

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

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|------------------------------|------------------------------------------------------------------------------------------|
| <b>Application number:</b>   | DA18/0599                                                                                |
| <b>Proposed development:</b> | Use of an Existing Building as a Child Care Centre x 22 Place and Associated Car Parking |
| <b>Property address:</b>     | 84 - 90 Third Road, BERKSHIRE PARK NSW 2765                                              |
| <b>Property description:</b> | Lot 107 DP 975322                                                                        |
| <b>Date received:</b>        | 15 June 2018                                                                             |
| <b>Assessing officer</b>     | James Heathcote                                                                          |
| <b>Zoning:</b>               | RU4 Primary Production Small Lots - LEP 2010                                             |
| <b>Class of building:</b>    | Class 9b                                                                                 |
| <b>Recommendations:</b>      | Approve                                                                                  |

### Executive Summary

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Council is in receipt of a development application for the Use of an Existing Building as a Child Care Centre x 22 place and Associated Car Parking at 84-90 Third Road, Berkshire Park. The subject site is occupied by an existing dual occupancy and associated child care centre, currently operating at a 'home-based child care' scale.

The subject site is zoned RU4 Primary Production Small Lots under Penrith Local Environmental Plan 2010. The proposal is defined as a child care centre, which is not a permissible land use in the zone. However, the proposal is permissible pursuant to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

The application has been notified to 13 adjoining properties and advertised between 29 June 2018 and 13 July 2018. Council received no submissions in response.

Concerns were raised during the assessment process regarding car parking and access, wastewater provision, operational management and the unauthorised use of the child care centre as a dwelling. The applicant has satisfactorily addressed these concerns raised through the assessment process. The proposed development is unlikely to have a negative impact on the surrounding environment. As such, the site is suitable for the proposed development and the proposal being in the public interest.

An assessment under Section 4.15 (formerly Section 79C) of the Environmental Planning and Assessment Act 1979 has been undertaken, and the application is recommended for approval.

### Site & Surrounds

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The subject site, legally known as Lot No 107 DP 975322, is located on the north-eastern side of Third Road, approximately 245m north-west of its intersection with St Marys Road in Berkshire Park. The site is rectangular in shape and is 1.619 Ha in area, with an 80m frontage to Third Road. The site is occupied by an existing dual occupancy (each dwelling with a swimming pool), child care centre (currently operating at a 'home-based child care' scale) associated with the front dwelling, farm shed, detached garage and detached shed structure used as an office for the rear dwelling. To the north, east and south and west of the site are predominately rural-residential and agricultural land uses, with conservation lands approximately 875m to the north-west.

## Proposal

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The proposed development involves:

- Change of use of the existing building used for 'home-based child care' to a 'centre-based child care centre'. The proposed centre-based child care centre will have a capacity to cater for 22 children.
- Minor internal alterations to the existing building accommodating the home-based operation to provide for an office and additional toilet facilities.
- Marking of additional car parking spaces within the front setback area of the site.
- Addition to the On-site Sewage Management System (OSSM) to manage the additional wastewater load that will result from the proposed child-care centre.

The following operational elements are proposed:

- Age Group: 2-6 year olds. Children: 22
- Hours of Operation: 7:30am - 5:30pm, Monday to Friday. Closed on Saturday and Sunday.
- 4 staff members: 2 x full-time, 1 x part-time, 1 x casual.

## Plans that apply

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

## Planning Assessment

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### • Section 79BA - Bushfire prone land assessment

Pursuant to Section 4.14 (formerly Section 79BA) of the *Environmental Planning & Assessment Act 1979*, the subject site is identified as bushfire prone land. A Bushfire Attack Level assessment has been carried out by a Bushfire Assessment Report submitted by the applicant. The report appears to be in accordance with the provisions of *Planning for Bushfire Protection* and AS 3959-2009, recommending new construction to comply with a BAL 12.5 requirement. The application was also referred to NSW Rural Fire Service who, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and as a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997*, issued General Terms of Approval (GTA). These GTA's are recommended as conditions of consent.

### • Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 (formerly Section 79C) of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration.

### • Section 91- Integrated development

Under Section 4.46 (formerly Section 91) of the *Environmental Planning and Assessment Act 1979*, the proposed development is integrated development as it requires development consent from the following authorities:

- NSW Rural Fire Service seeking approval in accordance with Section 100B of the *Rural Fire Act 1997*.

The General Terms of Approval (GTAs) have been issued from the NSW Rural Fire Service which included conditions relating to asset protection zones, water and utilities, evacuation and emergency management, design and construction and landscaping. These GTAs will form part of the conditions of consent.

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

### **State Environmental Planning Policy No 55—Remediation of Land**

SEPP 55 aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 requires a consent authority to be satisfied that the site is suitable for the proposed development, or can be made suitable prior to the determination of the application.

The site is currently used for residential and home-based child care purposes, which is being changed by the increase in capacity of the child care. The proposed development includes minor alterations to the existing child care centre and sealing of the car parking area. There is no history of contamination or unauthorised earthworks recorded at the subject site.

In consideration of the above, the proposal satisfies the requirements of SEPP 55.

### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. SREP No. 20 covers water quality and quantity, environmentally sensitive areas, scenic quality, agriculture and urban and rural-residential development.

The proposal involves the change of use of an existing building from a home based child care to a 22 place centre based child care centre and alterations and additions. Given that no new buildings are proposed as part of the application, the proposal is considered satisfactory in regards to SREP No. 20.

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

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

#### **Part 3 Early Education and Care Facilities - Specific Development Controls**

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

This Clause applies to development for the purpose of a centre-based child care facility if the floor area of the building does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or if the outdoor space requirements for the building or place does not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.

The indoor floor requirement under regulation 107 requires 3.25m<sup>2</sup> per child. For the proposal, this requires an area of 71.5m<sup>2</sup>. The proposed child care centre includes over 72.38m<sup>2</sup> of unencumbered floor area. The outdoor area requirement under regulation 108 requires 7m<sup>2</sup> per child. For the proposal, this requires an area of 154m<sup>2</sup>. The proposed child care centre includes well over this requirement of unencumbered outdoor area.

