

Assessment report to Sydney Central City Planning Panel

Panel reference: PPSSCC-379

Development application

DA number	SPP-22-00003	Date of lodgement	24 March 2022
Applicant	Mr Stephen Sammut, on behalf of Nayak Investments Pty Ltd		
Owner	Nima Abdi and Nilofar Abdi		
Proposed development	Subdivision into 1 superlot and road with the construction of a part 1/part 2-storey building and its use as a 110-place childcare centre and medical centre with basement parking and business identification signage on proposed lot 1.		
Street address	143 Kensington Park Road, Riverstone		
Notification period	4 to 18 May 2022	Number of submissions	1

Assessment

Panel criteria Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021	<ul style="list-style-type: none"> Development for private infrastructure and community facilities (including child care centres and health services facilities) with a Capital Investment Value > \$5M is regionally significant development.
Relevant section 4.15(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy (Precincts - Central River City) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Blacktown City Council Growth Centre Precincts Development Control Plan 2010 Central City District Plan 2018 Blacktown Local Strategic Planning Statement 2020
Report prepared by	Tim Moore, Planning Consultant
Report date	16 September 2022
Recommendation	Approve, subject to conditions listed at attachment 8.

Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Detailed information about proposal and DA submission material
- 5 Development application plans
- 6 Assessment against planning controls
- 7 Issues raised by the public
- 8 Draft conditions of consent

Checklist

Summary of section 4.15 matters

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive summary of the Assessment report? Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments, where the consent authority must be satisfied about a particular matter, been listed and relevant recommendations summarised in the Executive Summary of the Assessment report? Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the Assessment report? Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (section 7.24)? Yes

Conditions

Have draft conditions been provided to the applicant for comment? Yes

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1 Executive summary

- 1.1 The key issues that need to be considered by the Panel in respect of this application are:
- The development proposes a centre-based child care facility and medical centre with shared basement car parking. Concern was initially raised in regard to the permissibility of the proposed development, which presents as mixed use development. Mixed use development is not listed as a permissible use in the relevant zone. However, it is confirmed that in any zone, a combination of permissible uses can be permitted on a site without listing mixed use development as a permissible use. On this basis, the proposed development is permitted with consent in the zone.
 - The applicant proposes a basement car park for the child care centre which is a variation to the requirement in the Blacktown City Council Growth Centre Precincts Development Control Plan 2010 which discourages basement parking for child care centre. This variation is supported in consideration of the NSW Department of Planning and Environment's Child Care Planning Guideline 2017 which supports basement parking, subject to design requirements.
 - The applicant proposes a non-compliance with the development control plan provisions relating to childcare capacity and location. The proposed 110 place centre is compatible with the scale and character of the residential locality and is supported given there is sufficient site area to still meet Council's requirements. The location is also acceptable as the proposed frontage to a classified road and cul-de-sac is supported as there is no vehicular or direct pedestrian access to the site from the classified road.
 - Waste collection from the basement will be undertaken by a private waste contractor in an appropriately sized vehicle and at an appropriate time of day to minimise disturbance to residential amenity and avoid conflict with peak operation times for the child care centre and medical centre.
 - The removal of approximately 20 trees with a height of more than 3.5m will be necessary to accommodate the proposed building. The site benefits from biodiversity certification under Part 8 of the Biodiversity Conservation Act 2016. Proposed landscaping will include deep soil planting of canopy shade trees within the setbacks along the northern boundary and Talland Street frontage, as well as large variety Banksia on part of the Kensington Park Road frontage are included in the landscape design.
 - Potential privacy and noise impacts resulting from the childcare centre will be mitigated through its design. The child care play spaces will be located centrally within the site above the basement levels. A single storey perimeter building is proposed along the residential interfaces which will provide separation from and will mitigate any potential privacy and noise issues for the adjacent dwellings. With no deep soil in the outdoor childcare play space above the basement levels, the play area will rely on raised planter boxes for trees and smaller vegetation which will provide shading for parts of the outdoor play space.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by our technical departments have not identified any issues of concern that cannot be dealt with by conditions of consent.
- 1.3 The application is therefore satisfactory when evaluated against Section 4.15 of the Environmental Planning and Assessment Act 1979.
- 1.4 This report recommends that the Panel approve the application subject to the recommended conditions listed in attachment 8.

