

## SYDNEY WESTERN CITY PLANNING PANEL

Panel Number:	PPSSWC-27.
Application Number:	2019/710/1.
Local Government Area:	Camden.
Development:	Demolition of existing structures and construction of a church, hall, centre based child care facility, car park, landscaping and associated works.
Capital Investment Value:	\$23.95 million.
Site Address(es):	320 Dwyer Road, Leppington.
Applicant:	Holy Apostolic Catholic Assyrian Church of the East Property Trust c/o PMDL Architecture and Design.
Owner(s):	Holy Apostolic Catholic Assyrian Church of the East Property Trust.
Date of Lodgement:	9 September 2019.
Number of Submissions:	Two (one objecting to the development and one raising matters for consideration).
Number of Unique Objections:	One.
Classification:	Regionally significant and integrated development.
Recommendation:	Refuse.
Regional Development Criteria (Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011):	Community facility with a capital investment value >\$5 million.
List of All Relevant Section 4.15(1)(a) Matters:	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011.</li> <li>• State Environmental Planning Policy (Sydney Region Growth Centres) 2006.</li> <li>• State Environmental Planning Policy (Infrastructure) 2007.</li> <li>• State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.</li> <li>• State Environmental Planning Policy No 55 - Remediation of Land.</li> <li>• Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River.</li> <li>• Camden Development Control Plan 2011.</li> </ul>
List all Documents Submitted with this Report for the Panel's Consideration:	<ul style="list-style-type: none"> <li>• Assessment report.</li> <li>• Applicant's written request seeking to justify the contravention of a development standard.</li> </ul>

	<ul style="list-style-type: none"> <li>Camden Local Environmental Plan 2010 assessment table.</li> <li>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 assessment table.</li> <li>Camden Development Control Plan 2011 assessment table.</li> <li>Proposed plans.</li> <li>Submissions.</li> </ul>
Development Standard Contravention Request(s):	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Sydney Region Growth Centres) 2006.</li> <li>Maximum height of buildings.</li> </ul>
Summary of Key Submission Issues:	<ul style="list-style-type: none"> <li>Traffic impacts and road access issues.</li> <li>Acoustic impacts.</li> <li>Potential impacts upon the Precinct Plan for the locality.</li> <li>Potential impacts upon the provision of future infrastructure.</li> </ul>
Report Prepared By:	David Rowley, Senior Town Planner.
Report Date:	December 2020.

### Summary of Section 4.15 Matters

	Yes
Have all recommendations in relation to relevant Section 4.15 matters been summarised in the Executive Summary of the assessment report?	<input checked="" type="checkbox"/>

### Legislative Clauses Requiring Consent Authority Satisfaction

	Yes
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised in the Executive Summary of the assessment report?	<input checked="" type="checkbox"/>

### Development Standard Contraventions

	Yes	N/A
If a written request for a contravention to a development standard has been received, has it been attached to the assessment report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Special Infrastructure Contributions

	Yes	No
Does the application require Special Infrastructure Contributions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **PURPOSE OF REPORT**

The purpose of this report is to seek the Sydney Western City Planning Panel's (the Panel's) determination of a development application (DA) for the construction of a church, a hall, a centre-based child care facility, and a car park at 320 Dwyer Road, Leppington.

The Panel is the consent authority for this DA as the capital investment value (CIV) of the development is \$23.95 million. This exceeds the CIV threshold of \$5 million (private infrastructure or community facility) for Council to determine the DA pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

## **SUMMARY OF RECOMMENDATION**

That the Panel determine DA/2019/710/1 for a mixed use development pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* by way of refusal.

## **EXECUTIVE SUMMARY**

Council is in receipt of a DA for the construction of a church, a hall, a centre-based child care facility, and a car park at 320 Dwyer Road, Leppington.

The DA has been assessed against the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, relevant environmental planning instruments, development control plans and policies.

A summary of the assessment of all relevant environmental planning instruments is provided below with a detailed assessment provided later in the report.

State Environmental Planning Policy (State and Regional Development) 2011.	The Panel is the consent authority for this DA as the development has a CIV of \$23.95 million which exceeds the CIV threshold of \$5 million for Council to determine the DA.
State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth SEPP).	The development is satisfactory with respect to the matters for consideration until finalisation of precinct planning for land in clause 16 of the Growth SEPP.
State Environmental Planning Policy (Infrastructure) 2007 (ISEPP).	The DA was referred to Transport for NSW for comment pursuant to the ISEPP and the comments received have been considered.
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP).	The proposed development complies with the indoor and outdoor space requirements of the <i>Education and Care Services National Regulations</i> ; however, it does not comply with a number of matters of consideration in Part 3 of Child Care Planning Guideline.

State Environmental Planning Policy No 55 - Remediation of Land.	Council staff have assessed a phase 2 detailed contamination assessment and associated information submitted in support of the DA. Council staff are satisfied that the site is suitable for the development.
Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (SREP 20).	The development is consistent with the aim of SREP 20 (to protect the environment of the Hawkesbury-Nepean River system) and all of its planning controls.
Camden Local Environmental Plan 2010.	The development is permitted with consent in the applicable RU4 Primary Production Small Lots zone; however it is not compliant with the objectives of the zone, the maximum building height, or the matters of consideration with regard to earthworks.

The DA was publicly exhibited for a period of 14 days in accordance with Camden Development Control Plan 2011. The exhibition period was from 15 to 28 October 2019. Two submissions were received (one objecting to the development and one raising matters for consideration).

The issues raised in the submissions relate to:

- traffic impacts and road access issues;
- acoustic impacts;
- potential impacts upon the Precinct Plan for the locality; and,
- potential impacts upon existing and future infrastructure.

The applicant has submitted a traffic report and supporting information in support of the DA. The report and supporting information demonstrate that the development will not have a significant negative impact upon the surrounding road network and the operation of surrounding intersections. Council staff have reviewed the report and supporting information and agree with their conclusions.

The applicant has submitted an acoustic report and supporting information in support of the DA. A solid acoustic barrier is proposed along the northern and western boundaries, acoustic louvers are proposed to screen mechanical plant equipment, and acoustic treatment is proposed to the windows and doors of the proposed multi-purpose hall. The acoustic treatments, most notably the solid acoustic barrier, are considered to result in unreasonable impacts (visual bulk) for residents of adjoining properties.

