

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0019
Proposed development:	Expansion of Erskine Park Children's Centre including Use of Erskine Park Community Centre for Out of School Hours Care & Erection of Outdoor Play Area Fencing
Property address:	57 Peppertree Drive, ERSKINE PARK NSW 2759 158 - 172 Swallow Drive, ERSKINE PARK NSW 2759
Property description:	Lot 375 DP 713863 Lot 374 DP 713863
Date received:	17 January 2020
Assessing officer	Sufyan Nguyen
Zoning:	RE1 Public Recreation - LEP 2010
Class of building:	Class 9b
Recommendations:	Approve

Executive Summary

As the subject site is owned by Penrith City Council and the Council is the applicant for this development application, the Penrith Local Planning Panel is the determining authority for the application in accordance with Schedule 2 of the Minister's Local Planning Panels Direction.

Council is in receipt of a development application for a change of use for the Erskine Park Community Hall and the installation of 1.8m high palisade fencing to accommodate an additional 28 children as part of an outside of hours school care service for an existing centre-based child care facility (Erskine Park Children's Centre (The Centre)) at 57 Peppertree Drive and 158 - 172 Swallow Drive, Erskine Park. The subject site is zoned RE1 Public Recreation under the *Penrith Local Environmental Plan 2010* (LEP) and the development proposal is permissible with Council consent.

The proposed will result in a total of 138 child placements on the site, which requires the community hall to accommodate the additional 28 children. Given that the community hall is predominately used during evenings and weekends and that off-street parking is adequate, it is not considered that a change of use for the community hall will result in conflicts for the user groups.

It is noted that the existing Centre is required to incorporate acoustic fencing and a Noise Management Plan (NMP) to address noise mitigation measures as part of a previous development consent to expand the Centre (DA17/0240). A site visit on 31 January 2020 revealed that the acoustic fencing had not yet been installed and Council's records could not locate the NMP. As such, the applicant subsequently installed the acoustic fencing, in addition to providing a Noise impact assessment (NIA) and a NMP at the request of Council. The submitted documentation has been reviewed by Council's Environmental Management Unit, who advised that the proposal is within the established noise criteria, which ensures that the proposal will not result in any adverse impacts on the acoustic privacy of the immediately surrounding area.

Further, the proposed fencing will expand the outdoor play area and connect the community hall (Block C) to the existing buildings (Blocks A and B), which are currently being utilised by the Centre. In this regard, the proposed fencing appears to be in close proximity to existing trees on the site and therefore a recommended consent condition will require that an Arborist be engaged prior and during the installation of the fencing to ensure that there will be no tree impacts.

The proposal was advertised and notified to adjoining and nearby properties and publicly exhibited for a period of 14 days. No public submissions were received in response.

An assessment of the proposal under S4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) has been undertaken and the application is recommended for approval, subject to recommended conditions.

In addition, the application relates to land in the ownership of Penrith City Council. Accordingly, an independent peer review of the assessment of this proposal is required prior to determination.

Site & Surrounds

The subject site has a property address of 57 Peppertree Drive and 158 - 172 Swallow Drive, Erskine Park and is legally described as Lots 375 and 374 DP 713863. The allotment has a combined land area of 5.6366 ha, is irregular in shape and is situated at the T-junction of Peppertree Drive and Swallow Drive. The site is owned by Penrith City Council who provides community facilities, including Erskine Park Children's Centre (The Centre) and Erskine Park Community Centre and Erskine Park Community Hall and associated car park. The Centre is situated within Lot 374 and the Erskine Park Community Centre and Erskine Park Community Hall straddles over both lots and are adjacent to a building associated with Peppertree Reserve to the east.

The surrounding area is characterised by low density residential development. The site is in close proximity to a range of facilities and services including the Erskine Park Shopping Centre directly opposite the site to the north-west and James Erskine Public School to the south-west.

The broader road network includes the intersection of the M4 Motorway and Erskine Park Road approximately 1.47km northwards. The nearest bus service is located directly in front of the site to the north-west along Swallow Drive.

