

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-644
DA Number	eDA0255/25
LGA	Ku-ring-gai
Proposed Development	Demolition of existing buildings, construction of a 120 place child-care centre and associated works.
Street Address	4B and 8 Charlton Avenue, Turramurra
Applicant/Owner	Aremade Architectural Pty Ltd for Sydney North Shore Investment Pty Ltd
Date of DA lodgement	29 May 2025
Total number of Submissions	52
Number of Unique Objections	>10
Recommendation	Refusal
Regional Development Criteria (Schedule 1 of the SEPP (Planning Systems) 2021)	Estimated development cost of greater than \$5 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Act 1979 Environmental Planning & Assessment Regulation 2021 SEPP (Biodiversity & Conservation) 2021 - Chapters 2 and 9 SEPP (Transport and Infrastructure) 2021 – Chapter 3 Educational establishments and child-care facilities SEPP (Resilience and Hazards) 2021 SEPP (Sustainable Buildings) 2022 Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) Ku-ring-gai Development Control Plan (KDCP) Ku-ring-gai Contributions Plan 2023 Education and Care Services National Regulations (“National Regulations”) Child-care planning guideline (Sept 2021)
Attachments	<ul style="list-style-type: none"> Attachment A1 Development Assessment Report Attachment A2 Location sketch 2025/353932 Attachment A3 Zoning extract 2025/353933 Attachment A4 Preliminary Assessment Letter 2025/276700 Attachment A5 Amended Architectural plans 2025/377919 Attachment A6 Amended Landscape plans 2025/310526 Attachment A7 Amended stormwater plans 2025/309039 Attachment A8 Architectural summary of changes 2025/309041 Attachment A9 Cover letter about FSR 2025/309040 Attachment A10 Amended traffic and parking report 2025/309038 Attachment A11 Plan of Management 2025/350800 Attachment A12 Submitted Survey Plan 2025/159548

Clause 4.6 requests	Nil
Summary of key submissions	<ul style="list-style-type: none"> streetscape character uncharacteristic built form not compatible within low density residential area building height inadequate information to satisfy acoustic impacts landscape design loss of trees setback non-compliances
Report prepared by	Phillip Johnston
Report date	27 November 2025

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 summarized, 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 (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

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

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

PURPOSE OF REPORT

To determine Development Application No. eDA0255/25 for demolition of existing buildings, construction of a 120 place child-care centre and associated works at 4B and 8 Charlton Avenue, Turramurra.

This application is reported to the Sydney North Planning Panel for determination in accordance with the Minister's Section 9.1 Local Planning Panels Direction as it is a community facility with an estimated development cost of over \$5 million per Schedule 6 of SEPP (Planning Systems) 2021.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.	Applications are assessed in accordance with state and local plans.	Assessments are of a high quality, accurate and consider all relevant legislative requirements.

EXECUTIVE SUMMARY

Issues	Streetscape character Uncharacteristic built form Not compatible within low density residential area Inadequate information to satisfy acoustic impacts Landscape design Tree impacts Setback non-compliances
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Submissions	52
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Land and Environment Court	N/A
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Recommendation	Refusal
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HISTORY

Site history

The site has a history of residential use.

Previous applications history

On 1/12/2022 a Pre-DA consultation, under PRE0121/22 for a centre based childcare facility for 142 children was undertaken with Council and completed on 6 October 2022. The following key issues were identified:

1. site suitability
2. insufficient outdoor play space
3. acoustic impacts to adjacent residential properties
4. visual privacy impacts to adjoining residential properties
5. tree impacts from the proposed basement
6. conflict between the required driveway gradients and significant trees
7. legal terms of easement
8. kitchen design and supervision
9. provision of equitable access

No Pre-DA consultation was held for the current application (eDA0255/25).

Current Development Application History

Date	Action
29 May 2025	Application lodged.
3 June 2025	The applicant is requested to submit a BCA Report.
12 June 2025	The application was notified to neighbouring property owners for a period of 30 days. Thirty-one submissions were received including 1 petition containing over 500 signatories.
1 July 2025	A BCA Report and BCA Capability Statement were submitted.
15 August 2025	The applicant was updated about the assessment process, which is acknowledged later that day.
26 August 2025	Council sent a request for further information (RFI) to the applicant (Attachment A4). The following issues were identified: <ol style="list-style-type: none">i. noise reportii. water managementiii. vehicle access and parkingiv. construction management planv. landscapevi. site analysis planvii. visual characterviii. floor space ratio (FSR)ix. building setbacks

2 September 2025	Council staff meet with the applicant to discuss the issues raised in Council's RFI letter.
5 September 2025	The applicant is requested to provide an update on the response to Council's RFI.
19 September 2025	<p>The applicant submits additional information, which includes:</p> <ul style="list-style-type: none"> an architectural summary of changes letter (Attachment A8) a consultant's letter addressing FSR Attachment (A9) amended architectural plans an amended landscape plan (Attachment A6) an amended traffic and parking report (Attachment A10) <p>The amended plans included the following changes to the proposal:</p> <ul style="list-style-type: none"> reduction of child numbers from 140 to 120 deletion of above ground front car park area reduction in building heights part reduction in 3-storey appearance a reduction of indoor and outdoor play areas outdoor play area 6 removed from rear of the first floor relocated driveway centrally within site with stepped side (retaining) walls relocated pedestrian walkway from the northern side boundary to provide additional landscaping staggered front building setbacks modified building footprints modified front façade resulting from the modified driveway and reduction of child numbers rooftop air conditioning condensers enclosed
7 October 2025	The amended application was notified to neighbouring property owners for a period of 14 days. Eleven submissions were received.
20 October 2025	Council receives a Plan of Management for the child care facility (Attachment A11).
7 November 2025	The applicant is requested via email to address the height of the lift overrun which was assessed as exceeding the maximum of 9.5 metres by 290mm.
11 November 2025	Amended plans reducing the height of the lift overrun were submitted (Attachment A5).

Land and Environment Court appeal history

Not applicable.

THE SITE



Figure 1: showing aerial photograph of site (highlighted in red) and surrounding locality (source: Councils mapping)

Site description

The subject site, comprising two allotments, is legally described as Lot 1 in DP 120024 and Lot 5 in DP 734952 and are known as 4B and 8 Charlton Avenue, Turramurra respectively. As shown within **Figure 1** and **Attachment A2**, 4B Charlton Avenue is land locked being situated at the rear of the site resulting from subdivision approval DA0475/20. The site has an irregular shape, with a frontage of approximately 35.05 metres to Charlton Avenue inclusive of a 4.57 metres wide right of carriageway (R.O.C.), a northern side boundary measuring 80.62 metres, a western (rear) boundary measuring approximately 53.98 metres, southern side boundaries, in the form of a 'dog leg', measuring approximately 36.28 metres, 23.47 metres and 45.55 metres. Having a site area measuring approximately 3348.3m², the site falls from the rear of the site to its frontage (Charlton Avenue) by approximately 8.8 metres.

The site currently accommodates what predominantly presents as a two-storey dwelling house that is screened by vegetation (**Figures 2** and **3**). The site is accessed by two driveways - a stand-alone driveway to 8 Charlton Avenue and a R.O.C. The R.O.C. services 6 Charlton Avenue and the rear of 8 Charlton Avenue. An elevated deck is situated to the northern and eastern facades of the dwelling. The site contains an inground swimming pool situated at the rear of the dwelling and a disused tennis court is situated between 4B and 6 Charlton Avenue, as shown within **Figure 1** and **Attachment A12**.

The site is landscaped with trees and shrubs. The rear of the site is mapped as containing areas of biodiversity significance, as shown within **Figure 2**.



Figure 2: street view photo showing dwelling on 8 Charlton Avenue screened with vegetation



Figure 3: photo from the driveway showing dwelling on 8 Charlton Avenue screened with vegetation



Figure 4: map showing areas of biodiversity significance (source: Councils mapping)

Constraint:	Application:
Visual character study category	The area started being developed from the 1940's with the street being developed with dwellings by the 1960's.
Easements/rights of way	Right of carriageway
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes
Bush fire prone land	No
Natural Resources Biodiversity	Yes
Natural Resources Greenweb	Yes
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Wahroonga Estate – Clause 6.11, KLEP	N/A

Surrounding development

Located on the high side of the street, two storey dwellings exist either side of the subject site, as shown within **Figures 5 and 6**. A mix of single and two storey dwellings are located on the low side of the street.

The rear yard of 6 Charlton Avenue is screened by tall trees being planted along the rear property boundary, which faces the eastern elevation of the rear building of the proposed development.

A swimming pool is within the rear yard of 10 Charlton Avenue, which has secondary frontage to Princes Street, and is viewed from the site.



Figure 5: Photograph showing dwelling and driveways of 6 and 4B & 8 Charlton Avenue, Turramurra



Figure 6: Photograph showing dwelling of 10 Charlton Avenue, Turramurra

THE PROPOSAL

The application proposes demolition of existing structures and construction of a centre-based child care facility for a maximum of 120 children over one level of basement car-parking.

Demolition

- demolition of all structures including a swimming pool and tennis court
- removal of 12 trees: Trees 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, and 32 (as numbered in the applicant's Arborist's report)

Construction

- excavation for driveway and the footprint of the proposed building
- construction of a part two and three storey building above the car park level and the use of the site for the purposes of a centre-based child-care facility in the following way:
 - car park level
 - a walled driveway of varying heights, with a 6.6 metres wide garage opening centrally located within the street frontage
 - one level of basement car parking with a variable floor level that slopes up from RL155.10 at the entry to RL156.95 at the rear
 - 30 car parking spaces including a disabled space, 12 staff spaces and bicycle racks
 - two floor level lobby areas (RL153.83 metres and RL155.6 metres) with 'sign in' desk, stairs, pram storage, separate platform lift and lift No. 1, and fire stairs
 - pedestrian pathway along the northern row of car spaces
 - external access to waste bins, located south of the carpark level, and pathway to driveway and street frontage
 - bulk waste room
 - lift No. 2 & fire stairs.
 - ground floor level – front and rear buildings
 - 2 metres wide pedestrian pathway from Charlton Avenue to the front office area
 - Office area, corridor, accessible toilet, laundry, kitchen and pantry, fire stairs and lift No. 1
 - Indoor play spaces areas 1 and 2, two cot areas, two junior toilet areas accessible to outdoor play areas, and storage
 - two separate outdoor play areas front and rear accessible from the indoor play areas
 - Outdoor play area No. 3 connecting to the rear of the building
 - rear building containing indoor play areas 3 and 4, separate accessible and junior toilet areas, corridor, lift No. 2, fire stairs and access to the eastern pathway adjoining rear of adjoining property No. 6 Charlton Avenue
 - Outdoor play space No. 4 facing the southern property (4A Charlton Avenue)
 - acoustic walls with heights of 1.39 metres, 1.8 metres and 2.1 metres

- first floor level front and rear buildings
 - o lift No. 1 and fire stair access to Lobby area facing Charlton Avenue
 - o separate staff room, meeting room and storeroom for external use
 - o Indoor play area No. 5 adjoining a music room
 - o rear deck provided with fire stairs and platform lift
 - o an elevated covering with battens which connects the front and rear buildings
 - o internal store-room, separate accessible and junior toilet areas
 - o Lift No. 2 access to play room 7 and access to outdoor play space No. 6 to the west of the building
 - o acoustic walls with height of 1.39 metres and 1.8 metres

Works in the road reserve comprises a new 6 metres wide driveway and pedestrian access points fronting Charlton Avenue.

Number of children and age groups

- 0-2 years – 20 children
- 2-3 years – 30 children
- 3-5 years – 70 children

Hours of operation and staff

- 7am – 6pm (Monday to Friday).
- 20 staff
- 1 cook between hours of 10am and 2pm

Parking and deliveries

- 19 visitor parking spaces
- Staff parking is situated at the rear of the basement
- Deliveries to be made within the basement outside peak drop-off and pick up times

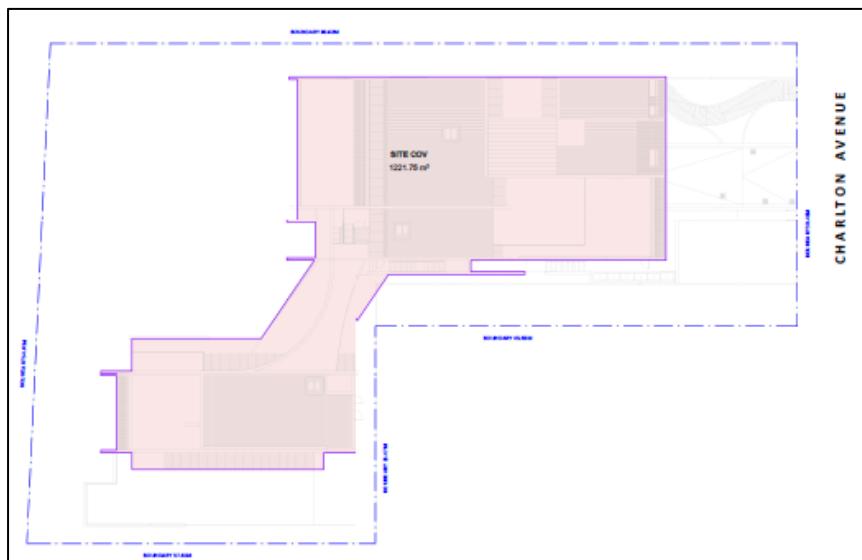


Figure 7: plan showing the proposed building footprint



Figure 8: plan showing current front façade facing Charlton Avenue

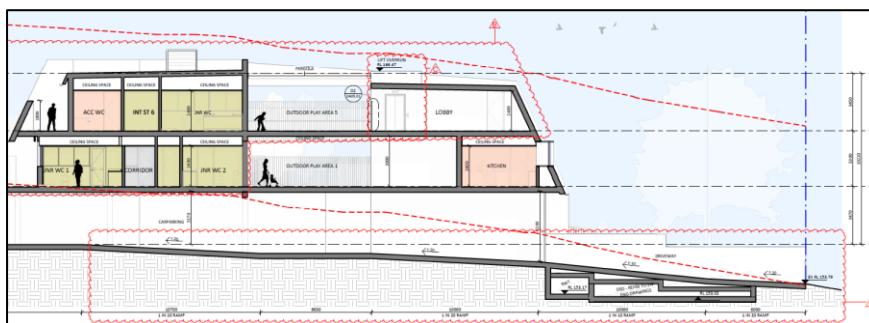


Figure 9: plan showing cross-section of the front building facing Charlton Avenue, Turramurra