The proposed uses are unlikely to have an adverse impact upon the future precinct planning process. Additionally, the development is satisfactory with respect to the matters for consideration until finalisation of precinct planning for land in clause 16 of the Growth SEPP.

The development has been assessed against the Western City District Plan, State Environmental Planning Policy (Sydney Region Growth Centres) 2006, the Camden Local Environment Plan 2010 and the Camden Development Control Plan 2011. The development presents a number of non-compliances with these policies.

Through the assessment of the DA the applicant has provided amended plans that have increased the proposed setbacks and reduced the height of the proposed buildings, while introducing boundary retaining walls and acoustic barriers to the proposal.

While the building heights have been reduced, the proposed church still contravenes the maximum height of buildings development standard that applies to the site. The development standard limits buildings to a maximum height of 9.5m above existing ground level and the proposed church has a maximum height of 11.4m above existing ground level. The contravention is assessed in detail in this report and is not supported by Council staff, as the proposed built form does not preserve and enhance the rural qualities of the locality and the clause 4.6 written request does not demonstrate that the standard is unreasonable and unnecessary or that there are sufficient environmental planning grounds to support the contravention.

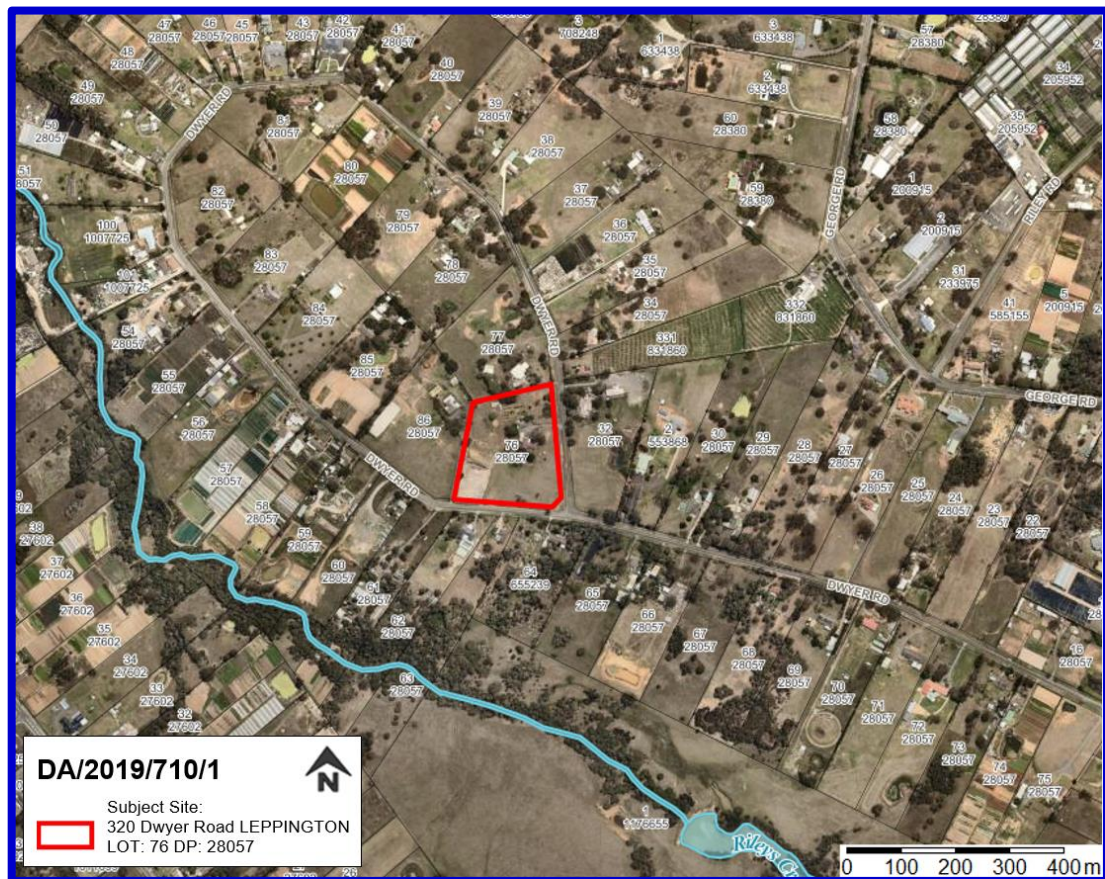
The applicant also proposes variations to Section B1.2, B1.16, B5.1, and D1.5 of the Camden Development Control Plan 2011 (Camden DCP). The only variation that has been supported by Council staff is a variation to section B5.1, where the Camden DCP requires the provision of 123 off-street car parking spaces for the development and only 100 spaces are proposed (a 23 space deficit). The proposed variations to Section B1.2, B1.16, and D1.5 of the Camden DCP pertain to the proposed earthworks, retaining walls, and acoustic barrier. An assessment of these issues is provided in the attachments to this report.

Based on the assessment, it is recommended that the DA be refused for the reasons outlined in this report.

#### **KEY PLANNING CONTROL VARIATIONS**

<b>Control</b>	<b>Proposed</b>	<b>Variation</b>
9.5m maximum building height.	11.4m maximum building height.	1.9m (20%).
123 car parking spaces.	100 car parking spaces.	23 car parking spaces (18.7%).

## AERIAL PHOTO



## THE SITE

The site is commonly known as 320 Dwyer Road, Leppington and legally described as Lot 76 in DP 28057.

The site contains an existing dwelling, garage, and outbuildings, as well as a storage yard. It has an area 2.37 hectares with approximately 151.5 metres of road frontage to the south and 173.8 metres of road frontage to the east. Both frontages are to Dwyer Road, which is a ring-road. The site slopes downwards from its eastern boundary to its south-western corner by 16.6 metres over 190 metres.

The surrounding area is characterised by undulating topography, scattered vegetation and a range of rural and rural-residential land uses in all directions. There is an existing place of public worship two lots eastward. The site is located in the Catherine Fields North Precinct of the South West Growth Area, which is yet to be released by the Minister for Planning and Public Spaces.