Proposal

The applicant seeks approval for an increase from 110 to 138 child placements for an existing centre-based child care facility (Erskine Park Children's Centre) at 57 Peppertree Drive and 158 - 172 Swallow Drive, Erskine Park.

The proposal includes the following aspects:

- Provide an additional 28 child placements for outside of school hours (OOSH) child care (from 68 to 93),
- Provide two additional educators for the additional 28 OOSH child care placements,
- Change of use for the Erskine Park Community Hall to a centre-based child care facility,
- Installation of a 1.8m high cottage green palisade fence linking the Centre and Erskine Park Community Hall, including 1 x single gate along the Centre's southern and 1 x single gate along the western fence and 1 x double gates (for maintenance access) along the south-eastern fence to match height and colour of Erskine Park Community Hall,
- Maintain 1 x single gate along existing Erskine Park Community Hall's western fence, and
- Installation of external lighting.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

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

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

Part 3 of the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* details the development standards that are applicable to centre-based child care facilities, including the following:

Clause 22 Centre-based child care facility—concurrence of Regulatory Authority required for certain development

Concurrence from the NSW Department of Education is required if the development does not comply with the minimum unencumbered space requirements of 3.25m² of indoor space and 7m² of outdoor space per child under Clauses 107 and 108 of the Education and Care Services National Regulation.

In this regard, the proposed increase from a total 110 child care placements to a maximum of 138 children to be accommodated at the centre at any one time requires a minimum indoor space of 448.5m² and a minimum outdoor space of 966m².

The figures proposed by the applicant are as follows:

- Total unencumbered indoor space - proposed 458.81m²; and
- Total outdoor unencumbered outdoor space - proposed 1,819m², including sufficient outdoor covered areas (371m²).

The proposal satisfies the minimum space requirements of the Education and Care Services National

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

The proposal has been assessed against the assessment framework of the Child Care Planning Guideline (2017) published by the NSW Department of Planning, Industry and Environment. The following comments made in relation to the key aspects of the development proposal are as follows:

Part	Objective	Comment
<p>3.1 Site selection and location</p>	<p>C1 To ensure that appropriate zone considerations are assessed when selecting a site</p>	<p>The existing Centre is situated within an RE1 Public Recreation zone and adjacent to Peppertree Reserve and is surrounded by an established R2 Low Density Residential zoning and adjacent to B2 Local Centre zoning, opposite to the north-west.</p> <p>The proposal is considered to remain compatible with the operation of the nature of these zones, noting that the NIA and NMP, which was submitted at the request of Council demonstrates that the proposal is compliant with the established noise criteria, as endorsed by Council's Environmental Management Unit and detailed below in Objectives C2 and C23- C24.</p> <p>The existing buildings and the dedicated car park on the site remain unaltered, which ensures that privacy and amenity and local traffic and parking impacts in the immediate surrounding area are minimal.</p>

	<p>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</p>	<p>It is noted that the site is adjacent to local overland flooding, however, an assessment of flooding impacts was previously carried out with the original proposal and is considered to be of minimal flooding risk, noting that the minor fence works do not warrant any flooding controls. It is also noted that the site is not subject to any other natural hazards nor does it contain any known contaminants, including asbestos, as demonstrated by the submitted Asbestos Building Materials Register prepared by Getex Pty Limited (Report No. 10509.27.ASSR, dated 14 August 2018).</p> <p>The Centre remains compatible with the context of the site. The corner lot and existing buildings have appropriate separation distances between adjoining and nearby properties and the site contains acoustic fencing and mature trees, noting that noise mitigation measures have demonstrated that the development meets specific guidelines, as discussed in this report. The site provides adequate off-street parking and it is not in proximity to any known incompatible social activities.</p> <p>Further, the minor fencing works is not considered to result in any adverse environmental impacts.</p>
	<p>C3 To ensure that sites for child care facilities are appropriately located</p>	<p>The Centre adjoins Peppertree Reserve, James Erskine Public School and is situated opposite to the Erskine Park shopping centre. It has access to bus stops directly outside the site along Swallow Drive with pedestrian footpath network. A number of home businesses are in proximity to the Centre.</p>
	<p>C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards</p>	<p>The Centre is not located nearby any known hazardous facilities, including heavy or hazardous industries, transfer depots, landfill sites, LPG tanks or service stations, water cooling/warming systems or odour generating land uses.</p>
<p>3.2 Local character, streetscape and public domain interface</p>	<p>C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape</p>	<p>The existing buildings on the site remain unaltered and the proposed outdoor play area fencing is considered to be compatible with the existing fencing and is of minimal impact on the streetscape.</p>

