m to 3.6m to rear of the building to the rear;Side setbacks are 1.0m;Site coverage of 22.5%
Number of Childcare places + Staff	<ul style="list-style-type: none">0-2 years – 4 places2 to 3 years – 5 places3 years to 5 years - 22 places4 staff
Indoor Play Area	<ul style="list-style-type: none">0-3 years – 31.26m²3-5 years – 73.25m²A total of 104.51m²



Details of the Proposal

Outdoor Play Area

- 225.37m² which includes a sandpit, play fall area, shade structures and synthetic grass.

Internal Rooms

Administration Area, Staff Room, A Kitchen, A Laundry/Store, Accessible Toilet, Cot Room, Toilet facilities

Hour of Operation

The proposed hours of operation will be 7:00am to 6:00pm Monday to Friday.

Materials and Finishes

P1	METAL ROOF SHEET, FASCIA & GUTTER - COLORBOND SHALE GREY
P2	LIGHT WEIGHT CLADDING - DULUX EVENING HAZE
P3	RENDER WALL WITH PAINT FINISH - DULUX SURFMIST
P4	LIGHT WEIGHT FB CLADDING - DULUX WALLABY
P5	PAINT FINISH - DULUX GULLY
BA	1.2m CHILD SAFE GLASS BALUSTRADES