As such, subclauses 2-7 are not applicable as the proposal satisfies the requirements of Clause 22(1).

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

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 requires that before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development. As such, an assessment was undertaken against the provision of the Child Care Planning Guideline dated August 2017, as summarised below:

| Section                                | Objectives                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Proposed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>3.1 Site Selection and Location</b> | <ul style="list-style-type: none"> <li><i>To ensure that appropriate zone considerations are assessed when selecting a site;</i></li> <li><i>To ensure that the site selected for a proposed child care facility is suitable for the use.</i></li> <li><i>To ensure the site for child care facilities are appropriately located;</i></li> <li><i>To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.</i></li> </ul> | <ul style="list-style-type: none"> <li>The proposed use is not a permitted land use in the zone. However, the site is not subject to adverse environmental conditions. The site is suitable in regards to the following matters: <ul style="list-style-type: none"> <li>i) The selected site and proposed use is compatible with the surrounding land uses. Specifically, the site is located within a well established rural-residential area where a demand for child care has been identified by the applicant, who currently operates a home based child care at the subject site.</li> <li>ii) The proposal does provide suitable and safe user drop off and pick up arrangements to the child care centre. The proposal relies on car parking spaces on site (as per the stamped approved plans amended in red).</li> </ul> </li> <li>Access from Third Road give direct access to car parking, where separate pedestrian pathways and crossings to the child care centre entry point.</li> <li>Although there is a pedestrian crossing that crosses over a driveway leading to the rear residence located toward the rear of the property, this pedestrian crossing is considered safe due to the high visibility from the car park and low-to-zero traffic use associated with the residential land use.</li> <li>iii) The proposed accessible entry point to the centre is situated directly adjacent to the proposed car parking arrangement via a separate pedestrian crossing and walk way.</li> <li>Given the above, the selected site and design is considered both suitable and compatible with the adjoining land uses.</li> </ul> |

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| <b>3.2 Local Character, streetscape and the public domain interface</b> | <ul style="list-style-type: none"> <li>• <i>To ensure that the child care facility is compatible with the local character and surrounding streetscape;</i></li> <li>• <i>To ensure clear delineation between the child care facility and public spaces;</i></li> <li>• <i>To ensure front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</i></li> </ul> | <ul style="list-style-type: none"> <li>• The proposal includes minor alterations and additions to an existing building and will not significantly alter the existing character and streetscape.</li> <li>• The proposed car parking arrangement has been amended in red to ensure the clear delineation between the child care centre, accessways/crossings and car parking/drop-off areas.</li> </ul>                                                                                                                                                                                                              |
| <b>3.3 Building Orientation, envelope and design</b>                    | <ul style="list-style-type: none"> <li>• <i>To respond to the streetscape, while optimising solar access and opportunities for shade;</i></li> <li>• <i>To ensure that child care facilities are designed to be accessible by all potential users;</i></li> <li>• <i>To ensure that buildings are designed to create safe environments for all users.</i></li> </ul>                                                                       | <ul style="list-style-type: none"> <li>• The proposal is located in a well established rural-residential location.</li> <li>• The proposal ensures that the facility is accessible to all potential users. Conditions of consent are recommended to ensure relevant BCA compliance and Australian Standards are achieved.</li> <li>• The proposed design enables a safe environment for all users. Access to the building is provided from the car park with separate pedestrian access. Due to the design of structures on site, such as the rural shed, good visual access is achieved in these areas.</li> </ul> |

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| <b>3.4 Landscaping</b>                 | <ul style="list-style-type: none"> <li>• <i>To provide landscape design that contributes to streetscape and amenity.</i></li> </ul>                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Conditions of consent are recommended to ensure existing landscaping is maintained.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>3.5 Visual and Acoustic Privacy</b> | <ul style="list-style-type: none"> <li>• <i>To protect the privacy and security of children attending the facility;</i></li> <li>• <i>To minimise impacts on privacy of adjoining properties;</i></li> <li>• <i>To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.</i></li> </ul> | <ul style="list-style-type: none"> <li>• The privacy and security of children attending the facility is upheld by secure fencing and the operation plan in place.</li> <li>• The proposal was notified to neighbouring lots. No submissions were received in response. In addition, the siting of the facility is screened by vegetation and the rural shed located along the southern boundary.</li> <li>• The acoustic report submitted with the application has been assessed as generally satisfactory. Noise levels are to be managed as conditioned.</li> </ul> |
| <b>3.6 Noise and Air Pollution</b>     | <ul style="list-style-type: none"> <li>• <i>To ensure that outside noise levels on the facility are minimised to acceptable levels;</i></li> <li>• <i>To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution.</i></li> </ul>                                                    | <ul style="list-style-type: none"> <li>• Noise levels generated by the child care centre are capable of complying subject to conditions. Air quality for the subject site has been assessed as suitable.</li> </ul>                                                                                                                                                                                                                                                                                                                                                   |
| <b>3.7 Hours of Operation</b>          | <ul style="list-style-type: none"> <li>• <i>To minimise the impact of the child care facility on the amenity of neighbouring residential developments.</i></li> </ul>                                                                                                                                                                            | <ul style="list-style-type: none"> <li>• The proposed operating hours of Monday to Friday, 7:30am to 5:30pm are satisfactory and should not impact on the amenity of neighbouring residential developments.</li> </ul>                                                                                                                                                                                                                                                                                                                                                |

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| <b>3.8 Traffic, Parking and Pedestrian Circulation</b> | <ul style="list-style-type: none"> <li>• <i>To provide parking that satisfies the needs of users and demand generated by the centre;</i></li> <li>• <i>To provide vehicle access from the street in a safe environment that does not disrupt traffic flows;</i></li> <li>• <i>To provide a safe and connected environment for pedestrians both on and around the site.</i></li> </ul> | <ul style="list-style-type: none"> <li>• Chapter C10 Transport, Access and Parking includes parking rates for Child Care Centres that requires 1 space per 10 children plus 1 per employee plus provision of any dwelling. In consideration of the number of children, number of staff and provision of parking for the dual occupancy on site, a minimum of 6 parking spaces is required for the child care centre. The plans have been amended in red to provide 6 parking spaces plus 1 disabled parking space; satisfying the needs of users and demand generated by the centre.</li> <li>• The child care centre will utilise the existing vehicular access from the street, which will provide safe vehicular access for the centre that is not expected to disrupt traffic flows.</li> <li>• Safe and connected pedestrian access is provided both within the centre, and around the carpark through provision of separate pedestrian access ways and crossings.</li> </ul> |
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#### **Clause 24 Centre-based child care in Zone IN1 or IN2**

This clause is not applicable as the subject site is zoned RU4.