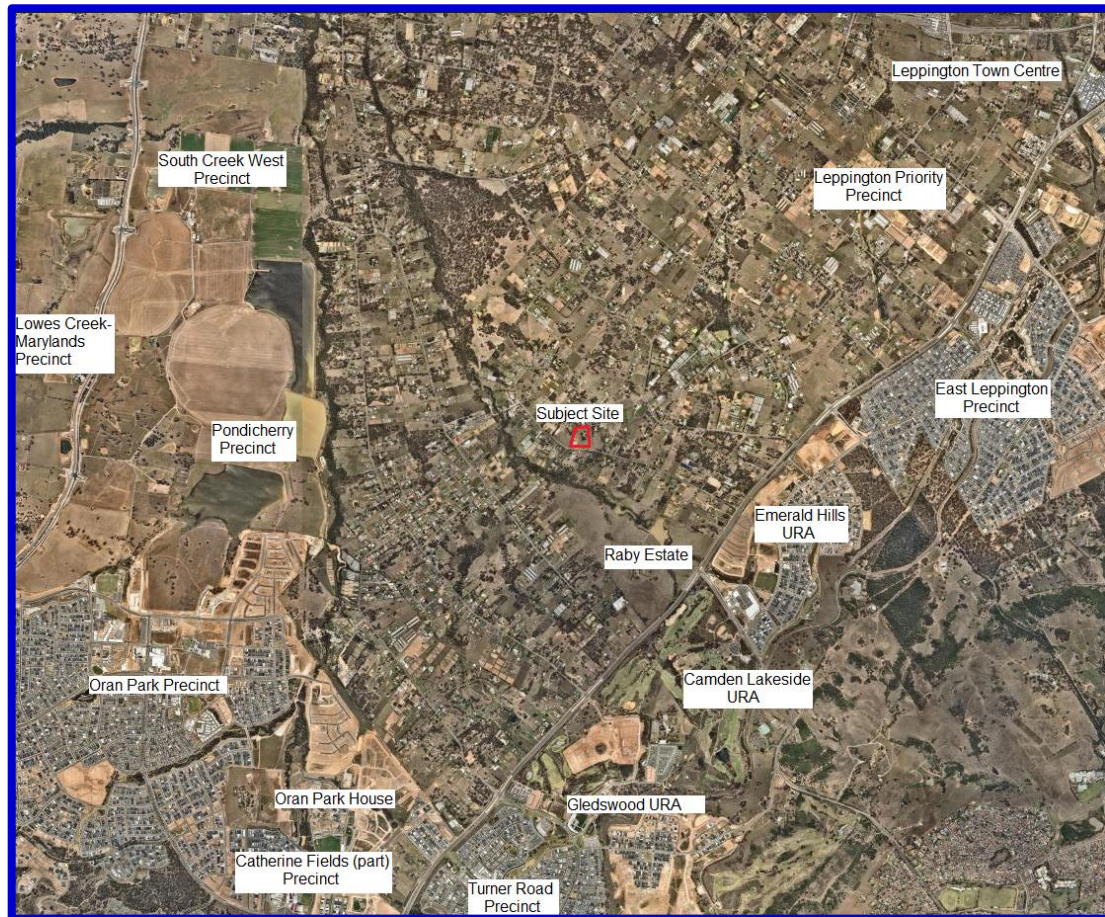
To the north lie the rural-residential suburbs of Leppington and Rossmore. Further north-west lies the Leppington Town Centre and Leppington Priority Precinct.

To the east lies Camden Valley Way, the Emerald Hills urban release area, and the East Leppington Precinct of the South West Growth Area. Both Emerald Hills and East Leppington feature developed and developing suburban land uses.

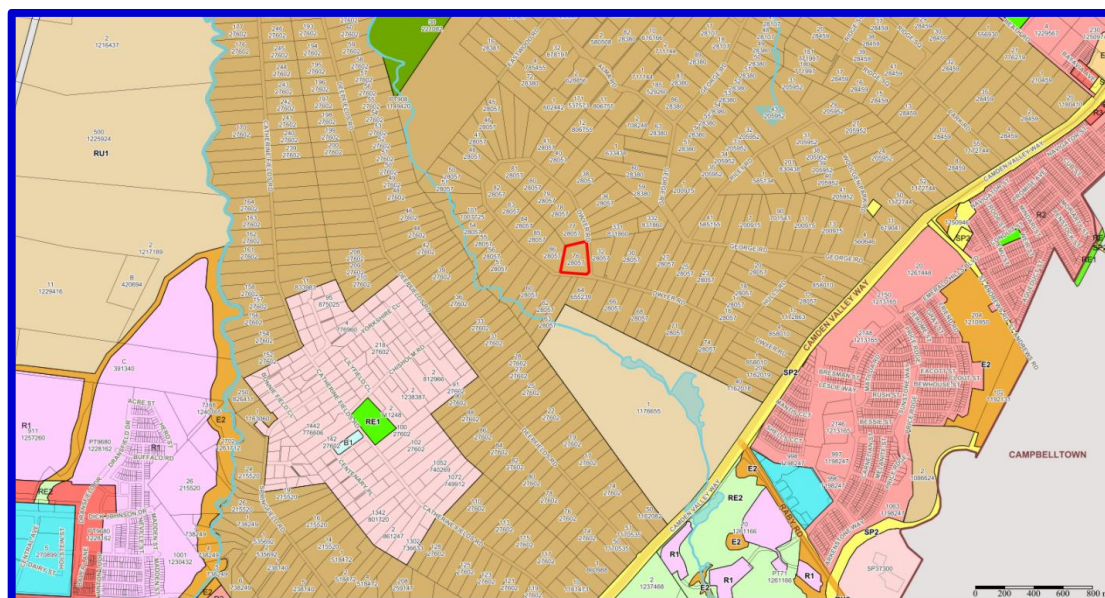
To the south lies Rileys Creek and the 'Raby' estate, a heritage item of State-significance, within the rural-residential suburb of Catherine Field.



