

SWCPP Ref. No.:	PPSSWC-315
DA No.:	DA23/0076
PROPOSED DEVELOPMENT:	Construction Of A Two Storey Child Care Facility Catering For 108 x Children With Basement Car Parking, Signage, Tree Removal & Associated Works
PROPERTY ADDRESS:	72 Park Avenue, KINGSWOOD NSW 2747
PROPERTY DESCRIPTION:	Lot 10 DP 1224143,
ZONING:	Zone R4 High Density Residential - LEP 2010
CLASS OF BUILDING:	Class 9b
ASSESSING OFFICER	Donna Clarke
APPLICANT:	C Assaf
DATE RECEIVED:	3 February 2023
REPORT BY:	Donna Clarke, Consultant Planner, Penrith City Council
RECOMMENDATIONS:	Refuse

Assessment Report

Executive Summary

The Development Application requires determination by Sydney Western City Planning Panel (Panel reference: PPSSWC-315) as Regionally Significant Development under Schedule 6, clause 5(b) of the State Environmental Planning Policy (Planning Systems) 2021, being for a child care centre with a capital investment value of more than \$5 million.

Council is in receipt of a Development Application for the clearing of the site and tree removal, and construction of a three storey centre based child care centre with space for 117 children, signage and associated civil and landscaping works at Lot 10 DP 1224143, 72 Park Avenue, Kingswood. During the assessment, the number of children proposed was reduced to 108.

The application for a child care centre is made under State Environmental Planning Policy (Transport and Infrastructure) 2021.

The site is zoned R3 Medium Density Residential under Penrith Local Environmental Plan 2010 (LEP), and the proposal for the purposes of a "centre-based child care facility" is permissible with consent.

A briefing was made to the Sydney Western City Planning Panel on 3 April 2023 by the Applicant and Council. The Panel questioned what considerations have been made to avoid overlooking and acoustic impacts on the adjoining residences to the east and west and regarding waste collection.

Key issues identified for the proposal include:

- Inappropriate site due to topography and extensive earthworks, recontouring and retaining walls.
- Context and compatibility with the character of the local area or the desired future character of the area.
- Poor design interface, setback treatments and spatial arrangement.
- Unacceptable built form, size, and scale.
- Inadequate outdoor play space area calculations.
- Poor play space.
- Insufficient tree protection, on-site landscaping and replacement planting, and inadequate protection of trees on adjoining properties.
- Unacceptable residential interface and amenity for future occupants, and amenity impacts for adjoining properties.
- Inadequate infrastructure including stormwater drainage, driveway design, parking, maneuvering and evacuation.
- Lack of consideration of impacts on groundwater.

- Insufficient address of urban heat and sustainability requirements.
- Compliance with Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014.
- Lack of information or errors and inconsistencies in documentation.

In accordance with Council's Community Engagement Strategy, the proposal was advertised in a local newspaper on 24 February 2023 and notified to adjoining and nearby property owners and residents, with the public exhibition period between 27 February 2023 and 13 March 2023. Council received no submissions in response.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal.

Site & Surrounds

The site is legally described as Lot 10 DP 1224143, being 72 Park Avenue, Kingswood. The site is rectangular in shape 1960m², with frontage to Park Avenue of 30.58m, rear northern boundary of 30.49m, eastern side boundary of 65.39m and western side boundary of 63.17m and is orientated in a north-south direction.

The site is located on the northern side of Park Avenue, approximately 105m from the intersection to the west with Richmond Road and Kingswood Railway Station. Opposite the site to the south is the railway corridor and railway lines, screened from the site by established hedging.

The site falls from north to the street by approximately 6 metres, with a batter within the southern portion that falls down to the front and side setbacks. The site is presently the site is vacant and clear of all buildings and vegetation, however it is noted that tree removal has only recently occurred. Remnants of retaining walls exist on the northern rear portion of the Site and open style fencing along the front boundary encloses the site and an existing concrete wall along the rear boundary.

At the time of lodgement, the site contained ten trees, which have been removed around May/June 2023. The adjoining site contains a tree (T11) located adjacent to the side eastern boundary of the site. The matter of tree removal has been the subject of compliance investigation.

A footpath exists along the frontage of the site, an electricity pole is located on the landscape verge in front of the site in the southeastern corner and overhead powerlines along the frontage. A sewer pipe exists within the front setback of the Site approximately 6m from the front boundary.

The site is burdened by easements and restrictions relating to services and drainage along the eastern boundary, as well as an easement for services through the centre of the Site which must be relocated to the eastern boundary prior to any residential development occurring on the site. A sewer pipe exists within the front setback approx. 6m from the front boundary.

The surrounding area consists of predominately residential development, comprising a mix of older medium to high density housing stock, including townhouses and three storey residential flat buildings. The site is located within a pocket of land zoned R4 High Density Residential located around the Kingswood Railway Station. The subject site is bound by St Joseph's Primary School to the north, a three storey flat building to the east, the Western Railway adjacent Park Avenue and a two storey townhouse development to the west. No items of heritage significance are located within the immediate vicinity of the Site.

The site was created from a subdivision of land previously owned by St Joseph's Primary School, which shares the northern boundary of the subject site. A large building is built adjacent to the common boundary with a setback of approx. 3.5m.

The site is not identified as bush fire prone land and is not affected by local overland flow or mainstream flooding.

Background

The site has a development consent issued under DA17/0559 for a Residential Flat Building containing 45 units, future potential ground floor child care centre, basement car parking and associated landscaping and drainage works. The building contained two levels of basement with 5 storeys above, which presents to the street as 4 storeys. This consent expires on 5 March 2024.

The subject development application DA23/0076 was lodged on 3 February 2023 and sought consent for vegetation

removal and construction of a three storey child care facility for 117 children over basement parking on the site.

A briefing was made to the Sydney Western City Planning Panel on 3 April 2023 by the Applicant and Council.

The Panel specifically questioned what considerations have been made to avoid overlooking and acoustic impacts on the adjoining residences to the east and west and regarding waste collection.

On 28 April 2023, Council sent a request for information with respect to the proposed development, including comments received from the Sydney Western City Planning Panel briefing.

On 6 July 2023, a formal response was received from the applicant, including amended plans and documentation, which reduced the number of children from 117 to 108.

On 31 August 2023, this Class 1 Appeal was commenced with the Land and Environment Court.

On 14 September 2023, Council sent a further request for information with respect to the amended proposed development.

On 11 October 2023, a Statement of Facts and Contentions was lodged by Council as the Respondent to the Land and Environment Court Appeal.

A Section 34 Conference is scheduled for 4 April 2024.

Proposal

The proposal as originally lodged is for clearing of the site and tree removal, and construction of a three storey centre based child care centre with space for 117 children, signage and associated civil and landscaping works. The original proposal was for 117 children between the ages of 0-6 years old, 21 staff and 31 parking spaces.

In response to Council's Request for information, the proposal was amended and now includes:

(a) Clearing of the Site, including existing retaining walls.

(b) Excavation of approximately 3795 cubic metres to create a basement/ground floor level.

(c) Construction of a two-storey childcare centre above the basement/ground floor level with space for 108 children, including:

i. Basement level, containing 29 parking spaces (11 parent spaces including 1 accessible, and 18 staff spaces including 3 tandem spaces), sprinkler room, storage room, rainwater tank and access to lobby, lifts, and stairs, with access via a vehicular ramp from Park Avenue at the southwest portion of the site.

ii. Level 1 floor, allocated to 0-2-year-olds and 2-3-year-olds, comprising a foyer, reception, administration areas, kitchen, staff room, laundry, cot rooms, bottle preparation room, bathroom facilities, indoor and outdoor storage and two outdoor play areas allocated to 0-2-year-olds and 3-5-year olds.

iii. Level 2, allocated to 3-6-year-olds, comprising indoor and outdoor play areas and bathroom facilities, indoor and outdoor storage.

iv. Monday-to-Friday occupation during the hours of 7.00am to 6.00pm of a childcare centre accommodating 108 children, employing up to 19 staff and comprising:

1. 0-2 years: 28 spaces;
2. 2-3 years: 40 spaces; and
3. 3-6 years: 40 spaces.

v. Associated landscaping and drainage works including On-site detention tank within the front setback below proposed pedestrian ramps and landscaping around the perimeter of the building.

vi. Pedestrian access is proposed from Park Avenue via ramps to a centrally located lobby and 4 bicycle spaces at the front of the building. A concrete pathway is proposed along the western boundary from the front boundary to the central portion of the Level 1 outdoor play area. A concrete pathway is proposed along the eastern boundary from the

front ramps to the rear portion of the Level 1 outdoor play area.

vii. Waste storage area incorporated into the front of the building with separate entry, in south-eastern corner of the building.

viii. Levels 1 and 2 are "L" shape in design with a wide frontage facing the street and a long narrow building extending to the rear along the eastern boundary.

ix. Level 1 outdoor play area is located on the western side of the building above the basement level below and is enclosed by retaining wall with acoustic barrier above with an overall height of 2.1m, set off the boundaries. The building and play area above provides shading to part of the lower play area. The area is embellished with play equipment, bike track, sandpit, paving, steppingstones, rubber surface, timber deck and synthetic grass. Planter boxes are proposed and limited pockets of planting and palm trees.

x. Level 2 outdoor play area is elevated and is enclosed by 1.8m high acoustic fencing, is located on the northern side of the building, has a freestanding shade structure over the northeastern corner and is enclosed by a barrier with an overall height of 1.8m. The area is embellished with play equipment, train track, bike track, rubber mound, sandpit, paving, steppingstones, mulched garden beds, timber deck and synthetic grass. Planter boxes are proposed.

xi. Front fencing is proposed along the front boundary which comprises brick columns and base with metal blade fence inserts.

xii. The materials and finishes comprise a large front facade comprising timber look aluminium battens, a bright yellow central feature of render and paint, cladding, and face brick with a mid-tone grey roof. There is a mix of colours comprising mid-tone face bricks and timber, yellow features and charcoal windows, gutters, and downpipes. The acoustic barriers comprise Perspex or glass.

xiii. Signage comprising:

1. Sign 1 – On front façade, 3D illuminated lettering indicating "Montessori Academy" and logo.
2. Sign 2 – Freestanding on front boundary, solid timber or metal with graphics indicating "Montessori Academy" and logo.

The amended application indicates that tree removal has already been undertaken in accordance with DA 17/0559 for a residential flat building. The validity and appropriateness of this tree removal is being investigated by Council's Compliance Unit.

Plans that apply

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

Planning Assessment

• Section 4.15 - Evaluation

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

• Section 7.12- Developer Contributions

The application is recommended for refusal, therefore development contributions are not applicable. However, were the application supported, contributions would be required as per Council's adopted Section 7.12 Development Contributions Plan.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Having regard to water quality and quantity management, the proposed development provides adequate arrangements for stormwater management and water quality to demonstrate compliance with Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapter 6 Water Catchments, Division 2 Controls on development generally Section 6.6 Water quality and quantity, states the following:

"(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- c) whether the development will increase the amount of stormwater run-off from a site,*
- d) whether the development will incorporate on-site stormwater retention, infiltration, or reuse,*
- e) the impact of the development on the level and quality of the water table,*
- f) the cumulative environmental impact of the development on the regulated catchment,*
- g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- b) the impact on water flow in a natural waterbody will be minimised."*

Based on the above, Council's Engineers and Waterways Officers have concluded that adequate information was submitted with the application to enable an assessment of the compliance with the above requirements in terms of groundwater and stormwater.

The Development Application however does not adequately consider the impact of the proposed development on underlying and surrounding groundwater resources and adopt appropriate measures to avoid these impacts. Whilst the basement FFL is not designed below the road level, the excavation for the basement is fairly substantial. The basement excavation ranges from approximately 1.5m at the front of the site to 4m at the rear of the site. The Geotechnical Report Section 5.8 notes that ground water management shall be considered as part of the basement design as it may be encountered during excavation. The report suggests that provision for a sump and pump out system may be required to capture and drain the groundwater to Council's stormwater drainage system (subject to Council's approval). The draining of groundwater to Council system as a permanent solution is not supported by Council as it may reduce the life of the public drainage infrastructure as a result of continuous water flow in the system. The basement must be tanked so that ground water is not extracted.