Figure 4 - Site Plan

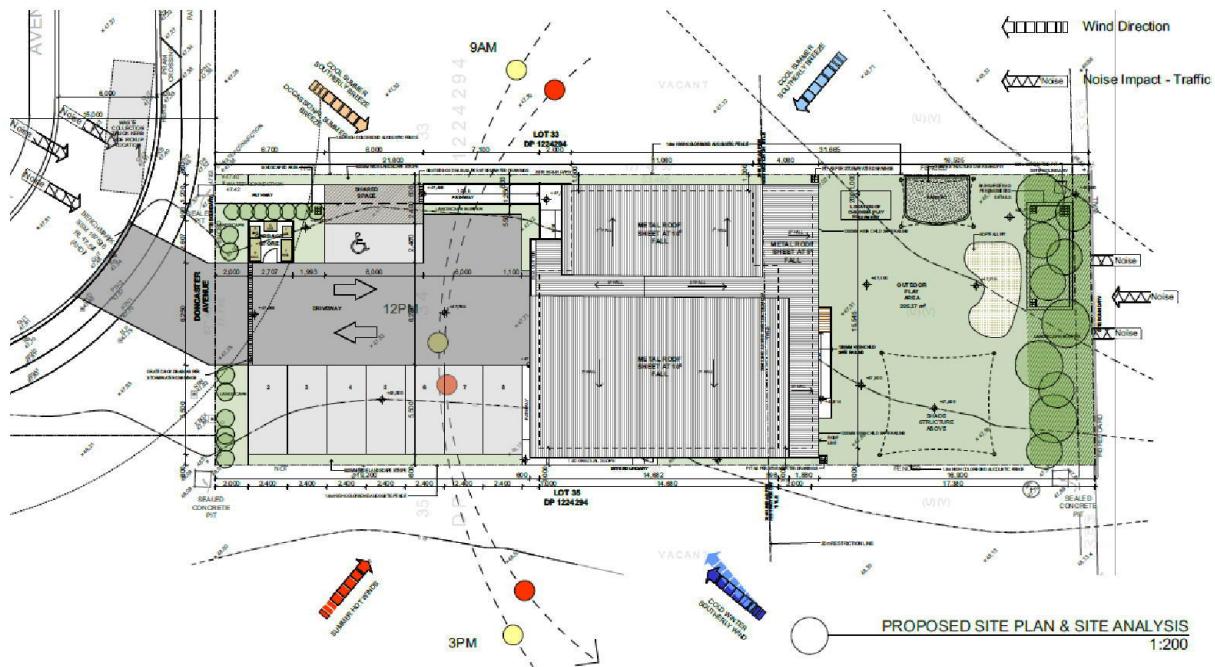




Figure 5 - Ground Floor Plan

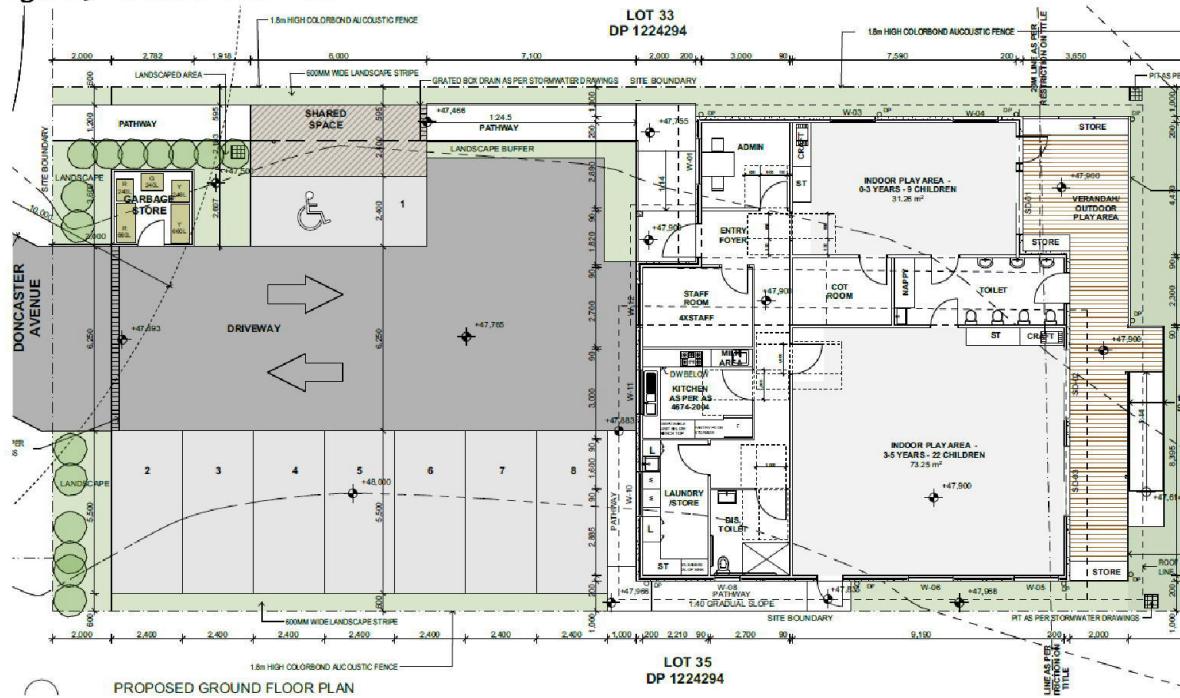


Figure 6 - North Elevation

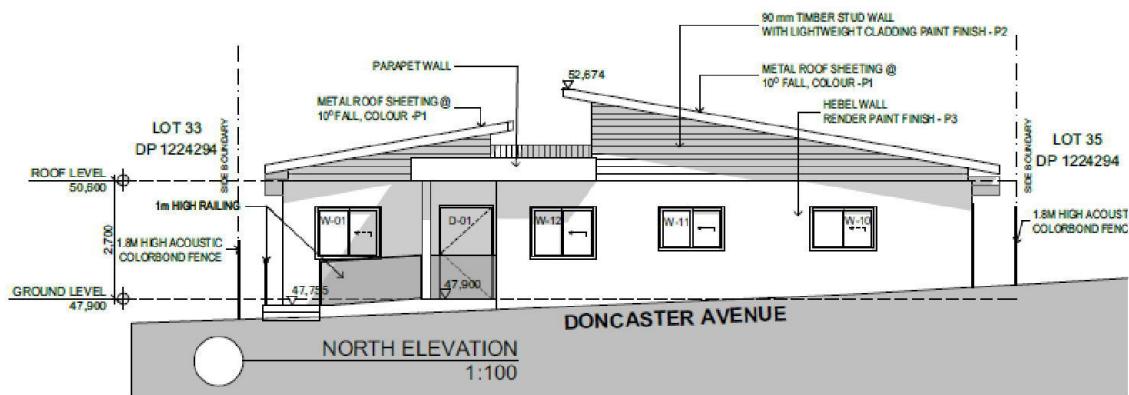




Figure 7 - South Elevation

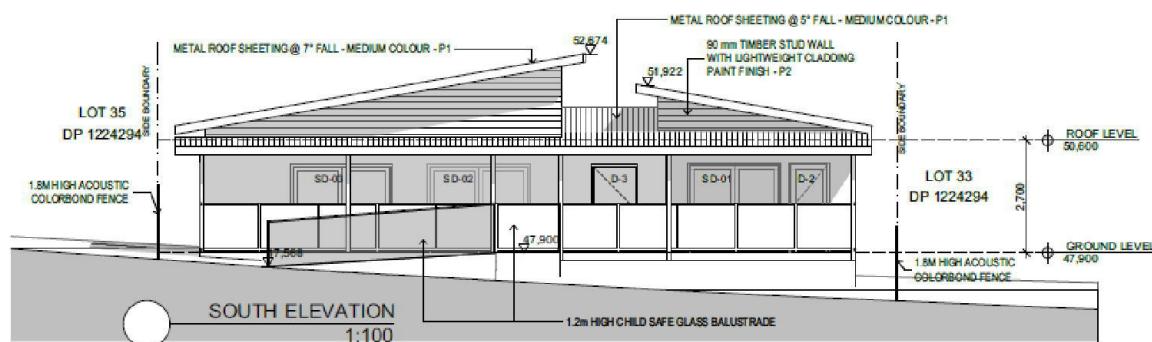


Figure 8 - East Elevation

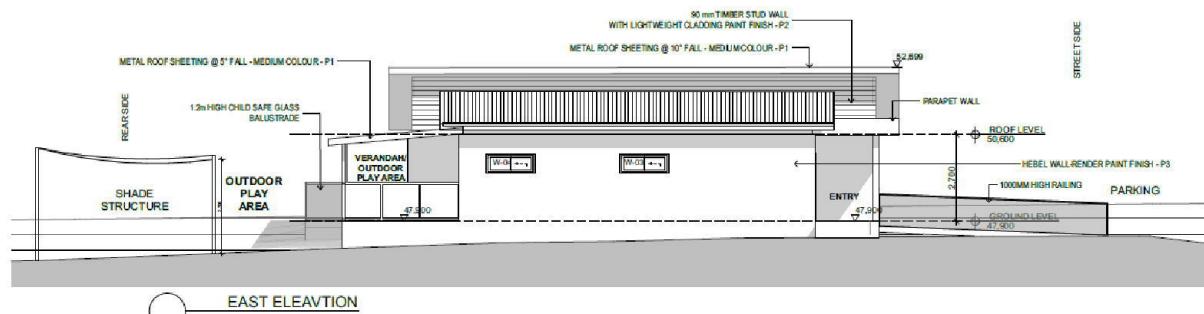


Figure 9 - West Elevation

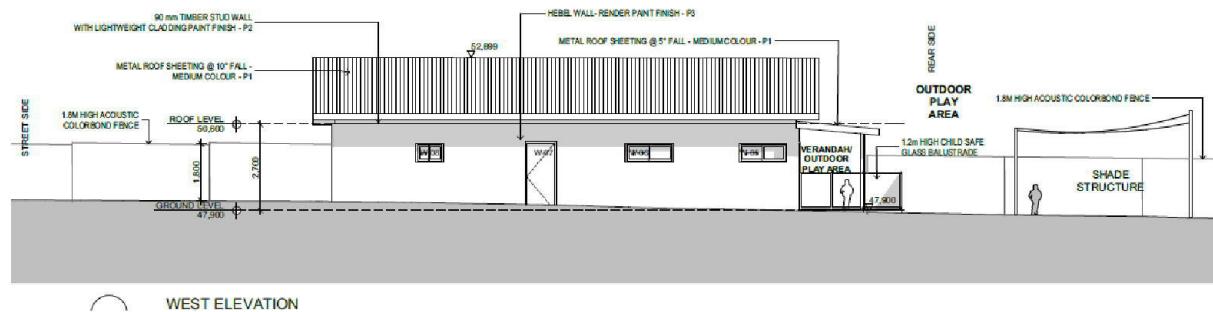
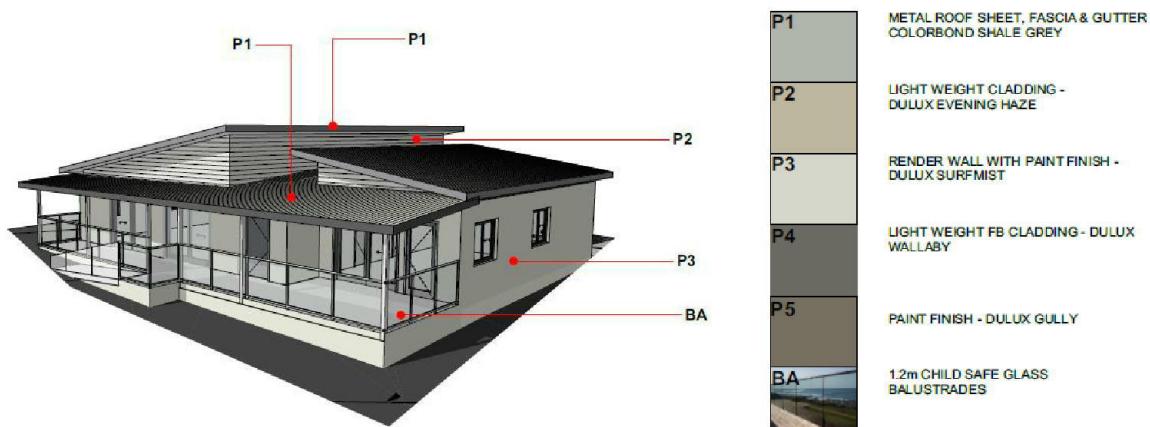
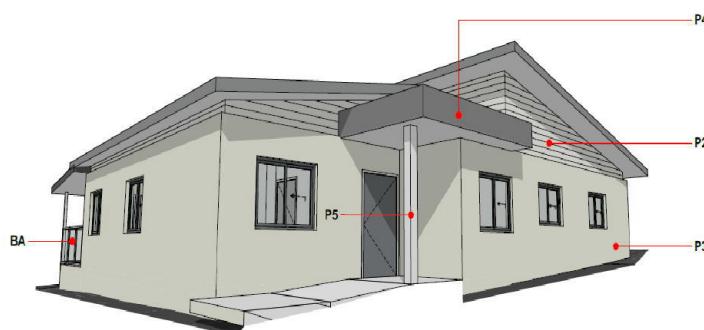




Figure 10 - Perspectives of the Building



Rear Perspective



Front Perspective

4.1 Supporting Documentation

The following information has been prepared in support of the proposed development;

Architectural Design Drawings	Shobha Designs
Site Survey	Mark Castelletti Surveying
Landscape Plan	EziGrow Landscape and Trees
Traffic and Parking Assessment	ML Traffic Engineers
Access and Parking Certification	ML Traffic Engineers
Acoustic Report	Envirotech Consulting Group
Access Report	PSE Access Consulting
Bushfire Assessment	Fire Investigation & Safety Compliance Australia
BCA Report	National BCA
Sedimentation Control Plan	NITMA Consulting Pty Ltd



Stormwater Management Plan	NITMA Consulting Pty Ltd
Waste Management Plan	Shobha Designs

5.0 STATUTORY CONSIDERATIONS

The proposed development has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 (EP&A Act). Of particular relevance to this proposal is the following sections.

5.1 Section 4.46 of the EP&A Act

Rural Fires Act 1997

The site is identified as being bushfire prone as shown in Figure 11 below. Section 100B of the Rural Fires Act 1997 states the following;

100B Bush fire safety authorities

- (1) The Commissioner may issue a bush fire safety authority for:
 - (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
 - (b) development of bush fire prone land for a special fire protection purpose.

A 'special fire protection purpose' is described as;

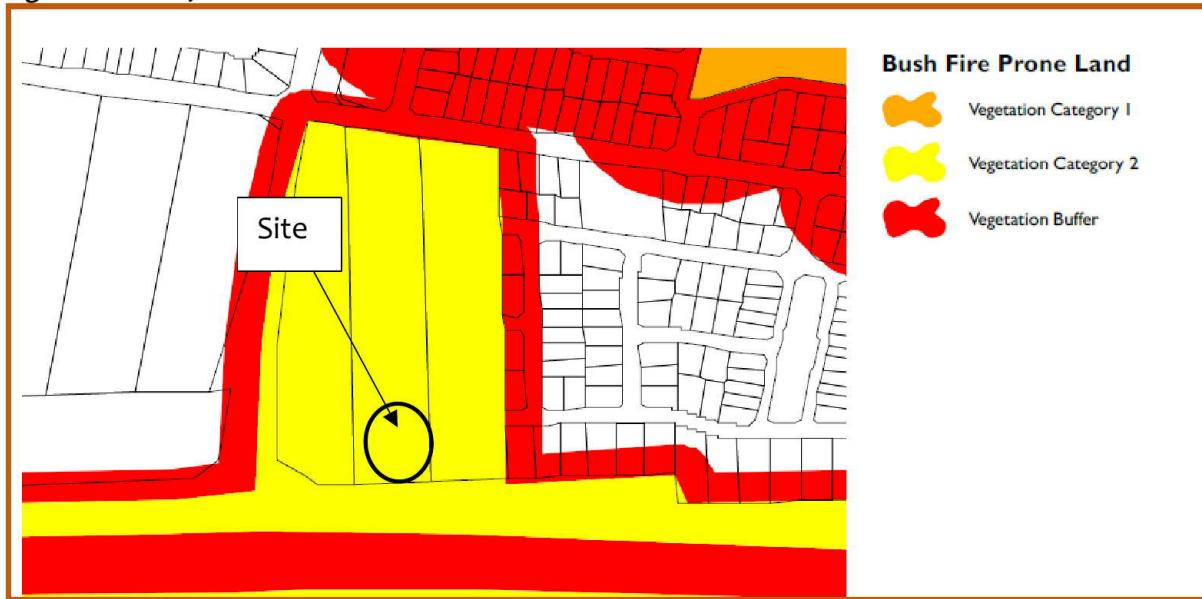
special fire protection purpose means the purpose of the following:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- (f) seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,
- (g) a group home within the meaning of State Environmental Planning Policy No 9— Group Homes,
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.



The development is therefore Integrated Development for the purposes of Section 4.46 of the EP&A Act requiring a Bushfire Safety Authority in accordance with Section 100B of the Rural Fires Act, 1996.

Figure 11 - Bushfire Prone Land



Vegetation Category 2 is considered to be a lower bush fire risk than Category 1. This vegetation category has lower combustibility and/or limited potential fire size due to the vegetation area shape and size, land geography and management practices. A Bushfire Assessment Report supports this application.

5.2 Section 88B of the Conveyancing Act 1919

When the subdivision for the land was approved it incorporated a number of positive and restrictive covenants imposed along with various easements. The subject site has three such covenants as indicated below in Figure 12.

These property notations relate to the following;

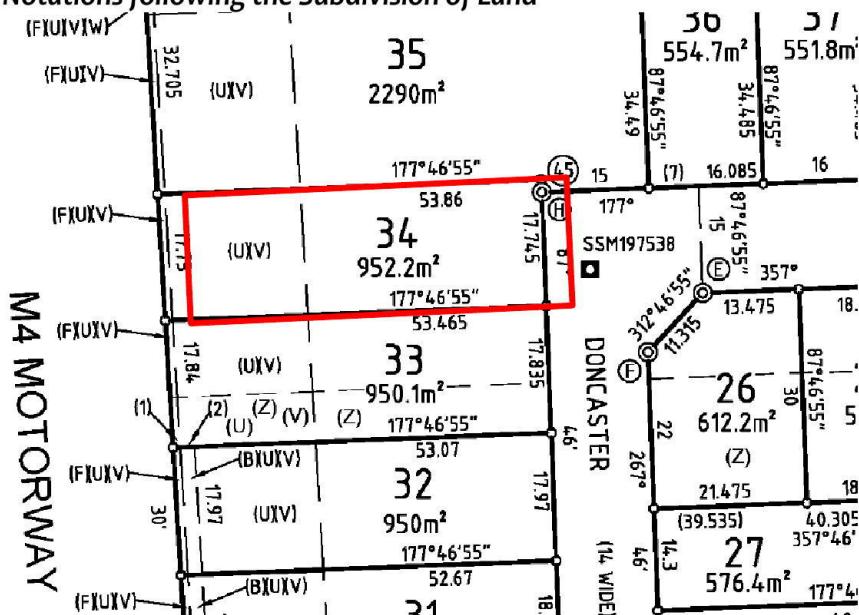
Notation Number	Purpose
F	Positive Covenant 1.0m wide to enable the installation of acoustic barriers and for the ongoing management and retention of these barriers.
U	Positive Covenant 20m wide for the continued maintenance of conservation area from the rear boundary.



V

Restriction on the Use of Land 20m wide which restricts the erection of structure without the prior written consent of the Authority benefited.

Figure 12 - Lot Notations following the Subdivision of Land



The proposal does not affect notations (F) and (U) but does require the Restriction on Use that is tently (or V above) described in the term of easements, positive and restrictions on use, as imposed on the site in accordance with Section 88B of the Conveyancing Act 1919.

Restriction 10 affects Lots 30-35 inclusive and states:

TERMS OF RESTRICTION TENTHLY REFERRED TO IN THE ABOVENAMED PLAN:

No structures are to be constructed within the rear 20 metres of the Burdened Lot without prior written consent from the Authority benefited.

The Authority benefited from the Restriction on Use and with the ability to waive, modify or amend it is the Penrith City Council.

The development application is seeking a variation to this Restriction on Use for the reasons contained in the Clause 4.6 request to vary a Development Standard as contained in Clause 7.15(3)(c)(iii) which states:



to provide a minimum setback of 20 metres from the M4 Motorway reserve to any dwelling or substantial structure.

6.0 Section 4.15 Considerations

An assessment of the proposal in accordance with provisions of Section 4.15 of the EP&A Act is provided for below.

6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instruments

The proposed development has been assessed against the suite of planning controls that regulate land use proposals on the site. These controls include the following;

- Sydney Regional Environmental Plan No. 20- Hawkesbury Nepean River
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environment Planning Policy (Educational Establishments and Child Care Facilities) 2017
- Penrith Local Environmental Plan 2010.
- Penrith Development Control Plan 2015

6.1.2 State Environmental Planning Policies

Sydney Regional Environmental Plan No. 20- Hawkesbury Nepean River

The proposal is accompanied by a detailed stormwater and Water Sensitive Urban Design (WSUD) assessment by NITMA Consulting Pty Ltd. The objective of the WSUD assessment is enable treatment to be incorporated into the overall water management of the site thereby improves the quality of water leaving the site. By incorporating the WSUD assessment recommendation and through the water treatment the quality of water leaving the site will be improved. This is in accordance with the key principles of the SEPP.

There will be suitable sedimentation and erosion control fencing in place in accordance with the Council's requirements and these measures can be incorporated into conditions of consent to be satisfied, prior to any additional work commencing.

State Environmental Planning Policy No. 55 - (Remediation of Land)

The residential subdivision of the site that was approved by Council, was supplemented with a Phase 1 contamination assessment which concluded that the likelihood of the land being contaminated, is unlikely. The land was deemed suitable for residential use. Council placed conditions on the consent that required only clean fill could be used and that certification of this material would be necessary. Because of this history, past



contamination assessment and development consent conditioning the site is not considered to be contaminated and is suitable for the proposed use and satisfies the provisions of Table 1 in the 'Contaminated Land Planning Guidelines'.