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

The objective of this clause is to identify development standards for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.

The following are non-discretionary development standards for the purposes of section 4.15 (2) and (3) of the Act in relation to the carrying out of development for the purposes of a centre-based child care facility:

(a) Location - the development may be located at any distance from an existing or proposed early education and care facility. The proposal complies with this development standard.

(b) Indoor or outdoor space -

(i) For development to which regulation 107 and 108 (for minimum provision of unencumbered indoor and outdoor area requirements) applies. The indoor and outdoor areas for the development complies with the requirements of those regulations.

(ii) For development to which Clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies. The development complies with the indoor space requirements or the useable outdoor play space requirements in that clause.

The proposal complies with these development standards.

(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. The proposal complies with this development standard.

(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 items or in a heritage conservation area. The proposal is not a State or local heritage item, and the existing child care building generally reflects the residential dwellings on the site. The proposal complies with this development standard.

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

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, management plans or arrangements (including hours of operation):

The proposal is supported by a Operational Plan of Management which details the proposed capacity and children age ratios for the centre, hours of operation, staffing requirements, parent/children arrival and departure schedule, daily schedule for children and educators, a traffic and parking plan, noise management plan, mechanism for conveying policies to customers/parents, security measures, collection of children procedures etc. Conditions of consent are recommended that address specific requirements for these aspects.

(b) Demonstrated need or demand for child care services

The applicant currently operates a home based childcare service at the subject site, and has identified from customers and neighbouring properties the demand of additional child care services in the Berkshire Park area.

(c) Proximity of facility to other early education and care facilities.

The proposal complies with this aspect.

(d) Any matter relating to development for the purpose of a centre-based child care facility contained in:

- (i) the design principles set out in Part 2 of the Child Care Planning Guideline, or
- (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).

See the Clause 23 section above regarding design principles set out in Part 2 of the Child Care Planning Guideline. The matters for consideration set out in Part 3 and regulatory requirements set out in Part 4 of the NSW Child Care Planning Guideline have been appropriately assessed, and conditions of consent recommended where appropriate. The child care centre building is appropriate in terms of building height and side and rear setbacks. The proposed development also satisfies car parking rate requirements. See discussion under C10 Transport, Access and Parking in relation to the assessment of Penrith Development Control Plan 2014 for further information.

**Clauses 27 - 32**

Not applicable for the subject application.

**Local Environmental Plan 2010 (Amendment 4)**

| Provision                              | Compliance                |
|----------------------------------------|---------------------------|
| Clause 2.3 Permissibility              | Complies - See discussion |
| Clause 2.3 Zone objectives             | Complies                  |
| Clause 5.11 Bush fire hazard reduction | Complies - See discussion |
| Clause 7.2 Flood planning              | Complies - See discussion |
| Clause 7.7 Servicing                   | Complies                  |



**Clause 2.3 Permissibility**

The subject site is zoned RU4 Primary Production Small Lots. The proposal is for Centre-based Child Care Facility accommodating a maximum of 22 children, which is a land use not permitted in the RU4 zone.

However, the proposal is permissible under State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP 2017). This Policy applies to the State and aims to facilitate effective delivery of educational establishments and early education and care facilities across the state by simplifying and standardising planning approval pathways for these forms of development.

Before determining a development application for the purpose of a centre-based child care facility, the consent authority must take into consideration Clauses 22 - 32 of SEPP 2017. See discussion under State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 in relation to our assessment for further information.

**Clause 5.11 Bush fire hazard reduction**

The subject site is identified as bushfire prone land. The application was referred to the NSW Rural Fire Service, who raised no objection subject to general terms of approval.

**Clause 7.2 Flood planning**

The development satisfies the requirements of Clause 7.2. See discussion under C3 Water Management in relation to the assessment of Penrith Development Control Plan 2014 for further information.

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

### Development Control Plan 2014

| Provision                                      | Compliance                                                    |
|------------------------------------------------|---------------------------------------------------------------|
| C1 Site Planning and Design Principles         | Complies                                                      |
| C2 Vegetation Management                       | Complies                                                      |
| C3 Water Management                            | Complies - see Appendix - Development Control Plan Compliance |
| C4 Land Management                             | Complies                                                      |
| C5 Waste Management                            | Complies                                                      |
| C6 Landscape Design                            | Complies                                                      |
| C7 Culture and Heritage                        | N/A                                                           |
| C8 Public Domain                               | N/A                                                           |
| C9 Advertising and Signage                     | N/A                                                           |
| 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 |
| D5.1. Application of Certification System      | N/A                                                           |
| D5.2. Child Care Centres                       | Complies - see Appendix - Development Control Plan Compliance |
| D5.3. Health Consulting Rooms                  | N/A                                                           |
| D5.4. Educational Establishments               | N/A                                                           |
| D5.5 Parent Friendly Amenities                 | N/A                                                           |
| D5.6. Places of Public Worship                 | N/A                                                           |
| D5.7. Vehicle Repair Stations                  | N/A                                                           |
| D5.8. Cemeteries, Crematoria and Funeral Homes | N/A                                                           |
| D5.9. Extractive Industries                    | N/A                                                           |
| D5.10 Telecommunication Facilities             | N/A                                                           |

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

The subject application was referred to Council's Building Surveyor Department, who advised that under Clause 143 of the Environmental Planning and Assessment Regulation 2000 the authority issuing the Construction Certificate will need to consider the fire protection, structural capacity, and Category 1 fire safety provisions of the building, prior to the issue of the Construction Certificate. This is reinforced by a condition on the consent.

