

8.3 DA0280/2023 - Alterations and Additions to existing Preschool - 2 Lovejoy Street, Mudgee

REPORT BY THE PLANNING COORDINATOR
 TO 20 SEPTEMBER 2023 ORDINARY MEETING
 GOV400103, DA0280/2023

RECOMMENDATION

That Council:

- A. receive the report by the Planning Coordinator on the DA0280/2023 - Alterations and Additions to existing Preschool - 2 Lovejoy Street, Mudgee;
- B. approve DA0280/2023 - Alterations and Additions to existing Preschool - 2 Lovejoy Street, Mudgee be approved subject to the following conditions and statement of reasons:

Approved Plans

1. The development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below, except as varied by the conditions listed herein and/or any plan notations.

Title / Name:	Drawing No / Document Ref	Revision / Issue:	Date [dd.mm.yyyy]:	Prepared by:
Site Plan	568PRE-01	C	18.08.2023	SUNRAI Designs
Existing Floor Plan & Existing Fire Safety Measures	568PRE-02	C	18.08.2023	SUNRAI Designs
Demolition Plan	568PRE-03	C	18.08.2023	SUNRAI Designs
Proposed Floor Plan	568PRE-04	C	18.08.2023	SUNRAI Designs
Elevations	568PRE-05	C	18.08.2023	SUNRAI Designs
Window & Door Schedule	568PRE-06	C	18.08.2023	SUNRAI Designs
MPS Floor Plan	568PRE-07	C	18.08.2023	SUNRAI Designs
MPS Elevations	568PRE-08	C	18.08.2023	SUNRAI Designs
MPS Sections	568PRE-09	C	18.08.2023	SUNRAI Designs
MPS Perspectives	568PRE-10	C	18.08.2023	SUNRAI Designs
Access Report	-	Issue A	25 July 2023	SUNRAI Designs
4.6 Variation Written Request	2023/39	-	17 December 2022	Drew Roberts Consulting
Statement of	2023/39	-	7 December	Drew

Environmental Effects			2022	Roberts Consulting
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General

3. This development consent does not include approval for any signage for the development. A separate Development Consent or Complying Development Certificate may be required for signage, if the signage is not exempt development.
4. All demolition works are to be carried out in accordance with AS 2601-2001 “Demolition of structures”, with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, shall be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council’s Waste Depot requires prior arrangement for immediate landfilling.
5. Notwithstanding the approved plans the structure is to be located clear of any easements and/or 1.5 metres from any water and sewer mains in accordance with Council Policy. No works involving cut or fill within the registered easement or within 1.5m of the water or sewer line.
6. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement Certifying that each specified fire safety measure is capable of performing to its specification.
7. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and Council. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
8. All earthworks, filling, building, driveways or other works are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.
9. Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

10. Pursuant to section 64 of the Environmental Planning and Assessment Regulation 2021, the existing building shall be brought into conformity with the following Performance Requirements of the BCA, Volume 1.
 - EP4.1 / E4P1– To facilitate safe evacuation in an emergency, the building must be provided with a system that ensures a level of visibility sufficient to enable exits, paths of travel to exits and any obstacles along a path of travel to an exit to be identified; and activates instantaneously upon the failure of an artificial lighting system, to the degree necessary, appropriate to the function or use of the building; and the floor area of the building; and the distance of travel to an exit.

- **EP4.2 / E4P2** – To facilitate evacuation, suitable signs or other means of identification, must, to the degree necessary, be provided to identify the location of exits; and, guide occupants to exits; and, be clearly visible to occupants; and, operate in the event of a power failure of the main lighting system for sufficient time for occupants to safely evacuate.

Plans and specifications demonstrating compliance are to be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

11. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the *Local Government Act, 1993* to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.
12. Prior to the issue of a Construction Certificate, the developer shall obtain a Certificate of Compliance under the *Water Management Act 2000*.
13. In accordance with the provisions of Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Contributions Plan 2019*, a levy based on the value of works shall be paid to Council in accordance with this condition for the purpose of local infrastructure, prior to issue of a Construction Certificate.

The value of works is to be calculated in accordance with Section 2.9.3 and the procedure outlined in Section 4.3 of the Contributions Plan. A report regarding value of works and any necessary certification is to be submitted to Council. Council will calculate and advise of the levy amount following submission of the documents.

Note – based on the proposed cost of works being \$556,345.94, it is estimated the contribution amount will be \$5,636.00

Note – the contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued.

Note – Mid-Western Regional Contributions Plan 2019 is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website www.midwestern.nsw.gov.au under Council Documents/Strategies and Plans.

14. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$250,000 or more.

Note - The amount payable is currently based on 0.25% of the cost of work. This is a State Government Levy and is subject to change.