To the west lies Rileys Creek and the rural-residential suburb of Catherine Field. Further west, beyond Rileys Creek and South Creek, lies the 'Pondicherry', 'Lowes Creek-Marylands', and 'South Creek West' precincts of the South West Growth Area. These precincts have been released for planning investigation but have not yet been rezoned. A context map has been provided below:

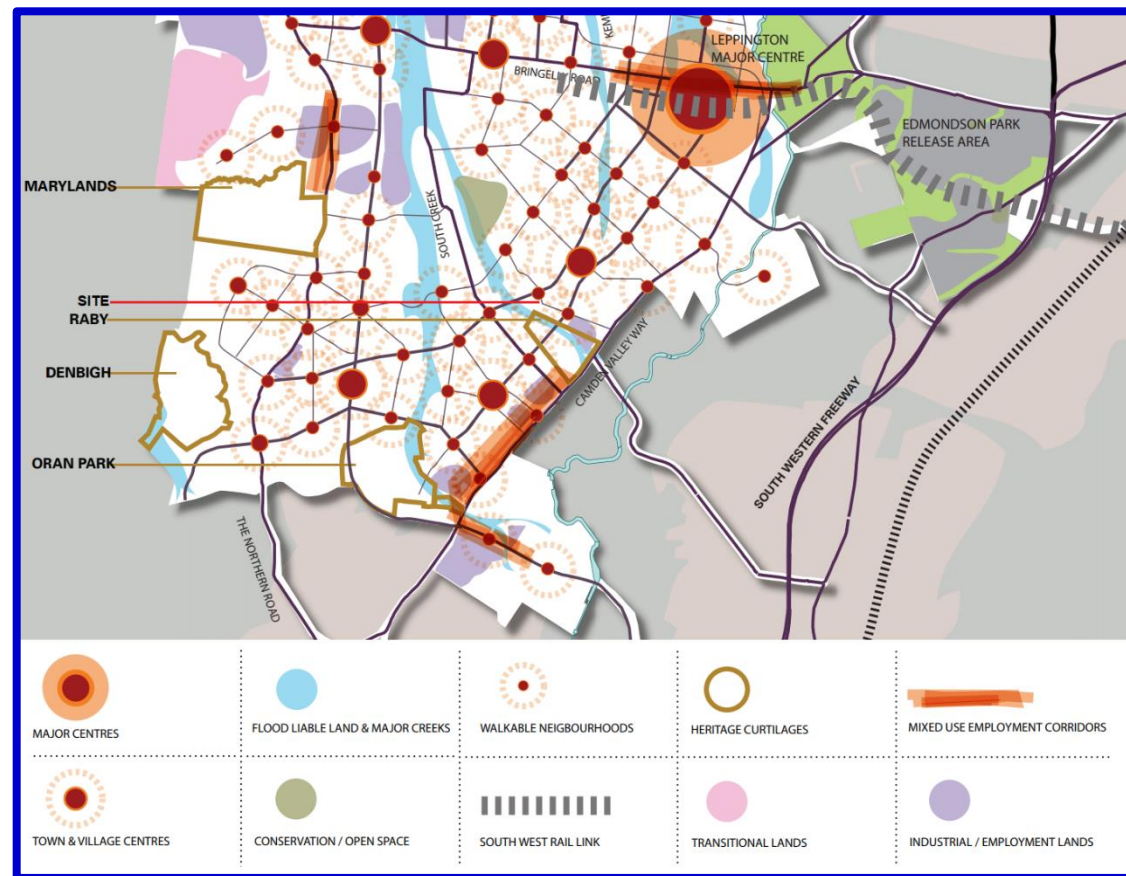


## ZONING PLAN





## SOUTH WEST GROWTH CENTRE STRUCTURE PLAN



## THE PROPOSAL

DA/2019/710/1 seeks approval for the construction and use of a mixed use development.

Specifically, the development involves:

- demolition of all existing structures and removal of vegetation;
- bulk earthworks across the site;
- construction of a two-storey, 90-place centre-based child care facility;
- construction of an at grade car park and internal accessway to accommodate 100 car spaces;
- construction of a two-storey, 600-seat place of public worship with associated bible study rooms and office space;
- construction of a multi-purpose hall to be used in conjunction with the proposed place of public worship; and,
- associated site works including the provision of drainage, landscaping, and the installation of an onsite sewage management system.



Approval is not sought for the display of any signage as part of the development.

## **PANEL BRIEFING**

Council staff briefed the Panel on the DA on 2 March 2020. The following discussion provides an assessment of how the issues raised by the Panel at the briefing have been addressed:

1. *The land the subject of the application is unsewered, which has constrained the development of the locality. Both the practicality of approving the development at this scale with a pump out system (as currently proposed), and the cumulative effect of such an approach if replicated, will need to be considered.*

The proposal has been amended such that on-site reuse is now proposed, as addressed in an Onsite Wastewater Management Assessment prepared by Martens Consulting. This approach to wastewater disposal is in line with that taken by surrounding sites, albeit on a larger scale. A 3,090m<sup>2</sup> effluent disposal area has been proposed in the eastern portion of the site. It is noted that this is approximately 13% of the subject site area. If the development application were approved, the proposed onsite sewage management system would be the subject of further detailed assessment by Council in accordance with section 68 of the *Local Government Act 1993*.

2. *The success of the proposed minimalist design will likely be dependent on the quality and type of materials employed. This might need to be nominated at DA stage.*

The materials to be employed in the proposed development have been nominated on the architectural plans (dwg. DA203 to DA205). Neutral tones have been proposed, as follows:

- Church – White textured masonry with dark grey window frames.
- Hall – White textured masonry with dark grey window frames, timber-look battens & soffit, and mid-grey ribbed metal cladding.
- Child care facility – timber-look battens, mottled earth-colour masonry, rustic soffit, and dark grey window frames.

3. *The proposed height non-compliance of around 50% would have to be justified according to the usual principals applying to a 4.6 variation. While this is a large site, the proposed building is shown close to a side boundary where it will be elevated above the adjoining property due to topography. These matters will need to be evaluated.*

The proposal has been amended such that the northern, western and southern setbacks have been increased. Additionally, the proposed contravention of the maximum permitted height is now limited to the church, with the multi-purpose hall reduced to a compliant height. Additionally, the proposed contravention of the maximum permitted height of the church has been reduced from 14.08 metres to 11.4 metres above existing ground level. A detailed assessment of this contravention is provided below.