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

### **Context and Setting**

The proposal involves the change of use of the existing building used as a 'home-based child care' to a 'centre-based child care centre, with minor alterations and additions to the existing building that will not significantly alter the existing built form from street view. Subject to conditioned, the proposed land use is compatible with the surrounding land uses, both within and its the vicinity of the site.

Assessment of the proposal, including multiple site inspections and discussions with the applicant, has demonstrated that the proposal has taken into consideration measures to ensure the development will not adversely impact on adjoining properties, nor users that occupy and/or utilise the site.

### **Access and User Safety**

The proposal provides an accessible entrance/exit at the front of the site (south-west elevation). The submitted plans (amended in red) demonstrate a suitable design for both the access point, car parking provision and the accessways/crossings provided for separate pedestrian access into the child care centre. Despite the siting of a rural shed adjacent to the car parking area, good visibility is provided for both pedestrian and vehicle traffic.

Considering the above, the application meets the objectives of the Child Care Planning Guideline, under the provision of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, in that the proposal creates a safe environment for all users, and meets the objectives of Section 5.2 of Penrith Development Control Plan 2014, to ensure the safe drop-off and collection of children, including direct, safe pedestrian access to the entrance of the centre.

### **Car Parking**

The proposal meets the rate of on-site car parking as set out in Table C10.2, Section C.10 of Penrith Development Control Plan 2014. Childcare centres/preschools are required to provide 1 space per 10 children, plus 1 per employee, plus provision of any dwelling.

The car parking arrangement on site has been amended in red on the site plan to ensure the minimum provision of spaces is provided whilst also ensuring safe pedestrian access and child pick-up/drop-off through separate pedestrian paths are provided.

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

The site is suitable for the proposed development for the following reasons:

- The proposal has demonstrated suitable access to the child care centre.
- The proposal has demonstrated suitable car park arrangements, including providing a safe drop off and collection of children, and safe pedestrian access between parking areas and the child care centre.
- The proposed entrance includes good visibility and clear delineation between the parking areas and child care centre, demonstrating good principles of Crime Prevention Through Environmental Design.
- A sufficient amount of indoor and outdoor unencumbered space has been provided within the child care centre.
- The surrounding land uses are not expected to negatively impact, or be negatively impacted by, the proposed child care centre.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

#### Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was advertised and notified to nearby and adjoining residents between 29 June and 13 July 2018. Council notified 13 neighbouring residences and no 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 - subject to conditions |
| Development Engineer                     | No objections                         |
| Environmental - Environmental management | No objections - subject to conditions |
| Environmental - Public Health            | No objections - subject to conditions |
| Traffic Engineer                         | Awaiting additional information       |
| Social Planning                          | Not supported                         |

#### Social Planning

Concerns raised by the Social Planning team have either been addressed through the assessment process or through recommended conditions of consent.

#### Traffic Engineer

The proposed car parking area has been amended in red on the stamped approved site plan. A condition of consent is recommended to ensure the car parking area is sealed and compliant with the following Australian Standards:

- AS2890.01
- AS2890.2
- AS2890.6

Concern was raised during the assessment of the application regarding the proposed crossing to enter the child care centre, and the potential operation of heavy vehicles on site; in consideration of the existing land uses and structures on site including a large shed used to store large vehicles. Several site inspections and discussions with the applicant have revealed the use of each structure on site, and how they operate alongside the currently operating home-based child care. It was also identified that the proposed pedestrian crossing to enter the child care centre is afforded with a sufficient provision of visibility, despite its proximity to the large shed that sits on the south boundary line. Subject to recommended conditions of consent, and construction of the proposed car parking area in accordance with the stamped plans amended in red, the proposed parking area for the proposed child care centre will provide safe and separate pedestrian access for all users accessing the site.

The expected additional traffic generated by this development can be adequately accommodated within the surrounding network.

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

The proposed development will not generate any significant issues of public interest.

## **Conclusion**

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In assessing this application against the relevant environmental planning instruments, being State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The proposed design of the child care centre is responsive, generally complies with key development standards and generates no significant issues of public interest. Therefore, the application is worthy of support, subject to recommended conditions of consent.

## **Recommendation**

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That DA18/0599 for the Use of an Existing Building as a Child Care Centre x 22 place and Associated Car Parking at 84-90 Third Road, Berkshire Park NSW 2765, be approved subject to the attached conditions.

## General

### 1 A001

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

| Description                 | Plan No.     | Revision | Prepared By             | Date     |
|-----------------------------|--------------|----------|-------------------------|----------|
| Site Plan                   | Sheet 1 of 3 | B        | Havanah Building Design | 01.03.18 |
| Floor Plan & Part Site Plan | Sheet 2 of 3 | A        | Havanah Building Design | 01.03.18 |
| Elevations & Section        | Sheet 3 of 3 | A        | Havanah Building Design | 01.03.18 |

### 2 A019 - Occupation Certificate

The development shall not be used or occupied until an Occupation Certificate has been issued.

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required prior to the issue of the Occupation Certificate. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

### 3 A021 - Business Registration

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.

### 4 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The operating hours are from 7:30am to 5:30pm Monday to Friday. The centre is not to operate on weekends or public holidays. Staff are not permitted to generate noise that can be heard from an adjacent premises before 7:30am. Waste collection and deliveries are only to occur during these times of operation.

### 5 A046 - Obtain Construction Certificate before commencement of works

A **Construction Certificate** shall be obtained prior to commencement of any building works.

### 6 A Special (BLANK)

A maximum of 22 children (Aged between 2-6 year old) are to be enrolled to attend the premises at any one time.

### 7 A Special (BLANK)

The proposed Child Care Centre is to comply with the requirements of the Education and Care Services National Regulations under the Education and Care Services National Law at all times.

### 8 A Special (BLANK)

The applicant shall comply with the conditions contained in the General Terms of Approval issued by the NSW Rural Fire Service Reference D18/6120 - DA18062913737 RB and dated 3 August 2018.

### 9 A Special (BLANK)

Prior to the issue of an Occupation Certificate, an Emergency Evacuation Plan shall be provided to identify emergency procedures, demonstrating that children can be assembled at a safe distance from the building if needed, consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation plan' and the NSW Child Care Planning Guideline.