Further investigation and reporting under SEPP 55 is not considered necessary as there is no underlying change of use of the land from what was given development consent and as such Clause 7 of the SEPP is satisfied.

If any contaminated material or suspected contaminated material is unearthed during the construction process, then actions consistent with the legislative requirements and guideline document will be undertaken.

State Environment Planning Policy (Educational Establishments and Child Care Facilities) 2017
The following clauses of the SEPP are relevant to the assessment of this proposal.

Clause	Comment
Clause 22 – Concurrence of the Regulatory Authority required (1) This clause applies to development for the purpose of a centre-based child care facility if: (a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> , or (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	The proposed development provides the following indoor and outdoor spaces. Required - 100.75m ² - Proposed - 104.51m ² Required - 217m ² - Proposed - 225.37m ²
Clause 23 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 <i>Child Care Planning Guideline</i> , in relation to the proposed development.	The proposal complies with the <i>Education and Care Services National Regulations</i> so no concurrence procedures are required.
Clause 25 – Non-discretionary standards	Complies



Clause	Comment
(a) location —the development may be located at any distance from an existing or proposed early education and care facility,	Complies
(b) indoor or outdoor space	
(i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or	Complies
(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the <i>Children (Education and Care Services) Supplementary Provisions Regulation 2012</i> applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,	Complies
(c) site area and site dimensions —the development may be located on a site of any size and have any length of street frontage or any allotment depth,	Complies
(d) colour of building materials or shade structures —the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	
Clause 26 – Development Control Plans	
1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:	
(a) operational or management plans or arrangements (including hours of operation),	Noted.
(b) demonstrated need or demand for child care services,	
(c) proximity of facility to other early education and care facilities,	
(d) any matter relating to development for the purpose of a centre-based child care facility contained in:	Noted
(i) the design principles set out in Part 2 of the <i>Child Care Planning Guideline</i> , or	Noted



Clause	Comment
(ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).	

An assessment of the matters for consideration as outlined in the Child Care Planning Guideline is provided below.

Table 3 - Child Care Planning Guidelines Compliance

Matter for Consideration	Comments
2.0 Design Principles	
Principle 1 - Context	The proposed use is suitable located being close to public transport, within a new residential area and on the entry/exit to the residential neighbourhood. The site is of suitable size, level and cleared of vegetation. The building is of a suitable scale and designed for purpose. The design will introduce a contemporary modern building amongst a newly evolving residential community. The siting, scale and design elements of the building will enable this facility to add to the fabric of the area, provide a meaningful contribution to supporting the community and add to the areas character and aesthetics.
Principle 2 - Built form	<p>The following design attributes are positive outcomes;</p> <ul style="list-style-type: none">• Roof structure is divided into 3 parts which provides articulation, aesthetics and minimized bulk blends in with the residential characteristics of that area.• The built form is further defined by breaking the verticality of the wall into two different materials. The articulation in the walls allows the building to reduce the bulk to the public domain and helps enhance the streetscape of the developing area.• Appropriate proportion is maintained by providing different wall type, texture and material.



Matter for Consideration	Comments
	<ul style="list-style-type: none">• The overall built form of the building is aesthetically appealing from the street and generates interest by using different building elements, materials, colours and textures. <p>The contemporary design and high-quality lightweight materials will add to the future desired character of the area and align with other more recent contemporary developments in the area.</p> <p>The proposal is single storey and residential in appearance. It is similar in scale to the surrounding developments albeit a developing area. The built form represents a compatible building in scale and character and is consistent with the building forms represented in the locality.</p>
Principle 3 - Adaptive learning spaces	<p>The proposed facility accommodates 31 Children with 4 Staff members.</p> <ul style="list-style-type: none">• There will be 4 children - 0-2-year-old,• 5 children - 2-3-year-old and• 22 Children – 3-5-year-old. <p>The Outdoor play area is equipped with different play equipment such as sand pit, soft fall area etc that provides interactive learning spaces.</p> <p>The Indoor play areas have direct link to the outdoor play area via semi covered play area</p> <p>The internal layout and the delineation of how space within the facility will be used will provide an interesting and interactive learning space to accommodate children of various ages.</p>
Principle 4- Sustainability	<p>The building has been designed to enable natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling. This is provided for in the use of a skillion roof, fenestration and internal passages. Being able to open up the building to the outdoors also assists in the ability to link inside with the outside. The following design attributes are important for sustainability;</p> <ul style="list-style-type: none">• ACC panels (Hebel Power Panels) for external walls are used which provides high quality thermal insulation, higher acoustic rating and also reduces time requires during the construction.• Appropriate wall and roof insulation provided.



Matter for Consideration	Comments
Principle 5 - Landscape	<ul style="list-style-type: none">• The smaller scale of the roof prevents entrapment of hot air into large spaces and thus provides good thermal insulation.• A rain garden has been provided at the southern landscape buffer zone. <p>The proposal includes 225.37m² outdoor play area at the rear that integrates with new landscaping along the interface with the M4 Motorway. Landscaping is proposed around the site including along the side boundaries and with the front setback. Enhancing the natural features and contributing to the overall context of the street and locality in general. Landscape Design is prepared by a Landscape designer with appropriate species shown for the bush fire zone. A 4m wide landscape buffer is provided on the southern boundary which gives acoustic as well as visual privacy from the M4 Motorway. A minimum of 2 m wide landscape strip is provided on the street edge to enhance the streetscape. The front parking area is surrounded by landscape strips that further reduce the impact of hardstand parking area to the front. A rain garden has been provided at the southern landscape buffer zone.</p>
Principle 6 - Amenity	<p>The building has been designed to provide a high level of amenity for the children and staff by creating various spaces with the facility such as indoor play areas, administration and staff areas and outdoor areas. The building has good access to natural light and ventilation and have direct access to the outdoor play areas. The other amenities include 1.2m high child safe handrails to safety, accessible ramps. The outdoor play area includes various play equipment, sand pit and soft fall pits with shade structure, staff room, administration office and outdoor seating. The transition from internal play area to outdoor play area is through a covered outdoor play area in the form of Patio.</p>
Principle 7 - Safety	<p>The proposal has been designed to create a safety and secure facility. Separate pedestrian access to the main entry foyer from the street via a pathway and there is</p>



Matter for Consideration	Comments
	<p>good access around the building. Internally there is access to each of the play areas for different age cohorts. The location of the car parking area, pedestrian pathway and proposed windows around the building provide passive surveillance opportunities. There will also be CCTV provided to the building which add to the safety and security provisions of the facility. There are no hidden nooks and corners in the proposed building. The play area and children utilities are provided with clear and direct sight line and thus it encourages passive surveillance.</p>
3.1 Site Selection and Location	
Objective: To ensure that appropriate zone considerations are assessed when selecting a site.	The proposed development is sited in a developing residential area. The development has been accompanied by an acoustic report which investigates the acoustic implications of the facility and adjoining land uses impact on the facility. The setbacks have been devised to enable the building to assimilate with the character of the area while providing scope for this form of development. The ability to provide landscaping and a low scaled built form enables compatibility and integration with current and future character of the immediate area. The site provides suitable parking to the front of the site that is validated by consultative reports.
Objective: To ensure that the site selected for a proposed child care facility is suitable for the use.	The issues that have been identified in this part of the guide are addressed in Section 6.4 of this SoEE and by the supportive consultative reports. These address bushfire, accessibility and traffic and parking.
Objective: To ensure that sites for child care facilities are appropriately located.	The site is located within a new residential area and adjacent to an established residential area within Claremont Meadows. The site is within close proximity to public transport and only 300m from Caddens Road. The site has good access by car and is suitably located at the exit from or entry to the emerging residential area. The site location does not introduce through traffic amongst an established residential area.
Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	The site does not have any of these risks present and is suitably located.
3.2 Local Character, Streetscape and public domain interface	
Objective: To ensure that the child care facility is compatible with the	The building is single storey, built from light weight materials and has a skillion roof. The location of the



Matter for Consideration	Comments
local character and surrounding streetscape.	building on the site provides for a 19.8m setback at its closest point. The presentation of the building is residential in character. The building will be articulated with windows and entry points along with a range of building materials. Landscaping will be provided that provides for a green edge and softening of the overall development.
Objective: To ensure clear delineation between the child care facility and public spaces.	The proposal has a 19.8m setback within which car parking and access to the site is provided. The front of the site will be landscaped and there is a pedestrian access provided from the street to the main entry to the building. The layout of the proposal will enable users of the site to find their way around the site and to the building. Suitable access paths and material changes will provide indicators of where to walk to access the building.
Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain	No front fence is proposed. The frontage of the site will be landscaped along the front boundary which is similar to existing residential sites.
3.3 Building orientation, envelope and design	
Objective: To respond to the streetscape and site, while optimising solar access and opportunities for shade.	The proposal incorporates the following attributes that demonstrate this; <ul style="list-style-type: none">• A significant setback from the street;• Presentation to the street;• Modern contemporary single storey design;• Good solar access and suitable shade facilities such as verandahs and shade structures.
Objective: To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised	The size of the facility is for 31 places. This is not a large facility and will enable the building and the associated elements of the centre to be suitably accommodated within its setting. The proposal has had a series of supporting consultants reports undertaken to address the landscaping, noise and drainage. All of these suggest that the proposed use is compatible with the adjoining area, which is under going change to a new residential area.
Objective: To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context.	The setback from the front boundary ate its closest point is 19.8m and the 16.5 from the rear boundary. The positioning of the building on site is not inconsistent with others sites in the area. The front setback is generous but



Matter for Consideration	Comments
Objective: To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character	<p>serves to reduce the impact on the streetscape and provide enough area for carparking and landscaping.</p> <p>For the reasons outlined above these are the reasons why this objective has been met;</p> <ul style="list-style-type: none">• the proposed use is suitable located being close to public transport,• it is within a new residential area and on the entry/exit to the residential neighbourhood;• the site is of suitable size, level and cleared of vegetation;• the building of a suitable scale and designed for purpose;• the design will introduce a contemporary modern building amongst a newly evolving residential community; and• the siting, scale and design elements of the building will enable this facility to add to the fabric of the area, provide a meaningful contribution to supporting the community and add to the areas character and aesthetics.
Objective: To ensure that buildings are designed to create safe environments for all users.	<p>The proposal incorporates a separate pedestrian pathway from the street to the building, providing safe passage for children entering and leaving the site.</p> <p>The entry and pathway will be visible from the street frontage and can easily be monitored through both natural and camera surveillance</p>
Objective: To ensure that child care facilities are designed to be accessible by all potential users.	<p>The proposal provides for facilities to accommodate persons with accessibility issues. Refer to the detailed Accessibility Review Report prepared by PSE Access Consultants and submitted with this application for further details on disabled access provisions.</p>
3.4 Landscaping	
Objective: To provide landscape design that contributes to the streetscape and amenity.	<p>Landscaping has been proposed along the front and side boundaries as well as within the rear play area.</p> <p>Refer to the landscape plans prepared by EziGrow Landscape and Trees for more details on the proposed landscaping.</p>
3.5 Visual and acoustic privacy	
Objective: To protect the privacy and security of children attending the facility.	<p>The internal play areas of the facility are positioned at the back of the building way from the public areas. The site will be landscaped along the side boundaries for added privacy. Windows along the side of the building are minimal. The rear of the outdoor play areas will be</p>



Matter for Consideration	Comments
	screened from the M4 Motorway and position behind an existing screen fence.
Objective: To minimise impacts on privacy of adjoining properties.	The facility is orientated north/south. The landscaping proposed and the internalising of the space for the children will assist in addressing any concerns about the use. The application is supported by an acoustic report from Envirotech Consulting Group that examines the juxtaposition of adjoining sites.
3.6 Noise and air pollution	
Objective: To ensure that outside noise levels on the facility are minimised to acceptable levels.	Refer to an acoustic report from Envirotech Consulting Group.
Objective: To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development.	The proposal is located within a residential area with no known or obvious major air pollution sources.
3.7 Hours of operation	
Objective: To minimise the impact of the child care facility on the amenity of neighbouring residential developments.	The proposed hours of operation will be 7:00am to 6:30pm Monday to Friday.
3.8 Traffic, parking and pedestrian circulation	
Objective: To provide parking that satisfies the needs of users and demand generated by the centre.	It is proposed to provide 8 car spaces in accordance with the DCP requirement.
	Refer to the detailed Traffic and Parking Impact Assessment prepared by ML Traffic Engineers and submitted with this application for details on the proposed car parking layout and operation.
Objective: To provide vehicle access from the street in a safe environment that does not disrupt traffic flows.	Refer to the detailed Traffic and Parking Impact Assessment prepared by ML Traffic Engineers and submitted with this application for details on the proposed car parking layout and operation
Objective: To provide a safe and connected environment for pedestrians both on and around the site.	The proposal has been designed to incorporate the following: <ul style="list-style-type: none">• A separate pedestrian access from the car park to the facility.• Separate pedestrian and vehicle entries from the street for parents, children and visitors.