Note – Council can only accept payment of the Long Service Levy as part of the fees for a Construction Certificate application lodged with Council. If the Construction Certificate is to be issued by a Private Certifier, the long service levy must be paid directly to the Long Service Levy Corporation or paid to the Private Certifier.

PRIOR TO COMMENCEMENT OF WORKS

15. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
 - a) the appointment of a Principal Certifying Authority and
 - b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

16. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE

17. A sign must be erected in a prominent position on any work site on which involved in the erection or demolition of a building is carried out;
- stating that unauthorised entry to the work site is prohibited, and
 - showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
 - the name, address and telephone number of the principal certifying authority for the work,
 - The sign shall be removed when the erection or demolition of the building has been completed.

18. If the work involved in the erection/demolition of the building;
- is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - building involves the enclosure of a public place
- A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

19. The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - Appropriate dust control measures;
 - Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
 - Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

20. Runoff and erosion controls shall be installed prior to clearing and incorporate:-

- diversion of uncontaminated up-site runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed;
- sediment control fences at the downslope perimeter of the cleared and/or disturbed area to prevent sediment and other debris escaping from the land to pollute any stream or body of water; and
- maintenance of all erosion control measures at maximum operational capacity until the land is effectively rehabilitated and stabilized beyond the completion of construction.

DURING WORKS

- 21. All building work must be carried out in accordance with the provisions of the National Construction Code, the *Environmental Planning & Assessment Act 1979* and Regulations and all relevant Australian Standards.**
- 22. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.**
- 23. Construction work noise that is audible at other premises is to be restricted to the following times:**
 - Monday to Saturday - 7.00am to 5.00pm**

No construction work noise is permitted on Sundays or Public Holidays.
- 24. All mandatory inspections required by the *Environmental Planning & Assessment Act* and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.**
- 25. The licensed demolition contractor and/or principal contractor must comply with the following specific requirements in respect of the proposed demolition works:-**
 - a) Demolition work is not be undertaken until:**
 - Council has been provided with a copy of any required Hazardous Substances Management Plan;**
 - The licensed demolition contractor and/or principal contractor has inspected the site and is satisfied that all measures are in place to comply with the provisions of such Plan;**
 - b) The removal, handling and disposal of any asbestos material (in excess of 10m²) is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by WorkCover NSW, and in accordance with the requirements of WorkCover NSW, the *Work Health and Safety Act 2011* and Australian Standard 2601-2001**
 - c) All asbestos and other hazardous materials are to be appropriately contained and disposed of at a facility holding the appropriate license issued by the NSW Environmental Protection Agency;**
 - d) Seven working days notice in writing is to be given to Council prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor.**
- 26. The strength of the concrete used for the reinforced concrete floor slab must be a minimum 25Mpa.**
- 27. All stormwater is to discharge to the street gutter with the use of non-flexible kerb adaptors. Alternatively, stormwater is to be connected to the approved inter-allotment drainage system.**
- 28. This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.**
- 29. All building work is to comply with the requirements of the Access to Premises Standard.**

30. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Section 78 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

31. Should any contaminated, scheduled, hazardous or asbestos material be discovered before or during construction works, the applicant and contractor shall ensure the appropriate regulatory authority (e.g. Heritage NSW, SafeWork NSW, Council, Fire and Rescue NSW etc.) is notified, and that such material is contained, encapsulated, sealed, handled or otherwise disposed of to the requirements of such Authority.

Note - such materials cannot be disposed of to landfill unless the facility is specifically licensed by the EPA to receive that type of waste.

32. If unexpected soil contaminants are discovered during works which has the potential to alter previous conclusions regarding site contamination; work must cease and Council or NSW Environmental Protection Authority must be notified immediately.

The contaminated land situation is to be evaluated by the supervising environmental consultant and an appropriate response determined in consultation with the developer, which is agreed to by Council.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

33. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.

34. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifier to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Section 41 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* for each measure listed in the schedule. The certificate must only be in the form specified by Section 86 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

35. Prior to use of the development and/or issue of an Occupation Certificate, the excavated and/or filled areas of the site are to be stabilised and drained, to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water, and to ensure the free flow of water away from the building and adjoining properties.

36. Prior to use of the development and/or issue of an Occupation Certificate, all roof water shall be conducted to the street gutter by means of a sealed pipeline having a minimum diameter of 90mm. Please note this can be achieved by connecting to existing stormwater lines.