### 10 A Special (BLANK)

Any animals kept on site or associated with the residential use of the land shall be kept separate from the child care centre and associated operations at all times.

### 11 A Special (BLANK)

The operation of heavy vehicles on the subject site shall not occur during the hours of operation for the child care centre.

12 **A Special (BLANK)**

The child care centre shall not be utilised as a dwelling, or for similar living arrangements, at any time.

13 **A Special (BLANK)**

The use of the shed adjacent to the car park is to remain closed at all times the Child Care Centre is operating.

14 **A Special (BLANK)**

Prior to the issue of an Occupation Certificate, a signage plan for the erection of a sign or advertising structure other than an advertisement listed as exempt development is to be submitted to Penrith City Council for approval, complying with the requirements of Penrith Development Control Plan 2014.

15 **A Special (BLANK)**

A public contact number is to be displayed on any childcare centre signage and must be operational during business hours. A complaint register is to be maintained and must include complaint details and any actions taken to address those complaints. A copy of the complaint register is to be provided to Council upon request.

## Environmental Matters

16 **D001 - Implement approved sediment& erosion control measures**

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be installed and maintained in accordance with the Department of Housing's "*Managing Urban Stormwater: Soils and Construction*" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

17 **D005 – No filling without prior approval (may need to add D006)**

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

18 **D009 - Covering of waste storage area**

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

19 **D010 – Appropriate disposal of excavated or other waste**

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

20 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the 'Acoustic Assessment - Childcare Centre: Meek's Day Care Centre' prepared by PKA Acoustic Consulting dated 21 March 2018 (Ref. No. 11164 R01v2). The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and **shall be shown on plans accompanying the Construction Certificate application.**

A certificate is to be obtained from a qualified acoustic consultant certifying that the development has been constructed to meet the noise criteria in accordance with the approved acoustic report. **This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.**

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

21 **D - Dust**

Dust suppression techniques are to be employed during demolition and construction to reduce any potential nuisances to surrounding properties.

22 **D - Mud/Soil**

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

23 **D Special (BLANK)**

Due to noise requirements, restrictions apply to the number of children allowed in the outdoor play areas at any one time. The outdoor play areas combined are to have a maximum of:

- 14 children aged 0-2 years or
- 36 children aged 2-4 years or
- 40 children aged 4-5 years.

24 **D Special (BLANK)**

Appropriate signage is to be provided to the car park and entrance of the centre requesting patrons to minimise noise and protect the amenity of the surrounding neighbourhood.

Signage reminding people to lock their vehicles and remove valuables shall be installed in the car park.

- Prior to the issuing of the Occupation Certificate, a suitable signage plan is to be submitted to Council for approval.
- The signage plan is to provide details on the location, sizing and wording of the proposed signs.
- The signs are to be constructed prior to the issuing of the Occupation Certificate.

25 **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 maybe 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.

The noise impact assessment report is to 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.

26 **D Special BLANK**

All mechanical plant and equipment is to comply with the noise criteria outlined in 'Acoustic Assessment - Childcare Centre: Meek's Day Care Centre' prepared by PKA Acoustic Consulting dated 21 March 2018 (Ref. No. 11164 R01v2).

**Prior to the issue of the Occupation Certificate**, a Compliance Certificate is to be submitted to and approved by Council. The Certificate is to outline that all plant and equipment have been installed to comply with the above information and the established noise criteria. Should the Compliance Certificate identify any non-compliance issues, the Certificate is to provide suitable recommendations for mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

27 **D Special BLANK**

The 'Operational Plan of Management :Meek's Day Care and Early Learning Centre' is to be implemented and complied with.



## BCA Issues

### 28 E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

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As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

### 29 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

### 30 F Special (BLANK)

Prior to the issue of a Construction Certificate, the following shall be demonstrated:

The construction, fit out and finishes of the food premises (preparation area) must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 *Design, Construction and Fitout of Food Premises*. In this regard, your attention is drawn to the following requirements:

- Hand basins must be provided in the food preparation area, 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.
- Staff toilets must be provided on the premises. Where a toilet adjoins a food preparation area it must be separated by an air lock and its doors must be fitted with self closing devices. Toilets intended for customer use must not be accessed through areas where open food is handled, displayed or stored.
- A hand basin must be located within the toilet cubicle. Hand basins must be 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.
- The floor of the food premises must be finished in an approved non-absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and scullery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.

- Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.
- The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish or be splayed at a 45-degree angle to eliminate a ledge that would allow dust and grease to accumulate.
- The walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.
- The ceiling in the preparation, service and scullery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.
- In addition to the hand wash basin, the food preparation area must be equipped with a double bowl sink constructed of stainless steel, have a minimum bowl size of 450mm x 300mm x 300mm to enable cleaning of large pots and equipment, be fitted with a draining area at each end, and have a splashback as part of the unit at least 300mm up the wall or alternatively, have a single bowl sink and a dishwasher. All utensils and equipment must undergo a washing, sanitising and rinsing cycle. The sanitising rinse cycle must achieve a water temperature of 80°C for 2 minutes or 75°C for 10 minutes.
- All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning.
- All fittings and fixtures must be built into the wall and floor to be free from joint, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:
  - a. Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and coved at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.
  - b. Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.
  - c. Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200 mm.

NOTE: False bottoms under fittings are not permitted (AS4674-2004 – Section 4.2 and 4.3).
- All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.

## Utility Services

### 31 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](http://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.

# Construction

## 32 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

## 33 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

34 [H041 - Hours of work \(other devt\)](#)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

35 [H Special \(BLANK\)](#)

The external finishes of the building and any associated structures (not including any outdoor play equipment) shall be of natural bushland tones complimentary to the surrounding setting.

36 [H Special \(BLANK\)](#)

Prior to the issue of a Construction Certificate, it shall be demonstrated that any proposed or existing shade structures comply with AS/NZS 4486.1, and that any shade structure does not have footholds or grip surfaces that allow for climbing.

37 [H Special \(BLANK\)](#)

Any proposed alterations shall be purpose designed and built to satisfy the requirements of the NSW Department of Community Services.