Matter for Consideration	Comments
	<ul style="list-style-type: none">• To provide adequate space within the site to allow vehicles to enter and leave the site in a forward direction.• To provide clearly marked accessible parking as close as possible to the primary entrance to the building.
4.0 Applying the National Regulations to development proposals	
4.1 Indoor space requirements Every child being educated and cared for within a facility must have a minimum of 3.25m ² of unencumbered indoor space	The facility is for 31 children. 100.75m ² of internal space is required and 104.51m ² is provided. <input checked="" type="checkbox"/>
4.2 Laundry and hygiene facilities There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.	An internal laundry will be provided adjacent to the kitchen and disabled toilet facility. A storage area has been provided within the laundry that will accommodate for the disposal of nappies and other waste <input checked="" type="checkbox"/>
4.3 Toilet and hygiene facilities A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.	Toilet and hygiene facilities have been provided for the children (age-appropriate) as well as toilets and shower facilities for staff (disabled toilet). <input checked="" type="checkbox"/>
4.4 Ventilation and natural light Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.	The building has been designed to allow good solar access having a north/south orientation. The building has adequate cross through ventilation and will be able to cater for comfort and wellbeing of staff and children. <input checked="" type="checkbox"/>
4.5 Administrative space A service must provide adequate area or areas for the purposes of	An administration area is provided. In addition, a staff room is also provided. <input checked="" type="checkbox"/>



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conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	
4.6 Nappy change facilities Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.	Nappy change facilities have been provided. <input checked="" type="checkbox"/>
4.7 Premises designed to facilitate supervision A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity	The facility caters for 31 children and the layout of the internal floor space will enable clear sight lines across the space to enable suitable supervision of children. Suitable conditions of consent could address this issue in terms of internal treatments if deemed necessary. <input checked="" type="checkbox"/>
4.8 Emergency and evacuation procedures Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: <ul style="list-style-type: none">instructions for what must be done in the event of an emergencyan emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exita risk assessment to identify potential emergencies that are relevant to the service.	The operator of the facility will comply with these provisions and provide the necessary operational procedures in place for emergency situations. <input checked="" type="checkbox"/> It is expected that this information will be required as a condition of consent and to be approved by Council prior to the issues of an Occupation Certificate.



Matter for Consideration	Comments
4.9 Outdoor space requirements An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m ² of unencumbered outdoor space.	For a child care facility accommodating 31 children, 217m ² of outdoor play area is required. The proposed outdoor play area provided is 225.37m ² . ✓
4.10 Natural environment The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	A range of play equipment and features will be provided in the outdoor spaces to allow children to explore and experience the natural environment such as sandpits, softfall areas, shade area and synthetic grass. There is also a covered verandah area that is protected and open to the elements. ✓
4.11 Shade The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	The proposal includes shade devices and a verandah area. ✓
4.12 Fencing Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	All fencing will satisfy this requirement. ✓
4.13 Soil assessment Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: <ul style="list-style-type: none">• a soil assessment for the site of the proposed education and care service premises• if a soil assessment for the site of the proposed child care facility has previously been undertaken, a	For the reasons outlined in Section 6.1.2 the site is not considered to be contaminated. ✓



Matter for Consideration	Comments
<p>statement to that effect specifying when the soil assessment was undertaken</p> <ul style="list-style-type: none">• a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children.	

6.1.3 Local Environmental Plan

The site is zoned R2 – Low Density Residential in accordance with Land Zoning Map - Sheet LZN_0013 of Penrith Local Environmental Plan 2010 (PLEP). Centre-based child care facilities are permissible with consent in the zone.

A Centre-based child care facility is defined as;

- (a) *a building or place used for the education and care of children that provides any one or more of the following:*
 - (i) *long day care,*
 - (ii) *occasional child care,*
 - (iii) *out-of-school-hours care (including vacation care),*
 - (iv) *preschool care, or*
- (b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),*

The zoning objectives of the R2 zone are;

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



- 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.
- To enhance the essential character and identity of established residential areas.
- To ensure a high level of residential amenity is achieved and maintained

The proposed development is consistent with the objectives in that it will achieve the following outcomes;

- A development that is consistent with the form, style and character of the immediate and future locality;
- A development that will support the local neighbourhood in the provision of services;
- A development that is suitably located with access to and from the site;
- A development that will complement the streetscape in terms of its siting and location.

Figure 13 - Penrith LEP 201 Zoning Map for the Site

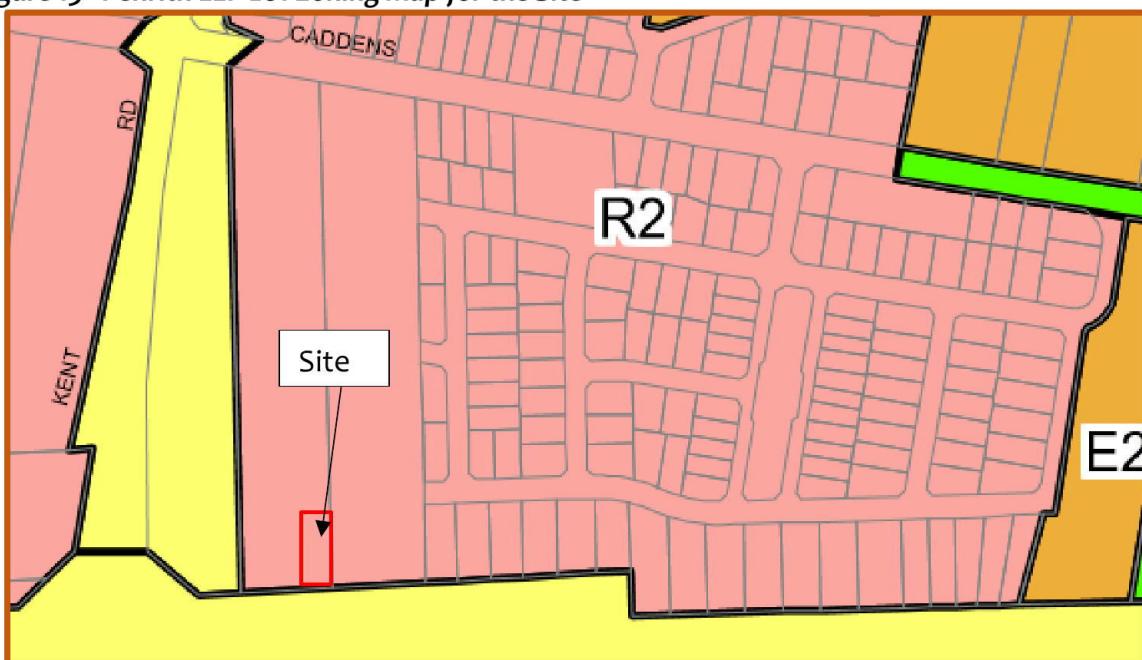




Figure 14 - Building Height Map - 8.5m

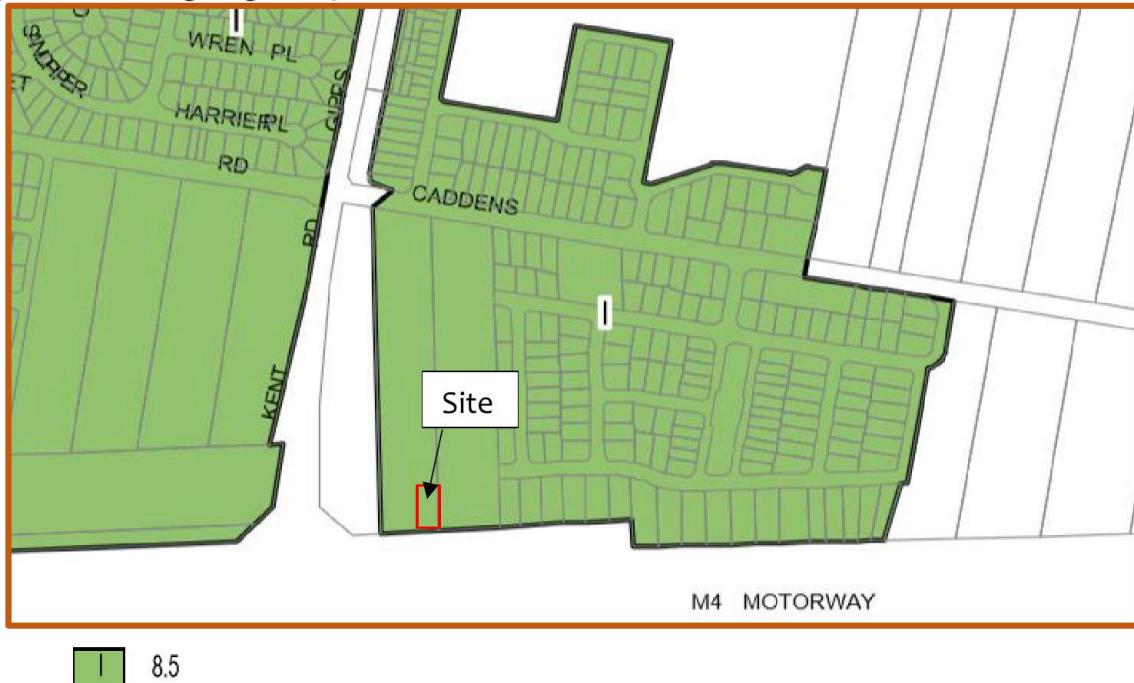


Table 4 - Penrith LEP Compliance

Penrith Local Environmental Plan 2010 – Compliance Table

Clause and Control	Comments	Compliance
Zoning – R2 – Low Density Residential	Allows for Centre-based child care facilities.	Yes
Permitted Development		
2.3 Zone Objectives	The proposal is consistent with the objectives of the R2 zone.	Yes
2.6 Subdivision	No subdivision other than lot consolidation proposed.	N/A
2.7 Demolition	N/A	Yes
Development Standards		
4.1 – 4.2A Minimum Lot sizes	Does not apply	N/A
4.3 Height of Building	The proposal complies with the 8.5m height requirement	Yes
4.4 Floor Space Ratio	Does not apply	N/A