4. *The car park design would seem to be improved from a visual and heat sink perspective by introducing canopy tree planting and potentially breaking up the*

*length of the car park into smaller components. Again, the elevation of that car park which may make it visually prominent is a factor to be considered.*

Shade trees have now been proposed in lieu of some parking spaces at a rate of at least one planter space per eight parking spaces. Additionally, the proposed parking spaces have been set back further from the boundary to allow additional landscaping. This element of the proposal is detailed on the landscaping plans provided as an attachment to this report.

5. *The setbacks proposed are less than those recommended by Council's DCP policy for other land uses. While there are no controls adopted specifically for the proposed uses, that does not mean that established setbacks and the setbacks required for other forms of development, are irrelevant. On a large greenfield site such as this, where the use will be quite different to its rural surroundings, narrow setbacks such as the front 4 metre setback and the effectively zero setback to the western boundary car park (which would prevent any screening or acoustic mitigation) would need strong justification.*

The proposal has been amended such that the northern, western and southern setbacks have been increased as follows:

Direction of Setback	Originally Proposed	Amended Proposal
Northern	19.425 metres	19.5 metres
Western	21.5 metres	26.0 metres
Southern	2.9 metres	7.59 metres to pump room 20.0 metres to child care facility
Eastern	70.2 metres	67.75m metres

Additionally, the proposed car parking spaces have been set back 5.4 metres from the boundary to allow space for a 1.4m pedestrian path, 3.1 metres of landscaping (including a drainage swale), and 900mm of screen landscaping to conceal an acoustic barrier from the adjoining land.

## **ASSESSMENT**

### ***Environmental Planning and Assessment Act 1979 - Section 4.15(1)***

In determining a DA, the consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the DA:

#### ***(a)(i) the provisions of any environmental planning instrument***

The environmental planning instruments that apply to the development are:

- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
- State Environmental Planning Policy (Infrastructure) 2007.
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.
- State Environmental Planning Policy No 55 - Remediation of Land.

- Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River.
- Camden Local Environmental Plan 2010.

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP identifies development that is State significant or regionally significant development.

The Panel is the consent authority for this DA as the CIV of the development is \$23.95million. This exceeds the CIV threshold of \$5 million for Council to determine the DA pursuant to Schedule 7 of the SRD SEPP.

State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth SEPP)

The Growth SEPP aims to co-ordinate the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre and the Wilton Growth Area.

Clause 16 of the Growth SEPP identifies matters for consideration until the finalisation of precinct planning for land. Consideration for these matters is provided as follows:

- (a) *whether the proposed development will preclude the future urban and employment development land uses identified in the relevant growth centre structure plan,*

Per the extract of the South West Growth Centre Structure Plan provided previously, the subject site is in close proximity to a 'walkable neighbourhood'. It is not identified as employment, flood-labile, conservation, transitional, or heritage-affected land.

The proposed land uses are considered to be consistent with a neighbourhood centre; however, the proposed quantum of earthworks may have adverse impacts on the development of adjoining sites, particularly where there is fill proposed to the boundary. Further consideration of the proposed earthworks is provided in the assessment tables attached to this report.

- (b) *whether the extent of the investment in, and the operational and economic life of, the proposed development will result in the effective alienation of the land from those future land uses,*

The future zoning of the subject site is uncertain and unknown at this stage. Despite this, some conclusions can be drawn, as the precinct planning process considers physical site constraints. The subject site is not currently identified as bushfire-prone, flood-prone, environmentally-sensitive, or heritage-affected land. As above, the site is not identified in the South West Growth Centre Structure Plan as employment land or transitional land either. The proposed development involves land uses that are permitted in a range of zones, and as such it is not anticipated that the proposed development will result in the alienation of land from future planned land uses.

Further consideration of the site's strategic planning merits and site development constraints is dependent on the input of technical studies that are commissioned through the precinct planning process. This process would also consider existing

land uses, along with projections of community demands and the required social infrastructure based on forecasted population catchments.

- (c) *whether the proposed development will result in further fragmentation of land holdings,*

Subdivision is not proposed with this application and, as such, the proposed development will not result in further fragmentation of land holdings.

- (d) *whether the proposed development is incompatible with desired land uses in any draft environmental planning instrument that proposes to specify provisions in a Precinct Plan or in clause 7A,*

There is no draft environmental planning instrument that proposes to specify provisions in a Precinct Plan. Clause 7A does not apply to the subject site. There are no desired land uses specified in any draft environmental planning instrument for the subject site.

- (e) *whether the proposed development is consistent with the precinct planning strategies and principles set out in any publicly exhibited document that is relevant to the development,*

The proposal is not inconsistent with the strategies and principles of the Western City District Plan.

- (f) *whether the proposed development will hinder the orderly and co-ordinated provision of infrastructure that is planned for the growth centre,*

Concern was raised by a neighbour regarding the impact of the proposal on an indicative road location that is shown in the '*Rickard Road Strategic Route Report*' prepared by ARUP on behalf of the then Department of Planning and Infrastructure and dated 9 January 2014.

The Design Plans in Appendix A of the Report (p. 60) show a proposed road that extends from Raby Road to intersect with the proposed Rickard Road extension. This indicative road then continues through the site, to the indicative George Road extension and beyond.

While the Rickard Road Strategic Route Report was finalised in 2014, no road corridor conservation process has been undertaken by Transport for NSW since then, particularly for the section of proposed Rickard Road within Catherine Field North Precinct.

As such it is not considered that the proposal will hinder the orderly and co-ordinated provision of infrastructure that is planned for the growth centre.

- (g) *in the case of transitional land—whether (in addition) the proposed development will protect areas of aboriginal heritage, ecological diversity or biological diversity as well as protecting the scenic amenity of the land.*

The subject site has not been identified as 'transitional land' in the South West Growth Centre Structure Plan, per the extract provided previously. The subject site is 300 metres from Rileys Creek and is not likely to be considered as a valuable site with regard to ecological or biological diversity. The potential for



Aboriginal heritage onsite has been considered through the assessment of this application and impacts to Aboriginal objects are not anticipated.