2 Location

- 2.1 The site is within the North West Growth Area, which is rapidly transitioning from rural residential to urban. Within this urban context, the immediate location is predominantly low-density housing comprising 2-storey dwellings and town houses.
- 2.2 The site is approximately 3.5 km via road from Tallawong Metro Station to the south-east and a similar distance from both Schofields Train Station to the south-west and Riverstone Train Station in the north-west.
- 2.3 The site is a relatively large holding in comparison to adjacent residential lots. It is on the northern side of Kensington Park Road, adjacent to a new roundabout at the T-intersection with Boundary Road. Kensington Park Road is a collector road carrying traffic between Richmond Road to the west and Schofields Road to the south.
- 2.4 The open space around First Ponds Creek riparian corridor is 500 m to the east along Kensington Park Road.
- 2.5 Adjacent to the site are residential developments at:
 - 61 Grandeur Parade, comprising 67 dwellings fronting Grandeur Parade (adjacent to the site's northern boundary)
 - 137 Kensington Park Road, comprising 43 dwellings (adjacent to the site's western boundary)
 - 147 Boundary Road, Tallawong, currently undeveloped and opposite the site on Kensington Park Road.
- 2.6 There are several approved and proposed childcare centres within Riverstone/Schofields area but none are close to the subject site.
- 2.7 The location of the site is shown at attachment 1.

3 Site description

- 3.1 The legal description for the land is Lot 9 DP 1232418.
- 3.2 The site's southern boundary is the curved frontage to Kensington Park Road, at the location of the recently constructed roundabout at the intersection with Boundary Road.
- 3.3 The site's eastern boundary adjoins Talland Street, a cul-de-sac that extends south from Grandeur Parade.
- 3.4 A proposed boundary adjustment will see the dedication of the unfinished portion of land to complete the cul-de-sac turning head.
- 3.5 Apart from the curved forms on the street frontages, the site is generally rectangular in shape with a total area of 2,499 m² (excluding the land dedicated for the cul-de-sac) with dimensions:
 - 52.0 m along the northern boundary
 - 51.7 m along the western boundary
 - 59.8 m along the eastern boundary fronting Talland Street
 - 57.6 m to the southern boundary fronting Kensington Park Road.
- 3.6 The site is vacant and contains approximately 20 native trees over 3.5 m in height, which are generally concentrated toward the site's northern and eastern boundaries.
- 3.7 The site has a fall of around 3 m from the north-west corner to the south-east corner on Kensington Park Road.

3.8 An aerial image of the site and surrounding area is at attachment 2.

4 Background

4.1 A pre-lodgement meeting was not held in relation to the proposed development.

4.2 The site is zoned R2 Low Density Residential under Appendix 7 of State Environmental Planning Policy (Precincts - Central River City) 2021.

4.3 A Childcare centre is permissible with consent in the R2 Low Density Residential zone pursuant to the land use table in Appendix 7 of State Environmental Planning Policy (Precincts - Central River City) 2021. The proposed medical centre is also permissible pursuant to the State Environmental Planning Policy (Transport and Infrastructure) 2021, as follows:

- Clause 2.60 of State Environmental Planning Policy (Transport and Infrastructure) 2021 allows development for the purposes of health services facilities to be carried out by any person with consent in a prescribed zone.
- Clause 2.26 includes the R2 Low Density Residential zone as a prescribed zone.
- The definition of a health services facility includes, among other things, a medical centre.
- The proposed medical centre is appropriately characterised in line with the standard instrument definition of medical centre.

Therefore the proposed mixed-use childcare centre and medical centre is permissible with development consent.

4.4 The current proposal has been revised on several occasions. Additional information to address our written requests dated 5 May 2022, 13 May 2022, 14 June 2022, 4 July 2022, 11 July 2022, 21 July 2022, 23 August 2022, and 30 August 2022. Outstanding information was followed up with the applicant on 5 August 2022, 9 August 2022, 22 August 2022, and 30 September 2022. Extension of time to provide additional information was requested by the applicant and granted on 21 July 2022.