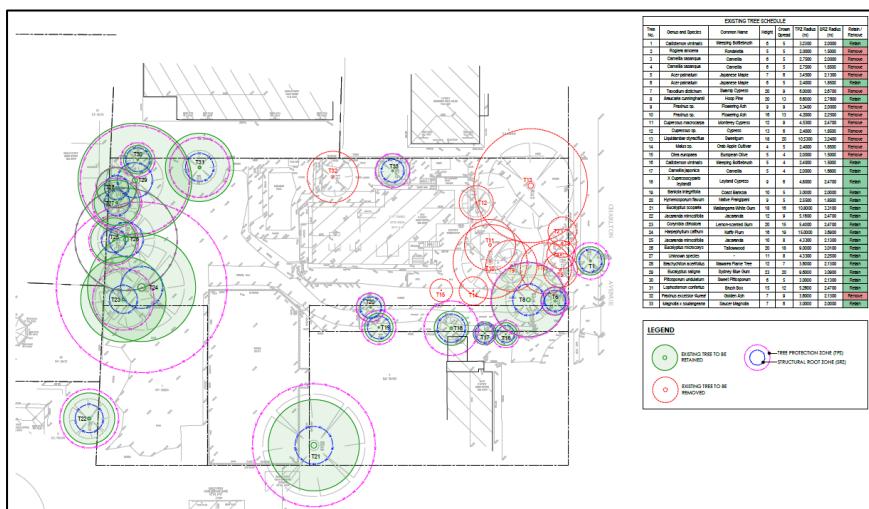


Figure 10: plan showing trees retained and removed

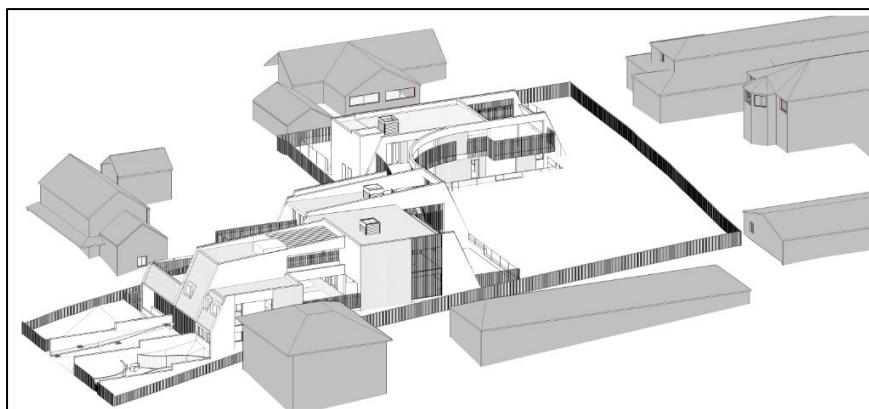


Figure 11: plan showing oblique view of site and adjoining buildings

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. In response, submissions from the following were received:

1. *Hyunjoo Shin of 23 Charlton Avenue, Turramurra*
2. *Dr David Lee of 103 Pentecost Ave, Turramurra*
3. *Megan Kinniburgh of 25 Charlton Avenue, Turramurra*
4. *Olivia Xiao of 20 Charlton Avenue, Turramurra*
5. *Hal Evans of 3 Musgrave Street, Turramurra (x2)*
6. *Justin Sprogis of 33 Buckra Street, Turramurra*
7. *Emily Burnett of 7 Karuah Road, Turramurra*
8. *Guy Burnett – (no address provided) – for support*
9. *Jamie Park of 16 Charlton Avenue, Turramurra*
10. *Ben Sweet of Buckra Street, Turramurra*
11. *Henry Yin – no address provided*
12. *Mrs R E Montgomery of 15 Charlton Avenue, Turramurra*
13. *Helen Buick of 9 Central Avenue, Eastwood*
14. *Richard Dianne Gregson of 2B Charlton Avenue, Turramurra (x2)*
15. *Rosemary Montgomery of 15 Charlton Avenue, Turramurra*
16. *Abiraami Thambipillay of 1 Charlton Avenue, Turramurra*

17. *Richard and Lydia Shakenovsky of 4 Charlton Avenue, Turramurra*
18. *Ian & Gayle Eitzen – (no address provided)*
19. *Anne Le Moy of 20 Raglan Street, Turramurra*
20. *Louise Oehlers of 18A Charlton Avenue, Turramurra*
21. *Mr and Mrs DJ Burns of 17 Charlton Avenue, Turramurra*
22. *Mr R. Burns of 17 Charlton Avenue, Turramurra (x2)*
23. *Tom Burns of 17 Charlton Avenue, Turramurra*
24. *Charles Bogle of 4A Charlton Avenue, Turramurra*
25. *Per and Joanne Amundsen of 19 Charlton Avenue, Turramurra*
26. *Debbie and Tim Anderson of 29 Wyuna Road, West Pymble*
27. *Tim Cooper Planning Consultant on behalf of 10 Charlton Avenue, Turramurra*
28. *Michael Rudd of 10 Charlton Avenue Turramurra (head petitioner)*

Amended plans received 19/09/2025 and 22/09/2025

The amended plans were notified and submissions from the following were received:

1. *Annabelle Singram of 111 Pentecost Avenue, Turramurra*
2. *Susan Nicholson (no address provided)*
3. *Meagan Kinniburgh of 25 Charlton Avenue, Turramurra*
4. *Rosemary Montgomery of 15 Charlton Avenue, Turramurra*
5. *Hyunloo Shin of 23 Charlton Avenue Turramurra*
6. *N Strong (no address provided)*
7. *Justin Sprogis of 33 Buckra Street, Turramurra*
8. *Anne Le Moy of 20 Raglan Street, Turramurra*
9. *David Burns of 17 Charlton Avenue, Turramurra*
10. *Rob Burns of 17 Charlton Avenue, Turramurra*
11. *Michael Rudd of 10 Charlton Avenue Turramurra*

The issues raised in submissions from the first notification and the second notification are addressed below

Visual character is not compatible with adjoining dwellings

For streetscape and landscape reasons the design of the street setback of the front building is not supported and forms part of the reasons for refusal.

Scale, bulk and height not consistent with the low-density residential area

The proposal is compliant with the development standards for floor space ratio and building height, however the setbacks of the rear building are not supported and form part of the reasons for refusal.

Car parking within frontage not compatible within surrounding area and would result in noise impacts

The car park within the street frontage has been deleted.

Excessive excavation within a residential zone

For streetscape and landscape reasons the proposed excavation within the street setback of the front building is not supported and forms part of the reasons for refusal.

Significant tree and landscape removal

The original proposal included the removal of landscape features along part of the northern side boundary, and front landscape areas, the amended plans retain these features. Concerns regarding impacts upon trees nominated for retention have been raised by Council's Senior Landscape and Tree Assessment Officer and these concerns form part of the reasons for refusal.

Overlooking and privacy impacts

The initial proposal provided windows and play areas, along the northern elevation that had potential to create overlooking and privacy impacts onto 10 Charlton Avenue. The amended plans have resolved these concerns through landscape screening and modified windows with vertical slats.

The development by its size is best suited within a commercial area

Child care facilities are permitted on land zoned R2 Low Density Residential and the site is consistent with the location criteria of the Child Care Planning Guideline.

Construction impacts generated not typical of a dwelling

If the development were recommended for approval, construction related impacts could be addressed through the imposition of standard conditions relating to construction traffic, management, construction hours and noise.

The traffic generated by child-care centre of 120 children and circa 20 staff will bring approximately 220 traffic movements during peak traffic hours creating increased traffic congestion and pedestrian safety.

In terms of traffic flows, it is estimated that up to 190 vehicles per hour (2-way) may be experienced in the section of Charlton Avenue between the site and Pentecost Avenue in the AM and PM peaks. This is below the environmental capacity performance standard of 200 vehicles per hour on residential streets as suggested in the RTA Guide to Traffic

Generating Developments. Other parts of Charlton Avenue, and Princes Street are expected to experience traffic flows of between 60 and 120 vehicles per hour (2-way) during the AM and PM peaks, which is also below the environmental capacity performance standard.

In terms of traffic incidents, Council's Strategic Traffic Engineer has stated that:

"The most recent 5 years of recorded crash history at the intersection of Pentecost Avenue and Charlton Avenue and at the intersection of Charlton Avenue and Princes Street was checked, during which there were no recorded crashes. A check of the "Near Miss" data for the past 5 years from the CompassIoT platform was undertaken for the intersection of Pentecost Avenue and Charlton Avenue and at the intersection of Charlton Avenue and Princes Street. CompassIoT is a connected vehicle data platform that provides data points from connected vehicles to offer information on road conditions, driver behaviour, and traffic patterns. In the case of near misses, it identifies high-risk driving events on the road, which act as a leading indicator of potential crashes. At the 2 intersections above, there was no adverse clustering of near-miss events."

The proposal satisfies the provisions of Part 22 of KDCP and is acceptable in regard to traffic impacts.

Incompatible with adjoining dwellings - the physical size, height and scale of the centre will dwarf surrounding residences that are one or two storey structures.

The site is located on the high side of the street. **Figure 11** shows the site with two separate buildings over the basement. Acoustic walls, measuring 1.39 metres, 1.8 metres, and 2.1 metres, are provided to the outdoor play areas at both ground and first floor levels for the respective buildings. **Figures 8 and 9** show a 3 storeys building façade facing Charlton Avenue.

The proposed building has a staggered front design, which departs from the two-storey façades of the neighbouring houses at 6 and 10 Charlton Avenue. To reduce the visual impact of the three-storey section at the front, the applicant has adjusted the design by reducing its width compensating this by increasing the size of certain elements, such as indoor play area 5, the music room, and the acoustic wall for outdoor play area 5.

At the front building line, the ground floor will sit about 3 metres above the existing natural ground level. However, excavation for the driveway and pathway means the building will appear taller from those points—approximately 4.5 metres above the finished driveway level and 5.7 metres at the pathway entrance near the car park lobby.

The childcare centre is designed for a large but constrained site of 3,348.3 m², which includes biodiversity areas to the rear (**Figure 4**). **Figure 11** shows an angled view comparing the proposed centre with the neighbouring houses. The visual comparison highlights the new buildings being significantly larger with a different building form than the surrounding dwellings.

As a result of the above, the proposal is contrary to Objectives 1, 2, 3, 4, and 5 and Control 1 of Part 10.2 of the DCP and is not supported in this regard.

Tree removal is not environmentally friendly

Tree removal is not proposed within the rear biodiversity area. The proposal retains seven trees, whilst eight new trees, capable of reaching a minimum of 13 metres in height, is proposed.

Approval to remove a Sweetgum (*Liquidambar styraciflua*) was issued on 11 May 2025 subject to a replacement tree, which has been shown on the landscape plan.

Council's Landscape and Tree Assessment Officer supports the proposed tree removal subject to replacement trees being provided, which is agreed. However, concerns are raised that the design of the front setback does not provide conditions for suitable tree planting, as a result the application is not supported in this regard.

A 120 capacity centre lacks justification, given abundant existing childcare centres nearby, all with vacancies, and located on larger, safer, and more traffic-suited roads

The proposed childcare facility is a permissible form of development within the zone. The existence or number of childcare facilities within an area is not a matter for consideration. Section 3.26(2)(a) of SEPP (Transport and Infrastructure) 2021 states:

that a child care centre, 'may be located at any distance from an existing or proposed early education and care facility',

Accordingly, a consent authority does not have discretion to refuse a child-care centre based on proximity to other centres.

No plan of management submitted for review

A Plan of Management has now been submitted (**Attachment A11**).

A middle driveway appears unsafe due to the site's slope

The slope of land is less than 15%, as calculated by spot levels shown on the survey plan. As shown within **Figure 9**, the driveway slope is less than the natural ground level (shown as red dashed lines). Excavation is proposed for the driveway, which shows a reduced slope, which is acceptable. Council's Team Leader, Development Engineers is satisfied that the driveway complies with the relevant Australian Standards.

Amended stormwater plans do not address Council's concerns

Council's Team Leader, Development Engineers is satisfied that the amended stormwater plan (**Attachment A7**) has addressed Council's earlier concerns, which is agreed.

Amended landscape plans do not address Council's concerns

Whilst the amended plans have deleted the front car park, the amended plans propose driveway and pathway retaining walls that extend to the front property boundary and impact deep soil areas, which is incompatible with the character of adjoining dwellings and detracts from the established landscape setting. Council's Senior Landscape and Tree Assessment Officer has assessed the amended Landscape plans (**Attachment 6**) and does not support the extent of excavation and landscape design, which is agreed. This forms a recommended reason for refusal.

Waste collection hours result in further impacts

The Plan of Management document (**Attachment A11**) states:

"Should a commercial contract be required for waste collection, we recommend waste collection take place during normal business hours, i.e. Monday to Friday

between 7 am and 6 pm".

However, the amended Traffic and Parking Impact Assessment report states:

"The waste collection will be managed such that the waste will be collected outside of operating hours of the child-care centre where the visitor car parking spaces within the undercover car parking area will be vacant."

The above demonstrates inconsistency within the information lodged in support of the proposed development.

Waste collection within the site during 7am to 6pm will conflict with parent and staff car movements. However, waste collection during out of hours, within the site, as outlined within the traffic consultant's report will generate minimal traffic impacts. This can be conditioned in the event of an approval.