Chapter C3 to the PDGP requires that any new development ensures and demonstrates that an adequate and environmentally acceptable method of removing surface water and stormwater is implemented, coupled with minimisation of nuisance flows of stormwater from one property to adjoining properties.

As such, the proposal is not satisfactory with respect to State Environmental Planning Policy (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 of SEPP (Industry and Employment) 2021 provides controls for advertising and signage. This particular chapter aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high quality. The policy applies to all signage with the exception of that which could be considered as exempt development.

The proposed signage includes signs to clearly identify the proposed child care centre, with one on the front facade and the other being freestanding behind the front boundary fence.

The proposed signage is considered to be of a suitable design which will provide effective communication without

compromising the visual appearance of the building and has been assessed against the Schedule 5 assessment criteria, as detailed below.

Schedule 5 - Assessment Criteria

Criteria	Comments
Character of the area	The proposal is compatible with the existing character of the area, being primarily for residential purposes, with the railway station nearby and railway lines opposite. The proposed sign is compatible with the proposed use of the site as a child care centre. Whilst concerns have been raised with the scale of the building, the proposed signs are appropriate in size and design for the building and its location. The proposed signage will have a high quality and consistent appearance which will complement the overall physical appearance of the site. Opposite the site is railway lines. The proposed signage is compatible with the context of the locality.
Special areas	The subject site is visible from the railway lines and public road. The signage is consistent with other signage in the surrounding locality for this form of land use. The signage is not directly visible from the adjoining residential areas due to their location on the front facade and facing south. The proposed signage is not visible to or from any environmentally sensitive areas, natural or other conservation areas, waterways, or rural landscapes.
Views and vistas	The proposal does not detract, obscure, or dominate important views or vistas. The proposed signage appropriately located to ensure that they do not obstruct sight lines for motorists. The proposed signage does not obscure any existing signage on surrounding and opposite lands and therefore respects the viewing rights of existing or future advertisers.
Streetscape, setting or landscape	The proposed signage is consistent with the existing signage designs for child care centres, and wholly contained within the subject site. Overall, the proposal is not considered to create visual clutter which will ensure that there will be no adverse impacts on the visual quality of the surrounding area. No vegetation removal is required to accommodate the signage on the proposed building or adjacent to the front boundary.
Site and building	The scale and design of the signage is in proportion relative to the size of the building. The proposed signage has been appropriately positioned and proportioned to identify the principal entry points for users of the Centre. The proposed signage is not contrary to its context in the R4 zone and will not result in any unreasonable visual impacts.
Associated devices and logos with advertisements and advertising structures	The proposed signage will be installed according to manufacturer and engineering requirements, which will be addressed by a recommended consent condition.
Illumination	The proposed signage on the front facade will be illuminated letters. The proposed sign is not located to face towards the adjoining residential premises. Accordingly, it will not result in any unacceptable impacts.

Safety	The proposal is not considered to reduce safety for local traffic or pedestrians. The signs have been located to ensure that it will have no impact on visibility for motorists or obstruct views of pedestrians. The sign will not include any flashing or moving parts and therefore will not pose any distraction to passing motorists.
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State Environmental Planning Policy (Precincts—Western Parkland City) 2021 State Environmental Planning Policy (Precincts - Western Parkland City) 2021 contains a map that relates to wildlife buffer areas. This map is titled the "Wildlife Buffer Zone Map". The map shows that the subject site is within a 13km 'wildlife buffer zone' of the Western Sydney Airport site. Consideration has been given to Clause 4.19 of the SEPP and the proposed development. The objective of Clause 4.19 is to regulate development on land surrounding the Western Sydney Airport site where wildlife may present a risk to the operation of the airport. Certain types of development trigger the requirements for further consideration under Clause 4.19. The proposed development is not one of the types of uses that warrant additional consideration under the SEPP with regard to wildlife and the operation of the airport.

The subject site is also identified as being located within the "Obstacle Limitation Surface Map" area. Clause 4.22 of the SEPP relates to development that would penetrate the prescribed air space for the airport and be a 'controlled activity'. The proposed development neither penetrates the prescribed air space, nor is it a controlled activity, therefore not triggering any additional considerations under this clause.

State Environmental Planning Policy (Resilience and Hazards) 2021

The proposal has been considered against relevant criteria under State Environmental Planning Policy (Resilience and Hazards) 2021. The Site has been vacant for some time and historically has been used as surplus land for the adjoining school. A review of aerial photography and site history has not identified any evidence of land contaminating activities that would warrant a detailed site investigation noting that the site is zoned for residential development with adjoining residential development currently constructed. Given the current and historic uses of the Site, it is unlikely to have been affected by sources of contamination associated with hazardous, industrial, and agricultural uses/activities.

The application includes a Preliminary Site Investigation (PSI). The PSI includes soil sampling and analysis and concludes the site is suitable for the proposed use.

The PSI was reviewed by Council's Environmental Management Officer and deemed satisfactory and was prepared in accordance with NSW EPA contaminated land guidelines and the National Environment Protection (Assessment of Site Contamination) Measure 1999 [NEPM 2013]. The application satisfactorily demonstrates the site is suitable for the proposed development.

No objection is raised to the proposed development in terms of State Environmental Planning Policy (Resilience and Hazards) 2021, subject to recommended conditions of consent, although it is noted that the application is unsupportable and recommended for refusal.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

The application was referred to Sydney Trains in accordance with under Clause 2.99 Excavation in, above, below, or adjacent to rail corridors of State Environmental Planning Policy (Transport and Infrastructure) 2021, specifically subclause (1)(b) relating to penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m (measured horizontally) of a rail corridor. Concurrence was provided by Sydney Trains via letter dated 11 October 2023.

The application was supported by a Noise Impact Assessment prepared by Acoustic Logic dated 20 June 2023, which includes discussion regarding noise and vibration. A condition of consent would be recommended (in the event of a favourable determination) to ensure that the recommendations of the acoustic report would be implemented should the application be recommended for approval to ensure impacts from the rail are minimised.

The proposal has been assessed as satisfactory with respect to Clauses 2.98, 2.99 and 2.100 of State Environmental Planning Policy (Transport and Infrastructure) 2021 and the likely impacts of the proposal on the rail corridor opposite the site.

Chapter 3 - Educational establishments and childcare facilities

The proposal has been made as a Centre-based childcare facility in accordance with the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021.

Clause 3.22 Centre-based childcare facility - concurrence of regulatory authority required for certain development

The application is unsatisfactory for the purpose of Clause 3.22. The NSW Education and Care Services National Regulations specifies the rate of indoor and outdoor unencumbered space required per child.

While the plans indicate that the proposal complies with these rates, it has not been demonstrated that these areas are unencumbered. Further, the first floor outdoor play area does not comply with the Childcare Planning Guidelines as it has walls higher than 1.4 meters and it is not open on one third of its perimeter.

Clause 3.22 states (in part):

"3.22 Centre-based child care facility—concurrence of Regulatory Authority required for certain development

(1) This section applies to development for the purpose of a centre-based child care facility if—

(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or

(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.

(2) The consent authority must not grant development consent to development to which this section applies except with the concurrence of the Regulatory Authority."

Regulations 107 and 108 of the Education and Care Services National Regulations set out the requirements for unencumbered indoor and outdoor play space. The internal space requirement is a minimum of 3.25m² for each child, which requires a minimum of 351m². The combined internal space in this application is 396m² (6 rooms). The internal space requirements have been met based on the proposed 108 places.

The outdoor play space requirement is a minimum of 7m² per child, which requires a minimum of 756m². The provision of outdoor space in this application is 817m² and therefore initially meets the requirement based on projected numbers of children.

However, the outdoor play space raises safety concerns. There is a risk of children climbing using non- fixed equipment and planter boxes and falling to the lower level.

In this regard, it is unclear whether the proposal complies with Regulation 108 (outdoor unencumbered space requirements) of the Education and Care Services Regulations. The provisions of this clause state that the consent authority must not grant consent to development where Regulation 108 is not complied with except with the concurrence of the Regulatory Authority. The Regulatory Authority have not provided concurrence for the application for the purposes of this clause. In this regard, based on the determined non-compliance with Regulations 107 and 108, development consent cannot be granted for the proposal without further clarification to demonstrate compliance, and provide a partially open perimeter.

Clause 3.23 matters for consideration by consent authorities

Clause 3.23 requires that before determining an application for development for the purpose of a centre based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline. It has not been demonstrated that the principles set out by the Childcare Planning Guidelines, particularly Principle 1 (Context), Principle 2 (Built Form) and Principle 5 (Landscape), have been adequately addressed given the following:

- The scale and massing of the building is inconsistent with the surrounding locality. This is due to the large footprint, facade, and roof pitch; unarticulated side elevations; they built form that spans the entire width of the site; building length; elevated building; and the minimal side setbacks.
- The side and front setbacks are inconsistent with the surrounding area which is unlikely to leave enough space for deep soil landscaping around the site edges.
- The building has a form which is not considered to be sufficiently compatible with the residential character of the area. The design needs to complement existing residential features, which include mature trees and landscaped gardens, articulation, and a series of buildings to break up the length.

- The building presents as an unnecessarily large building due to the design and elevated nature of the building and extends beyond the permitted building envelopes.
- The site's topography does not lend itself easily to play areas that are not elevated.
- The proposed landscaping is not appropriate and will not sufficiently contribute to the streetscape or screen the development from neighbours.
- The location of windows and elevated play areas are considered to potentially impact on the privacy of adjoining residents.

A detailed discussion against the Guideline, including principles, is provided below.

Child Care Planning Guideline

Before determining an application, the consent authority must take into consideration the provisions of the Child Care Planning Guideline. The relevant provisions are discussed in detail below.

2. Design Quality Principles

The design quality principles establish the broad design context guide for centre based child care facilities. The Guidelines contain the following Design quality principles, and a comment has been provided with respect to the proposal against each principle.

Principle 1 - Context

Good design responds and contributes to its context, including the key natural and built features of an area, their relationship, and the character they create when combined. It also includes social, economic, health and environmental conditions. Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes, and neighbourhood. Well-designed child care facilities take advantage of its context by optimising access by walking and public transport, public facilities, and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

The proposed development in terms of its siting, design and built form and scale does not respond to the context of the area which is primarily medium to high density development designed in a series of buildings which provide breaks in built form and opportunities for trees and landscaping. The pitched roof is excessive and should be lowered to reflect the angle of the large majority of pitched roofs in the area. The proposal has inadequate setbacks and landscaping, resulting in unsupportable amenity and streetscape impacts.

The proposal has not responded to the local context including large basement, existing sewer lines and proposed stormwater infrastructure encroachments within the setbacks which restricts deep soil zones and suitable vegetation growth and canopy coverage being an objective of the rear setback provisions and separate urban heat management development controls. Furthermore, the front setback does not comply numerically with the surrounds and is occupied by ramping, services, and driveway with limited meaningful planting, which is not in accordance with the garden surrounds or the objective of the front setback development control.

Principle 2 - Built form

Good design achieves a scale, bulk, and height appropriate to the existing or desired future character of the surrounding area. Good design achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation, and the manipulation of building elements. Good design also uses a variety of materials, colours and textures. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook. Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Considering the existing character of the area/streetscape and the test of compatibility in the Child Care Planning Guideline, and Chapter D5 of the Penrith DCP, the proposal is unacceptable. The immediate area is medium to high density residential. The surrounding buildings are in garden settings, with more traditional front gardens and driveways leading to at-grade parking. The front setback issue raised above, coupled with the matters discussed below (scale and appearance and tree removal) result in a commercial/industrial style contemporary building design and form, which is not compatible with the existing character and appearance

of the area.