The issues raised relate to the following:

- Drainage matters.
- Environmental health matters relating to acoustic and contamination issues.
- Permissibility of use.
- Submission of objection raising concern with overdevelopment and traffic generation.
- Compliance with Blacktown City Council Growth Centre Precincts Development Control Plan controls, including locational and design requirements, setback distances, and landscaped area.
- Provision of deep soil zones and canopy shade trees.
- 3D modelling to show to proposed building in the context of adjacent residential development and views from the building from both street frontages.
- Compliance with State Environmental Planning Policy (Transport and Infrastructure) 2021 provisions, including floor space ratio for child care centre.
- Clarification on area of encumbered outdoor play space, excluding landscaping, for the child care centre.
- Clarification on medical centre use, including use of floors and rooms, maximum number of staff, and the nature of health and medical services to be provided.

- Waste storage and collection.
- 4.5 The current proposal has been developed in accordance with the amendments and additional information provided by the applicant to address our written requests. The most recent architectural plans are Revision B dated 1 August 2022 and landscape plans are Revision C dated 31 August 2022 submitted on 7 September 2022. This report is based on these amended plans.
- 4.6 The zoning plan for the site and surrounds is at attachment 3.

5 The proposal

- 5.1 The development application has been lodged by Mr Stephen Sammut, on behalf of Nayak Investments Pty Ltd.
- 5.2 The applicant proposes:
- A subdivision into 1 superlot and road - this will involve the civil construction of the incomplete cul-de-sac turning head and the dedication of this remaining part of Talland Street to Council free of cost
 - removal of all vegetation from the site
 - excavation to provide 2 basement levels for parking and servicing
 - construction of a new part 1/part 2-storey building comprising 2 separate buildings over a shared basement car park.
 - use of the building as a childcare centre with a capacity for 110 children and a medical centre with 9 staff servicing 7 consulting rooms
 - associated business identification signage.
- 5.3 Other details about the proposal are at attachment 4 and a copy of the proposed development drawings and subdivision plan are at attachment 5.

6 Assessment against planning controls

- 6.1 A full assessment of the development application against relevant planning controls is provided at attachment 6, including:
- Environmental Planning and Assessment Act 1979
 - State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - State Environmental Planning Policy (Planning Systems) 2021
 - State Environmental Planning Policy (Precincts - Central River City) 2021
 - State Environmental Planning Policy (Resilience and Hazards) 2021
 - State Environmental Planning Policy (Transport and Infrastructure) 2021
 - Blacktown City Council Growth Centre Precincts Development Control Plan 2010
 - Blacktown Local Strategic Planning Statement 2020
 - Central City District Plan 2018.

7 Issues raised by the public

- 7.1 The proposed development was notified to 140 property owners and occupiers in the locality between 4 and 18 May 2022. The development application was also advertised in the local newspapers and a sign was erected on the site.

- 7.2 In response we received 1 submission from a "neighbouring resident". The property address of the submitter was not provided.
- 7.3 The issues raised by the resident relate to the capacity of the local street network to support traffic generated by the proposed development. A summary of the issue and our response is at attachment 7.
- 7.4 The issues raised in the objection are not considered sufficient to warrant refusal of the development application.

8 Key issues

8.1 Permissibility of proposed development

- 8.1.1 The development proposes a centre-based child care facility and medical centre with shared basement car parking. We initially raised concern in regard to the permissibility of the proposed development which appears to be consistent with the definition of 'mixed use development'. Mixed use development is not listed as a permissible use in Zone R2 Low Density Residential under Appendix 7 Alex Avenue and Riverstone Precinct Plan 2010 of State Environmental Planning Policy (Precincts—Central River City) 2021.
- 8.1.2 However, a review of the Department's Planning Circular dated 26 March 2007 confirms that in any zone, a combination of permissible uses can be permitted on a site without listing mixed use development as a permissible use. The land uses, centre-based child care facility and medical centre are both separately defined land uses which are permitted with consent in Zone R2 Low Density Residential. On this basis, it is considered that the proposed development is permitted with consent in the zone.