	<p>C6 - C8 To ensure clear delineation between the child care facility and public spaces</p>	<p>1.8m high cottage green palisade fencing is proposed around the western and south-eastern sides of an outdoor play area on the site, which links the Centre and the Erskine Park Community Hall. It is noted that low level height fencing is preferred, however, the proposed 1.8m high fencing will secure the outdoor play area from the adjoining public reserve. The fencing is considered to be compatible with the existing 1.8m high maroon and cottage green palisade boundary fencing across the site.</p> <p>Further, the provision of new gates will provide maintenance access and fenestration is maintained along building facades to provide for passive surveillance. Existing landscaping maintains amenity to the public domain.</p> <p>In addition, the existing pedestrian entrances are maintained from the car parking area on the site, which are considered satisfactory, in terms of vehicular circulation and visitor access.</p>
	<p>C9 - C10 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</p>	<p>The existing 1.8m fencing and proposed 1.8m fencing is considered to be compatible with the desired future character of the local area and provides a suitable form of street presentation, which also assists in mitigating acoustic levels from the site.</p> <p>The Centre's front building line and adjacent front fence is appropriately setback from the road and public domain. The existing trees provide visual relief from these structures.</p> <p>The existing acoustic fencing on the site mitigates noise impacts on nearby residential properties.</p>
<p>3.3 Building orientation, envelope and design</p>	<p>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</p>	<p>The proposed works are limited to new fencing, which is considered to be of minimal impact on the streetscape.</p> <p>The existing buildings on the site contain fenestration, which provide adequate solar access and do not result in noise or overlooking impacts on nearby residential properties.</p>

	<p>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The single storey building heights and building setbacks remains unaltered. The proposed change of use for the community hall and adjacent outdoor play area requires new fencing to be extended along the south-eastern section of the site, which adjoins a public reserve.</p> <p>The change of use for the community hall and the addition of a outdoor play area boundary fence is considered to be minimal impact on the nearby buildings and adjoining public reserve.</p>
	<p>C13 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context</p>	<p>The outdoor play area setbacks remain essentially the same, in that, the south-western boundary for the outdoor play area is merely extended along this boundary. The Centre maintains adequately setback from the street and the adjoining public reserve building.</p>
	<p>C14 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>	<p>The subject site is situated within an RE1 zone. Notwithstanding, the side and rear boundary setbacks remain largely unaltered, in particular, along the streetscape fronting neighbouring properties.</p>
	<p>C15 To ensure that buildings are designed to create safe environments for all users.</p>	<p>The external changes are limited to fencing adjustment, as detailed above, which is considered to be compatible with the local character. Further, existing vegetation is retained across the site to ensure amenity is preserved.</p>
	<p>C16 To ensure that buildings are designed to create safe environments for all users</p>	<p>The internal layout configuration and pedestrian pathways remain unaltered.</p> <p>The existing main entrances provide a clear entry point, which are visible from the car parking area and street frontage.</p> <p>It is noted that an accessible gate is provided along the south-western side of the outdoor area, which can serve as an evacuation gate for emergency exit.</p>
	<p>C17 To ensure that childcare facilities are designed to be accessible by all potential users</p>	<p>The site is relatively flat and the Centre makes provision for two accessible car parking spaces adjacent to the main entrance. An accessible parking space is located adjacent to the community hall and an accessible toilet in each Block A and Block B buildings. The child care centre remains as single storey buildings and key areas of the site are accessible by wheelchairs and prams.</p>