Contributing to this concern is the sheer scale and massing of the proposed building from all elevations. In addition, the design, detailing, and architectural language of the proposed building, particularly the large opening at the front elevation (for the basement), tall front fence, and the hard features including front fence, ramp, and driveway, result in a building that has the form and appearance of a commercial or even industrial office building. This is not compatible with the existing character of the area, which may contain some of these features but on a more appropriate scale and in keeping with the residential context. The design will also result in a sense of overlooking and overbearing.

The proposal includes excessive wall lengths with little articulation and the extent of building mass is not in accordance with the residential surrounds and accentuates the mass and scale of the development contributing to it being considered an over development of the site.

Principle 3 - Adaptive learning spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces' fit-out. Good design achieves a mix of inclusive learning spaces to cater for all children and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology, and opportunities for interaction.

The proposal appears to provide good learning spaces internally. However, concerns have been raised regarding the safety of the elevated outdoor play space, as mentioned earlier in the report.

Principle 4 - Sustainability

Sustainable design combines positive environmental, social, and economic outcomes. This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation. Well- designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

The proposal does not adequately address the principles of sustainable development in terms of energy efficiency and conservation, building design and orientation, water conservation and water re-use, including:

- The proposed removal of all trees from the site is acceptable and there is limited opportunity for deep soil planting or meaningful landscaping on the site.
- The proposal does not maximise green infrastructure and provides an inadequate amount of landscaped area.
- The locations of proposed tree planting identified on the landscape plan are insufficient to permit them to grow to maturity and provide adequate canopy cover.
- Impacts to trees on adjacent sites which should be retained and protected have not been assessed. It is not evident that the development has been designed to respond to the retention and protection of adjoining trees.
- Minimal landscaping and no canopy trees are proposed to be planted within the outdoor play areas.
- Surface treatments in this location are likely to absorb heat and are not accompanied by adequate shade and natural cooling.
- The planter pot sizes are insufficient to accommodate canopy trees.
- The proposed outdoor play areas are predominantly synthetic in nature, which cannot accommodate viable and healthy planting.
- Control (1)(c) to the 'Landscape Design' section in PDCP Part C14 Section 14.2 requires that shading be provided to exposed western facades of development. The proposal contravenes this requirement, with the ability for suitable landscaping along the western boundary compromised by basement encroachments and drainage works.
- Control (1) to the 'Irrigation' section in Part 14.2 to Chapter C14 of the PDCP requires 'all development not covered by the State Environmental Planning Policy – BASIX is to provide drip irrigation or passive irrigation to private vegetated landscaped areas'. The proposed landscaping treatment does not incorporate an irrigation system, increasing the reliance on portable water resources, contrary to this control. The Development Application has not demonstrated a commitment to an appropriate certification system, nor provided an assessment report that confirms if the development can and will achieve the rating required by Part 5.1 to Chapter D5 of the PDCP.

Principle 5 - Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age- appropriateness and amenity. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

The areas proposed for landscaping are narrow or restricted by infrastructure required for the development including the basement, sewer, and stormwater management. In this regard, the proposed landscape plan design does not appear to be able to be implemented as shown and concerns are raised regarding the narrow areas available along the side and rear boundaries which do not allow for sufficient screen planting growth and viability or interlocking tree canopy.

Principle 6 - Amenity

Good design positively influences internal and external amenity for children, staff, and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of children and staff. Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility. Well-designed child care facilities provide comfortable, diverse, and attractive spaces to learn, play and socialise.

The concerns identified regarding the landscape design may impact upon the external play areas. The amenity of the children could be improved by greater separation to the adjoining dwellings. The applicant has proposed 1.8m high fencing around the boundaries. The visual impact of fencing with limited landscaping is unacceptable for neighbouring residential properties.

Principle 7 - Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately. Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED). Well-designed vehicular parking and access minimise traffic safety risks on children and staff.

The terraced outdoor play spaces raises safety concerns as there is a risk of children climbing using non-fixed equipment and falling.

Below is also an assessment against the Guidelines.

3. Matters for Consideration

3.1 Site selection and location states:

"Child care facilities should also be compatible with the surrounding land uses. The predominant issues will vary depending on the location and setting of the site, the type of development being proposed, and the type of surrounding land use"

C1 - To ensure that appropriate zone considerations are assessed when selecting a site.

The Guidelines state:

"For proposed developments in or adjacent to a residential zone, particularly if that zone is for low density residential uses consider:

- the acoustic and privacy impacts of the proposed development on the residential properties*
- the setbacks and siting of buildings within the residential context*
- visual amenity impacts (e.g. additional building bulk and overshadowing, local character)*

- *traffic and parking impacts of the proposal on residential amenity and road safety*

For proposed developments in commercial and industrial zones, consider:

- *potential impacts on the health, safety and wellbeing of children, staff, and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions*
- *the potential impact of the facility on the viability of existing commercial or industrial uses."*

The characteristics of the site are not suitable for the scale and nature of the development having specific regard to the compatibility with surrounding land uses and street frontage, dimensions, and overall lot size.

The design compromises the capacity of development on the site to achieve suitable spatial separation between building forms across property boundaries or availability for screen and perimeter landscaping or the minimum amount of car parking.

The application has not demonstrated suitability with respect to acoustic and privacy impacts, has unacceptable setbacks and results in significant visual impacts from the public domain and the adjoining dwellings.

The Acoustic Report submitted with the proposal contains errors. In this regard, the acoustic impacts to surrounding residential properties has not been fully or adequately considered.

The typical setbacks for residential development on the subject site require a garden filled front setback averaging the front setback of the neighbouring properties. The front setback is occupied by driveway, existing sewer, stormwater, pathways, fencing and retaining walls. An inadequate portion of landscaping is proposed in the front setback and does not achieve the garden filled front setback character of the residential surrounds. This is the consistent character of the area which the development must be consistent with.

The proposal includes large building lengths with minimal articulation. The excessive building length, large front facade and roof pitch and elevated finished floor level over the carpark/part basement, coupled with lack of articulation provides excessive building mass which is not in accordance with the residential surrounds.

In light of the above, the proposal does not respond to the residential context and therefore adverse character impacts are envisioned as a result of the proposal.

C2 - To ensure that the site selected for a proposed child care facility is suitable for the use.

The Guidelines state:

"When selecting a site, ensure that:

- *the location and surrounding uses are compatible with the proposed development or use*
- *the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards*
- *there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed*
- *the characteristics of the site are suitable for the scale and type of development proposed having regard to:*
- *length of street frontage, lot configuration, dimensions, and overall size*
- *number of shared boundaries with residential properties."*

The proposed development has had insufficient regard to the surrounding residential buildings, local context and character, size of the site and frontage width when designing the development to the size and attributes of the site.

Further, groundwater issues remain unresolved and are an environmental constraint to development on the site.

3.2 Local character, streetscape, and the public domain interface

3.2 Local character, streetscape, and the public domain interface states:

"A detailed understanding of the overall site context will help create a well-designed and integrated child care facility. Context is the character and setting of the area within which the facility will sit. This character and setting is influenced by environmental, physical, economic, and social factors.

Local character is what makes an area distinctive. It is created by the way built and natural elements in both the public realm and private domain interrelate with one another. Built form, bulk, scale, and height as well as landscaping and good design all play a part in ensuring the character of an area is maintained while still allowing for new development to occur. Good design in the built environment is informed by and derived from its location, context, and social setting.

The key priorities when responding to character and context are:

- *Communities - understanding social dynamics can help developments reinforce local communities.*
- *Place - drawing inspiration from Indigenous character and heritage can strengthen local identity.*
- *Natural resources - maximising use of the intrinsic resources of the site can create more sustainable developments.*
- *Connections - understanding existing street and integrated movement framework.*
- *Feasibility - ensuring schemes are economically viable and deliverable.*
- *Vision - understanding the aspirations of the site within the setting of the wider area.*

Streetscape impacts are integral to local character and identity. Streetscape is particularly important in areas with a strong unified, environmental, architectural, design, planting, or cultural character such as scenic protection areas, environmental protection areas or heritage and urban conservation areas.

The public domain interface is the transition area between the child care facility, its private or communal space at the street edge and the public domain. The interface contributes to the quality and character of the street.

Key components to consider when designing the interface include entries, fences and walls, changes in level, service locations interactions with outdoor play spaces and the location and size of street facing windows.

New development should also appropriately consider surrounding identified heritage items and identified heritage conservation areas. Local heritage provisions may apply to the proposal."

The Guidelines reinforce the importance of maintaining the character of the area and the visual impact from the public domain and streetscape. The proposal does not meet the intent of 3.2 as previously outlined.

C5 - To ensure that the child care facility is compatible with the local character and surrounding streetscape.

As discussed previously under consideration C1, the proposal does not respond to the residential surrounds considering the proposal does not include a garden filled front setback and vegetated rear and side setbacks, the building length and roof pitch are excessive, and the building lacks articulation which contributes to building mass. The resulting development is not in accordance with residential surrounds.

The proposal is inconsistent with the objectives of the R4 High Density Residential zone (PLEP Land Use Table) as the design does not reflect the existing or future character of the area, in particular with respect to setbacks, built form and design, amenity and visual impacts. The existing character of the area is reflective of predominately residential development, comprising a mix of older medium to high density housing stock, including two storey townhouses and three storey residential flat buildings which comprises a series of buildings on each site to break up the built form with large, landscaped setbacks, pitched roofs, reasonable separation of dwellings on adjoining properties and stepped or articulated buildings form and façades. Mature trees are a dominant feature along Park Avenue, as well as open fencing and landscaped frontages. St Joseph's Primary School to the north is located on residentially zoned land and a large 1-2 storey building is built up the common boundary with a setback of approx. 3.5m for the majority of the width of the rear boundary.

PDCP Part D2 section 2.6 relevantly provides, with respect to non-residential development proposed in a residential zone, that development should "*be planned and designed according to principles of traditional suburban design and to preserve the amenity of residential neighbourhoods*", through (inter alia) consideration of traditional building design features, articulation and breaks, traditional garden frontages, side setbacks to provide for effective landscaped separation from adjacent developments, protection of the privacy of adjacent properties and provision of minimum required landscaped area. The proposal is inconsistent with established and desired future character of the locality because in terms of front, rear, and side setbacks, built form, bulk and scale, provision of landscaped area, protection and retention of trees and landscape treatments at the street edge and between property boundaries.

C9 & C10 - To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.

The Guidelines states:

“Front fences and walls within the front setback should be constructed of visually permeable materials and treatments.”

and

“The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.”

The proposal incorporates a front fence along the boundary which is visually permeable.

The proposal includes a ramp within the front setback. The proposed ramping results in walls up against the front and side boundaries. The extent of hard walls and hardstand area visible from the public domain does not respond to the context of the low density residential surrounds that requires landscaping as the predominant treatment.

3.3 Building orientation, envelope, building design and accessibility

3.3 Building orientation, envelope, building design and accessibility states:

“Orientation refers to the position of a building and its internal spaces in relation to its site, the street, the subdivision and neighbouring buildings, vistas, and weather factors such as sun and wind. Building orientation influences the urban form of the street and building address. In residential areas, orientation of the facility may directly affect residential amenity including solar access and visual and acoustic privacy.

The building envelope is determined by the permissible building height and site setbacks. The following elements of building design make up the overall form.

Building height - helps shape the desired future character of a place relative to its setting and topography.

Setbacks - are usually expressed as the distance of a building from property boundaries. Setbacks are important to the amenity of new development and buildings on adjacent sites. Setbacks to the street establish the alignment of buildings along a street frontage. Combined with building height and road reservation, street setbacks define the proportion and scale of the street and contribute to the character of the public domain.

Floor space ratios - of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. Floor space ratios can be used to define and regulate the bulk and scale of developments.