Penrith Local Environmental Plan 2010 – Compliance Table

Clause and Control	Comments	Compliance
4.6 Exception to Development Standards	An exemption to development standard as outlined in Clause 7.15(3)(c)(iii)	No – See Clause 4.6 variation request.
Miscellaneous provisions		
5.10 Heritage conservation	There are no heritage restrictions on the site.	N/A
Additional Provisions		
7.1 Earthworks	Minor earthworks are proposed to facilitate the proposed development. These works will result in minimal impact to adjoining sites.	Yes
7.2 Flood planning	N/A.	Yes
7.4 Sustainable development	The proposal satisfies the LEP in that: <i>(a) conserving energy and reducing carbon dioxide emissions,</i> <i>(b) embodied energy in materials and building processes</i> The proposal will have sustainable solutions such as <ul style="list-style-type: none">• ACC panels (Hebel Power Panels) for external walls which provides high quality thermal insulation, higher acoustic rating and also reduces time required during the construction phase.• Appropriate wall and roof insulation provided.• The smaller scale of the roof prevents entrapment of hot air into large spaces and thus provides good thermal insulation <i>(c) building design and orientation,</i> <i>(d) passive solar design and day lighting,</i> <i>(e) natural ventilation,</i>	Yes



Penrith Local Environmental Plan 2010 – Compliance Table

Clause and Control	Comments	Compliance
	<p>The design of the building will enable adequate solar access and cross ventilation through the building.</p> <p>(f) <u>energy efficiency and conservation</u>, (g) <u>water conservation and water reuse</u>,</p> <p>The development will incorporate Water Sensitive Urban Design principles and provide a rain garden to the rear of the site.</p> <p>(h) <u>waste minimisation and recycling</u>, Waste management and recycling can be addressed through waste management plan.</p> <p>(i) <u>reduction of vehicle dependence</u></p> <p>The site is within 300m from a bus stop.</p> <p>(j) <u>potential for adaptive reuse</u>.</p> <p>Not Applicable for this proposal.</p>	
7.5 Protection of Scenic Character and Landscape values	The site is not identified as having scenic of landscape values.	Yes
7.7 Servicing	The site is well serviced by water and sewer and other utility services. All the necessary certificates and approvals verifying this will be provided in accordance with suitable conditions of consent.	Yes
7.15 Claremont Meadows		
7.15 (2) Clause Objectives	<p>(a) <u>to ensure a high level of pedestrian amenity and good pedestrian linkages within the land and between the land and the existing land forming Claremont Meadows estate, surrounding development and natural areas</u>,</p> <p>There is pedestrian access provided to the site as part of the subdivision and from the street to the entrance of the building.</p>	Yes



Penrith Local Environmental Plan 2010 – Compliance Table

Clause and Control	Comments	Compliance
	<p>(b) <u>to permit a diverse housing mix that provides a wide range of dwelling types and choice,</u> The area is has developed and this part of the area will develop into the future.</p> <p>(c) <u>to allow for multiple lot sizes that promote higher density around open space,</u> Not applicable for this development.</p> <p>(d) <u>to ensure that housing located in the vicinity of a major road takes account of the constraints imposed by noise and visual impact.</u> The proposal is accompanied by a noise assessment, BAL assessment and the most recent changes to the east access to the M4 from Kent Road have introduced significant changes that ameliorate the existing area from the M4 in terms of noise and provide a visual barrier from the M4 Motorway. These works significantly alter the existing environment from what existed when the area was first designed and planned for.</p>	Yes Yes Yes
7.15(3)(c) Matters for Council to consider before granting development consent	<p>(c) <u>for development within 100 metres of the M4 Motorway road reserve, any measures that are proposed:</u></p> <p>(i) <u>to protect the viewscape into the subject land when viewed from the M4 Motorway from both the east and the west, so that residential development is not prominent, and</u> (ii) <u>to provide a vegetated corridor on those lots that adjoin the M4 Motorway reserve, linking Claremont</u></p>	Yes Yes

Penrith Local Environmental Plan 2010 – Compliance Table

Clause and Control	Comments	Compliance
	<p><u>Creek to the South Creek Corridor, and</u></p> <p>(iii) <u>to provide a minimum setback of 20 metres from the M4 Motorway reserve to any dwelling or substantial structure.</u></p> <p>The immediate area has changed from the time that these provisions were considered necessary due to the upgrade of the M4 Motorway just recently. There is a large earth mound with landscaping positioned between these new road improvements and the rear of the properties backing onto the M4. These works have resulted in improved visual screening in both directions along the M4 and improved acoustic attenuation. This development standard will be the subject of a Clause 4.6 variation submission.</p>	<p>No – See Clause 4.6 variation to the Development Standard.</p>

6.2 Section 4.15(1)(a)(iii) – Any Development Control Plans

Further consideration needs to be given to relevant Development Control Plans (DCP) where matters not captured by a SEPP, need consideration. Development Control Plans support the environmental planning instruments and have a greater degree of flexibility and interpretation in their implementation.

6.2.1 Penrith Development Control Plan 2014

Council's Development Control Plan 2014 (Penrith DCP 2014) provides more detailed guidelines that the proposal needs to consider, where the SEPP 65 Apartment Design Guidelines, have not already addressed these matters, in the design, layout and amenity outcomes for the site and its surrounds. These provisions are important for ensuring developments meet standards of qualitative and quantitative performance.

An overview of those provisions within Penrith DCP 2014 deemed applicable is detailed in Table 4 below.

Table 5 - Penrith DCP 2014 Compliance

Penrith Development Control Plan 2014 – Compliance Table

C1 - Site Planning and Design Principles

1.1 Site Planning

- 1.1.1 Site Analysis

A site plan has been provided and evaluates the site's context with the surrounding locality. The site plan identified a suitable location for the proposed dwelling while considering the character of the surrounding area. It identifies proximity to adjoining lands.

1.2 Design Principles

- 1.2.2 Energy Efficiency and Conservation

The proposal is orientated providing access to morning, midday and afternoon sunlight into the dwelling. A BASIX certificate is attached to the proposed development verifying its energy achievements.

- 1.2.3 Height, Bulk and Scale

Complies with the SEPP (Educational Establishments and Child Care Facilities) 2017 and PLEP 2010.

- 1.2.4 & 1.2.5 Responding to landform and Safety

The development does not require significant site disturbance and is appropriately accommodated on site.

Complies with C1 of DCP

Yes

C2 - Vegetation Management

2.1 Preservation of Trees and Vegetation

The site is not within a Scenic or Landscape Values area as identified below. The site is cleared of vegetation.



2.2 Biodiversity Corridors

N/A

2.3 Bushfire Management

The site's BAL is 12.5. A Bushfire Attack Level Assessment Report accompanies the development application.

Complies with C2 of DCP

Yes

C3 - Water Management



Penrith Development Control Plan 2014 – Compliance Table

3.1 The Water Cycle	A drainage and Water Sensitive Urban Design solution have been proposed.
3.2 Catchment Management	The proposal incorporates a series of responses to capture and reuse rainwater.
3.3 Watercourses	N/A
3.4 Groundwater	N/A
3.5 Flood Planning	N/A
3.6 Stormwater Management	NITMA Consulting Pty Ltd have provided a detailed stormwater plan for the site. The stormwater plan proposes to connect to existing infrastructure within the site and to capture runoff from roof water and direct it to a rainwater garden to treat the water before leaving the site.
3.7 Water Retention Basin	N/A
3.8 Rainwater tanks	No rainwater tanks are proposed
Complies with C3 of DCP Yes	
C4 - Land Management	
4.1 Site suitability and earthworks	The site works required to facilitate the development are minor and unlikely to cause any impact to adjoining properties.
4.3 Erosion & Sedimentation	Suitable sedimentation and erosion controls will be in place, as detailed by NITMA Consulting Pty Ltd see plan Sheet 2 of 2 Project No. 3513H Issues A Dated 21/6/2018.
4.4 Contaminated Lands	Given the site's history the site is not considered to be contaminated.
4.5 Salinity	N/A
Complies with C4 of DCP Yes	
C5 - Waste Management	
5.1 Waste Management Plans	A Waste Management Plan accompanies the documentation to the application.
5.2.4 Non-Residential Development Controls	The proposed waste storage and collection area is position to the front of the site behind a 2m landscape area.



Penrith Development Control Plan 2014 – Compliance Table

The storage area is covered and secure. A waste contractor will service the site on a weekly basis. The proposal provides both residual, recycled and green waste bins capable of accommodating 850L of waste each per week for the residual and recycled waste and 240L per week for green waste.

Complies with C5 of DCP		Yes
C6 - Landscape Design		
C6.1.1 – c6.1.5	A Landscape Plan has been submitted by EziGrow Landscape and Trees. The landscaping proposed for the site will;	
<ul style="list-style-type: none"> • Provide a green edge to the site; • Provide a suitable interface with the street; • Provide screening for the east/west movement along the M4 Motorway; • Provide pervious areas with the site for deep soil planting; • Contribute the overall streetscape character in the area, 		
Complies with C6 of DCP		Yes
C7 - Culture and Heritage		
7.1 European Heritage	N/A	
7.2 Aboriginal Heritage	N/A	
7.3 Significant Trees	The site does not contain any trees.	
Complies with C7 of DCP		Yes
C10 - Transport Access and Parking		
10.2 Traffic management and Safety	A Traffic and Parking Assessment has been submitted by ML Traffic Engineers. This is supplemented by swept paths and driveway/parking certification.	
10.5 Parking, Access and Driveways	Council DCP requires the following; 1 space per 10 children plus 1 per employee plus provision for any dwelling.	
<p>Staffing rates in accordance with Clause 123 Education and Care Services National Regulation;</p> <p>4 children – 0 -2 years – requires 1 staff 5 children – 2 – 3 years – requires 1 staff 22 children – 3 – 5 years. – requires 2 staff</p>		
<p>31 children/10 requires 3.1 spaces – 4 staff spaces or 8 spaces in total. 8 have been provided.</p>		
Complies with C10 of DCP		Yes
D5.2 Other Uses – Child care Centres		
Control	Comment	Complies
C2 Location		



Control	Comment	Complies
a) Any proposed centre which: i).. ii) Does not propose to cater for 0 – 2 year olds; must demonstrate that the service to be provided meets an unmet need in the community. Unmet demand in the community can be assessed through waiting lists of centres in surrounding areas, a comparison of the number of children aged 0-5 recorded in the census for the area and the number of child care places available.	4 children of 0-2 years are proposed.	✓
b) Child care centres shall be located in close proximity to other community activities and facilities, such as schools, community facilities, places of public worship, parks that contains child play equipment, larger formal public reserves and local shopping centres.	Clause 25(2)(a) of the SEPP (Educational Establishments and Child Care Facilities) 2017 applies.	✓
c) The site shall not rely on direct access from, nor be located on, a designated road, unless it can be demonstrated that the safe operation of the road and the amenity of the children attending the centre will not be affected. Penrith Development Control Plan 2014 D5 Other Land Uses D5-4	N/A	✓
d) Access to the site shall not be located in a cul-de-sac, at an intersection, or on a minor residential road unless it can be demonstrated that additional vehicles associated with the child care centre will not create traffic conflict or have an adverse impact on the amenity of the locality.	A Traffic and Parking Assessment by ML Traffic Engineers supports the application. The site is close to the entry and exit of the residential area with good access to Caddens Road, Kent Road and the M4 Motorway.	✓
e) A child care centre shall not be located on land within an 85m radius of an existing or approved service station, or on land in a specific radius of an existing/approved flammable storage area under State Environmental	N/A	✓



Control	Comment	Complies
Planning Policy No 33 Hazardous and Offensive Development.		
f) A child care centre shall not be located on land that is directly opposite to or adjacent to (including behind) an existing and lawful sex services premises and/or restricted premises	N/A	√
g) A child care centre shall not be permitted on land on which there is an electricity transmission easement, mobile phone tower or similar, or on land immediately adjacent to those structures. Centres should be located at least 500m from mobile phone towers or electricity transmission easements.	N/A	√
h) A child care centre should not be located on land below the flood planning level and on land that cannot be safely and effectively evacuated during a 1:100 ARI flood event. (See the Water Management section of this Plan for further details on the flood planning level and 1:100 ARI flood event).	N/A	√
C3 Scale and Design		
a) The scale and character of the development shall be compatible with surrounding development.	The proposed development is single storey, achieves 22% site coverage, is set 19m from the front boundary at its closest point, provides landscaping to the site and will be not in use on weekends and at night.	√
b) The design of the child care centre must take into account nearby traffic generators, street design and the existing environment for pedestrians and cyclists	A Traffic and Parking Assessment supports the proposed development.	√
c) Sites must be of sufficient area to accommodate the child care centre, all required associated parking and traffic manoeuvring areas.	The site is 952m ² with suitable site dimensions to accommodate the proposal areas.	√