<p>3.4 Landscaping</p>	<p>C18 - C19 To provide landscape design that contributes to the streetscape and amenity</p>	<p>The development retains existing landscaping, which comprises of a mix of several mature trees, shrubs, ground cover and grass. The vegetation is considered to provide adequate amenity and visual quality to the streetscape. It is noted that the proposed fencing is in proximity to existing trees and therefore a recommended consent condition will require that an Arborist attend the site during the installation of the fencing to ensure that there will be no tree impacts.</p>
<p>3.5 Visual and acoustic privacy</p>	<p>C21 To protect the privacy and security of children attending the facility</p>	<p>The Centre contains existing fencing and the proposal provides appropriate fencing that surrounds outdoor play areas. Suitable pathway entrances and adequate tree screening is maintained. These privacy measures will minimise overlooking into the indoor and outdoor spaces and provide security for the children on the site.</p>
	<p>C22 To minimise impacts on privacy of adjoining properties</p>	<p>The proposed change of use for the community hall and the extension of the outdoor play area is not considered likely to result in overlooking to nearby residential properties. It is noted the windows in the existing building's north and north-western facades do not cross-view to nearby properties. It is also noted that appropriate fencing and existing vegetation will protect the privacy of the nearby properties.</p>
	<p>C23 - C24: To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.</p>	<p>It is noted that a previous development consent (DA17/0240) approved an expansion of the Centre and the enclosure of an awning. The approval required the installation of acoustic fencing along the Swallow Drive frontage and the submission of a Noise Management Plan (NMP) in accordance with the recommendations in the NIA, prior to the issue of an Occupation Certificate. In this regard, a site inspection on 31 January 2020 revealed that the acoustic fence had not yet been installed and Council's records could not locate the NMP. As such, the applicant was requested to address these outstanding matters and provide an NIA to demonstrate that the proposal, in particular, the increase in OOSH child care numbers and associated vehicular access are compliant with the established noise criteria and will not adversely impact on nearby sensitive receivers.</p> <p>The applicant subsequently provided a</p>

		<p>NIA, Centre Noise Management Plan (CNMP) and installed acoustic fencing in this regard. It is noted that the NIA refers to criteria in the now superseded Industrial Noise Policy, however, no objection is raised to the use of the criteria given that the NIA references and complies with the 'Association of Australian Acoustical Consultants Guideline for Child Care Centre Acoustic Assessment'. The NIA concludes that the operation of the Centre can comply with established noise criteria, subject to the implementation of operational noise management measures.</p> <p>In addition, the CNMP supplements the NIA, which provides a schedule of outdoor play to limit the maximum number of 69 children outdoors at any one time. It is noted that the CNMP refers to children being at the Centre until 6:30pm. The period 6pm - 10pm is classified as the 'evening' period when considering noise criteria that apply, however, it is considered that this period of 6pm - 6:30pm is a 'shoulder period' between 'day' and 'evening' criteria and ultimately, the performance of the Centre in terms of noise compliance relies heavily upon the operational noise management practices implemented. It is also noted that limited children are in attendance during the period 6pm - 6:30pm. Accordingly, no objection is raised to the play schedule and the proposal is compliant with the relevant noise criteria, as advised by Council's Environmental Management Unit, subject to recommended consent conditions.</p>
<p>3.6 Noise and air pollution</p>	<p>C25 - C26 To ensure that outside noise levels on the facility are minimised to acceptable levels</p>	<p>Documentation and modelling submitted with the proposal, demonstrates that acceptable noise levels are achieved in accordance with the relevant guidelines, as endorsed by Council's Environmental Management Unit.</p>
	<p>C27 - 28 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.</p>	<p>The existing Centre is situated along a local road, which is considered to be acceptable in terms of air pollution from passing motorists.</p> <p>It is noted that the Centre and its surrounds contains numerous mature trees to improve air quality for the users and visitors of the Centre.</p>