Architectural form - defines a building as viewed from a distance and makes a strong contribution to local character. Aesthetics and articulation can assist in refining the form and enhancing it with scale and proportion by providing a balanced composition of solid and void.

Roof design - forms an important part of the skyline and may provide opportunities for open space. Roof design can reduce a building's bulk and visual impact.

Facades - contribute to the visual interest of the building and the character of the local area. They have an impact on the public domain where they face the street and may influence the amenity of neighbouring buildings.

Materials and finishes - including consistency of finish, durability of surface finishes and fixtures, resistance to damage and vandalism, and minimal recurrent maintenance provide visual interest and create good amenity and a positive visual impact.”

The proposal has a building width occupying approximately 88% of the allotment width, compromising landscaping opportunities and eroding the locality's established spatial break between building forms across allotment boundaries. The proposal has a large flat unarticulated front elevation, with large upper level, and tall, pitched roof as a design treatment which is disproportionate to the overall façade, resulting in dominant upper levels and unsympathetic streetscape presentation. The proposal does not provide adequate articulation or adopt recessive built-form elements and therefore does not reflect or complement the built form of the surrounding residential area and adds to the bulk and massing of the development.

The long eastern elevation of the building is a sheer wall of bricks for one and a half levels with no breaks in form. PDCP Part D2 Section 2.5.4 requires the alignment of all facades to be stepped with a substantial indentation every 10 metre run of wall, divide buildings into separate wings and vary the width of side setbacks to minimise the impact on bulk and scale and to provide for articulation and allow room for tree canopy growth in side setback zones. The proposed, unbroken three-storey building form along the eastern boundary is contrary to these principles and exacerbates the bulk and scale of the development when viewed from neighbouring properties.

The eastern boundary within the front setback proposes an elevated ramp over the OSD tank, resulting in a long wall forward of the building within the front setback which is elevated above the proposed front fencing at the boundary due to level difference.

The western boundary within the front setback proposes a wall between the driveway and pathway to separate the driveway. The extent of retaining wall visible from the public domain does not sympathetically respond to the context of the residential surrounds.

The fire stairs and emergency egress pathways add bulk to the building as they are elevated due to level difference and extend close to the side boundary, being approx. 0.3 metres -0.8 metres from the boundaries.

This is indicative of the bulk, scale, floor area and form of the development being wholly inconsistent with the desired character for the area and the proposal is contrary to Section 3.2 of the CCPG and PDCP Part 5 Section 5.2, specifically 3) Design, Scale and Site Frontage and 4) Built Form. The elevated mounding of the site and the proposed design provides for a development which is situated higher than the adjoining properties. Considered in addition to the elongated design response of the building along the street frontage and eastern elevation in the proposal, this results in:

- Excessive footprint of underground car parking, compromising the capacity of the rear setback to accommodate landscaped area, contrary to PDCP Part 2.1.2 Control (1)(e)(iv).
- The creation of a conflict between adequate emergency evacuation routes and fire stairs and side boundary landscaping, thus contributing to the presentation of excessive building mass to neighbouring properties and cannot accommodate the landscape embellishments with deep soil;
- Conflicts between the availability of deep soil zones for tree and shrub landscaping in the front, rear and side setback zones and on-site detention and stormwater pipes and accessible paths of travel. In this regard, the entire surrounds of the building have restricted landscaping and includes drainage pits, retaining walls, the driveway, stairs, and accessible ramps;
- An elongated and overbearing building form which is contrary to and in conflict with the existing older medium to high density housing stock, including two storey townhouses and three storey residential flat buildings which are broken up into a series of buildings on a site with good separation and areas of landscaping.
- Too close to the boundaries and extends beyond the building envelope.

The building has an undesirable presentation to the street resulting from the large front facade which is commercial in nature and excessive hardstand within the front setback which limits the opportunity for meaningful landscaping or canopy trees. This is inconsistent with the character of the surrounding locality, which is predominately in the form of residential developments with large, landscaped setbacks and mature trees.

The development is not oriented and designed in a manner that optimises solar access to internal and external play areas (C11), resulting in inadequate internal amenity. The large acoustic walls 2.1 metres and 1.8 metres high which fully enclose the play areas create an enclosed environment for the children and workers at the centre, contrary to the CCPG, with little or no landscaping within the proposed outdoor play areas to soften and screen the acoustic walls or provision of canopy trees in the play areas for natural shade and amenity (CCPG Sections 3.4 and 4.11). The proposal does not comply with Control (1)(c) to Part 6.1.3 to Chapter C6 of the PDCP, which requires landscape design to enhance the amenity and visual quality of the site. The lack of deep soil and proposed locations for plantings around the boundary are too limited to achieve optimum growth and the structure and acoustic fences will further restrict their growth.

The Guidelines reinforce the importance of designing the building to be in keeping with the adjoining form and minimise amenity and visual impacts. The proposal does not meet the intent of 3.3.

C11 - To respond to the streetscape and site, mitigate impacts on neighbours, while optimising solar access and opportunities for shade.

The application proposes hard stand areas close to the side boundaries with limited setbacks and minimal landscaping, close to dwellings on the neighbouring sites. In this regard, the proposal has not considered locating the built form (building, basement, pathways etc) away from neighbouring properties.

As 10 trees have already been removed from the site under a previous consent, a minimum of 10 canopy shade trees should be replaced to compensate for the loss of the existing canopy, as required by PDCP Part C2 Section 2.1 Control 6(m). The number of replacement tree plantings proposed for the site cannot be sustained as there is insufficient useable deep soil area for a 1 for 1 replacement and the proposed deep soil areas provided will not sustain 10 canopy trees.

CCPG provides relevantly that- (at Part 4.11): Natural shade should be a major element in outdoor play areas and trees with design foliage and wide spreading canopies provide the best protection and indicates planting should be along the eastern and western boundaries. PDCP Part D5 Section 5.2 Control (8)(g) requires landscaping to provide shade and visual interest for the play areas. Limited landscaping is proposed in outdoor play areas and no canopy tree planting. Trees are proposed along the eastern and western boundaries where proposed drainage pipelines are located in a narrow area, which reduces long- term retention of the trees.

C12 - To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised

The Guidelines state:

“The following matters may be considered to minimise the impacts of the proposal on local character: 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 child care facility setbacks should provide adequate access for building maintenance setbacks to the street should be consistent with the existing character.”

As previously mentioned, the proposed development is inconsistent with the predominant residential dwelling form of the area and the inadequate setbacks and building mass and scale result in adverse amenity impacts for adjoining neighbours.

C13 - To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context

The Guidelines state:

“On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings.”

The townhouse development to the west is setback approximately 7.8 metres and the Residential Flat Building (RFB) to the east is set back 12 metres, giving an average of 9.9 metres. The development provides approximately 9.8m setback to the front façade from Park Avenue, with the ramps immediately adjoining the building set back 6 metres and the awning protruding forward 1.8 metres from the building down to 8m. The front setback therefore is contrary to the CCPG and PDCP and specifically the objective of PDCP Part D2 Section 2.5.6 ‘to reflect the character of established garden suburbs.

The design does not comply with applicable rear setback controls. CCPG Section 3.3 C14 requires on residential land, that side and rear setbacks observe the requirements for a dwelling house. PDCP Part D2 Section 2.1.2 Control 1(e) specifies that the minimum rear setback for a two-storey building (or any two storey component of a building) is 6 metres and the minimum rear setback for a single storey building (or any single-storey component of a building) is 4 metres and used predominantly for the provision of landscaped area. Basement encroachments are expressly prohibited in rear setback zones by PDCP Part D2 Section 2.5.6 Control 2.

The proposal sets back its basement 3.2 metres from the rear boundary. The first floor outdoor storage room is setback 5.48 metres, below the required 6 metre setback, as too is the retaining wall and acoustic fencing enclosure to the outdoor play area 2. These non-compliances do not provide sufficient width for tree growth and eliminate the opportunity for a “green corridor” of trees along the rear boundary that can be seen from the street and that can provide partial screening of the proposed development, nor reflect the established garden suburb, as required by PDCP Part D2 Section 2.5.2 Control 3.

On land in residential zones, side boundary setbacks of developments must observe the prevailing setbacks required for a dwelling house (CCPG Section 3.3, C14). PDCP Part D2 Section 2.1.2 Control 1(d) specifies that the minimum side setback be 900mm. The objective of this control is to ‘provide for establishment of vegetation and reasonable separation between buildings’ and ‘to provide a high level of visual and acoustic privacy for

residents and neighbours.' PDCP Part D2 section 2.5.7 Objective specifies that the side setback is to 'provide for reasonable landscaped separation between neighbouring buildings. The proposed building, basement are inadequately set back from both side boundaries, being 1.8 metres to 2.6 metres from the eastern boundary and 1.8 metres from the western boundary, with the fire stairs and emergency egress pathways encroaching further.

C17 - To provide landscape design that contributes to the streetscape and amenity

The proposed Landscape Plan proposes limited screen planting along the side boundaries. This area is further compromised by hard stand including pathways due to the basement and building areas of 0.8m to the east and 1.8m to the west only being available for deep soil planting on the side along the boundary. The basement beneath and hardstand does not allow for deep soil planting to provide suitable vegetation growth for screening purposes and in character with the rear and side setback provisions for residential areas and limits vegetated screening and planting capability that is critical between building forms and boundaries to maintain the garden setting of the locality.

Landscaping on the site is primarily restricted to the small front setback and narrow areas within side boundaries. The remainder of the site is playground materials or hardstand.

The provisions of this consideration state that screen planting areas should not be used to calculate outdoor play areas. Screen planting areas have been included in the outdoor space calculation, rendering the calculation inaccurate.

PDCP Part D2 Section 2.1.4 Control 1 and PDCP Part D2 Section 2.5.5 Control 3(a) provides that residential development in the R4 High Density Residential Zone should be subject to at least 35% landscaped area. Properly calculated, the proposal has approximately 14% of the site as landscaped area, free of basement encroachments and with minimum 2 metre widths of useable area. Almost the entirety of the outdoor play areas are treated with synthetic grass or other finishes, which are not deep soil and cannot accommodate healthy and viable planting and cannot be included in the calculation of landscape area.

As 10 trees have already been removed from the site under a previous consent (albeit subject to Compliance Unit investigations), a minimum of 10 canopy shade trees must be replaced to compensate for the loss of the existing canopy, as required by PDCP Part C2 Section 2.1 Control 6(m). The number of replacement tree plantings proposed for the site cannot be sustained as there is insufficient viable deep soil area for a 1 for 1 replacement and the proposed deep soil areas provided will not sustain 10 canopy trees.

CCPG provides relevantly that- (at Part 4.11): Natural shade should be a major element in outdoor play areas and trees with design foliage and wide spreading canopies provide the best protection and indicates planting should be along the eastern and western boundaries. PDCP Part D5 Section 5.2 Control (8)(g) requires landscaping to provide shade and visual interest for the play areas. Limited landscaping is proposed in outdoor play areas and no canopy tree planting. Trees are proposed along the eastern and western boundaries where proposed drainage pipelines are located in a narrow area, which reduces long-term retention of the trees.

CCPG Section 3.2, C5 and C17 and PDCP Part D5, Section 5.2 Control (8)(a) require development to positively contribute to the streetscape and reinforce the local context. The proposal fails to meet these requirements. It proposes pockets of landscaping within the front property boundary around the hard infrastructure including driveway, ramps, boosters and sewer line and limited deep soil zone areas for tree and shrub planting to moderate the mass, scale and bulk of the proposed development as viewed from the public domain.