Control	Comment	Complies
d) To ensure the safe operation of car parking areas and the amenity of neighbouring residents, sites shall have a minimum frontage of 22m.	Clause 25 of SEPP - (Educational Establishments and Child Care Facilities) 2017 applies.	✓
e) Safe sight distances must be provided for all points of access to the site	The site is located on a bend in the road which provides excellent sight lines in both directions.	
C4 Built Form		
a) Child care centres catering for 15 or more children shall be purpose designed and built, to satisfy the requirements of this section and the requirements of the NSW Department of Community Services. Modifications to existing dwellings will not be supported.	See Section 6.1.2 of this SoEE for assessment of SEPP - (Educational Establishments and Child Care Facilities) 2017 and the Childcare Planning Guidelines.	✓
b) In residential areas, the built form of the child care centre shall be sympathetic to adjoining development in terms of height, bulk and scale	See Section 6.1.2 of this SoEE for assessment of SEPP - (Educational Establishments and Child Care Facilities) 2017 and the Childcare Planning Guidelines.	✓
c) The external façade of the centre shall incorporate building materials and colours that complement the surrounding development. Council discourages the use of bright or garish colours.	See Section 6.1.2 of this SoEE for assessment of SEPP - (Educational Establishments and Child Care Facilities) 2017 and the Childcare Planning Guidelines. Clause 25 of the SEPP prevails over the DCP.	✓
d) Whilst it is preferable that child care centres are located at ground level, this may not be possible in commercial or industrial areas. Applications for centres above ground level will need to address the following: i) Access for parents and caregivers to drop off/pick up children; and ii) Availability of outdoor play space, or its equivalent.	N/A	✓
C5 Vehicle Access, Circulation and Parking		
a) Vehicle circulation and car parking areas shall be designed to allow safe drop-off and collection of children as well as the safe movement and	Drop off and pick up opportunities are available from the internal car park.	✓



Control	Comment	Complies
parking of staff, parents, visitor and service vehicles.		
b) Access driveways should not be located opposite, or in close proximity to, road intersections.	There is no intersection close to the site. The site is on the bend of a road.	✓
c) Parking shall be provided in accordance with the standards in the Transport, Access and Parking section of this Plan.	A Traffic and Parking Assessment supports the proposed development.	✓
d) The parking area is to be designed to ensure: i) The safe drop off and collection of children, including direct, safe pedestrian access between the parking area and the entrance to the centre; ii) Safe movement and parking of staff, parents, visitors and service vehicles; and iii) All vehicles can enter and exit the site in a forward direction	A Traffic and Parking Assessment supports the proposed development.	✓
e) Layout of the parking area must allow for safe access for service and emergency vehicles, such as ambulances, delivery and maintenance vehicles.	A Traffic and Parking Assessment supports the proposed development.	✓
f) Where the child care centre is located in the same building or development as other land uses, the parking and access arrangements for each separate use will need to be separately calculated and provided on site	N/A	✓
g) A traffic impact assessment may be required for the development of a child care centre proposing to cater for 40 children or more.	A Traffic and Parking Assessment supports the proposed development.	✓
C6 Noise		
a) Outside playing areas shall be designed and located to minimise noise impact on any noise sensitive adjacent properties. Separation between boundary fencing and areas occupied by the children may be required.	An Acoustic Assessment Report supports that application and addresses these issues.	✓
b) Where there may be noise impact on adjacent properties, fencing shall be of a height, design and material (e.g. masonry) suitable to contain noise generated by the children's activities. This ensures the children may play outside without time limitations in accordance with licensing requirements.	An Acoustic Assessment Report supports that application and addresses these issues.	✓



Control	Comment	Complies
c) Where a site may be affected by traffic, rail or aircraft noise, the child care centre shall be designed to minimise any impact on the children and staff. A report from an acoustic consultant may be required to support the proposal. (Design elements may include double glazing, insulated walls, locating sleeping rooms in protected areas and solid fencing).	An Acoustic Assessment Report supports that application and addresses these issues.	✓
d) A noise impact assessment may be required for the development of a child care centre proposing to cater for 40 children or more, or where surrounding land uses may have an impact on the proposal.	An Acoustic Assessment Report supports that application.	✓
e) A noise impact assessment report should address the relevant provisions of the Noise and Vibration section of this Plan.	An Acoustic Assessment Report supports that application and addresses these issues.	✓
C7 Shade		
a) Outdoor play areas and transition areas (between indoor and outdoor areas) are to be provided with appropriate safe shade requirements. Safe shade may be created by vegetation or shade structures.	See Section 6.1.2 of this SoEE for assessment of SEPP - (Educational Establishments and Child Care Facilities) 2017 and the Childcare Planning Guidelines.	✓
b) All active areas containing play equipment or areas where children play for extended periods of time (such as a sand pit) are to be shaded throughout the year.	The proposal indicates shade sails in the outdoor area. Should Council require more detail then this can be subject to suitable conditions of consent.	✓
c) Movable play equipment used for active play should be placed in the shade. (This should be a combination of built and natural shade)	There is ample room available on the outdoor area where there will be shade. Can be subject to suitable conditions of consent	✓
d) All shade structures in the play areas should be designed in accordance with AS/NZS 4486.1. If located over play equipment, the shade structure should not have footholds or grip surfaces that will allow for climbing.	Can be subject to suitable conditions of consent	✓
e) Outdoor teaching areas are to be provided with year round protective shade.	Should Council require more detail then this can be subject	✓



Control	Comment	Complies
	to suitable conditions of consent	
f) Outdoor eating areas are to be provided with year round protective shade.	Can be subject to suitable conditions of consent	✓
g) Other open areas are to be partially shaded.	Can be subject to suitable conditions of consent	✓
h) Any transition zone, between indoor and outdoor areas, such as a verandah, should be permanently shaded and protected in wet weather.	The proposal achieves this.	✓
i) The minimum width of a verandah should be 4m to allow for shaded play space underneath.	The verandah varies in width and is slightly less than the 4m..	On merit
C8 Landscaping		
a) Landscape planting shall complement the building(s) and the streetscape and provide screening for car parking and outdoor playing areas.	A Landscape Plan supports the proposed development.	✓
b) Landscaping shall be established prior to the use commencing.	To be conditioned and satisfied.	✓
c) Childproof fencing and gates shall be provided around the outdoor play areas, and to the entrance of the child care centre. Details of all fencing shall be included on the landscape plan.	Will be satisfied.	✓
d) Landscape planting (a minimum width of 2m) shall be provided along the front boundary of the site.	This is achieved.	✓
e) Additional landscape planting may be required along the side boundaries to integrate the development with neighbouring buildings and the streetscape, and to reduce the impact of vehicle lights on adjoining properties.	This proposed as part of the Landscape Concept.	✓
f) A landscape plan shall be prepared and submitted with the development application, in accordance with the Landscape and Design section of this Plan.	A Landscape Plan supports the proposed development.	✓
Complies with D5.2 of DCP		Yes
E2 Claremont Meadows Stage 2		



Eastern Precinct



The site is identified as a large housing lot with a buffer zone on it for noise from the Motorway.

Penrith Development Control Plan 2014 Compliance Table

2.2.3 Large Lot Residential Adjacent to the M4 Motorway The 20m buffer area was to be maintained and vegetated consistent with an asset protect zone. The Bushfire Assessment identifies this area as a low bushfire risk and as such the proposal is not inconsistent with this provision.

The area has undergone change since this control was considered with the implementation of the new on ramp to the M4 Motorway and the large landscape vegetated mound.

There are a number of existing structures built within the buffer area which contribute to the existing character and amenity of the area. Recently approval of a secondary dwelling was granted approval with an 8.9m setback from the rear boundary.

2.5.1 Major Roads (Werrington Arterial, Great Western Highway and the M4 Motorway)

The key consideration for property that adjoins any of these roads is the implication of noise on the amenity of future residents. The current application is accompanied by an Acoustic Report by Envirotech Consultants which concludes that the proposed use will not be adversely affected by the proximity of the M4 Motorway. Significant improvements introduced by the most recent roadworks has provided a level of attenuation not previously in place.

Complies with E2

Yes

6.3 Section 4.15(1)(b) – The Likely Impacts of the Development

The following matters have been considered as part of the proposed assessment in relation to potential impacts of the development.



Acoustic Considerations

An Acoustic Report was undertaken by Envirotech Environmental and Engineering Consulting Services which indicated the following.

Based on existing ambient noise levels, site specific noise goals from this proposal should not exceed a LAeq level of 55 dBA at the nearest residential receptor. To achieve this the following noise attenuating features will be installed;

Potential Noise Source	Attenuation Methods
The Child Care Facility	Walls The proposal is to comprise of 75mm Hebel Power Panels, followed by with 20mm internal air-gap, minimum density insulation and 13mm plasterboard on inside wall. These building materials will achieve a weighted reduction value of 65 -70 dBA. This is well above the required attenuation of to achieve a 55dBA requirement.
	Roof It is proposed that the roof of the childcare centre be of colourbond or equivalent design. It is recommended the ceiling be covered in 13mm plasterboard with appropriate insulation. This roof design will be result in reduction in dBA below the required level.
	Windows Windows are to be of minimum double glazed 4mm/6.38mm windows. Further improvement on the window acoustic is achievable via the use of proprietary glazing techniques (laminations etc.) or improved opening mechanisms (i.e. awning windows). Windows sill windows are proposed in the play areas. This window design will be result in reduction value of 46 dBA. This is above the required attenuation to achieve the 55dBA requirement.
	Doors If sliding glass doors are used for the childcare building, a double-glazed wide gap configuration is required; 6mm glass within non-sealed frames will provide a 35 dBA



Potential Noise Source	Attenuation Methods
	reduction. A further attenuation in the rating of 55 dBA is achievable with 6 – 10 mm monolithic glazing within acoustic seals surrounding the door frames. Further increase to the attenuation properties may be achieved via use of laminate glazing, or application of acoustically design door seals/interfaces. If timber doors are to be used externally, a 55mm single leaf solid core fire rated door set within a sealed frame will prove sufficient. This door design will result in reduction value of 47 dBA. This is above the required attenuation to achieve the 55dBA.
Outdoor Play Area	<ul style="list-style-type: none">• Maximum 2 hours in play area• Greater than 2 hours in play area <p>The immediate area surrounding the external play area is to be fenced by a 1.8m high sound proofing fence. This sound proofing fence is to provide a dBA reduction of a minimum 13 decibels.</p> <p>The immediate area surrounding the external play area is to be fenced by a 1.8m high sound proofing fence. This sound proofing fence is to provide a dBA reduction of a minimum 13 decibels.</p>
On-Site Vehicle Noise – Carpark	This attenuation is proposed to be provided via a 1.8m high, imperforate sound proofing fence. Seal all gaps with 100% polyurethane flexible sealant. The barrier may be constructed using lapped and capped timbers, masonry, colourbond or equivalent
Road Traffic Noise	This development will not lead to an increase in existing noise levels of more than 2 dBA. This is consistent with the NSW Road Noise Policy 2011.
Existing Road Traffic Noise on Childcare	The internal noise within the learning areas of the childcare must not be above 40 dBA. The outside play areas must not exceed 55 dBA. The measured dBA from the road noise was measured as 58.10 dBA. Thus, a requirement of 18.1 dBA is required for the attenuation on the childcare centre. This is already proposed within the attenuation methods outlined above making the centre noise compliant from any traffic noise generated on the M4 Motorway.



