

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA18/0675
Description of development:	Child Care Centre x 31 Place and Associated Car Parking, Landscaping and Drainage Works
Classification of development:	Class 9b

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 34 DP 1224294
Property address:	64 Doncaster Avenue, CLAREMONT MEADOWS NSW 2747

### DETAILS OF THE APPLICANT

Name & Address:	J S Bains, S K Bains C/- Shobha Designs Suite 21/1-7 Jordan Street GLADESVILLE NSW 2111
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### DECISION OF CONSENT AUTHORITY

Penrith Council has determined to refuse to grant consent to the subject development application. In accordance with Section 4.18(1) (a) of the Environmental Planning and Assessment Act 1979, the reasons for refusal to grant consent are in Attachment 1.

Date of this decision	20 December 2018
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### POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Lucy Goldstein
Contact telephone number:	+61247328136

## NOTES

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### Reasons

The reasons for refusal in the attached schedule have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 as amended.

### Reasons for refusal

Your attention is drawn to the attached reasons for refusal in attachment 1.

### Certification and advisory notes

It is recommended that you read any Advisory Note enclosed with this notice of determination.

### Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within six months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

### Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

### Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

### Sydney Western City Planning Panels

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

## SIGNATURE

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Name:	Lucy Goldstein
Signature:	

For the Development Services Manager

## ATTACHMENT 1 : REASONS FOR REFUSAL

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1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions:

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

- Clause 23 *Centre based child care facility- matters for consideration by consent authorities.*  
The application is not satisfactory in respect to the following provisions of the Child Care Planning Guideline dated August 2017:
  - Section 3.1 Site Selection and Location
  - Section 3.2 Local Character, streetscape and the public domain interface
  - Section 3.3 Building orientation, envelope and design

### **State Environmental Planning Policy (Infrastructure) 2007**

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

### **Penrith Local Environmental Plan 2010:**

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

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

### **Chapter 6 Landscape Design**

#### **B Objectives**

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

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

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

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

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

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

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

#### **B. Objectives**

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

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

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

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

### **C. Controls**

#### *Part 3, Design, Scale and Site Frontage*

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

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

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

#### **B. Controls**

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

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

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

3. The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality, including:
  - The application has not demonstrated that the development is suitable in respect to air quality impacts for those attending the facility.
  - The application has not demonstrated that the development is satisfactory in regards to achieving acceptable noise levels.
4. The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as it has not been sufficiently demonstrated that the site is suitable for the proposed development due to its size (being too small for the proposal), proportions, setbacks and potential adverse impacts from surrounding land and infrastructure.
5. The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 as the proposal is not considered to be in the public interest. It is appropriate to apply a precautionary principle in relation to potential adverse noise and air quality impacts, particularly given the nature of the proposed use and the adjoining Motorway.