The proposal provides an insufficient rear setback landscaping response. The proposed stormwater pipes and location of basement car parking compromises deep soil landscaping opportunities in the rear setback zone and fails to provide a minimum 4 metre rear setback with a deep soil area to maximise the amount of undisturbed soil, encouraging rapid growth of healthy trees and shrubs as required by PDCP Part D2, Section 2.1.2 Control 1(e)(i). The proposed 3.2 metre wide landscaping between the rear boundary of the site to proposed basement and existing concrete wall along the rear boundary will restrict growth of the proposed trees along the rear boundary, compromising the objectives of boundary screen and tree canopy planting.

The proposal has hardstand area and stormwater management infrastructure along the majority of the eastern and western side boundaries. The side setbacks accommodate onsite stormwater management, pedestrian access, drainage pits and discharge fire stairs. These encroachments compromise the ability of the design to incorporate sufficient landscaped separation from the adjoining property and the lack of deep soil will restrict screen landscaping growth. Proposed raised planters are too close to the building for canopy development and do not provide sufficient root volume for tree growth. The landscape plan for Level 1 indicates there is a root

barrier to be installed along a portion of the western boundary. The aim of a root barrier is to restrict/direct root growth away from a location and the installation of a root barrier in this manner defeats the purpose of the deep soil planting zone.

The proposal fails to assess whether the significant earthworks required to this area of the Site will impact existing tree on the adjoining property to the east adjacent to the side setback area. The proposed planting within the existing easement along the eastern elevation is inadequate and could be removed at any time, if necessary, under the terms of the easement. This easement is for services and drainage of water and as such there is a potential conflict between planting and services and limit the ability for meaningful landscaping with screening and shading abilities.

C16 - To ensure that child care facilities are designed to be accessible by all potential users

There is a continuous path of travel between the street and the building, as well as lift to the basement.

3.4 Landscaping

3.4 Landscaping states:

"Landscaping of child care facilities can play an important role in integrating facilities into the surrounding streetscape and context. Good integration of facilities benefits neighbours and future residents."

The proposed limited landscaping around the boundaries does not integrate the development into the streetscape or residential context.

3.5 Visual and acoustic privacy states:

"Visual privacy is about allowing residents on adjacent properties to occupy their private space without being overlooked by child care facilities and ensuring child care facilities are not overlooked by neighbouring properties. Privacy is influenced by the activities in each of the spaces where overlooking may occur, the times and frequency these spaces are being used, the expectations of occupants for privacy and residents' willingness to reduce overlooking with screening devices."

Acoustic privacy involves reducing sound transmission between activity rooms and outdoor play areas of the child care facility and its neighbours. Design and site layout are the main ways of reducing acoustic impacts for example:

- *site context and orientation of the building*
- *building design including the location of public and private open spaces and the arrangement of internal spaces*
- *physical relationship to surrounding uses*
- *building separation and providing physical barriers between the outdoor areas and the noise receivers.*

Outdoor areas near residential uses can be designed to encourage more passive activities. Acoustic attenuation measures can be used to reduce reflected noise and once a facility is operating the installation of public address systems should be discouraged."

The proposed child care centre is two storeys in height and the adjoining residential dwellings are 1-2 storeys.

There is the potential for overlooking from adjoining first floors into the ground floor play area and rooms given the limited setback of the building, play spaces in rear and side boundaries, coupled with insufficient area provided for screen planting.

The proposal has minimal regard for privacy impacts due to the matters stated in this report.

An Acoustic Report was prepared for the proposal and significant recommendations outlined to address the likely impact, including with respect to fencing and times and quantity of children using the outdoor play areas and also indicates that all windows and doors to all indoor playrooms will be kept closed when the rooms are in use.

Concerns have been raised regarding the visual impact of the proposed fencing on the adjoining residential

properties, as well as the lack of space available for meaningful screen planting and landscaping along the boundaries, with the proposed play areas up to the boundaries.

There are also inconsistencies between the Acoustic Report and other documentation and plans, as well as gaps in the Acoustic Report such as construction noise and service vehicle/waste collection.

The proposal is unnecessarily elevated due to the level differences of the site to adjoining development and would have an unacceptable impact on the amenity of neighbouring residential properties. The Land Use Table to the PLEP provides relevantly that the objectives for development on land zoned R4 High Density include: To ensure that a high level of residential amenity is achieved and maintained. The application indicates the ground floor as the level containing the basement car parking, waste room and lobby. Whilst this level is the entry from the street, it is clear from the Elevations and Sections within the Architectural Plan Set that the large majority of this level is below the natural ground level.

The proposed FFL results in Level 1 and Level 2 child care rooms and outdoor play areas that are in line with the first and second levels of the residential flat building to the east and part of the first level, second level and roof of the townhouses to the west. The proposal does not reflect the valued characteristics of the neighbourhood including ground levels of surrounding sites, contrary to the CCPG (C5), resulting in amenity impacts from the elevated child care centre within minimal side setbacks and an overbearing development. The proposal does not ensure that a high level of residential amenity is maintained, contrary to the objectives of development in the R4 High Density Residential zone. It proposes the siting of unrelieved built form too close to adjoining residential development with inadequate landscaping mitigation. The footprint of the building within 1.8m of side boundaries and three storeys above ground with no stepping of upper levels reduces the amenity of adjoining residential dwellings to the side.

PDCP Part D2 section 2.6 specifies that 'non-residential development should be planned and designed.... to preserve the amenity of residential development' with particular attention paid to the protection of the amenity of adjacent properties. The objectives of the rear setback control are to 'provide a high level of visual and acoustic privacy for... neighbours in dwellings and private open space,' and 'to ensure that building design minimises overlooking problems' and 'protect the amenity of occupants by controlling visual impacts relating to...bulk of buildings and the impact of loss of privacy, overshadowing and loss of views.' The Development Application is inconsistent with these controls in both a numerical and philosophical sense. It fails to comply with the minimum rear setback control of 4 metres and side setback controls, noting its basement encroachment and other hard features, negating the ability of screen and canopy planting along the rear and side boundaries. This will result in negative privacy and visual impacts to neighbouring properties.

The location and extent of the two elevated outdoor play areas on Level 1 and 2, down to 3 metre setbacks for Level 1, accentuates impacts of overlooking and loss of privacy into the adjoining private open space areas and balconies to the east. The outdoor play area which is enclosed with 2.1 metre high fencing for Level 1, and 1.8 metre high fencing for Level 2, is setback 3 metres at Level 1 and 6 metres at Level 2. This setback is from three adjoining townhouses, including their living areas, and associated private open space to the west. The indicated acoustic fencing to the two levels of outdoor play space is visually prominent to address noise impacts and is excessive in height and inappropriate for the residential context. It will result in a poor visual outcome for the adjoining residents to the east and west and when viewed from the public domain. These impacts are exacerbated by the resulting compromises to screen planting capacity and opportunities for canopy tree growth to address overlooking and privacy considerations.

The fire stairs and emergency egress pathways add bulk to the building as they are elevated due to level difference and extend close to the side boundary, being approximately 0.3 metres -0.8 metres from the boundaries. The elevated ground floor entry level (Level 1 on architectural plans), combined with the width of the building at the site, insufficient side setbacks and overall size from the design of the upper levels and roof pitch provide an overbearing development. The bulk of the development on the southern portion of the site is immediately adjacent to the front building on the adjoining land to the east and two townhouses and private open space on the land to the west. The long part of the building runs along the boundary adjoining two separate buildings with balconies to the east. Increased setbacks and a reduction in the overall roof pitch and building size and width, would be appropriate in the area of the proposed building to minimise the amenity impacts of the closest adjoining residential dwellings. The proposed elevated pathway and existing easement along the eastern boundary, fails to provide a continuous screen landscaping along that boundary to assist in minimising visual privacy from balconies of adjoining apartment building.

The proposed screen planting along the side boundaries will not assist to minimise any potential noise and privacy impacts and screen the large blank walls. This is excessive in height and inappropriate for the residential context. It will result in a poor visual outcome for the adjoining residents and when viewed from the public domain. These streetscape impacts are exacerbated by the resulting compromises to screen planting capacity and opportunities for canopy tree growth to address overlooking and privacy considerations. Given the residential context of the

site and interface with apartment building and townhouses directly overlooking the development additional planting and landscape treatment of setbacks and retention existing trees will be important to protect and enhance the residential amenity of the area.

C21 - To minimise impacts on privacy of adjoining properties

"Direct overlooking of main internal living areas and private open spaces in adjoining developments has not been achieved through:

- appropriate site and building layout
- suitable location of pathways, windows, and doors
- landscape design and screening"

PDCP Part D2 section 2.5.18 Control 2 provides that fences should be no taller than 1.8 metres or up to 2.4 metres on sloping sites, including the height of any retaining wall, and integrated into the landscaping; CCPG section 4.12 provides that side and rear boundary fences should be at least 1.8 metres high. The provision of acoustic fencing around the Level 1 outdoor play area which is a minimum of 2.1 metres in height is unsupportable due to its non-compliant height and visual impact. There is a discrepancy between the plans and Noise Impact Assessment (NIA) as to the overall effective height and whether the retaining wall is included in the effective height. The provision of acoustic fencing around the Level 2 outdoor play area which is a minimum of 1.8 metres in height is unsupportable due to its visual impact. The acoustic fencing results in unsatisfactory visual impacts to neighbouring residential development due to the inability to provide landscape screening to soften the solid fencing form, which is further exacerbated by the large built form of the building (CCPG, Section 3.5, C21).

C22 & C23 - To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments

An Acoustic Report was prepared. Acoustic fencing is proposed along all side and rear boundaries, adjacent to the residential dwellings, as discussed above. The Acoustic Report is not complete in all areas of assessment.

3.6 Hours of operation states:

"The hours of operation of child care facilities should not adversely impact the amenity of surrounding properties, particularly in residential areas. However, there is increasing demand for child care services outside the standard 7.00am – 7.00pm period as working hours become increasingly flexible for both shift and office workers. Hence there is a need to strike a balance between the needs of families and compatibility with the surrounding uses in an area."

The area is predominantly residential. Having regard to C28, the hours of operation of the centre should not extend beyond 7.00am to 7.00pm weekdays. The proposal is for 7am to 6pm, which is in keeping with the requirements.

C28 & C29 - To minimise the impact of the child care facility on the amenity of neighbouring residential developments

C28 states:

"Hours of operation 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 child care facility may be extended if it adjoins or is adjacent to non-residential land uses."

The area is predominantly residential. Having regard to C28, the hours of operation of the centre should not extend beyond 7.00am to 7.00pm weekdays. The proposal is for 7am to 6pm, which is in keeping with the requirements.

C30, C31 & C32 - To provide parking that satisfies the needs of users and the demand generated by the centre and to minimise conflicts between pedestrians and vehicles

Bicycle parking is proposed for 4 bikes.

The DCP requires 1 space per 10 children plus 1 per employee. Based on 108 children and 19 staff, 10.8 (rounded up to 11) plus 19 spaces, being a total of 30 spaces are required and 29 spaces proposed. This is

a shortfall of 1 space.

No parking is provided for emergency vehicles.

No parking or loading areas are provided for service vehicles for the child care centre.

However, there are questions regarding the number of staff and additional spaces may be necessary for ancillary staff for the centre.

A Traffic and Parking Report was submitted. Council's Traffic Officer has indicated that the maneuvering within the basement is tight, but acceptable.

In light of the above, the application has not demonstrated suitable parking and basement design.

C33 & C34 - To provide vehicle access from the street in a safe environment that does not disrupt traffic flows

Vehicular access is proposed from Park Avenue with no concerns raised to the access arrangement (other than the streetscape of the built form in response to the access arrangements).

C35, C36 & C37 - To provide a safe and connected environment for pedestrians both on and around the site

The proposal incorporates separate pedestrian access from the basement car park to the facility and clear pathway from the street. However, there has been no regard for pedestrian movements within the basement design, in particular prams, with pedestrians walking within the aisles and not on a dedicated pedestrian pathway. The design requires pedestrians to cross the vehicle path using the ramps to access the lift area.