Amended documentation received 20/10/2025 and amended plans received 7/11/2025

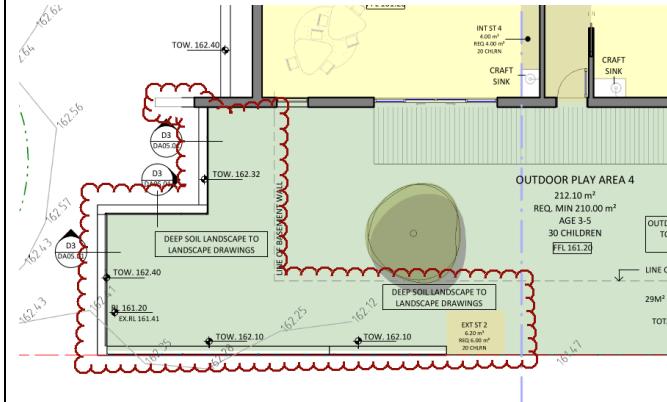
The amended documentation and plans were not notified to surrounding residents as the proposed amendments do not result in a greater environmental impact.

INTERNAL REFERRALS

Landscaping

Council's Senior Landscape and Tree Assessment Officer commented on the proposal as follows:

Child Care Planning Guideline (Sept 2021)		
Objective and Control	Proposed	Complies
Part 3.2 Local character, streetscape and the public domain interface		
C5: Use landscaping to positively contribute to the streetscape and neighbouring and neighbourhood amenity	<p>The landscape plan does not satisfy this control.</p> <p>The retention of existing trees within the southern portion of the front setback is improved. However, the introduction of multiple retaining walls and the proposed excavation of natural ground levels within the available deep soil areas will restrict the full development and long-term growth of the proposed trees.</p> <p>In addition, the pedestrian ramp and adjoining landscape areas are proposed below the natural ground level and include retaining walls exceeding 2 metres in height. This not only reduces the available deep soil area necessary for tree establishment but also creates an undesirable interface with the street resulting in poor and unacceptable streetscape impacts.</p> <p>The retaining wall in the front setback does not provide large deep soil areas to support the root development and long-term growth of tall trees.</p>	NO

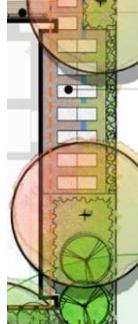
	<p>Cut is proposed for the rear building including footings for the 2.4 metres high retaining wall, which encroaches the biodiversity area and to the adjoining at 4A Charlton Avenue. The natural ground level within the rear of the site, adjacent to the biodiversity areas, should be kept.</p> 	
Part 3.4 Landscaping	Objective: To provide landscape design that contributes to the streetscape and amenity.	
<p>C17: Appropriate planting should be provided along the boundary integrated with fencing.</p> <p>Reflecting and reinforcing the local context</p> <p>Incorporating natural features of the site such as trees into landscaping</p>	<p>The amended landscape plans improve the interface with the northern boundary.</p> <p>The removal of the car parking area within the front setback enables the retention of existing canopy trees and allows for the inclusion of additional planting, including two tall trees.</p> <p>However, as noted above, retaining walls within the front setback do not allow for the full development and long-term growth of the proposed tall trees.</p> <p>The proposed planting is generally appropriate and consistent with the character of the local area; however, the cut and fill within the front setback exceeds the maximum acceptable and does not reflect the local context.</p>	NO
<p>C21: Minimise impacts on privacy of adjoining properties. - minimise direct overlooking through landscape design and screening</p>	<p>The landscape plan satisfies this control.</p> <p>The northern side setback allows suitable planting to assist in protecting the privacy and amenity of neighbouring properties.</p>	YES

<p>premises has at least 7 square metres of unencumbered outdoor space.</p> <p>Natural Environment Regulation 113. Outdoor space – natural environment</p>		
<p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk health and safety, such as:</p> <ul style="list-style-type: none"> - known to be poisonous - known to be toxic - have seed pods or stone fruit - attract bees - have thorns, spikes or prickly foliage or drop branches. 	<p>The landscape plan satisfies this control. Proposed plant species are appropriate for the intended use of the site.</p>	YES
<p>Part 4.11 Regulation 114 Shade.</p>		
<p>Natural shade should be a major element in outdoor play areas.</p> <p>Existing trees, particularly in rear setbacks should be retained to provide shaded play areas.</p>	<p>The landscape plan satisfies this control. Existing trees in the rear are proposed to be retained and can provide shade to the outdoor natural play area.</p>	YES

KDCP COMPLIANCE TABLE		
Control Childcare Centres	Proposed	Complies
<p>Part 10.1 Risk Assessment</p>		
<p>C10 No landscaped area within the childcare centre is to contain plant species that have the following characteristics:</p> <ul style="list-style-type: none"> i) plants known to be poisonous or that produce toxins; ii) plants with high allergen properties; iii) plants with thorns, spikes or prickly foliage; and iv) plant species that Council considers may place the health, safety and welfare of the centre's users at risk. 	<p>The landscape plan satisfies this control.</p>	YES

Part 10.2 Building Height and Setbacks

C3: The child-care centre is to be designed to provide deep soil areas that protect and retain existing trees and mature vegetation within setback areas and across the site.	The proposal provides deep soil areas that protect existing vegetation.	YES
C4: Deep soil setback areas are to incorporate planting style and species selection that is appropriate to the locality including: i) screen planting that can attain heights of 4m for single storey centres. Screen planting may need to exceed 4m in height for centres that are more than one storey. ii) medium size trees (6-8 metres) to tall trees (10-13 metres).	<p>The proposed landscape design outcomes are inconsistent with the control as there is inadequate deep soil and screen planting adjacent to the eastern side setback of the rear building.</p> <p>Proposed planting in the front setback is restricted by the numerous structures, retaining walls, and cut of the natural ground level which are unacceptable.</p> <p>The proposed rear building is set back 2 metres from the eastern boundary (rear boundary of 6 Charlton Avenue) and includes a fire egress corridor that limits the available space for screening vegetation along this boundary. As a result, opportunities to minimise the visual impact of the proposed building on the adjoining property are constrained.</p> <p>The proposal relies on the existing <i>Cupressocyparis leylandii</i> planting located within the adjoining property for visual screening. While this hedge currently provides effective buffering, amenity, and privacy, it is not within the subject site and therefore cannot be relied upon to provide long-term screening.</p> <p>Furthermore, <i>Cupressocyparis leylandii</i> is not a recommended species for use as screening vegetation due to its vigorous growth and impacts above and below ground structures, and as identified within Control 11 of Part 21.2 of the DCP. Should the adjoining owner seek to remove and replace this hedge in the future—due to overshadowing, overgrowth, or maintenance concerns—replacement planting may be of a smaller scale and may not achieve the height necessary to maintain adequate privacy between properties under the current proposal.</p>	NO

C5: Lots are to support a minimum number medium sized trees (6-8m) to tall trees (10-13m)	The proposal satisfies this control.	YES
C6: Where the child care site adjoins a low density residential area or land approved for use for a low density residential purpose, deep soil is to be provided within all as follows: i) a minimum of 1 metre of unrestricted deep soil area is to be provided to each of the side boundaries; and ii) a minimum of 2 metres of unrestricted deep soil area, to be used by plants that require deep soil, is to be provided to the rear boundary; and iii) a minimum of 3 metres of unrestricted deep soil area, to be used by plants that require deep soil, is to be provided to the primary street frontage.	<p>The proposal does not provide the required 1 metre of deep soil planting along the eastern side of the rear building as this area contains a pathway.</p>  <p>The front setback includes several retaining walls that restrict the development of the proposed and required planting, resulting in an inadequate landscape outcome and an unacceptable streetscape presentation.</p> <p>Refer to C12 and C13 Part 4A.2 below.</p>	<p>NO</p> <p>NO</p>
Part 13 Tree and Vegetation Preservation		
C1. Landscape proposals are to retain existing trees where possible. O3: To recognise, protect and enhance the aesthetic and heritage values of trees. O4:	<p>Tree removal</p> <p>The proposal includes the removal of twelve (12) trees: Trees 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, and 32 (numbering reflective of the applicant's Arborist report).</p> <p>T2 Rogiera amoena T3 and T4 Camellia sasanqua T5 Acer palmatum, T7 Taxodium distichum T9 and T10 Fraxinus sp. T11 and T12 Cupressus macrocarpa</p> <p>The construction of the new driveway will require</p>	YES

<p>To secure and maintain local character and amenity.</p> <p>O5: To sustain and enhance the tree canopy.</p> <p>O6 To prohibit unnecessary injury to, or destruction of, trees and vegetation.</p>	<p>the removal of these trees. Given the current driveway location, the removal is acceptable, subject to suitable replacement tree planting to ensure canopy replenishment.</p> <p>T13, <u><i>Liquidambar styraciflua</i></u>:</p> <p>Located in the front setback 4.6 meters from northern boundary. On 11 May 2025, approval was issued for the removal subject to tree replacement under a separate approval process. The required replacement tree is shown on the landscape plan.</p> <p>T14 <u><i>Malus sp</i></u></p> <p>Located within the proposed driveway. Removal is supported.</p> <p>T15 <u><i>Olea europaea</i></u>,</p> <p>Removal supported as it's within the building footprint and exempt from requiring approval for removal.</p> <p>T32 <u><i>Fraxinus excelsior 'Aurea'</i></u></p> <p>This tree is located approximately 3.2 metres from the northern boundary, within the footprint of the proposed building. It is assessed as having low retention value. The removal of Tree T32 is acceptable.</p> <p>The removal of trees T2, T3, T4, T5, T7, T9, T10, T11, T12, T14, T15 and T32 is acceptable, subject to suitable replacement tree planting to ensure canopy replenishment.</p> <p>Tree impacts The following trees are impacted by the proposal:</p> <p>T20 <u><i>Hymenosperum flavum</i></u>,</p> <p>Located adjacent to the proposed southern pedestrian access. The access and proposed building will encroach into the Tree Protection Zone (TPZ) of this tree. Arboricultural impact assessment (AIA) has not been amended to assess the impacts and protection measures on this tree.</p> <p>Further information is required to assess viability of this tree.</p>	<p>NO</p>
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	<p>T21 <u><i>Eucalyptus scoparia</i></u></p> <p>This tree is to the rear of 6 Charlton Avenue, almost on the boundary.</p> <p>The proposal does not provide sufficient details of existing natural ground levels around the TPZ of T21 to enable an accurate assessment.</p> <p>As per the AIA, the proposed rear basement and associated structures will encroach into the Tree Protection Zone (TPZ) by 29m², equating to 7.9% of the TPZ area. This is considered a minor encroachment under AS 4970–2009 and is within acceptable limits. It is noted that the existing retaining walls surrounding the tennis court have already raised the ground level above the TPZ, resulting in a pre-existing encroachment of 24.5%. No new encroachment into viable rooting zones is expected, as roots are unlikely to be present in the proposed area of excavation.</p> <p>T33 <u><i>Magnolia soulangeana</i></u></p> <p>This tree is located within the northern side setback, currently provides a good level of privacy and amenity to the adjoining property at No. 10 Charlton Avenue, particularly in relation to the neighbouring private open space.</p> <p>The proposed building will encroach into the TPZ of this tree. The AIA has not been amended to assess the impacts and protection measures for this tree.</p> <p>Because of the above, further information is required to assess viability of this tree.</p>	NO
Part 21.1 Earthworks and Slope		
C3. Landscape cut or fill should not be more than 600mm above or below natural ground line.	<p>The site has a moderate slope of approximately 9.88% (measured along the 80.62 metres northern boundary), equivalent to a gradient of 1:10.12, which is not considered a steeply sloping site (a steeply sloping site, as per KDCP is 15% - refer to Control 2 of Part 21.1).</p> <p>The landscape plan proposes significant excavation along the southern and western edges of Outdoor Play Area 4, with retaining walls resulting in ground level changes ranging from 1 metre to 1.2 metres below natural ground level. This exceeds the maximum 600 millimetres cut allowed under the DCP and is not supported (also refer to Control 11 of Part 21.1).</p>	NO

	<p>Similarly, the proposed driveway, pedestrian path, and adjoining garden area are located more than 2 metres below natural ground level along the building's frontage. The extent of excavation within the front setback, particularly within the driveway and pedestrian access areas, is excessive and not supported. Changes in levels should be confined to the building footprint and not within available deep soil areas and or in the front setback.</p> <p>The proposed design should be amended to minimise excavation and better respond to the site's natural topography. The proposal should maximise areas of deep soil at natural ground level, particularly within the front setback and along the rear of the site adjacent to the environmental area.</p> <p>The retaining walls proposed at the rear of the site are unnecessary and should be removed where possible. Retaining natural ground levels in this area is preferred to maximise deep soil planting opportunities and to minimise impacts on the adjacent biodiversity area.</p>	
C5. Existing ground level is to be maintained for a distance of 2 metres from any boundary.	The cut and fill in the front setback does not comply.	NO
C8. Retaining walls, excavated and filled areas are to be located and constructed to have no adverse impact on iii) trees and vegetation to be retained on site or on adjoining sites.	The proposal satisfies this control.	YES
Part 21.2 Landscape Design		
21.2 Landscape Design To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.	<p>The following assessment comments are made:</p> <p>No amenity screen planting is proposed to the east of the rear building adjacent to the rear yard of No. 6 Charlton Avenue.</p> <p>Proposed blade walls encroaching the biodiversity zone are not supported. (Refer to controls 7, 9 of Part 21.1 of the KDCP).</p> <p>Minimise excavation along the southern and western edges of Outdoor Play Area 4 and</p>	NO

	<p>within the front setback to comply with the maximum 600 millimetres cut permitted under the KDCP.</p> <p>The proposal needs to reduce excavation along the driveway, pedestrian path, and adjoining garden areas within the front setback to retain natural ground levels where possible. Changes in levels should be limited to the building footprint and not within deep soil areas.</p> <p>Maximise deep soil areas at natural ground level within the front setback and along the rear of the site adjacent to the environmental area to support planting of tall trees and other vegetation.</p> <p>Remove unnecessary retaining walls at the rear of the site to preserve natural ground levels, maximise planting space, and minimise impacts on the adjacent biodiversity area.</p> <p>Amend the design to better respond to the site's natural topography and improve landscape outcomes in accordance with the KDCP.</p>	
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The above landscaping referral comments have been considered, it is agreed that these issues are unacceptable, consequently they form recommended reasons for refusal.