3.7 Hours of operation	C29 - 30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	The existing Centre has an approved 7am to 6pm weekdays hours of operation, which is permissible and considered to be appropriate.
3.8 Traffic, parking and pedestrian circulation	C31 & C33 To provide parking that satisfies the needs of users and demand generated by the centre	<p>The development proposal has an existing front car park, which makes provision for 36 parking spaces, including three accessible parking spaces adjacent to front entrances, in addition to a mini bus parking space. The proposal requires a minimum of 30 car parking spaces in accordance with the DCP, which is satisfactory.</p> <p>Further, it is noted that the Erskine Park Community Centre is predominately used by the public after hours when the centre is not in use. Further, Council's Traffic Engineer Unit reviewed the proposal, which advised that this is acceptable as the Community Centre functions outside of peak periods.</p> <p>It is also noted that bus stops are within 130m walking distance are available.</p>
	C36 & C38 To provide a safe and connected environment for pedestrians both on and around the site.	The centre maintains a pedestrian pathway from the car parking area and a separate pedestrian pathway from the street, which are considered to be satisfactory.

Clause 25 Centre-based child care facility - non-discretionary development standards

The non-discretionary development standards which, if complied with, prevent a consent authority from requiring more onerous standards. These matters relate to location, indoor and outdoor space, site area and dimensions and the colour of building materials and shade structures, which as previously indicated in this report are considered compliant.

Clause 26 Centre-based child care facility - development control plans

The SEPP includes provisions in development control plans that cannot be applied to development of child care centres, such as hours of operation, demonstrated need for services, proximity to other facilities, or any matter set out in the *Child Care Planning Guideline*. Council's DCP does contain specific development standards related to the matters described in Clauses 25 and 26, which are rendered obsolete by the function of the SEPP.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Under Clause 7 of SEPP 55, it must be considered as to whether the land is contaminated, and if so, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

In this regard, the subject site has been used by the Centre and for community purposes for a number of years and the nature of the use will continue to be as such. It is noted that aerial observation mapping indicates that the site does not appear to contain any unknown imported fill and that the submitted Asbestos Building Materials Register determined that asbestos is not present on the site. Further, the minor works to erect a fence is unlikely to pose any land contamination risks.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the development against relevant criteria within *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the proposal is satisfactory subject to recommended conditions of consent, noting the minor fencing works and that adequate stormwater drainage is maintained.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion

Clause 1.2 Aims of the plan

The proposal seeks to increase the capacity of OOSH child care service for the Centre in response to the extensive waiting list for children moving from long day care to the neighbouring schools in 2020. Given that the proposal facilitates an essential service to the community within an established residential area, in addition to being located adjacent to a public school, the aims of the plan are therefore satisfied, in particular:

- *(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement, and*
- *(h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.*

Clause 2.3 Permissibility

Centre-based child care facilities are permissible in the RE1 Public Recreation zone and the development proposal is permissible with Council consent.

Clause 2.3 Zone objectives

The proposed increase in servicing capacity is in response to the emerging needs of the community. Therefore, given that the proposal's nature of business activities remains unaltered and that existing vegetation on the site is preserved, the objectives of the RE1 Public Recreation zone are met, in particular:

- *To provide a range of recreational settings and activities and compatible land uses, and*
- *To provide land for the development of services and facilities by public authorities for the benefit of the community.*

Clause 4.3 Height of buildings

The proposed works are limited to new fencing and therefore the building heights on the site remain compliant.

Clause 7.7 Servicing

Connection to existing services and facilities remain unaltered and will therefore provide adequate servicing for the proposal.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.*

It is noted that the proposed changes to State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	N/A
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies - see Appendix - Development Control Plan Compliance
D5.2. Child Care Centres	Complies - see Appendix - Development Control Plan Compliance

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

There are no planning agreements applicable to the development proposal.