Clause 3.25 Centre-based child care facility - floor space ratio

Clause 3.25 specifies that consent must not be granted for the purposes of a centre-based child care facility in zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1. Calculations of the gross floor area indicate that the proposal complies with this control with a FSR of 0.32.9:1.

4. Applying the National Regulations

4.1 Indoor Space Requirements

It is unclear whether the proposal complies with Regulation 107 (indoor unencumbered space requirements) of the Education and Care Service Regulations and further detailed calculations are required when design amendments are progressed to address the issues raised in this report.

4.8 Emergency and evacuation procedures

This section states:

"Risks associated with multi-storey buildings, including the appropriate child-to-staff ratios and emergency and evacuation plans, need to be assessed in the context of the service approval. These matters need to be considered by the Quality Assurance and Regulatory Services Directorate, Early Childhood Education on behalf of the Secretary of the NSW Department of Education."

And

"Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:

- *independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations*
- *child appropriate handrails and barriers if shared fire stairs are utilised*

- *a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation.*

For all child care facilities, an emergency and evacuation plan should be submitted with a DA and should consider:

- *the mobility of children and how this is to be accommodated during an evacuation*
- *the location of a safe congregation/assembly point, away from the evacuated building, busy roads, and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings*
- *how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios."*

An emergency and evacuation plan was submitted with the application.

The proposed development does not sufficiently provide for safe and efficient evacuation routes and measures. The development generally proposes two emergency egress routes externally along the eastern and western boundary setback zones. The proposed structures for evacuation within the side setback are substantial and have an adverse visual impact due to the level differences on the site. Both setback zones are inadequate in width and a widened setback that can accommodate screen planting in addition to an unimpeded emergency egress route is necessary. The evacuation route comprises side landscaping potential necessitating increased side setbacks.

4.9 External Physical Environment

It is unclear whether the proposal complies with Regulation 108 (outdoor unencumbered space requirements) of the Education and Care Service Regulations and further detailed calculations are required when design amendments are progressed to address the issues raised in this report.

4.11 Shade

The proposal incorporates shade sails to the outdoor play areas as well as a solid covered area as part of Playground 2 as per the Acoustic Report recommendations. Given the concern that the proposed trees cannot grow due to the basement, small setbacks, soft-fall and hardstand, natural shade may not be available or confined to the limited areas along the rear boundary.

The shortcomings of the Development Application namely, the insufficient setbacks, excessive basement footprint, location of stormwater drainage infrastructure and elongated building form and outdoor play areas limit the available area both above and below ground level for the use of mature, canopy shade trees. This is contrary to the CCPG, which urges the use of natural shade (CCPG Section 4.11). Further, the development proposes insufficient landscaping to offset the recent tree removal and little opportunity is available for replacement planting of trees given the limited setbacks and deep soil areas.

4.12 Fencing

This section states:

"Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area."

The proposed fencing will secure the site.

4.13 Soil assessment

This section requires a preliminary investigation of the soil and a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children.

This has been provided with the application.

3.26 Centre-based child care facility—non-discretionary development standards

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

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

Noted. The proposal is not being refused on this basis.

(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

Noted. As per discussion under Clause 3.22 it is unclear if the proposal complies with indoor or outdoor play area requirements. It has not been sufficiently demonstrated that the proposal provides sufficient unencumbered outdoor space for children. Clause 3.26(2)(b) of the SEPPTI calls up Clauses 107 and 108 of the Education and Care Services National Regulations 2011 which require unencumbered indoor space of 3.25 square metres per child and 7 square metres of unencumbered outdoor space per child, respectively. These are non-discretionary development standards.

The proposal has spaces for 108 children, which equates to a requirement of 756 square metres of unencumbered outdoor space. The provision of outdoor space in this application is 817 square metres.

However, proposal nominates areas that are not suitable for children's play and congregation as falling within its unencumbered outdoor space. This calculation is not certain as it includes an access hatch to the rainwater tank below, retaining walls and acoustic fencing. The CCPG states that the area of unencumbered outdoor space excludes any other space that is not suitable for children which would include screen planting which is not suitable for children play and is required to be excluded from the outdoor play area calculation (CCPG Section 4.9). It is unclear if the calculations excluding these components would comply.

The proposed outdoor play space on both levels is elevated above NGL and include various elevated elements such as mud kitchen and the planter boxes which are located proximate to the fencing and pose a safety risk.

(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,

N/A.

(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,

Noted. The proposal would be better sited on a larger site, or the development reduced in size, to be suitable for the area and dimensions of the subject site.

(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.

Noted. The proposal is not being refused on this basis.

3.27 Centre-based child care facility—development control plans

"A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:

(a) operational or management plans or arrangements (including hours of operation),

- (b) demonstrated need or demand for child care service
- (c) proximity of facility to other early education and care facilities,
- (d) any matter relating to development for the purpose of a centre-based child care facility contained in:
 - (i) the design principles set out in Part 2 of the Child Care Planning Guideline of
 - (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates)."

Provisions relating to building height are specified in the PLEP and are not a DCP control. The proposal complies with parking rates specified in the DCP.

The considerations of the Child Care Planning Guideline are outlined above and identify numerous non-compliances.

Ratios

Education and Care Services National Regulations (NSW) set out the staffing requirements 123 Educator to child ratios—centre-based services

"(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

- (a) for children from birth to 24 months of age—1 educator to 4 children;*
- (b) for children over 24 months and less than 36 months of age—1 educator to 5 children;*

Part 7.3 New South Wales—specific provisions

271 Educator to child ratios—children aged 36 months or more but less than 6 years

(2) The educator to child ratio for children aged 36 months or more but less than 6 years of age is 1 educator to 10 children.

289 Educator to child ratio—children over preschool age

(1) For the purposes of regulation 123(1)(d), the educator to child ratio for children over preschool age is 1 educator to 15 children."

Based on the information provided in the application the staffing requirements are set out below.

0-2 years: 28 places - 1 per 4 children generates 7 educators
 2-3 years: 40 places - 1 per 5 children generates 8 educators
 3-6 years: 40 places - 1 per 10 children generates 4 educators
 Total 108 children generates 19 educators

A total of 19 staff is proposed which meets these requirements. However, considerations for ancillary staff such as administration and food preparation are not included in above total number of Educators required. The above number is based on ratio requirements for face to face service delivery.

The application indicates that a Director and a part time cook would be employed, however this is not a realistic allocation to cover educator lunch breaks and programming time. With the addition of food preparation staff the head count would increase.

The application contains inconsistencies regarding staffing numbers.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies - See discussion

Clause 7.1 Earthworks	Does not comply - See discussion
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.30 Urban Heat	Does not comply - See discussion

Clause 2.3 Zone objectives

The objectives for development on land zoned R4 High Density Residential under the Penrith LEP are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

Whilst the proposal will provide a service for the day to day needs of residents, it is at the expense of the residential amenity of adjoining properties and the character of the area due to the size and scale and bulk design of the elevated building. A development with a smaller footprint to allow for deep soil planting and increased setbacks would be more appropriate to protect and enhance the residential character of the area.

The Development Application does not ensure that a high level of residential amenity is maintained, contrary to the objectives of development in the R4 High Density Residential zone. It proposes unrelieved built form too close to adjoining residential development with no inadequate landscaping and fails to adequately detail noise, privacy, and general amenity mitigation measures.

As such, the objectives of the R4 High Density Residential zone have not been satisfied.

Clause 4.3 Height of buildings

The Height of Buildings Map specifies that a building on the site is to have a maximum height of 15m and the proposal does not exceed this maximum requirement.

Clause 7.1 Earthworks

Clause 7.1 states:

"7.1 Earthworks

(1) The objectives of this clause are as follows—

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
- (b) to allow earthworks of a minor nature without separate development consent.*

(2) Development consent is required for earthworks unless—

- (a) the work is exempt development under this Plan or another applicable environmental planning instrument, or*
- (b) the work is ancillary to other development for which development consent has been given.*

(3) Before granting development consent for earthworks, the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise, or mitigate the impacts of the development,*
- (i) *the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area."*

Earthworks are required due to the topography of the site, and to accommodate the ground floor basement below the building. The close proximity of the earthworks to the side boundaries due to the size of the basement could result in potential impacts off site. The setbacks of the proposed building and basement should be increased to provide greater separation to the adjoining dwellings and minimise potential impacts regarding land stability and damage. The proposal in its current form has potential for adverse impacts on the adjoining dwellings during construction due to a side setback of only 1.8m.

Further, the Development Application does not adequately consider the impact of the proposed development on underlying and surrounding groundwater resources and adopt appropriate measures to avoid these impacts. Refer to discussion against Chapter 6 Water Catchments of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

As such, the proposal is unacceptable with respect to Clause 7.1 of PLEP.

Clause 7.4 Sustainable development

The proposal is unsatisfactory for the purpose of Section 7.4 of Penrith LEP. In deciding whether to grant development consent for development, the consent authority must have regard to the principles of sustainable development as they relate to the development based on a 'whole of building' approach by considering a range of sustainability measures listed in Section 7.4(a-j). The proposal has not been designed with regard to the principles of sustainable development.

The Development Application fails to establish that it has been designed and will be constructed and operated in a sustainable manner, contrary to the Child Care Planning Guideline and Penrith LEP.

Clause 7.30 Urban Heat

Clause 7.30 states:

"7.30 Urban heat

(1) The objectives of this clause are to—

- (a) ensure development incorporates planning and design measures to reduce the urban heat island effect in Penrith, and*
- (b) ensure buildings and outdoor spaces are thermally comfortable for people living and working in Penrith, particularly during summer, and*
- (c) promote the cooling benefits of green infrastructure and water in the landscape.*

....

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that planning and design measures are incorporated to reduce the urban heat island effect that—

- (a) maximise green infrastructure, and*
- (b) retain water in the landscape, and*
- (c) use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and*
- (d) use building, paving and other materials that minimise heat impacts, and*
- (e) reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources.*

(4) In this clause—

green infrastructure means the network of green spaces, natural systems and semi-natural systems including

waterways, bushland, tree canopy, green ground cover, parks, and open spaces, that—

(a) supports sustainable communities, and

(b) is strategically designed and managed to support a good quality of life in an urban environment. urban heat island effect is a result of conditions that contribute to higher temperatures in urban areas, including—

(a) use of roads, car parks, pavements, roofs, walls, and other hard and dark surfaces, and

(b) activities that generate heat, including waste air from mechanical cooling systems, and

(c) reduction in green infrastructure."

The proposal initially removes all trees from the site and does not make any attempt to retain any existing trees for instant shading. This is an unacceptable design response.

Following Council's request for information, which included retention of more trees to be incorporated into the proposal, the trees were removed reportedly under the allowances of the previous development consent DA17/0559.

The proposal does not maximise green infrastructure, providing inadequate landscaped area and limited opportunity for meaningful canopy tree planting other than along the rear boundary which is limited in width. The proposal does not adequately balance landscaped area with built upon and hardstand area, and to accommodate canopy tree planting in suitable locations on the Site that will provide shading and cooling.

Planting areas in the side setbacks are too limited in the space provided and will not enable for appropriate tree canopy spread and root development.

The design does not reduce reliance on mechanical ventilation and cooling systems, providing poor natural ventilation.

The design does not meet the objectives of Clause 7.30 - Urban Heat of Penrith LEP.

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

There are no draft policies or plans applying to the development proposal.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies

C10 Transport, Access, and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
C14 Urban Heat Management	Does not comply - see Appendix - Development Control Plan Compliance
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	N/A
D2.6 Non Residential Developments	Does not comply - see Appendix - Development Control Plan Compliance
D5.1. Application of Certification System	Does not comply - see Appendix - Development Control Plan Compliance
D5.2. Child Care Centres	Does not comply - see Appendix - Development Control Plan Compliance
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	N/A
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A

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

There are no planning agreements that apply to the Site.