8.2 Variation to the development control plan for basement parking is supported

- 8.2.1 Section 4.4.2.3 of the Blacktown City Council Precincts Development Control Plan 2010 (Growth Centre Precincts DCP 2010) includes controls in relation to access and parking for childcare centres.
- 8.2.2 The controls state that basement parking is not permitted in the R2 Low Density Residential zone.
- 8.2.3 The proposed basement parking is considered appropriate in this case for the following reasons:
- Section 3.8 Traffic, Parking and Pedestrian Circulation, of the NSW Planning and Environment's Child Care Planning Guideline 2017 supports basement car parking, subject to design requirements regarding the location of car park entries, their integration with the design of the building and by minimising their visual prominence.
 - The Blacktown Development Control Plan 2015 supports basement car parking for child care centres.
 - The child care centre control discouraging basement car parks was included as part of amendment to the Growth Centre Precincts DCP 2010 in December 2017. The Department of Planning and Environment has previously advised that the intent of the amendments was to ensure greater consistency with Blacktown Development Control Plan 2015 and that that the wording is an error. It should have read 'basement car parks are permitted'.
- 8.2.4 Access to the premises is via Talland Street, a cul-de-sac which will serve as the primary frontage for the proposed mixed-use development. No other properties have a sole frontage to this portion of Talland Street and the local street network

can support traffic movements to the site. Our traffic engineers support the findings of the submitted traffic impact assessment and consider traffic generation to be within acceptable limits.

- 8.2.5 The proposed car park entry is located to minimise visual intrusion within the street frontage setback and, in this location, it will avoid potential impacts for surrounding residential development.
- 8.2.6 The proposed basement parking is appropriate for the management of parking and servicing on the site, preventing large areas of hard stand parking that would be at odds with the residential character of the area.
- 8.2.7 The updated landscape plan includes canopy shade trees adjacent the car park entry and along the frontage to Talland Street, minimising the visibility of the basement entry in a landscaped setting.
- 8.2.8 An amended plan of management is required as a condition of consent. This plan is to include detail about how the basement car parking arrangements will operate. All visitors and staff who drive to the child care centre must park in the basement and enter the centre through the basement lifts only. Only customers who walk to the centre will be allowed to gain access through the front door at street level. The same will be applied to the medical centre. This will also be included as conditions of consent.

8.3 Non-compliance with development control plan provisions relating to childcare capacity and location are supported

- 8.3.1 Clause 4.4.2.3 of the Blacktown City Council Growth Centre Precincts Development Control Plan 2010 specifies a maximum childcare centre capacity of 40 child places. This is inconsistent with the State Environmental Planning Policy (Transport and Infrastructure) 2021 which does not require any maximum limit on childcare centre capacity.
- 8.3.2 The proposed 110 place centre is assessed as compatible with the scale and character of the residential locality and is supported for the following reasons:
 - The site area and location with 2 street frontages can support the scale of the operation.
 - The basement level provides for adequate parking and space for servicing, including waste handling and collection.
 - The site has 2 common boundaries with adjacent residential uses which achieve or exceed the minimum setback distances and incorporate deep soil for landscaping combining screen planting and larger canopy trees.
 - The design approach includes a single storey perimeter building along the residential interfaces, providing for the internalisation and centralisation of the outdoor child play spaces.
 - Noise impacts based on predicted noise emissions are assessed as compliant with the relevant criteria. Potential noise and other amenity issues to adjacent residential development are attenuated and mitigated with the proposed design for a perimeter building with acoustic treatment to boundary fences and an acoustic barrier enclosing the centralised open play spaces.
 - Enforceable conditions of consent will ensure any potential impacts are controlled and mitigated.
- 8.3.3 Clause 4.4.2.4 - Site Selection and Location specifies that child care centres are not appropriate on land with a direct frontage to a classified road and on roads that end in a cul-de-sac.

8.3.4 Kensington Park Road is a classified road and Talland Street is a cul-de-sac, however, the proposal is considered acceptable for the following reasons:

- The centre has no direct vehicle or pedestrian access from the Kensington Park Road classified road.
- An acoustic barrier is proposed to be erected to attenuate road traffic noise generated on the classified road.
- This part of Talland Street is less than 50 m in length and effectively provides exclusive access to the subject site. Although the adjacent land is being developed for residential purposes, it has frontage to Grandeur Parade and Kensington Park Road and it is not likely to require access from the cul-de-sac in the future. Talland Street is therefore suited to providing both vehicle and pedestrian access to the proposed child care centre.

8.3.5 The subject site is suited to the scale of the proposed operation and the design approach will ensure an appropriate fit with the character of the low-density residential area and adequate separation from adjacent dwellings.