Engineering

Council's Team Leader, Development Engineers, commented on the proposal as follows:

Water Management

Adequate gravity for the stormwater runoff from the property is directed to the existing kerb and gutter in Charlton Avenue. The site is burdened by existing right of carriageway (ROC) easement. The site is not affected during a 1% annual exceedance probability (AEP) flood event.

The amended stormwater plans show a combined belowground detention and retention of 75.9m³ and 20,200 litres tank located within the front setback of the site below the proposed driveway area, which is acceptable.

The sizing of the detention system complies with Part 24R.4 of the KDCP.

A basement parking level has been proposed with no pump out pit. As the car park levels in the basement floor are higher than the driveway, it is recommended that the basement to be fully tanked to minimise any seepage into the basement.

A BASIS Certificate is not required for this type of development, however a 20,200 litres rainwater re-use tank is proposed, which is designed to capture runoff from the roof area of 548m² to be used for toilet flushing and irrigation purposes, which is acceptable. Part 24C.3-4 of the Ku-ring-gai DCP requires that the rainwater retention and re-use be provided to achieve a 50% reduction in runoff days. A water balance

model has been submitted to demonstrate 67% reduction in runoff day, which is compliant with the KDCP.

The pollutant load standards set out in Part 24C.6 of the Ku-ring-gai DCP have been satisfied.

The site falls within a regulated catchment. The proposal includes appropriate stormwater measures to minimise any adverse impacts on the regulated catchment. The proposal is satisfactory regarding Chapter 6 'Water Catchments' of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Furthermore, consideration has also been given to the proposed development in relation to the relevant provisions of Clause 6.5 Stormwater and water sensitive urban design of KLEP 2015 and the proposal is satisfactory in this regard.

Parking Provision and Traffic Generation and associated impacts

An operational assessment of existing traffic conditions at the following intersections was carried out in the Traffic and Parking Impact Assessment (TPIA) using SIDRA traffic modelling software, with the corresponding Levels of Service (ranging from A being good operation, and F being unsatisfactory operation with excessive queuing):

Location	Level of Service AM Peak	Level of Service PM Peak
Charlton Avenue/Princes Street	A	A
Charlton Avenue/Pentecost Avenue	B	B

Level of Service "A" and "B" performance is characterised by low delays and spare capacity. All movements were operating satisfactorily for a low volume right turn movement from Charlton Avenue into Pentecost Avenue, however, is determined to be acceptable.

In terms of traffic flows, it is estimated that up to 190 vehicles per hour (2-way) may be experienced in the section of Charlton Avenue between the site and Pentecost Avenue in the am and pm peaks. This is below the environmental capacity performance standard of 200 vehicles per hour on residential streets, as suggested in the RTA Guide to Traffic Generating Developments. Other parts of Charlton Avenue, and Princes Street are expected to experience traffic flows of between 60 and 120 vehicles per hour (2-way) during the am and pm peaks, which is also below the environmental capacity performance standard.

The most recent 5 years of recorded crash history at the intersection of Pentecost Avenue and Charlton Avenue and at the intersection of Charlton Avenue and Princes Street was checked. Within this time there were no recorded crashes. A check of the "Near Miss" data for the past 5 years from the CompassIoT platform was undertaken for the intersection of Pentecost Avenue and Charlton Avenue and at the intersection of Charlton Avenue and Princes Street. CompassIoT is a connected vehicle data platform that provides data points from connected vehicles to offer information on road conditions, driver behaviour, and traffic patterns. In the case of near misses, it identifies high-risk driving events on the road, which act as a leading indicator of potential crashes. At the 2 intersections above, there was no adverse clustering of near-miss events.

Parking provision and design

Car Parking Provision

The Ku ring gai DCP (KDCP) requires car parking to be provided at the rate of 1 space per 2 staff and 1 space per 6 children in care (for visitors). The amended traffic and parking report has been assessed and is acceptable, as proposal meets the KDCP controls.

Bicycle Parking

The KDCP requires 1 bicycle parking space per 10 staff to be provided on-site, and consideration of a bicycle drop-off/pick up area for parents/carers. If the proposal were to be supported, a condition can be imposed to ensure that the bicycle parking at the rear of the basement is compliant with AS2890.3:

Electric Vehicles (EVs)

For child-care centres, the KDCP does not require any car parking spaces within the building to be EV compliant. However, provision at construction stage avoids costly retrofitting in the future. If the development were to be supported, a condition is recommended to allow EV readiness for the staff car parking spaces.

Servicing

The Traffic and Parking Impact Assessment (TPIA) notes that the KDCP does not specify servicing and loading requirements for child-care centres and relies on deliveries to be undertaken within the basement car parking area outside of peak times using vans or other similar B99 category vehicles, which is acceptable.

The TPIA also notes, waste collection is proposed to be undertaken outside the of operating hours of the child-care centre where the visitor car parking spaces within the at-grade car parking area will be vacant, which is acceptable.

Access Point

The architectural plans show a 6 metres wide access point at the property boundary, which is acceptable.

To discourage drop-off or pick up on the kerbside at the frontage of the site, 'No Stopping' restrictions are to be implemented from 7am-9am and 4pm-6pm on weekdays on the Charlton Avenue frontage of the site, if the development were to be supported.

Construction Management

An indicative construction traffic management plan (CTMP) has been provided within the Traffic Assessment Report, which is acceptable for DA purposes.

Waste Management

According to the Waste Management Plan, general waste and recycling bins are proposed and located in a dedicated bin enclosure adjacent to the ROC on the southern side of the car park level, which complies with Part 25 of KDCP.

Waste and recycling collection is proposed to occur twice weekly via a licensed private contractor.

Geotechnical Investigation

The proposed basement excavation will require up to approximately 3 metres of excavation below the existing ground level, with additional excavations possible for footings and service trenches.

The site investigation revealed no groundwater was observed during depth testing.

If the development were to be approved, the Geotechnical Investigation report recommends that detailed dilapidation surveys be conducted on buildings within the area of potential damage, prior to commencement of works, which is supported.

The above engineering referral comments have been considered and it is agreed that the proposed development is satisfactory in relation to engineering requirements.

Ecology

Council's Ecological Assessment Officer provided the following comments:

Biodiversity Conservation Act 2016		
Section 7.3	Proposed	Complies
<i>The purpose of the Act is to maintain a healthy, productive and resilient environment</i>	<p><i>The vegetation within the rear of the subject property supports Blue Gum High Forest characteristic of plant community type (PCT) 3616 Blue Gum High Forest (BGHF). BGHF is listed a critically endangered ecological community under the Biodiversity Conservation Act 2016.</i></p> <p><i>The subject property is mapped as containing vegetation mapped upon the Biodiversity Values (BV) Map. No native vegetation is to be removed from the BV mapped area.</i></p> <p><i>No biodiversity development assessment Report (BDAR) is deemed to be necessary in this instance.</i></p>	YES

LEP 2015 COMPLIANCE TABLE		
Part 6 Additional local provisions	Proposed	Complies
Clause 6.3 – Biodiversity Protection <i>The objective of this clause is to protect, maintain and improve the diversity and condition of native vegetation and habitat</i>	<p><i>The rear portion of the subject development has been mapped as 'Terrestrial biodiversity'.</i></p> <p><i>The proposed development will not result in the direct removal of native vegetation from lands mapped 'Terrestrial biodiversity' and will not result in adverse environmental impacts upon Terrestrial biodiversity.</i></p>	YES

Part 18 Biodiversity Controls		
18.4 Category – Landscape Remnant	The western portion of the subject site has been mapped landscape remnant.	YES

18.7 Category – No Net Loss	<p><i>The proposed development is located partially within lands mapped as landscape remnant.</i></p> <p><i>A vegetation management plan has been prepared by Travers Bushfire and Ecology and will enhance lands mapped as landscape remnant through targeted weed removal and planting.</i></p> <p><i>The proposal is consistent with the objectives and controls under these parts.</i></p>	
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The above ecological referral comments have been considered and it is agreed that the proposed development is satisfactory in relation to ecological requirements.

Environmental Health

Council's Co-ordinator Environmental Health Services provided the following comments:

The amended architectural plans (Issue B) prepared by ArtMade Architects dated 12 September 2025 provide several discrepancies when compared with the originally submitted architectural plans (Issue A, dated 30 August 2024) and the accompanying acoustic report.

Within the initial acoustic report, the recommended acoustic barrier fence heights for the outdoor play areas (OPAs) appear to have been based on specific child numbers, age groups, and play area sizes. However, the revised plans now differ in these aspects, which may affect the validity of the original acoustic recommendations.

The discrepancies are summarised in the table below:

Outdoor Play Area (OPA)	Architectural Plans (Issue A) - dated 30/08/2025			Architectural Plans (Issue B) - dated 12/09/2025		
	Number of Children	Age Group	Area (m ²)	Number of Children	Age Group	Area (m ²)
OPA1	23	0-3	168.00	35	0-3	247.60
OPA2	17	0-3	121.45	15	0-3	107.75
OPA3	20	3-5	146.40	20	3-5	146.40
OPA4	30	0-5	211.55	30	3-5	212.10
OPA5	20	2-3	142.30	10	3-5	108.70
OPA6	20	3-5	143.95	10	3-5	86.80
OPA7	10	3-5	86.50	<i>OPA7 omitted; replaced by OPA6</i>		

The current design shows that some of the outdoor play areas differ in capacity, area, setbacks, and proposed age groups. No updated acoustic report has been submitted

with the amended plans to explain the variances. Therefore, uncertainty exists within the recommendations of the existing acoustic report to be used for the amended proposal. Given the impacts cannot be assessed, the proposal is unsatisfactory in this regard.

The above environmental health referral comments have been considered and it is agreed that the proposed development is unsatisfactory in relation to acoustic impacts.

Building

If the application were to be approved, it would be acceptable subject to standard conditions.

STATUTORY PROVISIONS

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of land

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. A preliminary soil investigation report was submitted with the application, which concluded that, *“the site is considered suitable to the intended development”*. No additional contamination investigations are considered necessary, which is agreed.

State Environmental Planning Policy (Biodiversity & Conservation) 2021 - Chapter 6 Water Catchments

The provisions of Clause 6.6 ‘*Water quality and quantity*’ and Clause 6.7 ‘*Aquatic ecology*’ have been considered in the assessment of the proposal. The stormwater system includes design measures to address the requirements of Clause 6.6 including silt trap and trash screen. The proposal is also found to be consistent with the requirements of Clause 6.7 as it is unlikely to impact on aquatic ecology. Clause 6.8 ‘*Flooding*’, 6.9 ‘*Recreation and public access*’ and 6.10 ‘*Total catchment management*’ are not directly relevant to the merits of the proposal.

State Environmental Planning Policy (Sustainable Buildings) 2022 – Chapter 3

The Sustainable Buildings SEPP was made in August 2022 and applies to development applications submitted on the planning portal from 1 October 2023. The Sustainable Buildings SEPP encourages the design and construction of more sustainable buildings across NSW. Chapter 3 ‘Standards for non-residential development’ of the SEPP applies to the following development types:

- (a) *the erection of a new building, if the development has an estimated development cost of \$5 million or more, or*
- (b) *alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.*

These provisions apply to the development because it is for the erection of a new building with an estimated development cost of \$6.59 million.

The proposal satisfies the provisions in Section 3.2 ‘*Development consent for non-residential development*’ for the following reasons:

- i. The Ecologically Sustainable Design Report prepared by Efficient Living adequately addresses the matters for consideration specified in section 3.2(1) subsections (a) to (f).
- ii. The Nabers Embodied Emissions Materials Form addresses section 3.2(2) which requires that the embodied emissions attributable to the development be quantified.

State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 3 Educational establishments and child-care facilities

The aim of this Chapter is to facilitate the effective delivery of educational establishments and early education and care facilities across the State. Compliance is determined through the detailed application of the relevant requirements of the SEPP which, in this case are for a childcare facility, which are found under Part 3.3. The relevant provisions of Part 3.3 are considered below:

Part 3.3, Section 3.22 – Child Care Planning Guideline – concurrence of Regulatory Authority required for certain development

Under this Section, concurrence is required where the indoor and outdoor unencumbered space requirements are not met, per Regulation 107 and 108 of the [Education and Care Services National Regulations](#). The proposed development complies with these requirements.

Part 3.3, Section 3.23 – Child Care Planning Guideline – Design Quality Principles

Prior to determining a development application for a centre-based child-care facility, the consent authority is required to consider all relevant provisions of the *Child Care Planning Guideline*. An assessment of these provisions has been undertaken and is outlined below:

Principle	Consideration
1. Context	<p>The site is on the high side of the street and contains a two-storey dwelling. Two storey dwellings are also located on the adjoining sites. Located opposite the site on the low side of the street is a mix of single and two storey dwellings.</p> <p>The development has a three-storey presentation to the street and a car park entry of a scale that is not compatible with the built form character of the locality. Substantial excavation and tall retaining walls are proposed within the front setback which are not compatible with the landscaped character of the street and do not provide areas for sustainable tree planting.</p>
2. Built Form	<p>When viewed from Charlton Avenue, the building presents as three storeys.</p> <p>The childcare facility does not appropriately respond to the streetscape character of the locality, which comprises predominantly low density residential dwelling houses typically 1-2 storeys in scale.</p>

3. Adaptive learning spaces	The design and siting of the childcare centre provides high quality learning spaces for children and staff.
4. Sustainability	The application included an Ecologically Sustainable Development (ESD) report, stating that the initial proposal was acceptable. The ESD report was not amended to reflect the revised design. Nevertheless, the ESD measures can be applied to the amended design meeting the objective of this Principle.
5. Landscape	The landscape design is unacceptable, as addressed as detailed earlier in this report.
6. Amenity	The childcare centre provides good levels of internal and external amenity. The north facing outdoor play areas will receive access to sunlight. Within the development the acoustic fencing and landscaping, in addition to the design of the building, will ensure reasonable visual and acoustic privacy for children and staff.
7. Safety	<p>The childcare centre provides quality public and private spaces that are clearly defined. Satisfactory levels of casual surveillance will be provided along the front pedestrian path and entry, where children walking to the Charlton Avenue access point will be accompanied by parents/adults.</p> <p>The basement has been designed in a manner that will minimise safety risks for children, parents, carers and staff.</p>

The proposal is not found to meet all the principles as detailed in the Assessment Table, consequently it is not supported in this regard.