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

The ISEPP aims to facilitate the effective delivery of infrastructure across the State.

#### *Transport for NSW (TfNSW)*

The DA was referred to TfNSW for comment pursuant to Clause 104 of the ISEPP as, pursuant to Schedule 3 of the ISEPP, the development is classed as traffic generating development.

TfNSW provided a response that specified that it had no objection to the proposed development and did not recommend any conditions of consent. The response recommended that Council consider pedestrian safety and swept paths of the longest vehicle entering and exiting the subject site.

Pedestrian safety has been addressed within the site through the provision of a curbed walkway serving all car parking spaces, and two pedestrian crossings in close proximity to the building entrances. A separate pedestrian entry to the site has also been included with the amended proposal.

Swept paths were provided by the applicant and considered by Council's Traffic Engineer, Land Development Engineer and Waste Officer who are satisfied that accessibility to the site and manoeuvrability within the site will not be an issue.

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

The Education SEPP provides a consistent state-wide planning regime for education establishments and early education and care facilities.

Clause 22 of the Education SEPP requires that concurrence from the Department of Education be obtained should the development not comply with the indoor and outdoor space requirements of the *Education and Care Services National Regulations*. The development complies with the indoor and outdoor space requirements of the Regulations and therefore concurrence from the Department of Education is not required.

Clause 23 of the Education SEPP requires the consent authority to take into consideration any applicable provisions of the Child Care Planning Guideline ('the Guideline'). An assessment table in which the development is considered against the Guideline is provided as an attachment to this report. The proposed development does not comply with a number of matters of consideration in Part 3 of Guideline.

Clause 26 of the Education SEPP specifies that certain listed requirements of development control plans do not apply to centre-based child care facilities, including those matters contained within Parts 2, 3 and 4 of the Guideline.

### State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 provides a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires the consent authority to consider if the site is contaminated. If the site is contaminated, the consent authority must be satisfied that it is suitable in its contaminated state for the development. If the site requires remediation, the consent authority must be satisfied that it will be remediated before the land is used for the development. Furthermore, the consent authority must consider a preliminary contamination investigation in certain circumstances.

The applicant has submitted a phase two detailed contamination assessment and addendum in support of the DA. This assessment found the site to be suitable for the development from a contamination perspective. Council staff have reviewed the assessment, agree with its findings and are satisfied that the site is suitable for the development, subject to conditions of consent.

There is a data gap associated with the footprint of the existing dwelling, and if approved, a condition of consent should be imposed requiring soil testing within the dwelling footprint following demolition.

### Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (SREP 20)

SREP 20 aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

The development is consistent with the aim of SREP 20 and all of its planning controls. There will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of the development. Appropriate erosion, sediment and water pollution control measures have been proposed as part of the development.

### Camden Local Environmental Plan 2010 (LEP)

#### *Site Zoning*

The site is zoned RU4 Primary Production Small Lots pursuant to Clause 2.2 of the LEP.

#### *Land Use Definitions*

The development is defined as a “mixed use development” comprising of a “place of public worship” and a “centre-based child care facility” by the LEP.

#### *Permissibility*

All of the development is permitted with consent in the zone in which it is proposed pursuant to the land use table in the LEP.

Concern was raised with the applicant that the proposed multi-purpose hall could be viewed as a “recreation facility (indoor)”, which is prohibited development. The applicant has indicated that the multi-purpose hall will function as an ancillary facility for the proposed church and will therefore operate at the same time and capacity as the church.

### *Planning Controls*

An assessment table in which the development is considered against the LEP's planning controls is provided as an attachment to this report.

### *Proposed Contravention*

The applicant proposes a contravention to the height of buildings development standard that applies to the site. The development standard limits buildings to a maximum height of 9.5m above existing ground level. However, the proposed church building will have a maximum height of 11.4m above existing ground level. The contravention relates to two portions of the proposed church building and is shown in the applicant's request under Clause 4.6 of the Camden LEP 2010 that is attached to this report.

### *Contravention Assessment*

Pursuant to Clause 4.6(3) of the LEP, the applicant has submitted this written request that seeks to justify the contravention of the development standard. In summary, the applicant's written request provides the following justification for the contravention:

- the development is consistent with the objectives of the development standard in that it is compatible with the locality and will not impact upon the amenity of any existing development;
- the development is consistent with the objectives of the RU4 Primary Production Small Lots zone in that it will provide compatible community land uses;
- the proposed development has been sited and designed to minimise land use conflict with surrounding land uses through the incorporation of large setbacks and by responding to the natural topography of the site; and
- the contravention applies to a minor portion of the proposed church that will not be visually prominent.

A copy of the applicant's written request is provided as an attachment to this report.

Pursuant to Clause 4.6(4) of the LEP, Council staff are not satisfied that:

- the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, or
- the development will be in the public interest.

The development standard contravention is not supported for the following reasons:

- The site's location in the Catherine Fields North Precinct of the South West Growth Area is not grounds for demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the land is yet to be released for planning investigation and, as such, the desired future character of the locality is not known.

- The development is inconsistent with the objectives of the development standard, as listed below:
  - (a) *To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.*

The proposed development will not present a bulk and scale that is reasonable for the existing rural character of the locality. The proposed development has been sited along the western boundary of the subject site to allow a significant setback from the street, which has created acoustic issues. Despite the significant setback from the street, the proposed form of the church and centre based child care facility will not be compatible with the existing rural character of the locality.

The church building is proposed to cover approximately 880m<sup>2</sup> of the site and feature large expanses of blank wall, most prominently up to 18 metres in length and 13 metres in height above the finished ground level. While some articulation is provided to the roof of the proposal, this will not be readily apparent at the human scale and will largely be concealed by parapet walls. The large expanses of blank wall are proposed to be constructed of white textured masonry, with no variation in the choice of finish.

The centre based child care facility is proposed to have a maximum height of 9.5 metres above natural ground level. While this complies with the numerical control and shields some of the impacts that the church will have on the streetscape, the proposed two-storey, flat-roofed form, atop 2.5 metres of fill, is not anticipated to positively contribute to the streetscape.