The acoustic assessment determined that the noise generated will be negligible once attenuation recommendations are put into place to the closest residential receivers.

A sound reduction of 34.6 dBA is required for the childcare building 10 dBA for the outdoor area and 2 dBA required for the carpark to the closest residential receptor property boundaries after relevant calculations where finalised. These reductions will be achieved by construction materials for the childcare building and the proposed sound proof fencing around the site.

It assessment report concluded that the proposed development is predicted to comply with the relevant noise goals providing the recommendations provided in Section 6 and 7 of the report above are complied with.

Crime Prevention through Environmental Design

There are four principles that need to be used in the assessment of development applications to minimise the opportunity for crime:

(i) Surveillance

Crime can be reduced by providing opportunities for effective surveillance, both natural and technical. Good surveillance will enable people to be seen. According to the NSW Police, Offenders are often deterred from committing crime in areas with high levels of surveillance. From a design perspective, 'deterrence' can be achieved by:

- clear sightlines between public and private places
- effective lighting of public places
- landscaping that makes places attractive but does not provide offenders with a place to hide or entrap victims.

The proposed development is able to satisfy this requirement because of the following attributes;

- The open nature of the site and the entry points which will provide passive surveillance to the front of the site and from within;
- There are good passive surveillance opportunities available from widows to within the site and to the public domain;
- There are good pedestrian pathways surrounding the site;
- The access arrangements which facilitate movements throughout the entire site;
- There are a number of key meeting places within the site;
- The use of CCTV on the building.



(ii) Access control

Physical and symbolic barriers can be used to attract, channel or restrict the movement of people. They minimise opportunities for crime and increase the effort required to commit crime.

By making it clear where people are permitted to go or not to go, it becomes difficult for potential offenders to reach and victimise people and their property. Effective access control can be achieved by creating:

- landscapes and physical locations that channel and group pedestrians into target areas;
- public spaces which attract, rather than discourage people from gathering;
- restricted access to internal areas or high-risk areas (like carparks or other rarely visited areas). This is often achieved through the use of physical barriers.

In relation to the proposed development access control is achieved through;

- The delineation of accessway pathways and routes to various parts of the site and buildings;
- The site is managed by permanent staff;
- Restricting access to parts of the site by the use of signage or line marking;

(iii) Territorial reinforcement

People often feel comfortable in, and are more likely to visit, places which feel owned and cared for. Well used places also reduce opportunities for crime and increase risk to criminals.

If people feel that they have some ownership of public space, they are more likely to gather and to enjoy that space. Territorial reinforcement can be achieved through:

- Design that encourages people to gather in public space and to feel some responsibility for its use and condition
- Design with clear transitions and boundaries between public and private space
- Clear design cues on who is to use space and what it is to be used for.

In respect to the proposed development the following aspects are relevant to this issue;

- A purpose built and designed development with modern and contemporary design solutions;
- A managed site by the operators of the facility;



- Delineation of areas by way of landscaping

(iv) Space management.

Popular public space is often attractive, well maintained and well used space. Linked to the principle of territorial reinforcement and space management ensures that space is appropriately utilised and well cared for.

Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements.

In terms of this development, the ongoing management of the site will be the responsibility of the facility operator. Many of the ongoing site management issues in terms landscaping and graffiti will be an outcome of any development consent for compliance.

Traffic and Parking

A Traffic and Parking assessment was undertaken by ML Traffic Engineers. This assessment concluded the following in relation to the proposed development.

Doncaster Avenue is a local road with one lane each way with a default speed limit of 50km/hr. Unrestricted on-street parking is permitted on both sides of the road. Caddens Road is a local road with one lane each way with a sign posted speed limit of 60km/hr. Unrestricted on-street parking is permitted on both sides of the road. Kent Road is an arterial road on a divided carriageway near Caddens Road with two lanes each way with a sign posted speed limit of 70km/hr. Gipps Street is an arterial road with two lanes each way on a divided carriageway near Caddens Road with a sign posted speed limit of 80 km/hr.

As part of the traffic assessment, two intersections are assessed:

- The signalised intersection of Gipps Street and Kent Road with Caddens Road
- The priority-controlled intersection of Caddens Road with Doncaster Avenue and Blackwood Street

External traffic travelling to and from the development site will most likely need to travel through the above intersections. The findings of this assessment were;

- The proposed development is located in a residential area with unrestricted on-street parking along Caddens Road and Doncaster Avenue.
- The nearby intersections have spare capacity to accommodate additional traffic generated from the proposed development.
- The site has good access to public transport.



Based on the Traffic Assessment undertaken by ML Traffic Engineers, the following conclusions were made;

Based on the considerations presented in this report, it is considered that:

Parking

- The proposed development complies with the council's car parking requirements

Traffic

- The proposed development is a modest trip generator for the weekday AM and PM peak hours.
- The additional trips from the proposed development can be accommodated at the nearby intersections and road network without noticeably affecting intersection performance, delays or queues.
- There are no traffic engineering reasons why a planning consent for the proposed childcare at 64 Doncaster Avenue in Claremont Meadows, should be refused.

BCA Assessment

A Building Code of Australia assessment was undertaken by National BCA and it concluded the following;

'The building (when complete) will comply with the relevant provisions of the Building Code of Australia, Volume 1, Amend. 1, 2016 Edition (BCA) other than those provisions listed under "Limitations" of this report provided the matters raised in this report and its annexures are satisfactorily addressed prior to the issue of a construction certificate and the appointed Principal Certifying Authority (PCA) is similarly satisfied as to the buildings compliance with the BCA in force at the specified time and any conditions of Development Consent that are applicable to the Construction Certificate.'

6.4 Section 4.15(1)(c) – The Suitability of the Site

The following comments are made in relation to the key issues that relate to site suitability;

Bushfire Assessment

A Bushfire Assessment was undertaken by Fire Investigation & Safety Compliance Australia P/L. The property has been identified by the Penrith City Council as being in a Bushfire Prone area containing Category 2 vegetation. The vegetation was assessed to a distance of 140m in all directions. There was very little vegetation in any direction with the majority of vegetation appearing towards the East at a distance of approximately 70 m and was upslope from the proposed construction site. The highest BAL rating for this property is **BAL 12.5**.

It was Fire Investigation & Safety Compliance Australia's view that, in accordance with the bushfire safety measures contained in their report and consideration of the site specific bushfire risk assessment, that when combined, these will provide a reasonable and satisfactory level of bushfire protection to the subject development and also satisfy both the Rural Fire Service's concerns and those of Council in this area.

6.5 Section 4.15(1)(d) - Any submissions made in accordance with this Act or the regulations

Council will undergo its own process of seeking feedback and submissions through its formal assessment process. Should issues arise following this process then further information can be provided on request.

6.6 Section 4.15(1)(e) – The Public Interest

The assessment of the proposal against the planning controls that need to be considered has indicated that the development is consistent with the objectives that form the basis of these controls. The SoEE has demonstrated that the proposed development is capable of satisfying not only the planning objectives of the environmental planning instruments but the objects of the Environmental Planning and Assessment Act 1979, in particular 5(a)(i) and (ii).

The proposal will as a consequence of these key factors of planning compliance;

- i. be in the public interest as the resultant development accords with contemporary urban planning concepts;
- ii. result in a land use that adds value to its surrounds;
- iii. provide a complementary land use to the area the will provide a service;

The development is considered to be in the public interest for all the reasons outlined in this SoEE.



6.7 Section 4.15(3A) – Development Control Plans

Section 4.15(3A) has been considered in respect of this development application. The proposal is satisfactory when considered against the provisions of the DCP and not more onerous than the LEP. The DCP assessment indicated that the proposed development is consistent with the intent and objectives of these controls with the only area of possible variation being the width of the verandah. The verandah still functions as a covered space and it provides a suitable alternative space for use besides providing an appropriate transition between inside and outside. In accordance with this provision it is requested that Council apply those controls flexibly

7.0 CONCLUSION

The proposed development has been assessed against the requirements the State Environmental Planning Policies, Penrith Council's Local Environmental Plan 2010 and provided an assessment of Penrith Council's Development Control Plan 2014. The outcome of these assessments is that the proposed development is considered to represent a type of development that is acceptable for the site and the area generally. The proposed development is consistent with the zoning objectives for the site and represents orderly development in terms of the objectives of the Environmental Planning and Assessment Act, 1979.

The proposal does require the acceptance of a Clause 4.6 variation to Clause 7.15(3)(c)(iii) of the Penrith Local Environmental Plan 2010 for the 20m setback from the rear boundary to the M4 Motorway. The proposal seeks a modification to Section 88B Restriction on Use of this property in accordance with the Conveyancing Act 1919 for use of the 20m distance from the rear boundary. Both these requests are considered reasonable and justified by the suite of supporting information provided and fact that the area has changed markedly since these restrictions were imposed.

The proposal would not result in any unacceptable impact on the locality. The amenity and privacy of future adjoining residents will not be adversely impacted by the development and the proposal is considered to be compatible with the emerging area. The development is ideally located for this style of infill development being close to public transport and with good access. The development would result in a land use that:

- Is compliant with planning controls and objectives for the site;
- Is of a modest scale;
- Will service the immediate area;



- Is modern and contemporary but suited to its setting;
- Is suitably located on the property and provides good private open space;
- Is located in an area with good public transport facilities;
- Is not inconsistent in terms of rear setback from adjoining properties;
- Provides suitable vehicular access; and
- In the public interest.

Accordingly, it is respectfully recommended that the proposed development be approved.



APPENDIX 1 – Clause 4.6 Variation Request for Clause 7.15(3)(c)(iii)

1.0 Introduction

This clause 4.6 variation request to a development standard has been prepared by Paul Lemm Planning on behalf of the Mr. and Mrs. S Bains. It is submitted to Penrith City Council (the Council) in support of a development application (DA) to Council for a proposed Centre-based Child care Facility at 64 Doncaster Avenue, Claremont Meadows or Lot 34 DP 1224294. (the Site).

Clause 4.6 of the Penrith Local Environmental Plan 2010 (PLEP) enables the Council to grant consent for development, even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request:

- Relates to the development standard for rear setback to any dwellings or substantial structure as outlined in Clause 7.15(c)(iii) of the Penrith Local Environmental Plan 2010
- Should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Paul Lemm Planning Consultant dated June 2017, in relation to a proposed secondary dwelling located on the Site.

Both these requests demonstrate that compliance with the rear setback development standard, is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This development standard variation request demonstrates that, notwithstanding the non-compliance 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.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP.