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

The relevant prescribed conditions under the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, will be imposed as consent conditions. Subject to the recommended consent conditions, the development proposal complies with the requirements under Section 143 of the *Environmental Planning and Assessment Regulation 2000*. It is noted that an Annual Fire Safety Statement has been provided, which covers all the installed essential services and door latching devices and that there are no building issues, as advised by Council's Building Unit.

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

Under Section 4.15 of the Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

In this regard, the proposal makes provision for adequate indoor and outdoor spaces, amenities, pedestrian access, parking and vehicle manoeuvring, waste storage, safety and security and noise mitigation.

The proposed total of 138 child care placements requires a change of use for the Erskine Park Community Hall to accommodate the increased servicing capacity. Given that the community hall is predominately used during evenings and on weekends, as stated in the submitted statement of environment effects, it is not considered that the proposed change of use for the community hall is in conflict with user groups. The proposal is considered to be of a suitable scale given that the site has the capacity to accommodate the additional children and staff, noting that the existing Centre has been in operation for a number of years and has not received any formal complaints.

It is noted that the required acoustic fencing on the site is in place and that the submitted NIA demonstrates that the development is compliant with relevant noise guidelines, as advised by Council's Environmental Management Unit. It is also noted that the proposal is limited to fencing works, however, a recommended consent condition will require that an Arborist attend the site to monitor the installation of the outdoor play area fencing to ensure that there will be no tree impacts.

Given that the development is compliant with the relevant provisions and controls, it is not considered that it will result in any significant impacts on the nearby properties or the surrounding environment or the general public.

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

The development proposal is not considered to diminish the site's suitability, noting that there are appropriate noise mitigation measures in place, minimum indoor and outdoor space areas are compliant and that adequate off-street parking and secure outdoor play area fencing are provided.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the DCP, the development proposal was advertised in the local newspaper, notified and publicly exhibited. The proposal was advertised in the Western Weekender newspaper on 30 January 2020 and notified to 12 adjoining and nearby properties and publicly exhibited between 31 January to 14 February 2020. No public submissions were received in response.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

Section 4.15(1)(e) The public interest

In consideration of the nature and scale of the development proposal, in addition to the proposal being compliant with the applicable development controls and standards, the health and safety of the public will not be adversely affected, noting that the proposal poses no major flooding risks. Therefore, the development will not generate any significant issues of public interest.

Section 94 - Developer Contributions Plans

The development proposal is for a change of use for the Erskine Park Community Hall to a centre-based child care facility (OOSH) and does not involve any residential development. As such, development contributions are not applicable to the proposal, as advised by Council's Senior Contributions Planner.

The Erskine Park Residential Release Area Contributions Plan has been repealed, however it is confirmed that the plan did provide for the funding of both the community hall / facility and child care facility. The plan did not prescribe specific allocations of funding to each item separately, and does not identify specific floor area calculations separately between the two facilities. It is therefore considered that the proposed conversion is not in conflict with the terms of this repealed plan or the reasoning for the funding being an item within the plan for recovery as the development is still providing a form of community service (inclusive of day care) as was intended by the Plan.

Conclusion

In assessing this development proposal against the relevant environmental planning policies, including *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014*, *State Environmental Planning Policy No. 55—Remediation of Land* and *Sydney Regional Environmental Plan No. 20— HawkesburyNepean River (No. 2—1997)*, the development proposal satisfies the aims, objectives and provisions of these policies and does not contravene any development controls. The proposal is unlikely to have any significant impacts on the natural, social or economic environments and the site is suitable for the development. The proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval, subject to conditions.