The locality is typically characterised by one storey brick or timber clad dwellings with hip and gable roof forms, large verandahs, established landscaping, and scenic views. While there are some two storey dwellings, and dwellings with flat roofs, these do not form the existing or desired future character of the locality.

As a result of the proposed height, the lack of articulation in the elevations, and the choice of finishes, it is not anticipated that the proposal will minimise impacts on the scenic quality and rural character of the locality.

- (b) *To minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

The amenity of adjoining development will not be preserved, as the proposed development will have a significant visual impact from both the street and adjoining private land.

Acoustic barriers are proposed with a maximum height of 2.5 metres, which are likely to disrupt views and present adverse visual impacts. The applicant has proposed to set the barrier back 900mm to accommodate the planting of hedges and climbers to mitigate these impacts; however, the screen planting is located atop boundary retaining walls that will have a maximum height of 2.05 metres. The maximum combined height of the acoustic barriers and retaining walls is proposed to be 4.05 metres. While this will eliminate privacy concerns and provide a visual shield part of the non-compliant proposal, the acoustic barriers and retaining walls will add to the bulk and scale of the building and further detract from the scenic qualities and the overall amenity of the locality.



Additionally, no evidence has been provided to demonstrate that views will not be disrupted by the bulk and scale of the proposed development. While significant landscaping is proposed across the site to limit adverse visual impacts of the proposed development, the centre based child care facility will have an overbearing impact on Dwyer Road to the south (as addressed in response to 'a'), boundary retaining walls will have adverse impacts on adjoining development to the west and north, and the proposed place of public worship is of such a scale that it will still have a significant visual impact when viewed from Dwyer Road to the east.

(c) *To minimise the adverse impact of development on heritage conservation areas and heritage items.*

No evidence has been provided to demonstrate that the proposal will not have any adverse impacts on the Raby estate. While the homestead is approximately 1.1 kilometres away, and the curtilage is shielded by existing landscaping along Rileys Creek, the creek is approximately 10 to 15 metres below the ground level of the proposal, and Raby is approximately level with the roof of the centre based child care facility.

- The development is inconsistent with the objectives for development within the RU4 zone, as listed below:

1. *To enable sustainable primary industry and other compatible land uses.*

In accordance with the provisions of the DCP, easements are required on adjoining land for maintenance and support of the proposed boundary retaining walls. This requirement, combined with the adverse impacts arising from the bulk and scale of the proposal, results in a proposal that is not compatible with surrounding uses.

2. *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

The proposed development does not encourage or promote diversity and employment opportunities in relation to primary industry enterprises.

3. *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposed development is immediately surrounded by land within the same zone, as demonstrated in the zoning plan provided in this report. The Raby estate is the land in proximity that is zoned RU1 Primary Production. Insufficient information has been provided to demonstrate that the proposal will not have any adverse impacts on the Raby estate.

Consequently, it is recommended that the Panel not support this proposed contravention to the LEP.

***(a)(ii) the provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)***

Draft Environment State Environmental Planning Policy (Draft Environment SEPP)

The development is consistent with the Draft Environment SEPP in that there will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of it.

***(a)(iii) the provisions of any development control plan***

Camden Development Control Plan 2011 (Camden DCP)

Subsection 1.1.11 of the Camden DCP 2019 states:

*“This DCP does not apply to an application under EP&A Act which was lodged with Council but not finally determined before the commencement of this DCP. Any application lodged before the commencement of this DCP will be assessed in accordance with any relevant previous DCPs or other Council’s policy which applied at the time of application lodgement.”*

This application was lodged with Council on 9 September 2019. The Camden DCP 2019 commenced on 16 September 2019.

*Planning Controls*

As discussed above, Clause 26 of the Education SEPP specifies that certain listed requirements of development control plans do not apply to centre-based child care facilities, including those matters contained within Parts 2, 3 and 4 of the Guideline.

An assessment table in which the development is considered against the relevant applicable provisions of the Camden DCP is provided as an attachment to this report.

The applicant proposes variations to Section B1.2, B1.16, B5.1, and D1.5 of the Camden Development Control Plan 2011 (Camden DCP). Only the variation to section B5.1 has been supported by Council staff, as detailed below.

The proposed variations to Section B1.2, B1.16, and D1.5 of the Camden DCP pertain to the proposed earthworks, retaining walls, and acoustic barrier. An assessment of these issues is provided in the attachments to this report

***(a)(iia) the provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4***

No relevant planning agreement or draft planning agreement exists or has been proposed as part of this DA.

***(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

The *Environmental Planning and Assessment Regulation 2000* prescribes several matters that are addressed in the conditions attached to this report.

***(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

As demonstrated by the assessment, the development is likely to have unreasonable adverse impacts on the natural and built environments.

**(c) the suitability of the site for the development**

While the site is considered to be suitable for development, the subject proposal is not supported given the adverse impact on the rural character of the area and the amenity enjoyed by residents of adjoining dwellings houses.

**(d) any submissions made in accordance with this Act or the regulations**

The DA was publicly exhibited for a period of 14 days in accordance with Camden Development Control Plan 2019. The exhibition period was from 15 to 28 October 2019. Two submissions were received (one objecting to the development and one raising matters for consideration).

The following discussion addresses the issues raised in the submissions.

**1. Traffic**

*"The infrastructure in place is not fit for the traffic flow that the Methodist church generates, and the proposed development will generate"*

*"Traffic lights be installed at the intersection of Dwyer Road and the Camden Valley Way to ensure the safety of the current and future community around that intersection."*

*"A roundabout, or a give-way sign, be installed at the road-fork near the south-east corner of 320 Dwyer Road. This will regulate the anticipated traffic-increase... Alternatively, Dwyer Road can be changed to a clockwise one-way road, past the fork."*

*"Reduced general maximum speeds be considered along Dwyer Road, with appropriate signage"*

**Officer comment:**

The applicant has submitted a traffic report and supporting information in support of the DA. The report and supporting information demonstrate that the development will not have a significant negative impact upon the surrounding road network and the operation of surrounding intersections. The report states that the mass times will be after 7:00pm on weekdays and Sunday morning. These peaks fall outside of the traffic peaks. Council staff have reviewed the report and supporting information and agree with their conclusions.