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

Prescribed Conditions

There are relevant prescribed conditions of the regulations, such as the requirement for compliance with the Building Code of Australia, could be imposed as conditions of consent, however the application is recommended for refusal.

Advertising and Notification

The application was advertised and notified in accordance with the requirements of the regulations and the Penrith

Part 9 - Fire Safety and BCA Matters

An assessment of the fire protection and structural capacity of the proposed development is necessary. The application has been referred to Council's Building Surveyor for assessment and to ensure compliance with the Building Code of Australia and fire safety provision can be achieved, no objection was raised subject to conditions being imposed. However, the application is recommended for refusal.

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

Building Design & Streetscape

The scale and character of the development is not compatible with surrounding development and, in residential areas, is not sympathetic to adjoining development in terms of height, bulk and scale, inconsistent with PDCP Part D5, Section 5.2 Controls (3)(a) and (4)(b)).

The building has an undesirable presentation to the street resulting from the large front facade which is commercial in nature and hardstand within the front setback which limits the opportunity for meaningful landscaping or canopy trees. This is inconsistent with the character of the surrounding locality, which is predominately in the form of residential developments with large, landscaped setbacks.

Part 2.6 of Penrith Development Control Plan 2014 provides controls for non-residential development within residential zones. The following elements of the proposal do not reflect residential development forms in the vicinity:

- The development does not comply with the building envelope controls.
- The development does not provide the minimum 35% minimum landscaped area.
- The building does not comply with the built form controls in regard to maximum external wall length, articulation, and orientation of the front door.

The location of easements and stormwater management infrastructure does not allow for required landscaping to ameliorate the impacts of the development with respect to internal and external amenity, building bulk and scale, streetscape character and contextual integration. It is in direct conflict with other essential elements of the development - particularly landscaping.

Tree Management

The proposal does not sufficiently demonstrate that existing trees on neighbouring properties can be retained and protected.

Clause 1.2(2)(b) of the PLEP encourages development which demonstrates a strong commitment to environmental protection and enhancement.

PDCP Part C2 section 2.1 provides controls in relation to the preservation of trees through site planning and design; and PDCP Part C6 section 6.1.3 requires development to reinforce the landscape character of the area, protect and conserve biodiversity values of trees through preservation of existing trees and to enhance amenity and visual design of the site.

The proposal has, accordingly, not adequately demonstrated that the proposed development will not result in third party damage to trees located on adjoining land. This has the potential to reduce available natural shade contrary to the CCPG (Section 4.11) and is contrary to the principles of environmental protection and retention of green infrastructure, per clauses 1.2(2)(b) and 7.30 to the PLEP. The proposal is not supported by an Arboricultural Impact Assessment (AIA) that addresses impacts of all proposed works to trees on adjoining sites. It must also be demonstrated that the tree on the site to the east have sufficient space for continued growth and remain. Impacts from building/basement footprint, accessible emergency egress ramp, proximity of the building line, underground services and the proposed height of the building have been underestimated and will impact on the continued growth of the tree.

A proposal should not cause damage to third party property, therefore a minimum setback to permit a tree protection fence to be installed at the full extent of the TPZ and additional space to allow for the future growth requirements of the tree is required. Setback shall also ensure that no pruning of the tree is required to facilitate

construction (including enabling construction equipment to excavate for the basement/car parking area) and the proposed building line will not require excessive pruning to provide clearance from the building as the tree grows.

The Development Application fails to include appropriate landscaping on side boundaries and is contrary to the controls identified above.

The shortcomings of the Development Application particularised above - namely, the insufficient setbacks, excessive basement footprint, location of stormwater drainage infrastructure and elongated building form and outdoor play areas - limit the available area both above and below ground level for the use of mature, canopy shade trees. This is contrary to the CCPG, which urges the use of natural shade (CCPG Section 4.11).

The development proposes insufficient landscaping to offset the recent tree removal and little opportunity is available for replacement planting of trees given the limited setbacks and deep soil areas.

Unencumbered Play Space

The NSW Education and Care Services National Regulations specifies outdoor unencumbered space required per child. While the plans indicate that the proposal complies with these rates, this calculation is not agreed as it includes retaining walls, fencing and stairs. Further, screen planting is necessary and should be excluded from the outdoor unencumbered space as it is not space available for play.

Crime Prevention through Environmental Design

The proposal is consistent with the principles of Crime Prevention through Environmental Design (CPTED). The vehicular entry is clearly defined from the street via the basement. The main pedestrian entrance is proposed from a pathway which leads into the main entry of the building, which is clearly visible from the street, consistent with the principles of Crime Prevention through Environmental Design (CPTED) and allows for natural surveillance.

The upper level outdoor play space raises safety concerns and there is a risk of children climbing using non-fixed equipment and falling.

Internal Amenity

The proposal results in poor amenity noting the following:

- The proposal does not provide adequate side setbacks to allow for a landscaped buffer for adjoining residents or to prevent overlooking of the child care centre.
- There is no ability for meaningful plantings for shade within the play areas due to the inability for deep soil planting or canopy trees due to the basement and building below.

Insufficient Information

Inadequate, insufficient, or inconsistent information has been provided to undertake a complete assessment. In this regard the following is to be addressed/provided:

- The Architectural Plans do not include sufficient dimensions.
- There are inconsistencies between the architectural plans, landscape plans and civil design drawings, specifically relating to the ability to deliver landscaping in combination with proposed stormwater infrastructure. The landscape plans make no reference to the proposed required earthworks and retaining walls, or all drainage piping and on site detention and water quality infrastructure as indicated on the civil design drawings compromising the landscaping outcomes suggested.
- A site-specific Tree Protection Plan (Specification) and Drawings is required to ensure Tree 11 can be appropriately retained and protection with consideration being given to both above and below ground requirements. The Plan shall cover all stages of the development (e.g., demolition, construction, landscaping).
- Version 3 of the Arboricultural Impact Assessment (AIA) was not accurately updated as based on aerial imagery, the Tree circled as Tree 11 on the adjacent property was removed between June 13 and October 4, 2022 (under an approved Vegetation Permit) and it fails to depict the adjacent tree which appears to be accurately depicted as Tree 11 on the amended Architectural and Landscape Plans.

- An AIA that addresses impacts of all proposed works to trees on adjoining sites is required. It must also be demonstrated that the tree on the site to the east have sufficient space for continued growth and remain. Impacts from building/basement footprint, stormwater infrastructure, retaining walls, planter bed, construction of the basement accessible emergency egress ramp, proximity of the building line, underground services and the proposed height of the building have been underestimated and will impact on the continued growth of the tree.
- Insufficient information has been provided with regard to the management of groundwater by way of the basement being tanked so that ground water is not extracted.
- Insufficient information has been provided of compliance with the minimum unencumbered outdoor space for children, in accordance with the criterion contained in Clauses 107 and 108 of the Education and Care Services National Regulations.
- Insufficient information has been provided of proposed sustainability measures, including non-residential developments with a construction cost of \$1 million or more, inconsistent with PDCP Part D5 Section 5.1 Control 1.
- The Noise Impact Assessment (NIA) prepared by Acoustic Logic dated 20/6/2023, ref: 20220401.1/2112A/R/AZ includes the construction noise. However, Table 3 of the NIA states that the rating background level (RBL) measured at the site is 46dB(A), however, in Table 9, the background level used is 55dB(A). This is a discrepancy of 9dB(A) and is significantly louder than the measured RBL. All of the assessment relating to construction noise is then based on this elevated RBL. The measured RBL is to be used in calculating the noise impact in relation to construction noise to the neighbouring residents and school. The recommended attenuation measures are to be updated accordingly.
- Details regarding bottle preparation area.

Existing Easement

The proposed planting within the existing easement along the eastern elevation is inadequate and could be removed at any time if necessary, under the terms of the easement. This easement is for services and drainage of water and as such there is a potential conflict between planting and services and limit the ability for meaningful landscaping with screening and shading abilities. This setback should be enlarged to ensure planting is sufficiently distance from any services and can achieve its mature height to provide screening and shading and not be required to be removed in the future.

Stormwater

Sufficient information has been provided with regard to the stormwater concept plan.

Basement

The submitted swept path diagrams for within the basement are satisfactory, as too is access.

A shortfall of parking has been identified and is not supported.

Noise Management

The Noise Impact Assessment has inconsistencies, as detailed above in inadequate information. The proposed acoustic and noise management measures are not sufficient to demonstrate that the Site is suitable for the proposal. Further, the NIA recommends construction of *“a minimum 2.1 m high acoustic fence to be installed along the retaining walls surrounding the Level 1 outdoor play area.”* It is uncertain if the 2.1m is required above the retaining wall which would increase the height of the overall fencing.

As such, the proposal is unacceptable in its current form from a noise management perspective.

Water Sensitive Urban Design

The applicant has provided a MUSIC model which confirms that a 60KL rainwater tank will be provided and achieve a non-potable water reuse demand of 80.61%. This is in accordance with section 3.1 of councils WSUD policy.

The MUSIC model also confirms that a 1 x 460mm Psorb filter cartridge is to be provided as well as 2 ocean guard GPT. The model confirms that these devices along with the rainwater tank will provide treatment in accordance with section 3.2 of council WSUD policy.

The filter chamber is located at the front of the premises adjacent to Park Avenue. A 900mm² access panel has been provided above the filter chamber for maintenance access. Furthermore, the applicant has provided an operation and Maintenance Manual.

The Waterways team has no objections to the proposed development subject to conditions.

Traffic Generation and Road Network Impacts

The submitted traffic report contains surveys and modelling which demonstrates that the local network can accommodate the proposed traffic generation associated with the proposed development while maintaining a satisfactory level of service. Council's Traffic Engineer raised no objection to the proposed traffic generation.

Land Contamination

The application includes a Preliminary Site Investigation (PSI). The PSI includes soil sampling and analysis and concludes the site is suitable for the proposed use. The PSI was reviewed by Council's Environmental Management Officer and deemed satisfactory and was prepared in accordance with NSW EPA contaminated land guidelines and the National Environment Protection (Assessment of Site Contamination) Measure 1999 [NEPM 2013]. The application satisfactorily demonstrates the site is suitable for the proposed development.

Demolition and Construction Waste

The Waste Management Plan satisfactorily details proposed off-site disposal of construction waste materials.

Public Health

The plans provided reference that all food preparation areas, including kitchen and bottle preparation areas, will be constructed in accordance with AS4674: Design, Construction and Fit-Out of a Food Premise, as well as Standard 3.2.3 of the Australian and New Zealand Food Standards Code. As such, standard conditions have been provided to ensure compliance.

No objection is raised by Council's Public Health Officer subject to recommended conditions of consent should consent be granted.

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

The site is considered to be unsuitable for the following reasons:

- The footprint of the development is excessive and does not provide ample room for meaningful landscaping, deep soil planting, screen planting or interlocking canopy in the rear to address sustainability and urban heat provision.
- The design of the development is not compatible with, or complementary to the existing or future desired character or landscaping of the local area.
- The design of the development does not adequately respond to the site's constraints including the easements and groundwater.
- The development proposal does not adequately demonstrate that negative impacts related to visual impact, noise, privacy, general amenity, parking, and character are adequately mitigated against or addressed by the design.
- The design of the building on the site is not acceptable in terms of internal amenity or play areas, and external residential amenity and having regard to the building and landscape design and sustainability of the development.
- The development proposes insufficient landscaping to offset the recent tree removal, nor provide adequate protection to T11 on the adjoining land.

Section 4.15(1)(d) Any Submissions

Community Consultation

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

Community consultation

In accordance with Council's Community Engagement Strategy, the proposal was advertised and notified to nearby residents. The exhibition period occurring between 20 February 2023 to 6 March 2023. Council received no submissions in response.