Recommendation

That DA20/0019 for an expansion of Erskine Park Children's Centre, including use of Erskine Park Community Centre for outside of school hours care and erection of outdoor play area fencing at 57 Peppertree Drive and 158 - 172 Swallow Drive, Erskine Park be approved, subject to the attached conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

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

Drawing Title	Prepared By	Reference No.	Sheet No.	Issue	Dated
Roof/Site Analysis	Design Corp	2019-0190	C1 - C2	C	06/03/2020
Ground Floor Blocks A & B	Design Corp	2019-0190	C3	C	06/03/2020
Ground Floor Block C	David C. Jackson	2019-0190	C4	C	06/03/2020

Documents:

- Acoustics Noise Management Plan prepared by Far West Consulting Engineers, Reference No. 203510, Amended 2, dated 25 May 2020,
 - Erskine Park Children's Centre Noise Management Plan prepared by Amanda Collins, dated 22 April 2020,
 - Asbestos Building Materials Register prepared by Getex Pty Ltd, Report No. 10509.27.ASSR, Revision 0, dated 6 September 2018, and
 - Waste Management Plan prepared by Penrith City Council, dated 16 January 2020.
- 2 [A012 - Food Act](#)
The proprietor of the food business shall ensure that the requirements of the *NSW Food Act 2003*, *NSW Food Regulation 2010* and the Australian and New Zealand Food Standards Code are met at all times.
- 3 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)
The approved operating hours are from 7:00am to 6:00pm, Mondays to Fridays. The centre-based child care facility is not to operate on weekends or public holidays. Delivery, waste collection and other service vehicles generated by the development are restricted to these hours of operation.
- 4 [A039 - Graffiti](#)
The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 5 [A Special \(BLANK\)](#)
An Arborist shall be engaged before and during the fence installation, in particular, to monitor minimum tree protection requirements with hand digging during the installation of the steel fence post.
- 6 [A Special \(BLANK\)](#)
Special attention must be given the maintenance of the acoustic fence and any adjacent landscaping.
- 7 [A Special \(BLANK\)](#)
The maximum number of children placed at the centre-based child care facility is to be limited to 138 including 8 places available for babies and toddlers aged 0-2 years.
- 8 [A Special \(BLANK\)](#)
The scheduled outdoor play times shall be restricted to the Erskine Park Children's Centre Noise Management Plan prepared by Amanda Collins, dated 22 April 2020.

Demolition

9 [B005 - Mud/Soil](#)

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

Environmental Matters

10 [D013 - Approved noise level 1](#)

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the report titled 'Acoustics Noise Management Plan' prepared by Far West Consulting Engineers, Reference No. 203510, Amended 2, dated 25 May 2020. The recommendations provided in the Acoustics Noise Management Plan shall be implemented and applied to the operation of the development.

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

11 D014 - Plant and equipment noise

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

12 D Special BLANK

In the event of ongoing noise complaints relating to the development being received by Council, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the development to address the concerns of the community. Should that occur, the noise impact assessment report shall be prepared and provided to Council for approval within 45 days of being requested. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

BCA Issues

13 E006 - Disabled access and facilities

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

14 E01A - BCA compliance for Class 2-9

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

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Health Matters and OSSM installations

15 F001 - General Fitout

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

16 F027 - Hand basins

Hand basins must be freestanding, serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are installed the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

17 F029 - Hand basin within staff toilets

A hand basin must be located within the toilet cubicle. Hand basins must be freestanding, serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Where sensor taps are used the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

Utility Services

18 G002 - Section 73 (not for

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

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

Engineering

19 [K Special \(BLANK\)](#)

All car parking and manoeuvring must be in accordance with AS 2890.1-2004, AS 2890.6-2009 and the *Penrith Development Control Plan 2014*.

20 [K Special \(BLANK\)](#)

All car spaces are to be sealed/line marked and dedicated for the parking of vehicles only and not be used for storage of materials, products, waste materials, etc.

21 [K Special \(BLANK\)](#)

The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.

22 [K Special \(BLANK\)](#)

All vehicles are to enter/exit the site in a forward direction.