The following is an assessment against Section 3 ‘*Matters for consideration*’ of the Policy:

Part 3.3, Section 3.23 – Child Care Planning Guideline – Matters for consideration

COMPLIANCE TABLE		
Provision	Comment	Complies
3.1 Site Selection and Location Considerations Objective: To ensure that appropriate zone considerations are assessed when selecting the site.	The childcare centre is permitted within an R2 Low Density Residential zone subject to consent.	YES
C1 – for residential development <ul style="list-style-type: none">• Acoustic Privacy;• Visual amenity impacts (e.g. additional building bulk and overshadowing, local character);• Setbacks;• Traffic and parking impacts of the proposal;	An amended Acoustic Report has not been submitted to address variances to the proposed development by the amended plans.	NO
	Part of the car park level encroaches upon the northern tip of the R.O.C., which is acceptable in this instance.	YES

<ul style="list-style-type: none"> Residential amenity and road safety 	<p>The majority of the development presents as two storey; however, it is three storeys where measured above the front portion of the car park level.</p> <p>This excessive bulk of the building is created by use of 1.8 and 2.1 metres high acoustic walls of varying lengths. The frontage provides high blade walls, which are not characteristic of the adjoining dwellings in an R2 low density residential area.</p> <p>At mid-winter, shadow diagrams show that the majority of the outdoor play areas facing south do not receive 4hrs continuous sun access.</p> <p>The front building façade is located behind the front façade of 6 Charlton Avenue.</p> <p>Vehicular and pedestrian entries to the site are separated to further minimise potential conflict.</p>	<p>NO</p> <p>NO</p> <p>NO</p> <p>YES</p> <p>YES</p>
<p>Objective: To ensure that the site selected for a proposed childcare facility is suitable for use.</p> <p>C2 –</p> <ul style="list-style-type: none"> Compatible with surrounding uses; Not made unsafe by risk factors such as bushfire prone, landslip affected, flood prone..; Land is not contaminated or hazardous; Site characteristics are suitable for scale proposed in terms of: <ul style="list-style-type: none"> Size of street frontage, lot configuration, dimensions and size; Number of shared boundaries with residential 	<p>The site is zoned R2 Low Density Residential under the Ku ring gai Local Environmental Plan. The proposal is a permissible form of development within the zone.</p> <p>The site is not unsafe because it is not affected by bushfire, landslip, nor is it flood prone or likely to be contaminated, as discussed elsewhere in the report.</p> <p>The site characteristics are suitable and reflective of the requirements of this provisions as detailed, adjacent. Consequently, the proposal is acceptable in this regard.</p>	<p>YES</p>

<p>properties;</p> <ul style="list-style-type: none"> ○ Will not have adverse environmental effects upon surrounding area, particularly in environmentally sensitive or culturally sensitive areas; ○ There are suitable drop off and pickup areas and off street parking; ○ Type of adjoining road e.g. classified, cul-de sac etc. is safe for use; ○ Not located close to incompatible social uses such as restricted premises, injecting rooms, licensed premises, and gambling venues. 		
<p>Objective: To ensure that sites for childcare facilities are appropriately located.</p> <p>C3 – A childcare facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship; • near or within employment areas, town centres, business centres, shops; • with access to public transport including rail, buses, ferries; • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>The subject proposal is consistent with these objectives as the development is within walking distance of both Pymble School and Princes Lane “Irish Town Playground” which are located approximately 800 metres and 550 metres respectively to the west of the site.</p> <p>In addition to the above, the site is adjacent to Bus routes 577P and 579.</p>	YES
<p>Objective: To ensure that sites for childcare facilities do not incur risks from environmental, health or safety hazards.</p> <p>C4 – A childcare facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and 	<p>The site is not located near any risk generating uses.</p>	YES

<p>water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses.</p>		
<p>3.2 Local Character, streetscape and the public domain interface</p> <p>Objective: To ensure that the childcare facility is compatible with the local character and surrounding streetscape.</p> <p>C5 – The proposed development should:</p> <ul style="list-style-type: none"> contribute to the local area by being designed in character with the locality and existing streetscape reflect the predominant form of surrounding land uses, particularly in low density residential areas recognise predominant streetscape qualities, such as building form, scale, materials and colours include design and architectural treatments that respond to and integrate with the existing streetscape use landscaping to positively contribute to the streetscape and neighbouring amenity integrate car parking into the building 	<p>The site is located on the high side of the street. At the front building line the proposed child-care facility presents a three storey scale to the street frontage, which is not typical of the adjoining dwellings at Nos. 6 and 10 Charlton Avenue or area.</p> <p>The stepped 2 metres high walls, along the driveway connect the building façade to the street frontage and are not characteristic of the landscape setting.</p> <p>Both the ground and first floor levels provide outdoor play spaces facing the street and adjoining dwellings. Blade walls extend vertically above the roof. Excess outdoor play areas (m²) with acoustic walls contribute to the bulk and massing, which are not compatible with the residential character of the locality, as these are features not attributed to dwellings.</p> <p>The development provides both high pitch roofs facing the street, and flat roofs with blade walls, whilst the majority of the residential dwellings are a mix of hip and gable design.</p> <p>The design is not reflective of the surrounding and nearby dwelling houses, due to the building's design.</p> <p>The amended landscape plan provides suitable landscape species and pathway. However, within the built elements in the front setback</p>	<p>NO</p>

	<p>occupy approximately 48% of the front landscape area, where a maximum of 30% 'built-upon area' is permitted for dwelling house under the KDCP.</p> <p>Car parking is integrated into the overall design; however, the scale of the car park entry is not compatible with the residential character of the streetscape at the opening being 4.6 metres high and 6.6 metres wide - refer to Section A-A within drawing no. "DA05.01" Issue B.</p>	
<p>Objective: To ensure clear delineation between the childcare facility and public spaces.</p> <p>C6 – Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> - fencing to ensure safety for children entering and leaving the facility; - windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community; - integrating existing and proposed landscaping with fencing. <p>C7 – On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the childcare facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p> <p>C8 – Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> - clearly defined street access, pedestrian paths and building 	<p>An open palisade fence on the front boundary is shown on the artist impression, however no details or an elevation have been provided.</p>	NO

<ul style="list-style-type: none"> - entries; - low fences and planting which delineate communal/ private open space from adjoining public open space; - minimal use of blank walls and high fences. 		
<p>Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</p> <p>C9 – Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p> <p>C10 – High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p>	<p>An open palisade fence on the front boundary is shown on the artist impression, however no details or an elevation have been provided.</p> <p>Design guidance to achieve these objectives are also contained in Council's DCP Part 4C.8, Control 2 which permits front fences of >1.2 metres high. However, they must be set back 1 metre from the front property boundary line and provide amenity landscape planting. However, this is not proposed.</p> <p>In addition to the above inconsistency, the design proposes high garden walls, particularly along the entry driveway, which is not characteristic of the area, contrary to these controls and therefore objective of this provision.</p>	NO
<p>3.3 Building orientation, envelope and design</p> <p>Objective: To respond to the streetscape and site, while optimising solar access and opportunities for shade.</p> <p>C11 – Orient a development on a site and design the building layout to:</p> <ol style="list-style-type: none"> I. ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - facing doors and windows away from private open space, living rooms and 	<p>Adjoining properties receive sun access during midwinter.</p> <p>As shown within Sheet No. DA06.01 Issue C, Outdoor play area No. 1 receives minimal sun access, which is unacceptable, as outlined within reason for refusal 4a).</p> <p>Accessways do not directly impact adjoining dwellings. The proposed driveway is centrally located, as shown within amended plans.</p>	NO

<ul style="list-style-type: none"> - bedrooms in adjoining residential properties; - placing play equipment away from common boundaries with residential properties; - locating outdoor play areas away from residential dwellings and other sensitive uses. <p>II. optimise solar access to internal and external play areas;</p> <p>III. avoid overshadowing of adjoining residential properties;</p> <p>IV. minimise cut and fill;</p> <p>V. ensure buildings along the street frontage define the street by facing it;</p> <p>VI. ensure that where a childcare facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.</p>	<p>An acoustic fence measuring 1.8 metres high is proposed along the 2 metres setback measured from the northern side boundary of 4A Charlton Avenue, which is satisfactory.</p> <p>Solar access is not sufficiently provided to the south facing outdoor play areas.</p> <p>The midwinter shadow diagrams show that sun access is available to the rear yards of 6 and 10 Charlton Avenue.</p> <p>Cut is provided in the form of excavation for the car park level, which the geotechnical investigation report supports.</p> <p>The depth of excavation for the driveway creates a car park opening measuring approximately 4.2 metres high; however, contributes the three storey façade presentation, as viewed from the street, which is unacceptable.</p>	
<p>Objective: To ensure that the scale of the childcare facility is compatible with adjoining development and the impact on adjoining buildings is minimised.</p> <p>C12 – The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality; • building height should respond to the scale and character of the street; • setbacks should allow for adequate privacy for neighbours and children at the proposed childcare facility; • setbacks should provide adequate access for building maintenance; • setbacks to the street should be 	<p>The childcare facility presents as a part two and three storey building. The design of the buildings are not representative of the single and two storey dwellings within the locality, which is not consistent with the character of dwelling houses along Charlton Avenue and the surrounding area.</p> <p>The setbacks are addressed below under C13 and C14.</p>	NO

<p>consistent with the existing character.</p>											
<p>Objective: To ensure that setbacks from the boundary of a childcare facility are consistent with the predominant development within the immediate context.</p> <p>C13 – Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p> <p>C14 – On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p> <p>Rear setbacks with a site depth greater than 4 metres requires a minimum 12 metre setback under Control 9 of KDCP.</p> <p>The site is irregular; however, disregarding the rear portion of the site containing the rear building, the following side setbacks apply under Control 11 of KDCP:</p> <table border="1" data-bbox="231 1417 700 1590"> <tr> <th>Site Width</th> <th>Single Storey Building Setback - including single storey elements of two storey buildings</th> <th>Two Storey Building Setback - including any upper level</th> </tr> <tr> <td>Less than 20m</td> <td>1.5m</td> <td>2m</td> </tr> <tr> <td>20m or more</td> <td>9% of site width</td> <td>12% of site width</td> </tr> </table> <p>Thus, a 4.2 metres side building setback is required ($12\% \times 35.05$ metres).</p>	Site Width	Single Storey Building Setback - including single storey elements of two storey buildings	Two Storey Building Setback - including any upper level	Less than 20m	1.5m	2m	20m or more	9% of site width	12% of site width	<p>The front setbacks are consistent with the adjoining dwellings and locality. For commentary regarding the other setbacks, please refer to the discussion at the end of the table.</p>	<p>NO - refer to discussion at the end of the table</p>
Site Width	Single Storey Building Setback - including single storey elements of two storey buildings	Two Storey Building Setback - including any upper level									
Less than 20m	1.5m	2m									
20m or more	9% of site width	12% of site width									
<p>Objective: To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character.</p> <p>C15 – The built form of the development should contribute to the</p>	<p>The built form does not relate well to its context due to its non-compliance with setback requirements.</p> <p>The development does not contribute to the identity of</p>	<p>NO</p>									

<p>character of the local area, including how it:</p> <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage; • contributes to the identity of the place; • retains and reinforces existing built form and vegetation where significant; • considers heritage within the local neighbourhood including identified heritage items and conservation areas; • responds to its natural environment including local landscape setting and climate; • contributes to the identity of place. 	<p>place for reasons outlined within this report.</p>	
<p>Objective: To ensure that buildings are designed to create safe environments for all users.</p> <p>C16 – Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians; • directly accessible from the street where possible; • directly visible from the street frontage • easily monitored through natural or camera surveillance; • not accessed through an outdoor play area; • in a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>The development provides secure access to the building via a front path with a gate at the street boundary or the driveway that provides access to the enclosed car park.</p>	YES
<p>Objective: To ensure that childcare facilities are designed to be accessible by all potential users.</p> <p>C17 - Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation; 	<p>A pedestrian access path provides safe access to the childcare centre from Charlton Avenue.</p> <p>Two lifts and lift platforms provide accessible access from the basement to the respective floor levels.</p> <p>A continuous path of travel is</p>	YES

<ul style="list-style-type: none"> linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry; providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible; minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The <i>National Construction Code</i>, the <i>Discrimination Disability Act 1992</i> and the <i>Disability (Access to Premises – Buildings) Standards 2010</i> set out the requirements for access to buildings for people with disabilities.</p>	<p>provided to and within the building.</p> <p>The grades of the ramp are compliant with the relevant Australian Standards.</p>	
<p>3.4 Landscaping</p> <p>Objective: To provide landscape design that contributes to the streetscape and amenity.</p> <p>C18 – Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> reflecting and reinforcing the local context incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. <p>C19 – N/A – Car parking in basement below building – no scope for landscaping of area.</p>	<p>The landscaping in the front setback contributes to the streetscape, however the multiple retaining walls and excavation of deep soil areas do not provide an area for the growth of taller trees that are characteristic of the locality.</p>	NO
<p>3.5 Visual and acoustic Privacy</p> <p>Objective: To protect the privacy and security of children attending</p>	<p>The proposed perspex and brick acoustic walls, landscaping, as well as the overall design of the building,</p>	