**2. Noise**

*"The noise created by 240-300 vehicles and the 2-3 people in each vehicle is significant ... The noise created by the proposed early childcare centre in a quiet country setting is also significant. The Noise Impact Assessment indicates that compliance is expected however the mechanical plant data was unavailable and the noise levels were based on a prediction that may not be accurate. Our concern is that the predictions and reports do not represent the reality of the noise and disruption the proposed develop will have on the area"*

**Officer Comment:**

The applicant has submitted an acoustic report in support of the DA. An addendum to the report with regard to on-site traffic movements was provided at Council's request. The remodelled on-site traffic movements are predicted to cause exceedances up to 6dB for traffic generated during the church services and hall functions. A solid acoustic barrier is required along the northern and western boundaries, acoustic louvers are required to screen mechanical plant equipment, and acoustic treatment is required to the windows and doors of the proposed multi-purpose hall. As noted in the main of the report, the acoustic treatments, most notably the solid acoustic barrier, are considered to result in unreasonable impacts (visual bulk) for residents of adjoining properties.

3. Strategic Impact:

*"How is the proposed use of land, at 320 Dwyer, going to impact/influence the future zoning of surrounding lands?"*

Officer Comment:

The proposal has been considered against clause 16 of the Growth SEPP which identifies matters for consideration until the finalisation of precinct planning for land. The proposal is not considered to have a significant or adverse influence on the future precinct planning process; however, the proposed earthworks to the boundaries of the site are anticipated to have adverse impacts on the development of adjoining land and, as such, are not supported.

4. Wastewater Management:

*"The installation of a sewer trunk in Dwyer Road is likely to be the most economical option, even for a one-off development... The reason for this is that the distance between 320 Dwyer Road and the location of the existing sewer main (along the Camden Valley Way) is only around 1,200 metres."*

Officer Comment:

Sydney Water have advised the applicant that connections to the rising main in Camden Valley Way are not permitted as the proposed development has not been considered in the sewage design. The applicant has submitted an *Onsite Wastewater Management Assessment* in support of the application, which has identified onsite reuse as an option. Council staff have reviewed the report and agree with its conclusions. If the development application were approved, the proposed onsite sewage management system would be the subject of further detailed assessment by Council in accordance with section 68 of the *Local Government Act 1993*.

5. Water Supply:

*"Confirmation of this may be needed to ensure that sufficient water flow is available to support the proposed development."*

Officer comment:

The applicant has submitted a letter from Sydney Water in support of the DA, which confirms that there is capacity in the existing network to service the proposed development, and as such it will not warrant an upgrade of the existing water main in Dwyer Road.

**(e) *the public interest***

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The public interest is served through the detailed assessment of this DA under the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, environmental planning instruments, development control plans and policies. Based on the above assessment, the development is not consistent with the public interest.

### **EXTERNAL REFERRALS**

The external referrals undertaken for this DA are summarised in the following table:

<b>External Referral</b>	<b>Response</b>
Transport for NSW.	No objection and no conditions recommended. Recommendation that Council consider pedestrian safety and swept paths of the longest vehicle entering and exiting the subject site.

Pedestrian safety and swept paths of the longest vehicle entering and exiting the subject site were considered in the assessment of the proposed development, as per the ISEPP assessment in this report.

### **FINANCIAL IMPLICATIONS**

This matter has no direct financial implications for Council.

### **CONCLUSION**

The DA has been assessed in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies. The DA is recommended for refusal for reasons outlined below.

### **RECOMMENDED**

**That the Panel refuse DA/2019/710/1 for the demolition of existing structures and construction of a church, hall, centre based child care facility, car park, landscaping and associated works at 320 Dwyer Road, Leppington for the following reasons:**

1. The applicant's written request to contravene Clause 4.3 - height of building development standard of *Camden Local Environment Plan 2010* fails to provide sufficient environmental planning grounds to justify the contravention having regard to the objectives of the standard nor does it demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. The proposed built form does not preserve and enhance the rural qualities of the locality and the development results in unreasonable impacts on the amenity enjoyed by residents of adjoining properties.
3. The proposal is inconsistent with the objectives of RU4 Primary Production Small Lots zone in the *Camden Local Environment Plan 2010* in that the proposed bulk and scale is not compatible with sustainable primary industry and it does not promote employment opportunities in relation to primary industry enterprises.

4. The proposal is inconsistent with clause 23 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* in that that the child care facility is not compatible with the local character and surrounding streetscape, pursuant to the matter of consideration 'C5' in the Child Care Planning Guideline.
5. The proposal is inconsistent with clause 23 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* in that that the scale of the child care facility is not compatible with adjoining development and the impact on adjoining buildings is not minimised, pursuant to the matter of consideration 'C12' in the Child Care Planning Guideline.
6. The built form, articulation and scale of development does not relate to the context of the development, pursuant to the matter of consideration 'C15' in the Child Care Planning Guideline.
7. The proposal is inconsistent with clause 7.4(3)(d) of the *Camden Local Environment Plan 2010* in that the proposed earthworks will have adverse impacts on the existing and likely amenity of adjoining properties.
8. The proposal is inconsistent with Control 1 in Section B1.2 of the Camden Development Control Plan 2011 in that the development does not respond to the natural topography of the site, or minimise the extent of cut and fill, resulting in unreasonable impacts upon adjoining development.
9. The proposal is inconsistent with Control 14 in Section B1.2 of the Camden Development Control Plan 2011 in that the development does not provide for an easement for support on the subject lot and adjoining land.
10. The proposal is inconsistent with Control 7 under 'Acoustic Amenity (General)' in Section B1.16 of the Camden Development Control Plan 2011 and the provisions of Subsection D1.5.2 of the Camden Development Control Plan 2011 in that the proposed acoustic barrier does not satisfactorily blend in with the natural environment.
11. The proposed development is considered unsatisfactory pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that it has not been demonstrated that the proposal is in the public interest.
12. Pursuant to the provisions of Section 4.15(a)(iv) of the *Environmental Planning and Assessment Act 1979*, the proposal is not satisfactory with regard to clause 49 of the Environmental Planning and Assessment Regulation 2000 in that owner's consent has not been provided for the creation of easements for maintenance and support on Lots 77 and 86 in DP 28057.