23 [K Special \(BLANK\)](#)

The scope of works is to include the refurbishment of the parking area including the re-painting of faded pavement markings and renewal of damaged signage.

24 [K Special \(BLANK\)](#)

Appropriate pavement markings and signage are required to reinforce the direction of vehicle circulation and the location of minibus pick-up/drop-off area.

Landscaping

25 [L008 - Tree Preservation Order](#)

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

26 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Certification

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

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

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

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

Information to accompany the Notice of Commencement

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

28 [Q05F - Occupation Certificate for Class10](#)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all fencing works and prior to the use for the additional 28 out of hours school care child placements (total number of 138 child placements).

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

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The development proposal will boost socio-economic growth, which will in turn strengthen the locality. Given that child care services are essential to accommodate population growth, in addition to the proposal not resulting in any adverse impacts on the surrounding environment, the proposal contributes to sustainable development and therefore satisfies the DCP principles, in particular:

Principle 1: Provide a long term vision for cities, based on sustainability; intergenerational, social, economic and political equity; and their individuality, and Principle 2: Achieve long term economic and social security.

Part C - City-wide Controls

The proposal has been assessed against the applicable provisions of Part C of the *Penrith Development Control Plan 2014*, relevantly as follows:

C1 Site Planning and Design Principles

The proposed works are limited to new fencing and are considered generally desirable as they will have minimal physical and visual impacts on the surrounding development.

C2 Vegetation Management

The proposal does not include the removal of any vegetation. It is noted that the proposed fencing is in proximity to existing trees and therefore recommended condition of consent will require that an Arborist be on-site during the installation of the fence to ensure that there will be no tree impacts.

C3 Water Management

The site is affected by local overland flooding flows, however, given that the nature of the proposal, flooding controls remain compliant, as previously assessed for the original approval. Further, the proposed works are limited to new fencing, which poses no flooding risks and the existing stormwater drainage system will be maintained, which is considered adequate.

C4 Land Management

The proposed external works are minor and are unlikely to negatively impact upon the natural landform or result in contamination of land. A condition of consent will be imposed to ensure that appropriate erosion and sedimentation controls measures are installed during all external works.

The proposed works will not result in significant cut or fill and is generally regarded to satisfy the objectives of Part C4 of the DCP.

C5 Waste Management

The application was accompanied with a waste management plan, which is considered adequate.

C6 Landscape Design

The proposal does not include any landscaping works and will maintain the existing vegetation within/adjacent to the development and adjacent to the car parking area.

C7 Culture and Heritage

The site is not identified as and is not in the vicinity of any site that is a heritage item, heritage conservation area or archaeological site under the provisions of the LEP.

C8 Public Domain

The proposal does not substantially change the nature of use and does not adversely impact on the public domain.

C9 Advertising and signage

The proposal does not include any new or additional signage.

C10 Transport, access and parking

The proposal is considered to provide satisfactory car parking numbers as outlined within the assessment under *SEPP - Educational Establishments and Child Care Facilities) 2017* which has been addressed earlier within this report.

C12 Noise and vibration

The proposal is considered to satisfy key noise and vibration considerations as addressed by way of the submitted reports, assessment detail; contained earlier in this report under the assessment under *SEPP - Educational Establishments and Child Care Facilities) 2017* and by way of recommended conditions of consent.

It is also noted that the application was publicly notified to nearby and adjacent property owners with no submissions received.

C13 Infrastructure Services

The site is within an established area with adequate access to infrastructure and services. Requirements for a Section 73 Certificate have been conditioned to address the increase in child numbers proposed by way of this application.

D5 Other Land Uses

It is noted that the provisions of the Child Care Planning Guideline 2017 take precedence over the DCP and that there are a number of development controls that either overlap or are not applicable to the development proposal. As such, the proposal is considered to be compliant with the relevant development controls including Section 5) Vehicle Access, Circulation and Parking in the DCP, as detailed in the *SEPP (Educational Establishments and Child Care Facilities) 2017* section of this report.