<p>the facility.</p> <p>C20 – N/A</p> <p>C21 – Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • appropriate site and building layout; • suitably locating pathways, windows and doors; • permanent screening and landscape design. 	<p>assist in minimising any potential overlooking from Charlton Avenue and adjoining properties at the first floor level.</p>	<p>YES</p>
<p>Objective: To minimise impacts on privacy of adjoining properties.</p> <p>C22 – Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • appropriate site and building layout; • suitable location of pathways, windows and doors; • landscape design and screening. 	<p>Screening, setbacks and landscaping mitigate privacy impacts.</p> <p>The doors and windows to the indoor play areas and transitional areas are sufficiently orientated away from the boundaries of the site to ensure no unreasonable impacts.</p>	<p>YES</p>
<p>Objective: To minimise the impact of childcare facilities on the acoustic privacy of neighbouring residential developments.</p> <p>C23 – New development adjacent to residential development to provide:</p> <ul style="list-style-type: none"> - Acoustic fence along boundary with residential development; - Ensure that any plant / equipment is screened / in enclosure. <p>C24 – A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a childcare facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height 	<p>In the absence of an amended acoustic report, Council's Environmental Health Officer is not satisfied that the amended plans agree with the initial Acoustic report. Refer to the 'Referral Section' for additional commentary in this regard.</p> <p>The roof air conditioning condensers are screened/enclosed however the location of the carpark exhaust should be detailed.</p>	<p>NO</p>

of any acoustic fence to enable the noise criteria to be met.		
<p>3.6 Noise and air pollution</p> <p>Objective: To ensure that outside noise levels on the facility are minimised to acceptable levels.</p> <p>C25 – Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> - creating physical separation between buildings and the noise source; - orienting the facility perpendicular to the noise source and where possible buffered by other uses; - using landscaping to reduce the perception of noise; - limiting the number and size of openings facing noise sources; - using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens); - using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits; - locating cot rooms, sleeping areas and play areas away from external noise sources. 	<p>Charlton Avenue, is not a busy road and a reasonable front setback is proposed.</p> <p>The cot rooms are located such that external noise sources are minimised.</p>	YES
<p>3.7 Hours of Operation</p> <p>Objective: To minimise the impact of the childcare facility on the amenity of neighbouring residential developments.</p> <p>C29 – Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed childcare facility may be extended if it adjoins or is adjacent to non-residential land uses.</p> <p>C30 – N/A</p>	<p>The proposed hours of operation are 7am to 6pm (Monday to Friday).</p>	YES

<p>3.8 Traffic, parking and pedestrian circulation</p> <p>Objective: To provide parking that satisfies the needs of users and demand generated by the centre.</p> <p>C31 – Car Parking to meet requirements of KDCP 2015;</p> <p>C32 – N/A;</p> <p>C33 – A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> - the amenity of the surrounding area will not be affected - there will be no impacts on the safe operation of the surrounding road network. 	<p>The number of parking spaces is compliant with KDCP.</p> <p>A traffic and parking report was submitted with the application.</p> <p>The revised car park level was assessed by Council's Team Leader Development Engineers who concluded that the development is acceptable on traffic and parking grounds. This is agreed.</p>	<p>YES</p>
<p>Objective: To provide vehicle access from the street in a safe environment that does not disrupt traffic flows.</p> <p>C34 – Alternate access must be demonstrated where the site fronts:</p> <ul style="list-style-type: none"> - Classified road; - Road used for freight / dangerous goods / hazardous materials <p>C35 – Childcare facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>Charlton Avenue is not a classified road or a road used for freight / dangerous goods / hazardous materials.</p>	<p>YES</p>
<p>Objective: To provide a safe and connected environment for pedestrians both on and around the site.</p> <p>C36 – Design solutions may be included to help provide safe pedestrian environment:</p>	<p>A pedestrian walkway is provided within the car park level to the accessible lift.</p> <p>Accessible parking is provided, with lift to the upper floor levels and separate fire stairs leading to the internal and external areas of the buildings.</p>	<p>YES</p>

<ul style="list-style-type: none"> - Separate pedestrian access from car park to facility; - N/A; - N/A; - Pedestrian paths that allow two prams to pass each other; - Delivery and loading areas located away from main pedestrian access; - N/A - Vehicles can enter and exit site in forward direction. <p>C37 – N/A – Mixed use development only</p> <p>C38 – Car parking should include:</p> <ul style="list-style-type: none"> - Child safe fence separating building entrance from parking areas / play areas; - Compliant Accessible parking space provided; - Wheelchair and pram accessible parking to be provided. 		
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Building setbacks

Objective: To ensure that setbacks from the boundary of a childcare facility are consistent with the predominant development within the immediate context – Control C14

Front building

The front building setback, measuring 14.4 metres, meets the required 12 metres front building setback in Control 3 of Part 4A.2 of KDCP, and is consistent with the adjoining dwellings and locality, and is supported. The rear setback is approximately 26 metres and compliant with the 12 metres setback control.

The northern side building setback measuring 3.65 metres does not meet the 4.2 metres requirement in Control 11 of Part 4A.2 of KDCP. As shown within Figure 11, the northern façade provides a two storey development above a basement. A side setback of 3.6 metres is compatible with the streetscape character and marginally exceeds the minimum northern side setback of the existing dwelling on the site, which is approximately 3.2 metres. Screen planting in scale with the building is provided in the side setback, accordingly the variation to the side setback control is acceptable as the relevant objectives are achieved.

The southern side building setback is approximately 5.8 metres and compliant with the 4.2 metres side building setback control.

Rear building

The eastern façade of the rear building provides a setback of 2.3 metres to the rear boundary of 6 Charlton Avenue, Turramurra, which does not meet the 4.2 metres side building setback Control 11 of Part 4A.2 of KDCP, which is not supported. The concern is

raised by the Landscape and Tree Assessment Officer where a reduced width, between the eastern façade and the rear property boundary of 6 Charlton Avenue, does not allow for landscape screening. The use of the neighbouring screen trees should not be relied upon, as these neighbouring trees could be removed.

The rear setback is variable, being approximately 10.8 metres at the basement level, 7 metres to the blade walls and approximately 10 metres to the rear (western wall) of Playroom 4. As this part of the site is of lesser depth (approximately 37.6 metres) than the northern part of the site the rear setback control of 25% of the site depth has been applied which requires a minimum setback of 9.4 metres. Whilst the proposal is not strictly in accordance with the setback requirement the objectives are achieved as the encroaching elements (blade walls) do not add significant bulk to the western elevation.

The setback of the rear building to the northern side boundary is >31 metres, and compliant with the side setback requirement of 6.5 metres.

Conclusion

As demonstrated in the above Assessment Table, the proposal fails to meet a number of provisions contained in the *Child-care Planning Guidelines*, consequently the proposal is not supported for these reasons.

Consideration of Part 3.3, Section 3.26 – Centre-based childcare facility—non-discretionary development standards

Section 3.26 prescribes non-discretionary development standards that apply to centre-based childcare facilities, such as location, indoor and outdoor unencumbered space, site area and dimensions, colour of building materials and shade structures to childcare centres, noting that councils cannot apply or seek more onerous requirements.

The non-discretionary development standards are considered below -

(a) ***location***—the development may be located at any distance from an existing or proposed early education and care facility,

The distance of the proposal from other existing or proposed early education and child-care centres is not a proposed reason for the refusal of this application.

(b) ***indoor or outdoor space***

- (i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the *Education and Care Services National Regulations* applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or
- (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 the indoor and outdoor space requirements.

- (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,
- (d) **colour of building materials or shade structures**—the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.

The site is not located within a Heritage Conservation Area or adjacent to a heritage item. No objection is raised to the proposed colour scheme, shade structures or the site dimensions.

Consideration of Part 3.3, Section 3.27 - Centre-based child-care facility—development control plans

Section 3.27 provides provisions contained in a development control plan, including reference to ages, age ratios, groupings, numbers of children or the like does not apply, along with matters relating to:

- i. *operational or management plans or arrangement (including hours of operation),*
- ii. *Demonstrated need or demand for childcare services*
- iii. *Proximity of the facility to other early education and care facilities*
- iv. *Any matter relating to development for the purpose of a centre-based childcare facility contained in:*
 - a. *the design principles set out in Part 2 of the Child Care Planning Guideline*
 - b. *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)*

The DCP provisions considered in this report do not go to the matters listed in Section 3.27, as detailed above.

Education and Care Services National Regulations

Part 4 of the Child-Care Planning Guidelines requires consideration of the relevant National Regulations. Consideration is given below to the relevant National Regulations, as identified in Part 4 of the Child-Care Planning Guidelines -

National Regulation No. 25 – Soil assessment

A soil quality report was submitted with the application which concluded that the site is suitable as a childcare centre regarding soil conditions.

National Regulation No. 97 and 168- Emergency and evacuation procedures

An emergency and evacuation plan was submitted with the application, detailing the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency. The documentation provided with the application is satisfactory.

National Regulation No. 104 - Fencing or barrier that encloses outdoor spaces

The plans include details of appropriate fencing for play areas.

National Regulation No. 106 - Laundry and Hygiene facilities

The plans included one laundry area. It is well located and easily accessible by staff and is acceptable.

National Regulation No. 107- Unencumbered Indoor Space

The required amount of unencumbered indoor space per child is 3.25m²:

Number of children: 120
Required Area: 390m²
Provided Area: 449.25m² (Room 1 @ 99.55m² + Room 2 @ 69.95m² + Room 3 @ 66.65m² + Room 4 @ 67.35 + Room 5 @ 40.55m² + Music room @ 38.55m² + Room 7 @ 66.65m²).

The proposal exceeds the required indoor space by 59.25m².

National Regulation No.108 - Unencumbered Outdoor Space

The required amount of unencumbered outdoor space per child is 7m²:

Number of children: 120
Required Area: 840m²
Provided Area: 910.15m² (outdoor 1 @ 247.6m² + outdoor 2 @ 107.75m² + outdoor 3 @ 146.70m² + outdoor 4 @ 212.60m² + outdoor 5 @ 108.70m² + outdoor 6 @ 86.80m²).

The proposal exceeds the required outdoor space by 70.15m².

National Regulation No.109 - Toilet and hygiene facilities

Bathrooms are provided for all indoor play areas. The plans demonstrate that an adequate number of age-appropriate toilets, washing and drying facilities are provided.

National Regulation No.110 - Ventilation and natural light

Indoor spaces are expected to be adequate, as they are:

- well ventilated;
- able to access adequate natural light;
- will be kept at a reasonable temperature that ensures the safety and wellbeing of children through air conditioning.

National Regulation No. 111 - Administrative space

The design provides areas for administrative functions of the centre and parent consultation at ground level, and a staff room for conducting private conversations, which are acceptable.

National Regulation No.112 - Nappy changing facilities

Not all indoor play areas for the younger age cohorts include a directly accessible nappy changing area with adult hand washing facilities.

National Regulation No. 113 - Outdoor space

The proposed facility provides adequate outdoor spaces for children to play and explore the natural environment.

National Regulation No.114 - Outdoor space sun access

Shade structures have been provided which complies with these Regulations.

National Regulation No.115 - Premises designed to facilitate supervision

The design allows for an adequate amount of passive supervision, with views from the indoor playroom windows to the outdoor areas. The building design allows separation of toilets and nappy change facilities from the indoor play areas with viewing windows allowing supervision, which is acceptable.

Conclusion

This assessment finds that the application does not meet all of the National Regulations. Where it does not these issues form reasons for refusal.

Ku-ring-gai Local Environmental Plan 2015

Aims of the KLEP 2015

The proposal has been considered against the relevant aims of the Plan and is not consistent with these provisions for the reasons given throughout this report.

Zoning and permissibility:

The site is zoned R2 Low Density Residential. The proposed development is defined as a “centre-based child-care facility”, which is a permissible form of development within the zone.

Zone objectives:

The objectives of this zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.”*

The development for the purposes of a centre based child-care facility will provide a service to meet the day to day needs of residents. The proposed development therefore upholds the relevant zone objective.

Development standards:

Ku-ring-gai Local Environmental Plan 2015

Development standard	Proposed	Complies
CI 4.3 - Height of buildings: Maximum Building Height - 9.5 metres	9.419 metres lift No. 1 overrun. 8.58 metres (to top of first floor rooftop air conditioning condenser)	YES YES
CI 4.4(2A) - Floor space ratio (FSR): (site area = 3348.3m ²) Maximum Floor Space Ratio - 0.3:1 Gross Floor Area = 1004.49m ² (max)	0.295:1 or 986.8m ² (includes parts of the car park level that is not defined as a basement)	YES

Floor Space Ratio (FSR)

The maximum FSR is 0.3:1. The applicant claims the development achieves an FSR of 0.229:1 (768.15m² GFA) per Drawing No. DA03.04. The applicant's assessment of FSR is disputed as the following areas have not been included:

- i. Car parking spaces are not in a basement by definition;
- ii. Lifts and stairs that are not in a basement by definition; and
- iii. Stairs that are not 'common circulation' or 'voids'

Nevertheless, with these areas included the FSR is assessed as 0.26:1 (881m² GFA) and compliant with the 0.3:1 development standard.

Part 5 Miscellaneous provisions

Clause 5.10 – Heritage conservation

The subject site does not contain a heritage item and is not within a heritage conservation area, however, is located within 100 metres of heritage item "I798" at 111 Pentecost Avenue, Turramurra. The proposal will not affect the significance of the heritage item. The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance.

Part 6 Additional local provisions

Clause 6.1 – Acid sulphate soils

The land is mapped as Class 5 Acid sulfate soils. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. Development consent is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. The proposal is consistent with the provision of this clause as the works are more than 500 metres of adjacent Class 1, 2, 3 or 4 land.

Clause 6.2 - Earthworks

The proposed development will not restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics. Additionally, the fill to be removed will be disposed of appropriately. The proposal is considered satisfactory having regard to the requirements of this clause.

Clause 6.5 - Stormwater and water sensitive urban design

Council's Team Leader Development Engineers has considered the objective of this clause which seeks to minimise the adverse impacts of urban water on the site and within the catchment. The amended stormwater design could adequately manage water quality and controls discharge volumes and frequency, subject to conditions, if the application were to be supported.

It is agreed that is satisfactory having regard to the requirements of this clause.

Clause 6.3 - Biodiversity protection

The site is mapped as “Biodiversity” on the Terrestrial Biodiversity Map, as shown within **Figure 4**.