## Swimming Pools

38 [J Special \(BLANK\)](#)

The nearby swimming pool associated with the existing dwellings on the site must remain securely fenced (in accordance with the requirements of the Swimming Pool Act 1992) to prohibit access to the children in care.

## Engineering

39 [K201 - Infrastructure Bond](#)

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

40 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

Prior to the issue of any Construction Certificate, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

41 **K222 - Access, Car Parking and Manoeuvring – General**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

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

42 **K301 - Sediment & Erosion Control**

Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

43 **K Special (BLANK)**

The required sight lines around the driveway entrance and exit are not to be compromised by street trees, landscaping, fencing or signposting.

44 **K Special (BLANK)**

Prior to the issue of any Construction Certificate, kerb and/or wheel stops shall be provided for any parking spaces that front/back onto a pedestrianised area to control kerb overhang. Wheel stops shall be designed in accordance with AS2890.

45 **K Special (BLANK)**

A total of 6 off-street parking spaces are to be provided, line marked and maintained for the development, generally in accordance with the stamped approved plans. The parking space dimensions and manoeuvring areas are to comply with AS 2890.1 and AS 2890.2, the Building Code of Australia and the Commonwealth Disability Discrimination Act.

Of these spaces, parking space(s) for persons with disabilities are to be provided in accordance with AS1428.1 and are to be located close to pedestrian entrances to the building.

46 **K Special (BLANK)**

Directional signage shall be provided indicating the location of staff and customer parking.

47 **K Special (BLANK)**

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

48 **K Special (BLANK)**

Prior to the issue of an Occupation Certificate, directional signage and line marking shall be provided indicating directional movements and the locations of emergency vehicle car parking spaces.

## Landscaping

49 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved plan and Chapter C6 Landscape Design of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plan, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

50 **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.

51 **L012 - Existing landscaping (for existing development)**

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

## Certification

52 **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.

## Operation of OSSM



53 **R101 - Operational Approval prior to use**

**Prior to the issue of a Construction Certificate**, an amended waste water report and effluent management area plan prepared by a duly qualified consultant is to be provided to Penrith City Council for approval. The amended waste water report is to be prepared in accordance with the relevant Australian Standards and guidelines. It is to provide alternative recommendations for the disposal of treated effluent from the childcare centre by surface spray irrigation on the land available to the South-West of the primary dwelling. The size of the irrigation area is to be based on a minimum waste water loading of 1040 litres/day.

The on-site sewage management (OSSM) system and effluent management area shall be installed and operated in accordance with the:

- “Environmental and Health Protection Guidelines On Site Sewage Management for Single Households”
- Australian Standards AS1547:2012,
- Council’s On-Site Sewage Management and Greywater Reuse Policy,
- Current (at the time of installation) NSW Health Accreditation documentation,
- The approved, amended Wastewater Report identified above,
- The approved, amended Effluent Management Area Plan identified above,
- And, the conditions of this consent.

**Prior to the issue of the ‘Approval to Operate’, a Commissioning Certificate for the OSSM system shall be provided to Penrith City Council for approval.** This Certificate shall certify that the aerated wastewater treatment system (AWTS) has been installed and is operating in accordance with the conditions of its NSW Health accreditation documentation.

**Prior to the issue of the Occupation Certificate and before the OSSM system can be used, an ‘Approval to Operate’ for the OSSM system is to be sought from and issued by Penrith City Council.**

54 **R102 - OSSM System Type and Disposal Area (all systems)**

All wastewater generated from the child care centre is to be diverted to an Econocycle and be disposed of by way of surface irrigation in the amended, approved effluent management area. The effluent management area is to be located in accordance with the amended, approved Effluent Management Area Plan as approved by Council prior to the issue of a Construction Certificate.

The system is to be utilised for a daily wastewater load of 1074 litres in accordance with Wastewater Report (prepared by Envirotech, dated 24/08/2018, REF-18-5918-A2).

Any dwelling approval on the site greater than this may require a new wastewater report for Council’s consideration.

55 **R103 - Council inspections for Installation**

Penrith City Council is both the consent authority and certifying authority for the installation of the On-Site Sewage Management System (OSSM). **It is your responsibility to contact Council’s Development Services Department to organise all inspections required for the installation of the system.**

In this regard, the septic tank(s) and disposal area(s) will need to be inspected on completion of the system’s installation (before backfilling occurs) and prior to its commissioning, to ensure compliance with those conditions specific to the installation of the system.

A copy of the satisfactory inspection reports carried out by Council shall be submitted to the Principal Certifying Authority if Council is not the Principal Certifying Authority.

56 **R104 - No alterations without approval**

The septic tank, drainage and irrigation lines and effluent management area shall not be altered without the prior approval of Council. In addition, the septic tank shall not be buried or covered.

57 **R105 - Plumbing Code of Australia**

All house drainage and sanitary plumbing shall be carried out in accordance with the requirements of the Plumbing and Drainage Act 2011 and the Plumbing Code of Australia.

58 [R106 - AWTS - Design of Irrigation System](#)

The design of the irrigation system for the effluent management area is to be such that:

- The distribution line is to be buried from the tank to the designated disposal area.
- The moveable irrigation line and sprinklers (including the plume from the sprinklers) situated within the disposal area can not exceed the designated boundaries of the disposal area.
- The treated wastewater can be evenly irrigated across the entire designated disposal area, **avoiding the drip line of native trees.**

59 [R107 - AWTS - Irrigation pipework \(surface or sub-surface\)](#)

All irrigation pipework and fittings shall comply with AS2698 "Plastic Pipes and Fittings for Irrigation and Rural Applications". In this regard:

- the irrigation system is not to be connected to/not capable of connection to the mains water supply,
- standard household fittings, soaker hoses, garden sprinklers and standard water hose fittings are not to be used,

For Surface Irrigation-

- all distribution lines of the irrigation system to any standpipe shall be buried to a minimum 100mm below finished surface level,
- spray irrigation equipment connected to distribution lines shall be fixed, and
- spray irrigation shall only use low pressure, low volume spray heads which are not capable of producing aerosols. The spray shall have a maximum plume height 400mm and a plume radius of not more than 2 metres.