Referrals

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

Referral Body	Comments Received
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Environmental - Biodiversity	No objections
Traffic Engineer	No objection subject to conditions
Tree Management Officer	Not supported

Section 4.15(1)(e)The public interest

The Development Application is not in the public interest for the following reasons:

- The Development Application will not enhance the character of the local area and will not positively contribute to the amenity of residents of the locality.
- The Development Application departs from key requirements imposed by the Infrastructure SEPP, the Child Care Planning Guideline, the Penrith LEP, and the Penrith DCP in relation to character, bulk, scale, landscaping, management of urban heat effects and parking.

Conclusion

The development application has been assessed against the applicable environmental planning instruments, including State Environmental Planning Policies and Penrith Local Environmental Plan 2010, and the proposal does not satisfy the aims, objectives, and specific provisions of these policies.

In its current form, the proposal will have a negative impact on the surrounding character of the area, specifically the design, setbacks, and general design of the overall development. The proposal is not compatible with local character and is not representative of the future desired character of the area and provides an unacceptable level of amenity for the occupants and adjoining neighbours.

The development application was submitted with insufficient information and support for this application would set an undesirable precedent in the locality, particularly given the building design is not site responsive, the incompatibility of the design with the applicable key development standards of SEPP (Transport and Infrastructure) 2021, Child Care Planning Guideline, Education and Care Services National Regulations, PLEP and PDCP, which are directly resulting in unacceptable negative impacts in the locality and is not in the public interest.

It is for the above reasoning that the development application is not worthy of support.

Recommendation

That DA23/0076 for the clearing of the site and tree removal, and construction of a three storey centre based child care centre with space for 108 children, signage and associated civil and landscaping works at Lot 10 DP 1224143, 72 Park Avenue, Kingswood be Refused for the attached reasons:

CONDITIONS

Refusal

- 1 The proposed development is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with
 - (a) Chapter 3 Educational Establishments and Child Care Facilities of State Environmental Planning Policy (Transport and Infrastructure) 2021 and Child Care Planning Guideline (CCPG) 2021:
 - Clause 3.22 of the SEPPTI Centre-based child care facility—concurrence of Regulatory Authority required for certain development.
 - Clause 3.23 of the SEPPTI provides that any applicable provisions of the CCPG must be taken into account by a consent authority in considering a development application concerning a centre-based child care facility.
 - Clause 3.26 of the SEPPTI Centre-based child care facility—non-discretionary development standards.
 - CCPG Design Quality Principles, Objectives, Controls and Part 4 Applying the National Regulations.
 - Education and Care Services National Regulations.
 - (b) State Environmental Planning Policy (Biodiversity and Conservation) - Chapter 6 Water Catchments.
- 2 The Development Application is not satisfactory for the purposes of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal is inconsistent with the following provisions of Penrith Local Environmental Plan:
 - Clause 2.3 - Objectives of R4 High Density Residential zone.
 - Clause 7.1 - Earthworks.
 - Clause 7.4 Sustainable Development.
 - Clause 7.30 Urban Heat.
- 3 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
 - C1 - Site Planning and Design Principles;
 - C2 - Vegetation Management;
 - C3 - Water Management;
 - C6 - Landscape Design;
 - C10 - Transport, Access, and Parking;
 - C12 - Noise and Vibration;
 - C13 - Infrastructure & Services;
 - C14 - Urban Heat Management;
 - D2.6 - Non Residential Development;
 - D5 - Other Land Uses.
- 4 The application has failed to demonstrate that the proposal is satisfactory for the purpose of Section 4.15 (1) (b) of the Environmental Planning & Assessment Act 1979, in terms of potential and likely impacts, from a residential character and neighbourhood amenity perspective, namely:
 - The design and built form appearance of the development is not compatible with, or complementary to the existing or future desired character or landscaping of the local area.
 - The proposed development is inappropriate for the site due to the topography and extensive earthworks, recontouring and retaining walls proposed.
 - The development proposal does not adequately demonstrate that negative impacts related to visual impact, noise, general amenity, privacy, parking, and character are adequately mitigated against or addressed by the design.
 - The design of the building on the site is not acceptable in terms of spatial arrangement and siting, internal and external residential amenity and having regard to the poor design interface, insufficient setbacks and treatments, insufficient outdoor unencumbered play areas and terraced play areas.
 - The development is not sustainable, including removal of all trees and insufficient limited landscaping and minimal natural shade.
 - The development proposes inadequate infrastructure including stormwater drainage and water quality, basement design, parking, and maneuvering.
 - Groundwater impacts resulting from the development not appropriately considered.

- 5 The application has failed to demonstrate that site is suitable for the proposed development and if such is satisfactory for the purpose of Section 4.15 (1) (c) of the Environmental Planning & Assessment Act 1979.
- 6 The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest.
- 7 The application provides inadequate and inconsistent information and as such it cannot be determined that the proposal is satisfactory for the purposes of Section 4.15 of the Environmental Planning and Assessment Act 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

Clause 3.23 of the SEPPTI provides that any applicable provisions of the CCPG must be taken into account by a consent authority in considering a development application concerning a centre-based child care facility. Many of these controls override the general provisions of the DCP. Refer to discussion under SEPPTI.

C1 Site Planning and Design Principles

The Site is not suitable for the proposed development having regard to the scale and footprint of development proposed. Refer to detailed assessment against SEPPTI and CCPG.

C2 Vegetation Management & C6 Landscape Design & C14 Urban Heat Management

Part 2.1 to Chapter C2, which relates to the preservation of trees through site planning and design.

Part 6.1.3 to Chapter C6, which requires development to reinforce the landscape character of the area, protect and conserve biodiversity values of trees through preservation of existing trees and to enhance amenity and visual design of the site.

During the assessment of the application, all trees on the site were removed under a previous consent, with no consideration for any existing these trees to remain. Little opportunity is available for replacement planting of trees given the limited setbacks and deep soil areas.

The Landscape Plan does not meet the minimum objectives of s1.4 C14 Urban Heat Management Penrith Development Control Plan 2014. Due to the potential size of the species proposed to be planted in close proximity to the basement and other hard infrastructure, many are unsuitable. Medium – large tree species should be planted at grade or provided a planting area/depth as per s1.3 C14 Urban Heat Management – Penrith Development Control Plan 2014.

Furthermore, all new plantings should be positioned so that future growth will not conflict with proposed underground services including drainage and sewer infrastructure. It is also noted that an easement for services and to drain water exists along the eastern boundary and will limit the potential for meaningful and permanent landscaping, which could be removed in the future.

Urban heat island impacts in relation to lack of green infrastructure has been discussed further under Clause 7.30 Urban Heat of this report.

C3 Water Management

The Development Application provides adequate arrangements for stormwater management or water quality. Chapter C3 to the PDCP 2014 requires that any new development ensures and demonstrates that an adequate and environmentally acceptable method of removing surface water and stormwater is implemented, coupled with minimisation of nuisance flows of stormwater from one property to adjoining properties.

However, the location of stormwater management infrastructure does not allow for required landscaping to ameliorate the impacts of the development with respect to internal and external amenity, building bulk and scale, streetscape character and contextual integration. It is in direct conflict with other essential elements of the development - particularly landscaping.

The proposal achieves compliance with Council's WSUD Policy and Technical guidelines. Therefore, the proposal is unacceptable with respect to Chapter C3 to the PDCP 2014.

C5 Waste Management

Adequate waste arrangements have been proposed for the development.

C9 Advertising and Signage

The proposed signage is appropriate with respect to location, size, illumination and colours and nature of signage.

C10 Transport, Access, and Parking

The DCP requires 1 space per 10 children plus 1 per employee. Based on 108 children and 19 staff, 10.8 (rounded up to 11) plus 19 spaces, being a total of 30 spaces are required and 29 spaces proposed. This is a shortfall of 1 space.

No parking is provided for emergency vehicles.

No parking or loading areas are provided for service vehicles for the child care centre.

The proposal is unsatisfactory with respect to C10 Transport, Access, and Parking of PDCP.

It is noted that the quantum of stacked spaces is compliant with the DCP being < 10% of the total parking provided.

C12 Noise and Vibration

The proposed acoustic and noise management measures are not sufficient to demonstrate that the Site is suitable for the Development Application, as detailed under 'Likely Impacts'. The submitted Acoustic Report contains errors.

C13 Infrastructure and Services

Concerns are raised with the proposal to accommodate any additional necessary infrastructure, such as a substation, given the limited setbacks and hard infrastructure proposed within those setbacks.

D2 Residential Development

Part 2.6 Non-Residential Developments

Part 2.6 of Penrith Development Control Plan 2014 provides controls for non-residential development within residential zones and states:

"A. Objectives

Non-residential development should be planned and designed according to principles of traditional suburban design, and to preserve the amenity of residential neighbourhoods.

B. Controls

1) Principles of urban form and urban design that apply to permissible residential development should be adopted for non-residential development.

2) Particular attention should be paid to:

The development site including front setbacks, rear setbacks dual frontage situations.

a) Urban form including:

i) traditional building design features;

ii) traditional garden frontages;

iii) orientation of building entrances;

iv) continuously occupied rooms facing the street;

v) detailed consideration of significant townscapes or landscapes;

vi) signs.

vii) driveways and parking including:

• provision of on-site parking appropriate to the proposed use, and in accordance with the parking requirements of this DCP;

- *minimise site coverage by paved areas;*
- *conceal garages from views available from public parks and streets;*
- *locate driveways and parking areas away from any neighbouring residential development;*
- b) landscaped area- provision and design of the required minimum area with detailed design of gardens and paving;*
- c) side setbacks to provide for effective landscaped separation from adjacent developments;*
- d) solar planning and energy efficiency - minimised overshadowing of adjacent properties and minimise requirements for mechanical heating and cooling of interiors;*
- e) privacy - protect the amenity of adjacent properties.*
- f) storage and building services - sufficient to meet requirements generated by the proposed development and located to protect the amenity of adjacent developments.*
- g) privacy – protect the amenity of adjacent properties;*
- h) storage and building services – sufficient to meet requirements generated by the proposed development and located to protect the amenity of adjacent residents."*

The principles and controls identified in this clause are often echoed in the SEPP. Refer to discussion under State Environmental Planning Policy (Transport and Infrastructure) 2021 and 'Likely Impacts'.

Further, the following elements of the proposal do not reflect residential development forms in the vicinity or satisfy the above requirements:

- The development does not comply with the building envelope controls or provide the upper floor setback from the ground floor.
- The development does not provide the minimum 35% minimum landscaped area for residential development in this area. The submitted Landscape Plan provides minimal landscaping on the site and no opportunity for screen planting in particular along the side setbacks.
- The building does not comply with the built form controls in regard to maximum external wall length, articulation, and orientation of the front door.
- Traditional design features of the area have not been proposed with the design being commercial/industrial in nature.
- The building design, prominent basement entrance and driveway and hardscape front setback will considerably alter the character of the area and is inconsistent with the existing townscapes and landscapes of the street.
- The proposal is not considered to be energy efficient or sustainable building design.
- The amenity and privacy of the adjoining properties is not protected by the proposed development.

The building has an undesirable presentation to the street which is inconsistent with the character of the surrounding locality.

In summary, the proposed development has not been planned and designed according to principles of traditional suburban design and does not preserve the amenity of the residential neighbourhood.

The proposal does not have regard to the requirements of Part 2.6 of PDCP and is considered unsatisfactory.

D5 Other Land Uses

Part 5.1 to Chapter D5

Part 5.1 to Chapter D5 of the PDCP requires that non-residential developments with a construction cost of \$1 million or more demonstrate a commitment to achieving at least 4 stars under the "Green Star" ratings system or 4.5 stars under the Australian Building Greenhouse Ratings System. The Development Application has not demonstrated a commitment to an appropriate sustainability certification system, nor provided an assessment report that confirms if the development can and will achieve sustainability ratings required by the Penrith DCP.

Part 5.2 to Chapter D5

The majority of provisions under this section are overwritten or previously discussed under State Environmental Planning Policy (Transport and Infrastructure) 2021 section of this report. Refer to assessment under Likely Impacts.