Council’s Ecological Assessment Officer has considered the proposed development and is satisfied it has been designed to minimise impacts on the diversity and condition of native vegetation, fauna and habitat as per the requirements of the LEP, which is agreed.

Policy Provisions (DCPs, Council policies, strategies and management plans)

Ku-ring-gai Development Control Plan

Part A

Part 1A.5 General aims of the DCP

The proposed development has been assessed against the general aims of this DCP and is found to be unacceptable for the reasons given throughout this report.

Part 2: Site analysis

DCP COMPLIANCE TABLE SECTION A -		
Development control	Proposed	Complies
Part 2 Site Analysis		
Development applications are to contain a site analysis	A Site Analysis provided.	YES

Part 10: Child Care Centres

The table below addresses the relevant assessment criteria contained under Section A, Part 10 – **Child Care Centres**, as per Chapter 3 of SEPP (Transport and Infrastructure) 2021, only setbacks, car parking, landscaping and noise are relevant provisions to be considered.

DCP COMPLIANCE TABLE SECTION A - Part 10 Child-care centres		
Development control	Proposed	Complies
10.2 Building height and Setback		
Building height is to be consistent with neighbouring dwellings, integrate with the predominant street character and minimise overlooking, bulk and scale impacts to neighbours.	The proposed child-care facility is above a car park level that presents as a part two and three storeys building because of the protrusion of the front car park level above the ground, which is not consistent with the surrounding forms which include single and two storey dwelling houses. The non-compliance is contrary to the relevant objectives of the control and is unacceptable in this regard.	NO

DCP COMPLIANCE TABLE SECTION A - Part 10 Child-care centres											
Development control	Proposed	Complies									
<p>Building Setback</p> <p>Minimum side and rear setbacks are to comply with the setback requirements of the predominant adjoining residential development type of that location.</p> <p>Basement areas are to be consolidated under the building footprint and meet all building setback requirements.</p> <p><u>Side and rear setbacks:</u></p> <p>Rear setbacks with a site depth greater than 4 metres requires a minimum 12 metre setback under Control 9 of KDCP.</p> <p>The site is irregular; however, for purposes of calculating the <u>front building</u>, the following side setbacks apply under Control 11 of KDCP:</p> <table border="1"> <tr> <td>Site Width</td> <td>Single Storey Building Setback - including single storey elements of two storey buildings</td> <td>Two Storey Building Setback - including any upper level</td> </tr> <tr> <td>Less than 20m</td> <td>1.5m</td> <td>2m</td> </tr> <tr> <td>20m or more</td> <td>9% of site width</td> <td>12% of site width</td> </tr> </table> <p>Thus, a 4.2 metres side building setback is required (12% x 35.05 metres).</p>	Site Width	Single Storey Building Setback - including single storey elements of two storey buildings	Two Storey Building Setback - including any upper level	Less than 20m	1.5m	2m	20m or more	9% of site width	12% of site width	Refer to the 'Building setbacks' discussion under the Child Care Planning Guideline table.	NO
Site Width	Single Storey Building Setback - including single storey elements of two storey buildings	Two Storey Building Setback - including any upper level									
Less than 20m	1.5m	2m									
20m or more	9% of site width	12% of site width									
<p>Deep Soil Setbacks</p>											
<p>10.3 Parking and Access</p> <p>Car parking is to be provided as follows:</p> <p>Newly constructed centres are to provide car parking within the basement of the building.</p> <p>1 parking space per 6 children 1 space per 2 staff.</p> <ul style="list-style-type: none"> - minimum of one space accessible for persons with a disability. <p>Proposal:</p> <ul style="list-style-type: none"> - 120 Children - 20 Staff <p>Required: 12 spaces</p>	Refer to the Landscape Referral comments which address controls 3, 4, 5 and 6.										
		YES									
		YES									

DCP COMPLIANCE TABLE SECTION A - Part 10 Child-care centres		
Development control	Proposed	Complies
Accessible parking clearly marked and close to main entrance of the building.	The accessible parking space is clearly marked.	YES
Centre not to have vehicular access from major road (listed under 10A.1) unless it is demonstrated that alternate access is neither provided nor practical.	Access from minor road.	YES
Car parking spaces, circulation areas, roadways and ramps to comply with AS2890.1.	Complies.	YES
Designated footpath from car park to building entrance and to the footpath on the street.	Included on plans.	YES
Car parking areas shall be designed in a manner that allows vehicles to travel in a forward manner.	Designed, as required.	YES
Where located on a corner site, the car parking area shall be designed to avoid use of the site as a short cut.	Not a corner site.	YES
Car parking must be located away from outdoor play areas of the centre.	Car park level under the building footprint with exhaust vents not vented to outdoor play spaces.	YES

An assessment of the variations to the design controls identified in the compliance table is provided below.

Streetscape character

The site is located within a low-density residential zone. The established character within the locality of the site is predominately single and two storey dwelling houses. The current design is viewed as three storeys from Charlton Avenue, as shown within **Figure 8**. However, the applicant has endeavoured to reduce the impact by reducing the building plate of the first floor by increasing the front setback of the eastern face of the Indoor Play area No. 5 by 33.64 metres measured from the front property line of the site, which can be seen on architectural plan No. "DA03.03 Issue B". Further reduction of the remaining three storey component will expose the lift and fire stairwell such that, it will be seen from the street and is not a building element characteristic within the street.

The design of the front landscape area is unacceptable as the extent of excavation within the front setback and the number of structures located within designated deep soil areas restrict the establishment and growth of trees. This results in an inadequate landscape outcome that does not reflect the prevailing landscape character of the area or contribute positively to the streetscape.

Objective 4 of this Part seeks "*To secure and maintain local character and amenity.*" As commented previously, the front landscape area is compromised with the use of a large driveway, retaining walls and pathways, (refer to **Figures 12** and **13**), which are not characteristic of the adjoining dwellings. This element of the proposal does not meet Objectives 1 and 7 of Part 21 which are as follows:

“1 To respect the natural topography of a site.

7 To minimise excavated materials going off site.”

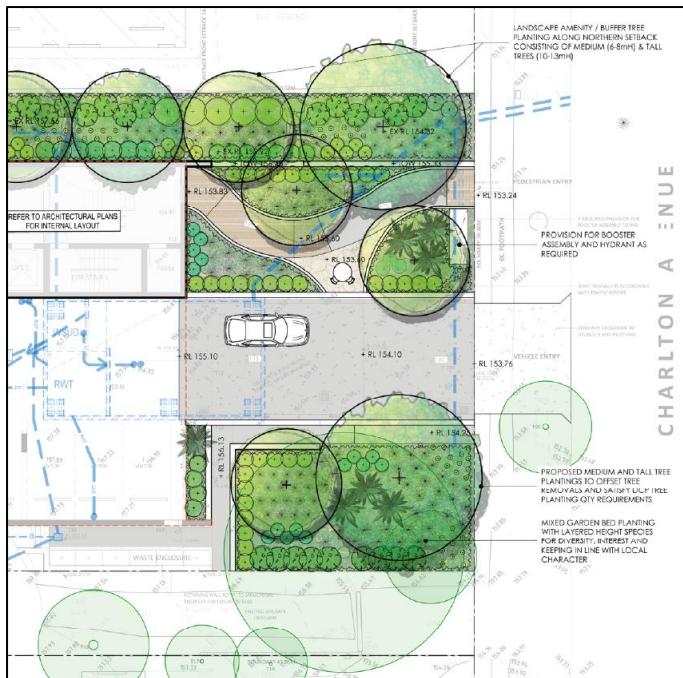


Figure 12: plan showing deletion of retaining wall and relocated pathway

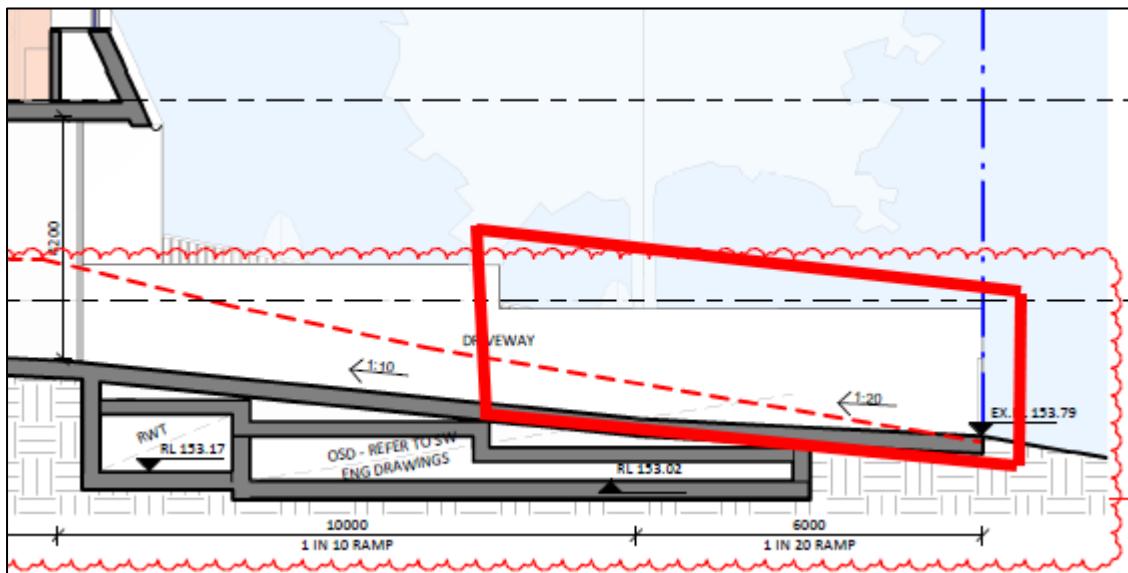


Figure 13: plan showing deletion of part side driveway wall

Building setbacks

The proposal does not comply with the relevant setback controls. The non-compliant setbacks are unnecessary, as the proposal provides more indoor and outdoor space than is required under Sections 107 and 108 of Chapter 3 of the Infrastructure SEPP 2021. The additional indoor and outdoor space contributes to a development that is bulky and does not align with dwellings houses within the locality, which is unacceptable. In this regard, the development does not meet the objectives of Part 10 Building and Setbacks, which are as follows:

1. *To integrate the child-care centre and ensure it is compatible with the scale and character of surrounding areas.*
2. *To be sympathetic to the amenity of neighbouring properties.*
3. *To provide attractive, site responsive and practical designs.*
4. *To support Ku-ring gai's unique character of built form in a quality landscape setting, including canopy trees.*
5. *To ensure landscaped setbacks are compatible with the streetscape and adjoining residential properties.*
6. *To enable ground water infiltration to limit heat island effects and promote outdoor comfort within the sit.*

The proposal provides a front building that complies with the required front setback. However, concern is raised by the Landscape and Tree Assessment Officer where a reduced width, between the eastern façade and the rear property boundary of 6 Charlton Avenue, does not allow for landscape screening. The use of the neighbouring screen trees should not be relied upon, as these neighbouring trees could be removed.

Ku-ring-gai Development Control Plan

Section B

Part 15 – Land Contamination

The site is not mapped as being contaminated and has a history of residential use and as such, it is un/likely to contain contamination and further investigation is not warranted in this case.

Part 18 – Biodiversity

As shown within **Figure 10**, the site is mapped as land comprising biodiversity significance.

Council's Ecological Assessment Officer is satisfied that the proposed development will not result in a significant detrimental impact contrary to the objectives of these provisions in relation to the diversity and condition of native vegetation, fauna and habitat, subject to conditions, which is agreed. Refer to the referral comments earlier in the report for further details in this regard.

Part 19 – Heritage and Conservation Areas

The site is within 100 metres of Heritage Item "I798" at 111 Pentecost Avenue, Turramurra, but is not listed as a heritage item or within a heritage conservation area.

There are no concerns regarding heritage impacts due to the satisfactory distance between the heritage item and the subject site along with being on a different street.

Ku-ring-gai Development Control Plan

Section C

Development Control	Proposed	Complies
Part 21 General Site Design		
21.1 – Earthworks and slope		
Development consider site topography, drainage, soil landscapes, flora, fauna and bushfire hazard by: <ul style="list-style-type: none">• Stepping buildings down the site• Locate finished ground level as close to the natural ground level as practicable• Level changes to occur primarily within building footprint• Minimum 0.6 metres width between retaining walls• Maintain existing ground level within 2 metres from any boundary• Limit slope for embankments to 1:6 (grassed) and 1:3 (soil stabilising vegetation)• No fill and excavation within sensitive environments• Minimise altered groundwater flows	It is agreed with Council's Landscape and Tree Assessment Officer who is not satisfied that the development does not impact the surrounding sites. Refer to the Internal Referrals section of this report for additional comments in this regard.	NO
A geotechnical report based on boreholes drilled to below basement level is to be submitted with the DA.	An adequate geotechnical report was submitted with the application.	YES
21.2 – Landscape Design		
Appropriate and sensitive site planning and design Existing appropriate screen planting is retained.	The proposal is not satisfactory in this regard because: <ul style="list-style-type: none">- No amenity screen planting is proposed.- Blade walls encroach into biodiversity areas.- Excavation exceeds 600mm.- Excavated driveway does not maintain natural ground level.- Insufficient areas of deep soil for the growth of tall trees.	NO

	<p>The existing front landscaping that softens the building form and provides a landscape setting is to be removed and replaced with excessive building works, which is uncharacteristic within the garden setting.</p> <p>Refer to the Internal Referrals section of this report for additional comments in this regard.</p>	
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Part 22 - General access and parking

22.1 – Equitable Access

Compliance with DDA demonstrated Entry access ramps located within the site and does not dominate the front façade Access ways for pedestrians and for vehicles are separated	<p>An access compliance report was submitted for the initial design; however, not as an amended document.</p> <p>The amended accessible pathway from the northern side elevation was relocated to allow a landscape strip.</p>	YES
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22.2 – General vehicle access