60 [R109 - No effluent runoff](#)

There shall be no effluent runoff from the subject property to adjoining premises, public places or reserves.

61 [R110 - EMA Signage](#)

A minimum of two signs shall be erected within the effluent management area. These signs are to state "RECLAIMED EFFLUENT - NOT FOR DRINKING - AVOID CONTACT". The signage shall be maintained for the term of the development.



## 62 [R111 - AWTS Servicing](#)

The owner/occupier shall enter into an annual service contract with the manufacturer, distributor or other person authorised (in writing) by Penrith City Council to service the aerated septic tank(s) every three (3) months from the date of commissioning in the following manner:

i. A three monthly service shall include a check on all mechanical, electrical and functioning parts of the aerated system including:

- the chlorinator,
- replenishment of the disinfectant,
- all pumps and switches,
- the air blower, fan or air venturi,
- the alarm system,
- the effluent disposal area and irrigation spray outlets and filters,
- the slime growth on the filter media, and
- the operation of the sludge returns system.

ii. The following field tests are to be carried out at every service:

- free residual chlorine using DPD colorimetric or photometric method,
- pH from a sample taken from the irrigation chamber,
- dissolved oxygen from a sample taken from the final aeration or stilling chamber (although recommended) is optional.

iii. On the yearly anniversary date of the commissioning of the system, an annual service of the system shall also be carried out which includes a check on the sludge accumulation in the septic tank (primary treatment tank) and the clarifier, where appropriate.

iv. For systems which utilise the sewage treatment principle of activated sludge or contact aeration, a sludge bulking test, known as a SV30 Test, shall also be conducted on an annual basis. This test is to determine whether the accumulated sludge is bulking, indicating that the aeration compartment(s) will require desludging.

v. On completion of each service, a service report sheet is to specify all service items and test results, the amount of chlorine compound provided, parts replaced (if applicable), the date the service was conducted and the technician's name. A copy of the service report is to be:

- given to the property owner and another to the applicant (if not the same), and
- forwarded to Penrith City Council.

Each service agent shall provide a registered business office which, if unattended during business hours, is provided with a telephone answering device or service. A means of reporting a malfunction or breakdown outside normal business hours shall be available. In the event of a breakdown or malfunction, the service agent shall, within 24 hours of the breakdown or malfunction, ensure that temporary repairs are carried out to the aerated system to ensure continued operation of the system. This may necessitate provision of adequate spare parts and temporary replacement blowers and irrigation pumps where repairs cannot be completed on site.

## 63 [R113 - Decommission old system](#)

The contents of the existing greywater tank which services the primary dwelling are to be removed by a licensed waste contractor and deposited to an approved waste facility. The disconnected greywater tank shall be removed, demolished or filled with clean soil and garden lime. Documentation of the collection and disposal of waste are to be retained and provided to Council on request.

## 64 [R114 - EMA Turfed](#)

The effluent management area is to be turfed to the satisfaction of Council. Where a specific variety of turf is identified in the approved Wastewater Report that variety is to be installed and maintained.

## 65 [R115 - No structures on EMA](#)

No concreting, driveways, vehicles or any other structure or access way is to be located over any portion of the effluent management area.

## 66 [R117 - No plants for human consumption within EMA](#)

Orchards, vegetable gardens or any other plant species that can be used for the purposes of human consumption are not to be planted within the effluent management area. Effluent from the on-site sewage management system is not to be used on fruit or vegetables grown for human consumption.

## 67 [R118 - EMA protected from stock damage](#)

The effluent management area shall be protected from possible stock damage.

68 [R119 - Wastewater and Native Trees](#)

No wastewater associated with the on-site sewage management system is to be applied or irrigated within the drip line of any native trees within the effluent management area.

It is the responsibility of the applicant to ensure the ongoing health of the trees in relation to the effluent management area.

69 [R128 - Swimming pool back wash](#)

At no time is the swimming pool back wash to be directed to the on-site sewage management system.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C3 Water Management

An objective of this Chapter is to reduce the impact of flooding and flood liability on individual owners and occupiers.

In this instance, the rear north-west corner of the subject site is identified as affected by the flood planning area. Review of the flood mapping by Council's Development Engineers revealed that there are no overland flows affecting the property. As the application is for change of use with minor alterations to the existing child care centre, the Development Engineering team have no objections to the proposal.

#### C10 Transport, Access and Parking

An objective of this Chapter is to ensure the provision of an appropriate number of vehicular spaces having regard to the activities present and proposed on the land, the nature of the locality and the intensity of the use.

Table C10.2: Car Parking Rates requires child care centres to provide 1 space per 10 children plus 1 per employee plus provision for any dwelling. The proposal includes a change of use from home-based child care to a child care centre that caters for 22 children, managed by 4 staff members. Considering the existing dual occupancy on site already has its required parking spaces allocated separately to the child care centre, a requirement of 6 spaces minimum is required for the proposed child care centre.

The car parking plan has been amended in red to ensure the provision of 6 parking spaces, including 1 disabled parking space, in addition to separate pedestrian access ways and crossing for safe entry into the child care centre.

As such, the proposed parking and accessibility for the subject site and its proposed land use(s) satisfies the requirements of Chapter C10.

#### C12 Noise and Vibration

An objective of this Chapter is to maintain the acoustical amenity of rural properties by controlling noise emissions from rural (and other) development.

An acoustic report prepared by PKA Acoustic Consulting supported the application which gave consideration to appropriate guideline documents and adequately addressed all potential noise sources associated with the proposed development. To manage potential noise impacts associated with the car park, recommendation is made for vehicular movements in the carpark to be limited to fifteen per 15 minute period to achieve compliance. This equates to approximately 7 drop-offs or pick-ups during this period, and has been included in the Operational Plan of Management. Given the low likelihood of occurrence with the size of the centre proposed, the proposal is expected to have a minimum impact on neighbouring properties.

Subject to recommended conditions of consent, the proposal satisfies the requirements of Chapter C12.

#### C13 Infrastructure and Services

An objective of this Chapter is to protect local community amenity by endorsing On-site Sewage Management systems (OSSM) that do not unreasonably interfere with the quality of life of all inhabitants, and where possible add to local amenity.