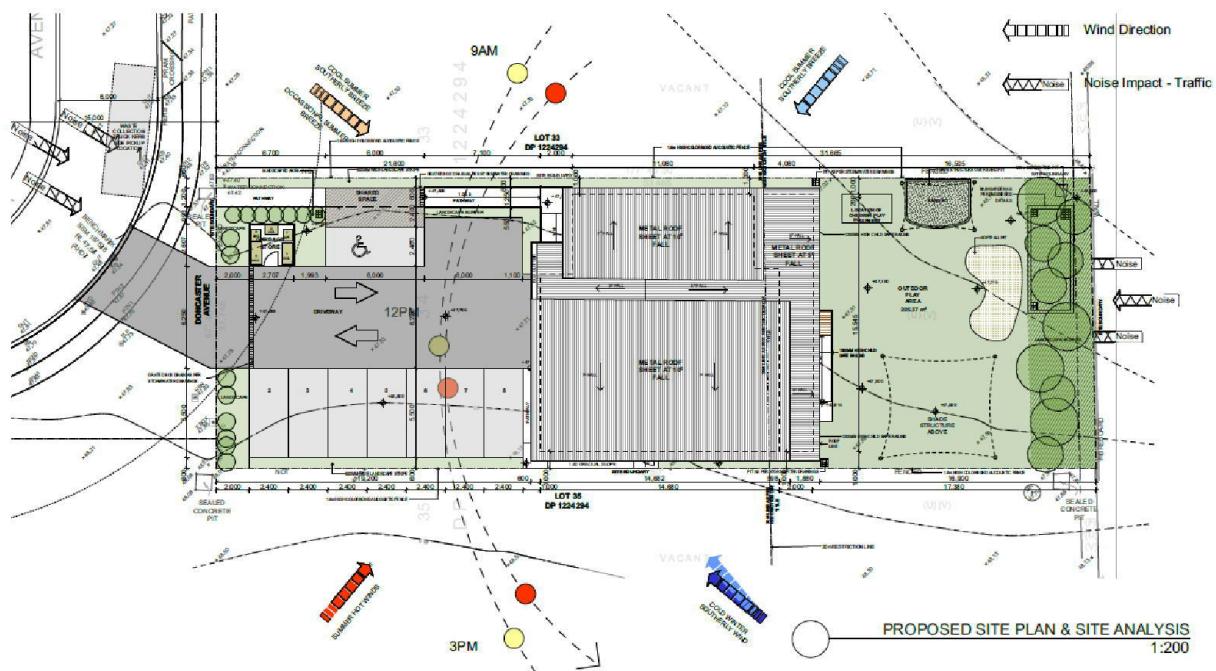


2.0 Development Standard to be Varied

PLEP 2010

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 7.15 (3)(c)(iii) of the Penrith LEP. Clause 7.15(3)(c)(iii) provides that the minimum rear setback to any dwelling or substantial structure is 20m.

The proposed development encroaches into the 20m setback by 3.495m. This represents a variation of 17.4%.



3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Penrith LEP provides that:

4.6 Exceptions to development standards

...

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

Further, clause 4.6(4)(a) of the PLEP provides that:

(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 matter required to be demonstrated by subclause (3), and
 - (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
- (b) the concurrence of the Director General has been obtained.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 1009.

The relevant matters contained in clause 4.6 of the PLEP with respect to minimum rear setback development standard, are each addressed below, including with regard to these decisions.

3.1 Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

The analysis in the *Wehbe* can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1. The *Four2Five Pty v*



Ashfield Council case, established that a written submission in relation to subclause 4.6(3)(a), must demonstrate that not just that objectives of the development standard are satisfied but demonstrate matters particular to the circumstances of the proposed development, that warrant the compliance with the development standard unreasonable.

As described above, there are two key elements which must be demonstrated to justify contravening a development standard. The first element as set out in Clause 4.6(3)(a) states:

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

The planning principle set out in *Wehbe v Pittwater Council (2007)* provides an accepted method for justifying that compliance with the development standard is unreasonable or unnecessary. This method is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard is undertaken. To this end, an objective by objective justification of both the objectives of the 'Additional Local Provisions' clause for Claremont Meadows as well as the objectives of the zone is provided below.

The second element to be satisfied which is set out in Clause 4.6(3)(b) states:

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

After demonstrating that the proposed development meets the relevant objectives of the PLEP, environmental planning grounds are set out to justify contravening the development standards.

3.1.1 The underlying objectives or purposes of the development standard

The objectives of clause 7.15 of the PLEP are:

- (a) to ensure a high level of pedestrian amenity and good pedestrian linkages within the land and between the land and the existing land forming Claremont Meadows estate, surrounding development and natural areas,*
- (b) to permit a diverse housing mix that provides a wide range of dwelling types and choice,*
- (c) to allow for multiple lot sizes that promote higher density around open space,*
- (d) to ensure that housing located in the vicinity of a major road takes account of the constraints imposed by noise and visual impact*



3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

PLEP 2010

Objective (a): to ensure a high level of pedestrian amenity and good pedestrian linkages within the land and between the land and the existing land forming Claremont Meadows estate, surrounding development and natural areas,

Comment

The site has no pedestrian accessibility to the M4 Motorway and the most recent roadworks would make this a permanent attribute of this section of the estate. The proposal does not change the accessibility from the internal streets as previously approved and constructed. The development does not change the existing street design and layout.

Objective (b) to permit a diverse housing mix that provides a wide range of dwelling types and choice,

Comment

The proposed development would provide a building that is residential in scale and would provide services to the immediate community. The proposal is complimentary to the broader residential area.

Objective (c) to allow for multiple lot sizes that promote higher density around open space,

Comment

The size of the lot resulted from the earlier subdivision process. The lot sizes were influence by the proximity of the M4 Motorway. Key considerations for the size of the lots that backed onto the M4 were visual impacts from both directions as seen from the M4, noise impacts from the M4 and a vegetation buffer. The size of the lot does not change. The location of buildings on the lot and the use of the site however does. The key considerations that influenced the shaping of existing planning policy when Claremont Meadows was created have changed. The surrounding environment has changed. It is arguable that the previous safeguards which were incorporated into the planning policies are now less potent in a planning sense.

Objective (d) to ensure that housing located in the vicinity of a major road takes account of the constraints imposed by noise and visual impact



Figure 15 - Pre and Post Recent Developments





Site after to the road works and recent subdivision in January 2018

Comment

Figure 15 below indicates the change to the site since 2010 when the PLEP was gazetted. This part of Claremont Meadows has changed significantly. The most recent works on the off ramp to Kent Road and introduced changes and the noise barriers on the site as an outcome of the most recent subdivision provide noise attenuation and visual improvements.

The proposal is accompanied by an acoustic report which indicates that the proposed dwelling benefits from the most recent attenuation measure built by the Roads and Maritime Services. The large earth mound now obscures the properties and their dwellings from being seen from either direction on the M4. The earth mound is landscaped and forms a new man-made natural barrier to properties backing onto it.

3.1.3 Conclusion on clause 4.6(3)(a)

In light of the above, compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because:

- Notwithstanding the non-compliance with the development standard in the PLEP, the proposal achieves each of the applicable objectives of the development standard.
- The 20-metre setback development standard, has been specifically implemented for this site in order to ensure that future development presents an appropriate visual relationship to the M4 motorway and the public domain. The development standard also seeks to ensure noise impacts from the M4 Motorway are consistent with acoustic standards. The current development proposal with the non-compliances has provided an acoustic assessment that demonstrates acceptable noise attention methods are to be implemented and a landscape response for the site.
- Insistence on compliance with the development standard is contrary to the approach that was taken at 54 Doncaster Avenue a few properties to the east. In this instance a setback of 8.9m was allowed. It will also not achieve the key outcomes that the development standard is seek to influence such as improved visual impact for the M4 Motorway, improved noise attenuation and a vegetation buffer because of the changes in the area since 2010.



3.2 Clause 4.6(3)(b) Environmental planning grounds to justify contravening the development standard

3.2.1 The strategic objectives, the site and surrounds

- The strategic objectives that underpinned the need for the rear setback have changed over time, as the area has implemented improvements in infrastructure to cope with the demands of a growing region. These improvements have benefited the site by improving the visual impact of buildings as seen from the M4 Motorway and the noise attributed to the traffic volumes.
- The site is no longer highly visible from the M4 Motorway and it is given added protection from the recently constructed noise mound and off ramp from Kent Road. The inclusion of a landscaping along the face of the new earth mound will provide added screening along with the solid fencing erected as an outcome of the subdivision of the land.
- The setback variation in itself, will not result in an added impact to the area in terms of visual impact as it will be screened by additional plantings.
- Full compliance with the development standard would sterilise the site for this type of land use which is modest yet can serve the needs to the immediate area.

3.2.2 Public Interest

- The development is considered to be in the public interest for the following reasons;
 - It will result in a low impactive purpose designed building;
 - It will provide a land use that will serve the immediate residential area;
 - The setback variations will not create any adverse amenity impacts to adjoining sites;
 - The proposal will not create any significant visual impacts to the area;
 - The planning landscape has changed since the inclusion of the setback standards within the environment planning instrument by virtue of changes in the site's most recent improvements.

3.2.3 Conclusion on clause 4.6(3)(b)

Having regard to the above, there are environmental planning grounds to justify the development standard variation these being:

- The area has changed over time and the planning provisions that sought to protect the amenity of residents are now not as potent due to the new roadworks, landscaping and noise attention. The basis around which they were written and the reason why they were there to safeguard future development against are not present. The shift in the areas makeup has made the basis for these controls arguable if the merit of a proposal on environmental grounds is satisfactory.

3.3 Clause 4.6(4)(a)(ii) In the public interest because it is consistent with the objectives of the zone and development standard

3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the rear setback development standard, for the reasons discussed in section 3.1.2 of this report.

3.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the R2 'Low Density Residential' Zone, as demonstrated below.

Table 6 - Zone Objectives and comments

To provide for the housing needs of the community within a low density residential environment.

The proposed development will supplement and serve the existing residential area.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal seeks approval for a land use that is residential in character and will serve the needs of the immediate area.

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.

The development will in a purpose-built facility that has a single storey appearance and design articulation. The siting and location of the building will complement the streetscape. The development will have landscaping that adds to the appearance of the



site and provides the green edging to enable a compatible land use amongst an evolving residential area.

To enhance the essential character and identity of established residential areas.

The proposed facility is located a large distance from the street frontage. The architectural style of the building is suitable for the setting being modern and single storey. The site coverage of the development is 22.5% which enable a large portion of the site to be open in character. The facility will not have any significant impacts on adjoining properties and will not be highly visible from the M4 Motorway.

To ensure a high level of residential amenity is achieved and maintained.

The proposal is purpose built and the level of amenity for the occupier will not be adversely affected. The suite of supporting information that accompanies the development demonstrate that the site is both suited to this type of land use and the area is capable of accommodating the development without any unreasonable impacts.

3.3.3 Overall public interest

As described in Section 3.2.2 above, the proposed development is considered to be in the public interest notwithstanding the non-compliance with the height of buildings development standard.

3.3.4 Conclusion on clause 4.6(4)(a)(ii)

In light of the above, the proposal is considered to be in the public interest because:

- It is consistent with the objectives of the Clause 7.15 of the PLEP for the reasons outlined in Section 3.1.2.
- It is consistent with the objectives of the R2 Low Density Residential Zone as outlined above in Section 3.3.2

Other Matters for Consideration

As the extent of variation exceeds 10% then the Clause 4.6 variation request will require the concurrence of the Secretary. Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

These matters are addressed in detail below

3.4 Clause 4.6(5)(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the rear setback development standard in the PLEP 2015 does not raise any matter of significance for State or regional planning.

3.5 Clause 4.6(5)(b) The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and Regional planning objectives. As noted in the preceding sections, the reduced rear setback proposed would not give rise to any adverse environmental impacts.

Given that the objectives of the development standard are achieved notwithstanding the variation, there is no public benefit in maintaining the standard on a site where previous environmental matters particular to it, have now changed and no longer have the same influence or affectation than when previously applied.

3.6 Clause 5.6(5)(c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters relevant to the proposed variation that are required to be taken into consideration by the Director-General before granting concurrence.



Conclusion

The assessment above demonstrates that compliance with the rear setback development standard contained in clause 7.15 (3)(c)(iii) of the Penrith LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for an appropriate outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the rear setback development standard, the proposed development:

- Achieves each of the applicable intentions of the rear setback development standard and Claremont Meadows;
- Does not give rise to any adverse environmental impacts, particularly with regard to the built form, visual impacts and noise intrusion from the M4 Motorway;
- Provides a number of compelling benefits that justify the non-compliance with the development standard on the basis of the changes to the immediate area in recent times;
- Is in the public interest.

Based on the information above and the assessment given of the key considerations of clause 4.6 Council can be assured that development consent can be granted, for the development application because clauses 4.6 (4)(i) and (ii) have been met. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Penrith LEP.