<ul style="list-style-type: none"> Minimise width and number of vehicle access points Access driveways set back at least 10m from street intersections and 3m from pedestrian entrances Vehicle and pedestrian access to buildings clearly distinguished and separated Vehicle crossing width is acceptable for intensity of use proposed Vehicles must exit in a forward direction Vehicle entries are integrated into the external façade and are finished in a high quality material Retaining walls associated with driveways maximum height of 1.2m No driveways are longer than 30m unless a passing bay is provided 	<p>The height of the driveway side walls are greater than 1.2 metres, which is not characteristic of the front garden setting, as excessive use of high walls combined with driveway and pathways are proposed restricting deep soil areas.</p>	NO
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22.3 – Basement car parking

Logical and efficient basement design AS2890.1	The proposal meets the Australian Standard AS2890.1.	YES
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<p>Appropriate ceiling floor to ceiling heights and ventilation provided:</p> <ul style="list-style-type: none"> • 2.5m for parking area for people with a disability; • 2.6m for residential waste collection and manoeuvring area • 4.5m for commercial waste collection and manoeuvring area 	<p>A 4.2 metre floor to ceiling height is provided at the car park entrance.</p> <ul style="list-style-type: none"> • a 3.6 metres floor to ceiling height is provided at the car space for people with a disability: • plans do not show a designated waste collection area within the basement. The 4.2 metres basement entrance opening would not permit a commercial waste collection, as the floor to ceiling height narrows to approximately 3.16 metres. A side door provides access to the waste bin enclosure area located adjacent to the right-of-carriageway. 	<p>YES NO</p>
<p>Basement is fully tanked</p>	<p>A geotechnical investigation report was submitted. Council's Team Leader Development Engineers raises no objection to the drainage system, which is directed to be directed to a combined belowground detention and retention of 75.9m³ and 20,200L located within the front setback of the site below the proposed driveway area.</p>	<p>YES</p>
<p>Unimpeded access to visitor parking and waste recycling rooms</p>	<p>The waste bin area is external to the basement visitor car parking areas.</p>	<p>YES</p>
<p>Ventilation grilles and screening devices are integrated into the landscape design</p>	<p>Apart from the driveway entrance and access doorways, the basement parking area is enclosed without grilles.</p> <p>Ventilation ducts are not shown on plans.</p>	<p>NO</p>
<p>Vehicles access ways are not in close proximity to doors and windows of habitable rooms</p>	<p>As shown within Drawing No. DA03.01 Issue B the driveway is centrally located within the site.</p>	<p>YES</p>
<p>Safe and accessible intercom access provided</p>	<p>Not shown on plans.</p>	<p>NO</p>

22.4 – Visitor parking		
Visitor parking located behind a security grille with an intercom system to gain entry	The accessible space is signposted and within proximity to the lift with all parking located behind the security garage door at the car park entrance.	YES
22.5 – Parking for people with a disability		
Accessible spaces are signposted and have a continuous path of travel to the principal entrance or a lift	The accessible space is signposted, accessible and adjacent to the lift.	YES
Non-residential development provides accessible parking as follows:		
Type of facility	Rate of provision	
<i>Retail/commercial</i>	1-2%	
<i>Civic/community centres</i>	2-3	
<i>Recreational facilities</i>	2-3%	
<i>Schools</i>	2-3%	
<i>Tertiary Education</i>	2%	
<i>Entertainment</i>	3-4%	
<i>Hospitals</i>	3-4%	
<i>Medical centres</i>	3%	
<i>Other uses</i>	At least 1%	
22.6 – Pedestrian Movement within Car Parks		
Pathways designed in accordance with AS1428.1	As shown on architectural plan Sheet No. DA03.01 Issue B.	YES
Marked pedestrian pathways have clear sightlines, appropriate lighting, are visible, conveniently located and constructed of non-slip material	As shown on architectural plan Sheet No. DA03.01 Issue B.	YES
22.7 – Bicycle Parking and facilities		
Bicycle parking and storage facilities satisfy AS2890.3	<p>It is not anticipated that children would ride to the childcare facility.</p> <p>The current design shows a pram store area within the basement within vicinity of the stairs and lift.</p>	YES
Bicycle access paths have a minimum width of 1.5metres	Other than the vehicular driveway access, the current design does not provide a separate bicycle access.	NO

Part 23 – Building Design and Sustainability		
23.3 – Sustainability of Building Materials and		
23.4 – Materials and Finishes		
External walls constructed of high quality and durable materials	Acoustic barriers range in height from 1.39 metres to 2.4 metres. The garage door is Colorbond. Earth toned colours are proposed. The materials used are considered high quality and durable notwithstanding the earlier concerns regarding the use of these materials.	YES
Use of materials and colours creates well-proportioned facades and minimises visual bulk	Complies	YES
23.6 – Building Services		
Services and related structures are appropriately located to minimise streetscape impact	Screening is proposed.	YES
In mixed use precincts substations and fire hydrants are not visible from the primary and principal street frontages	The subject site is not situated within a mixed-use precinct.	N/A
Air-conditioning units are well screened and do not create adverse noise impacts	The air conditioning condensers are screened, noise impacts have been addressed in the acoustic report which addressed mitigation measures.	YES
23.7 – General Acoustic Privacy		
Design minimises impact of internal and external noise sources	A revised acoustic report has not been submitted to support the amended plans.	NO
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not be audible within any habitable room in any residential premises before 7am and after 10pm. Outside of these restricted hours noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, or other mechanical ventilation systems and plant either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the boundary of the nearest potentially affected neighbouring properties. The background	The initial noise report recommended conditions to mitigate noise disturbance. However, the design has changed and an amended acoustic report has not been submitted.	NO

(LA90, 15 min) level is to be determined without the source noise present.		
23.8 – General Visual Privacy		
Visual privacy maintained for occupants and for neighbouring dwellings	Complies	YES
23.9 – Construction, Demolition and Disposal		
Satisfactory Environmental Site Management Plan.	A suitable plan has been provided.	YES

Part 24 – Water management

Council's Team Leader Development Engineers is satisfied that the proposed development has been designed to manage

Ku-ring-gai Contributions Plan 2023

If the application were recommended for approval the development would attract a Section 7.12 contribution of \$65,897.38.

Housing Productivity Contributions

If the application were recommended for approval contributions would be payable per the requirements of the Ministerial Order.

REGULATION

Section 61(1) of the Environmental Planning & Assessment Regulation 2021 requires the consent authority to consider the provisions of *Australian Standard AS 2601-2001: The demolition of structures*. If the proposal were to be supported, the demolition of the existing structure(s) will be carried out in accordance with a work plan and statement of compliance that will be required to be submitted to the Principal Certifier prior to the commencement of any works.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report and are deemed to be unacceptable

SUITABILITY OF THE SITE

The site is not suitable for the proposed development.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by the Panel ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and policies and is deemed to be unacceptable. On this basis, the proposal is contrary to the public interest.

CONCLUSION

Having regard to the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is not satisfactory.

RECOMMENDATION

THAT the Sydney North Planning Panel, , pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, refuse development consent to eDA0255/25 for demolition of existing buildings, construction of a 120 place child care centre and associated works on land at 4B & 8 Charlton Avenue Turramurra as shown on architectural plans DA00.00, DA02.01, DA02.02, DA03.01, DA03.02, DA03.03, DA03.04, DA04.01, DA05.01, DA06.01, DA06.02, and DA06.03 all Issue B, for the following reasons:

1. Visual character

The proposed design is not compatible with the streetscape character.

Particulars:

- a) The proposal does not display characteristics consistent with the existing character of Ku-ring-gai. The development does not satisfy the following:
 - i. The proposal presents as a three storey development within a predominantly single and two storey low density residential locality contrary to the prevailing built form character.
 - ii. The 2 metres high wall along the sides of the driveway ramp extending from the building frontage to the front boundary of the property is uncharacteristic of the street and will reduce sightlines for vehicles exiting the basement and may create further safety issues for pedestrians walking in front of the subject site.
 - iii. The proposal does not meet Objectives 1, 2, and 3 of Part 10.2 'Building setbacks' of the DCP, as outlined below:
 - To integrate the childcare centre and ensure it is compatible with the scale and character of surrounding areas.
 - To be sympathetic to the amenity of neighbouring properties.
 - To provide attractive, site responsive and practical designs.
 - To support Ku-ring-gai's unique character of built form in a quality landscape setting, including canopy trees.
- b) The proposal fails to comply with Controls and corresponding Objectives in Part 3 'Matters for Consideration' in the Child Care Planning Guideline (dated September 2021) in the following ways:
 - i. Control 12: Objective is "to ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised".
 - ii. Controls 13 and 14: Objective is "to ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context".

2. Non-compliant side setback for the rear building

The setback of the rear building from the rear boundary shared with No. 6 Charlton Avenue is unacceptable as it is not a sufficient setback to maintain landscape amenity, provide space for additional tree planting and minimise the visual impact of the two storey building on the private open space of the adjoining site to the east.

Particulars:

- a) Control 2 in Part 10.2 of the KDCP requires that minimum side and rear setbacks comply with the requirements in Part 4 of the KDCP. The minimum setbacks are specified in Part 4A.2 in KDCP and are determined based of the site width and site depth. The site is irregular in shape; however, is not a battle-axe allotment. The width of the site at the front building line fronting Charlton Avenue is 35.05 metres inclusive of the 4.57 metres wide ROC.
- b) Control 11 of Part 4A.2 of the KDCP states that for site widths measuring 20 metres or more 12% of the site width is required for two storey buildings. Thus, as the site width measures 35.05 metres, the side setbacks must be a minimum of 4.2 metres.
- c) The eastern side of the rear building has a setback of 2.3 metres to the rear boundary of No. 6 Charlton Avenue. The setback does not comply with the requirement of 4.2 metres, creates visual impact upon adjacent open space and provides insufficient landscape space, which is unacceptable.

3. Landscape design

The proposed landscape design provides excavation and built structures that impact the deep soil and character of the locality.

Particulars:

- a) The proposal does not meet the following Controls C5 in Part 3.2 and C17 in Part 3.4 of the "Childcare Planning Guideline" (Sept 2021):
 - i. The proposed cut and fill within the front setback measures more than 1 metres cut and is not characteristic of the adjoining properties.
 - ii. The proposed retaining walls and driveway within the front setback does not allow for the long-term growth of the proposed trees.
- b) Proposed blade walls encroaching biodiversity zone are not supported. (Refer to controls 7, 9 of Part 21.1 of the KDCP).
- c) The extent of excavation within the front setback and the number of structures located within designated deep soil areas restrict the establishment and growth of trees. This results in an inadequate landscape outcome that does not reflect the prevailing landscape character of the area or contribute positively to the streetscape. (Refer to C12 and 13 in Part 4A.2, C2, 3, 4, and 5 in Part 4A.4, C3 and 5 in Part 21.1, Part 21.2, C4 and C6 in Part 10.2 of the KDCP.)
- d) The landscape plan proposes significant cut along the southern and western edges of Outdoor Play Area 4., with retaining walls resulting in ground level changes ranging from 1.0 metres to 1.2 metres below natural ground level.

- i. The extent of cut exceeds the 600 mm maximum allowed under the DCP. The proposal fails to satisfy controls C3 and C11 in Part 21.1 of the KDCP. The site has a moderate slope of approximately 9.88% (measured along the 80.62 metres northern boundary), equivalent to a gradient of 1:10.12, which is not considered a steeply sloping site for the Ku-ring-gai area. (A steeply sloping site a per KDCP= 15%- refer to Control 2 of Part 21.1).
- ii. The proposed design should be amended to minimise cut and better respond to the site's natural topography. The proposal shall maximise the areas of deep soil in natural ground level, in particular along the rear of the site, adjacent to the environmental area.
- iii. These retaining walls are not considered necessary and should be removed where possible. Retaining the natural ground level in this area is preferred to maximise space available for deep soil planting and to minimise impact on the adjacent biodiversity area.

e) To satisfy Control 17 in Part 3.4 and Control 5 in Part 3.2 of the KDCP some of the retaining walls within the front setback should be removed, redesigned and/or reduced in height to allow larger areas of deep soil for the full development and long-term growth of the proposed tall trees and retain natural ground levels. The proposal results in an inadequate landscape outcome that does not reflect the prevailing landscape character of the area or contribute positively to the streetscape.

f) The proposed landscape design outcomes are inconsistent with controls C3 and C6 in Part 10.2 and C12 in Part 4A.2 of the KDCP. Deep soil and adequate screen planting is not provided adjacent to the eastern side setback of the rear building. The proposed rear building is setback 2 metres from the eastern boundary (rear of 6 Charlton Avenue), with a fire egress corridor limiting space for screening planting. The proposal relies on the existing *Cupressocyparis leylandii* in the adjoining property for privacy. While currently providing effective screening, this planting is off-site and not recommended in Ku-ring-gai. Future replacement by the neighbour may be smaller and insufficient to maintain privacy for the proposed development.

4. Solar access

The proposal fails to optimise solar access to external play areas, as required under Control 11ii) of Section 3.23 of the Child Care Planning Guideline.

Particulars:

a) As shown within Sheet No. DA06.01 Issue C, the mid-winter shadow diagrams show that Outdoor play area No. 1 will not receive adequate solar access.

5. Inadequate information

The application is not accompanied by adequate or sufficient information to enable a full and proper assessment of the application.

Particulars:

a) An amended acoustic report has not been submitted to address the changes shown within the amended plans. Inconsistencies require clarification, as the recommended acoustic barrier fence heights for the outdoor play areas (OPAs), shown on the

amended architectural plans, appear to have been based on specific child numbers, age groups, and play area sizes.

- b) Uncertainty exists with the design of the Perspex barrier attached to the 1.39 metre high fence to mitigate noise from outdoor play areas, as at other locations the use of 1.8 and 2.1 metres high fences are used. The reason why 1.8m high fences are required to ameliorate acoustic impacts for some parts of the outdoor play areas but not others has not been adequately explained.
- c) Not all indoor play areas for the younger age cohorts include a directly accessible nappy changing area with adult hand washing facilities as required by National Regulation No.112 - Nappy changing facilities.

6. Public interest

The development is unsatisfactory according to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the development fails to comply with the controls and objectives of the relevant planning provisions.