The subject site is located within a rural-residential area within Berkshire Park. As such, wastewater is managed independently on site by an OSSM system. The existing OSSM system is an Aerated Waste Treatment System (AWTS) which irrigates by surface spray towards the rear of the premises in accordance with the approved site plan located under DA04/2701. Both dwellings are connected to the existing AWTS. A inspection

conducted at the subject site identified a separate septic tank located near the swimming pool which irrigates grey water from the laundry into the front yard. On un-sewered premises, grey water can be disposed of within the garden through a greywater diversion device or grey water treatment device. Greywater diversion devices are required to dispose of untreated greywater by subsurface irrigation. All grey water diversion devices require an approval from Council. A search of Councils records shows that an approval has not been issued for the grey water diversion device on the property. The method of disposal does not comply with Councils Onsite Sewage Management & Greywater Reuse Policy (2014). However, this matter is recommended to be addressed through conditions of consent.

Regarding the AWTS, it does not have the capacity to accommodate the increase in wastewater flow expected by the proposed child care centre. Accordingly, an amended wastewater report was requested for the applicant to propose an alternate OSSM system that has capacity for the proposed development.

An amended waste water report was provided that gave suitable recommendations for the proposal, proposing the use of 2 AWTS's. This includes the retention of the existing AWTS for the dual occupancy which disposes of treated effluent by a single absorption bed/trench. The absorption bed is designed on a flow rate of 1650L/day and a DLR of 50mm/day. The data used is suitable for the development and soil profile. The absorption bed is 33m<sup>2</sup> (3m x 11m). It is not considered necessary to install a new effluent disposal area for the dual occupancy as the existing system has approval under DA01/2275.

The applicant requested that the treated effluent from the childcare centre be disposed of by surface spray irrigation. There is sufficient land available in the front yard for the disposal of treated effluent from the child care centre. It is recommended that an amended waste water report is provided to Council prior to the issue of a Construction Certificate to address this component.

## **D5 Other Land Uses**

### **D5.2 Child Care Centres**

#### **Location**

Assessment of the proposal, and the subject site, has confirmed the followings aspects:

- The site does not rely on direct access from, nor is it located on, a designated road.
- Access to the site is not located in a cul-de-sac or at an intersection. Referral to Council's Traffic team has identified that the expected additional traffic generated by this development can be adequately accommodated within the surrounding road network.
- The site is not located on land within 85m radius of an existing or approved service station, or on land that has an existing/approved flammable storage area.
- The site is not located near an existing and lawful sex service premises and/or restricted premises.
- The site does not include an electricity transmission easement, mobile phone tower or similar, nor is it land immediately adjacent to those structures (i.e. within 500m).
- The proposed child care centre is not located on land below the flood planning level or on land that cannot be safely evacuated during the 1:100 ARI flood event, as confirmed by Council's Development Engineers.

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

Regarding design, scale and site frontage, the proposal achieves the following aspects:

- The scale and character of the development is compatible with surrounding development.
- The design of the child care centre has taken into account nearby traffic generators and the existing streetscape.
- The site has a sufficient area to accommodate the child care centre, including all required associated parking and traffic manoeuvring areas.
- The site has a frontage of 80m, which ensures the safe operation of car parking areas and neighbour amenity.
- Safe sight distances have been demonstrated for all points of access to the site.

### **Built Form**

The built form of the proposed child care centre achieves the following aspects:

- A condition of consent is recommended to ensure any proposed alterations are purpose designed and built to satisfy the requirements of the NSW Department of Community Services.
- The building destined for the proposed child care centre is considered sympathetic to adjoining development in terms of height, bulk and scale.
- The external façade of the centre incorporates building materials and colours that complement adjoining structures and development. A condition of consent is recommended to ensure bright and garish colours are not to be utilised on external facades.
- The child care centre is located at ground level, which provides ease of access for parents and caregivers to drop-off/pick-up children. It also maximises the availability of outdoor play space and associated areas.

### **Vehicle Access, Circulation and Parking**

The proposed vehicular access, circulation and parking areas for the subject site achieve the following aspects:

- The vehicle circulation and car parking areas on site, as depicted on the site plan amended in red, are designed to allow safe drop-off and collection of children and also provide the safe movement and parking for staff, parents, visitors and service vehicles (as required). The area provided allows for all vehicles to enter and exit the site in a forward direction.
- The access point to the site is not located anywhere near a road intersection, with the closest intersection being located approximately 245m south-east of the subject site.
- Sufficient space is afforded to the parking area to allow safe access for service and emergency vehicles, such as ambulances, delivery and maintenance vehicles.

### **Noise**

The following considerations have been made regarding the mitigation and management of noise from the proposed child care centre, as follows:

- A noise impact assessment was made by the applicant, which considered surrounding land uses and the potential for the child care centre to impact, and be impacted by the local vicinity. The noise assessment report was assessed by Council's Environment team who had no objections subject to conditions.
- The design and location of the centre's outside playing areas minimises noise impacts to adjacent properties, with other structures and vegetation screening to each elevation. Outdoor playing areas are well separated from boundary fencing, by 40m to the north boundary and 20m to the south. Noise impact consideration was not addressed by the applicant for the front dwelling on the site. However, considering the child care centre is operated and supported by the owners of this dwelling, no issues of acoustic amenity is expected in this regard.
- A home-based child care currently operates from the subject site, which has received no complaints since it began operation at the subject site. The proposal was also notified to adjoining lots, with no submissions received in response.

### **Shade**

- An appropriate provision of safe shading is afforded to outdoor play areas and transition areas (between indoor and outdoor areas).
- A condition is recommended that all shade structures comply with AS/NZS 4486.1, and to ensure that any shade structure does not have footholds or grip surfaces that allow for climbing.

### **Private Dwelling**

- Parking for the front dwelling, which is in close proximity to the proposed child care centre, is to remain separate from the dedicated child care centre parking, as conditioned.
- The nearby swimming pool associated with the front dwelling must remain securely fenced (in accordance with the requirements of the Swimming Pool Act 1992) to prohibit access to the children in care.