8.4 Waste collection will be satisfactory

8.4.1 Waste collection is proposed to be undertaken by a private waste contractor. A 6.35 m small rigid, rear loading vehicle with a maximum height of 2.08 m is proposed to undertake collection outside of peak hours.

8.4.2 All waste collection will occur within the basement level to assist with noise attenuation and prevent disturbance to surrounding residential development.

8.4.3 A revised Waste Management Plan dated August 2022 and revised Traffic Impact Assessment dated August 2022 confirms that the specified 6.35 m waste collection vehicle will be able to enter and leave in a forward direction and there will be sufficient space to accommodate the vehicle with rear loading. The space designated for waste storage and handling for each of the proposed uses has been appropriately sized and configured.

8.4.4 A condition of consent is recommended to ensure waste collection only occurs at times that do not conflict with the peak operating times of the child care centre and medical centre and at times consistent with Council's waste collection activities in the surrounding residential area.

8.5 The removal of existing mature trees will be offset by onsite and offsite tree planting

8.5.1 The survey plan indicates that the proposal will involve the removal of 20 trees with a height of more than 3.5 m.

8.5.2 The application notes that the site benefits from biodiversity certification under Part 8 of the Biodiversity Conservation Act 2016.

8.5.3 In response to our concern on the limited amount of canopy and related heat load and amenity impacts for future child population and the contextual fit of the proposed development with surrounding low density residential development, the applicant submitted amended plans dated 8 August 2022.

8.5.4 The total landscaped area has been increased to 765 m², equivalent to 30.6% of the site area. A widened 3 m setback on the northern boundary will now provide some deep soil zone to support mature tree growth. A total of 7 native quandong trees along this boundary will provide some shading and cooling from summer heat without creating potential negative winter overshadowing impacts for the adjacent residential dwellings. Stenocarpus (Firewheel) trees on the Talland Street

frontage will anchor the development in a landscape setting and provide shade for the entrance to the site.

- 8.5.5 The proposed revised landscape plan is considered acceptable and the inclusion of space for shade canopy trees will help offset the loss of existing trees as well as the street trees required to be planted by the applicant.

8.6 The childcare play spaces are located centrally in the site above the basement levels

- 8.6.1 In this location the proposed perimeter building provides separation from, and mitigates potential privacy and noise issues for, adjacent dwellings. With no deep soil in this specific area, this open space relies on planter boxes for trees and smaller vegetation.
- 8.6.2 The revised landscape plan provides a mixture of Water Gum and Avocado trees (7 trees in total) within raised planter boxes, which will provide shading for parts of the outdoor play space.

8.7 The site has a low potential for contamination

- 8.7.1 Our Environmental Health Unit has reviewed the submitted technical studies, which validate soil quality and a Preliminary Site Investigation dated 22 November 2021. The potential for significant contamination of soil and groundwater is low and the site is suitable for the proposed use, subject to condition of consent.

9 External referrals

- 9.1 The development application was not required to be referred to any external authorities for comment.

10 Internal referrals

- 10.1 The development application was referred to the following internal sections of Council for comment:

Section	Comments
Building	Acceptable subject to conditions provided
Engineering	Acceptable subject to conditions provided
Traffic	Acceptable subject to conditions provided
Drainage	Acceptable subject to conditions provided
Waste	No comments on the proposal subject to planning assessment against waste criteria provided
Environmental Health Unit	Acceptable subject to conditions provided
Open Space	Acceptable subject to conditions provided

11 Conclusion

- 11.1 The proposed development has been assessed against all relevant matters and is satisfactory. It is considered that the likely impacts of the development have been addressed and that the proposal is in the public interest. The site is considered suitable for the proposed development subject to conditions.

12 Recommendation

- 1 Approve Development Application SPP-22-0003 for the reasons listed below, and subject to the conditions listed at attachment 8.
 - a The proposal results in an acceptable scale of development for the site and generally complies with the relevant provisions of the applicable planning controls. The site is suitable for the development. [Section 4.15 (c) of the Environmental Planning and Assessment Act 1979]
 - b The proposed development will not create an adverse environmental impact on existing or future potential adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy impacts. [Section 4.15 (b) of the Environmental Planning and Assessment Act 1979]
 - c The proposal is in the public interest. [Section 4.15 (e) of the Environmental Planning and Assessment Act 1979]
- 2 Council officers notify the applicant and submitter of the Panel's decision.



Per

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