ADVISORY NOTES

1. This development consent requires a Certificate of Compliance under the *Water Management Act 2000* to be obtained prior to the issue of a Construction Certificate. A person may apply to Mid-Western Regional Council, as the water supply authority, for a Certificate of Compliance pursuant to section 305 of the *Water Management Act*

2000. Please be advised that as a precondition to the granting of a Compliance Certificate, the following is to occur:

- a) A monetary contribution in accordance with the following Schedule of Contributions must be paid in full (including indexation, where applicable);

Section 64 Contributions			
Commercial Development per 100m ²			
	<i>ET/Unit</i>	<i>Value</i>	<i>105.8m²</i>
Water Headworks	0.1	\$9,713.00	\$1,027.64
Sewer Headworks	0.1	\$4,434.00	\$496.12
Total Headworks			\$1,496.75

- b) The adjustment of existing services or installation of new services and meters, as required, in compliance with *Australian Standard 3500: National Plumbing and Drainage Code*. All costs associated with this work shall be borne by the developer.

Note - Section 64 Developer Contributions are subject to Consumer Price Index increase at 1 July each year. Please contact Council's Planning and Development Department regarding any adjustments.

2. The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning - Public Places".
3. The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.
4. Division 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 6 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.
5. If you are dissatisfied with this decision section 8.7 of the EP&A Act gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice, pursuant to section 8.10(1)(b).
6. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. The proposed development complies with the requirements of the applicable environmental planning instruments and Mid-Western Regional Development Control Plan 2013.
2. The written request to vary a non-numerical standard under clause 4.6 of the Mid-Western Regional Local Environmental Plan 2013 to clause 6.7 Active Street Frontage has been adequately addressed by the applicant and the proposed development will be in the public interest as it achieves the objectives of clause 6.7 and the objectives of the zone.
3. The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the *Environmental Planning & Assessment Act 1979*.

4. No submissions were received during public notification of the development application.

Executive summary

OWNER/S	Crown Lands
APPLICANT:	Mrs Rai Geddes
PROPERTY DESCRIPTION	2 Lovejoy Street, Mudgee
PROPOSED DEVELOPMENT	Alterations and additions to existing preschool
ESTIMATED COST OF DEVELOPMENT:	\$556,345.94
REASON FOR REPORTING TO COUNCIL:	4.6 Variation to the Mid-Western Regional LEP
PUBLIC SUBMISSIONS:	Nil

DA0280/2023 has been submitted to Council seeking consent for alterations and additions to the existing child care facility located on the site. The proposed alterations and additions will not result in an increase in children numbers and therefore traffic and car parking arrangements will not change as a result of the proposed development.

The subject site comprises of 3 lots and is legally described as Lots 1 and 2 Section 68 DP 758721 and Lot 3 DP 727197, known as 2 Lovejoy Street, Mudgee. The site has a total area of approximately 1724.13m² and is currently occupied by the Mudgee Community Preschool Incorporated.

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days. During the notification period, no submissions were received.

The proposed development has been assessed in accordance with Council's DCP and the LEP. The proposed development is considered generally consistent with Council's planning controls however, a variation to Council's LEP clause 6.7 'active street frontage' provision is sought by the applicant. The proposed variation is discussed later in this report.

The application has been referred to Council for consideration as it exceeds staff's *Delegation of Authority*, in that the proposed development includes a variation to a non-numerical standard pursuant to clause 4.6 of the Mid Western Regional Local Environmental Plan 2012. As a result, determination of the application must be made by Council, and not under staff delegation, in accordance with Planning Circular PS 18-003 issued on 5 May 2020 by the NSW Department of Planning and Environment.

The application is recommended for Approval.

Disclosure of Interest

The Acting General Manager declares an interest in the application as the Applicant is his spouse.

Detailed report

Subject site

The subject site is legally described as Lots 1 and 2 Section 68 DP 758721 and Lot 3 DP 727197, known as 2 Lovejoy Street, Mudgee. The site has a total area of approximately 1724.13m² and is currently occupied by the Mudgee Community Preschool Incorporated – refer to Figure 1 below.

The site contains a number of existing mature trees, outbuildings for storage and play equipment for use by the children at the facility. Adjoining the site to the north and west is Robertson Park. To

the east and south are Perry and Lovejoy Streets, with a mix of established commercial and residential buildings occupying the surrounding area.

The subject land has a number of previous development approvals, including a Building Approval in 1972 (DA43/1972) for "Additions to Pre-School Kindergarten Building" and more recently a Development Application and Construction Certificate for "Commercial Alterations and Additions" (DA0164/2011). Prior to this, the site was utilised as a Bowling Club.



Figure 1: Site Location Plan

Proposed development

DA0280/2023 seeks consent for alterations and additions to the existing child care facility comprising of the following key elements:

- Internal alterations to the layout to improve the bathrooms, kitchen and other facilities throughout the centre;
- Minor external alterations including alterations to a window, roof and door arrangement, outdoor kitchen, ramp and the like;
- Enclosure of a small deck area to integrate the existing floor area internally;
- Removal of two trees, minor vegetation and fencing; and
- The erection of a new multipurpose space (including toilet facilities) comprising a total floor area of 105.8m² along the eastern boundary of the site.

Figure 2 below demonstrates the proposed layout of the development site.

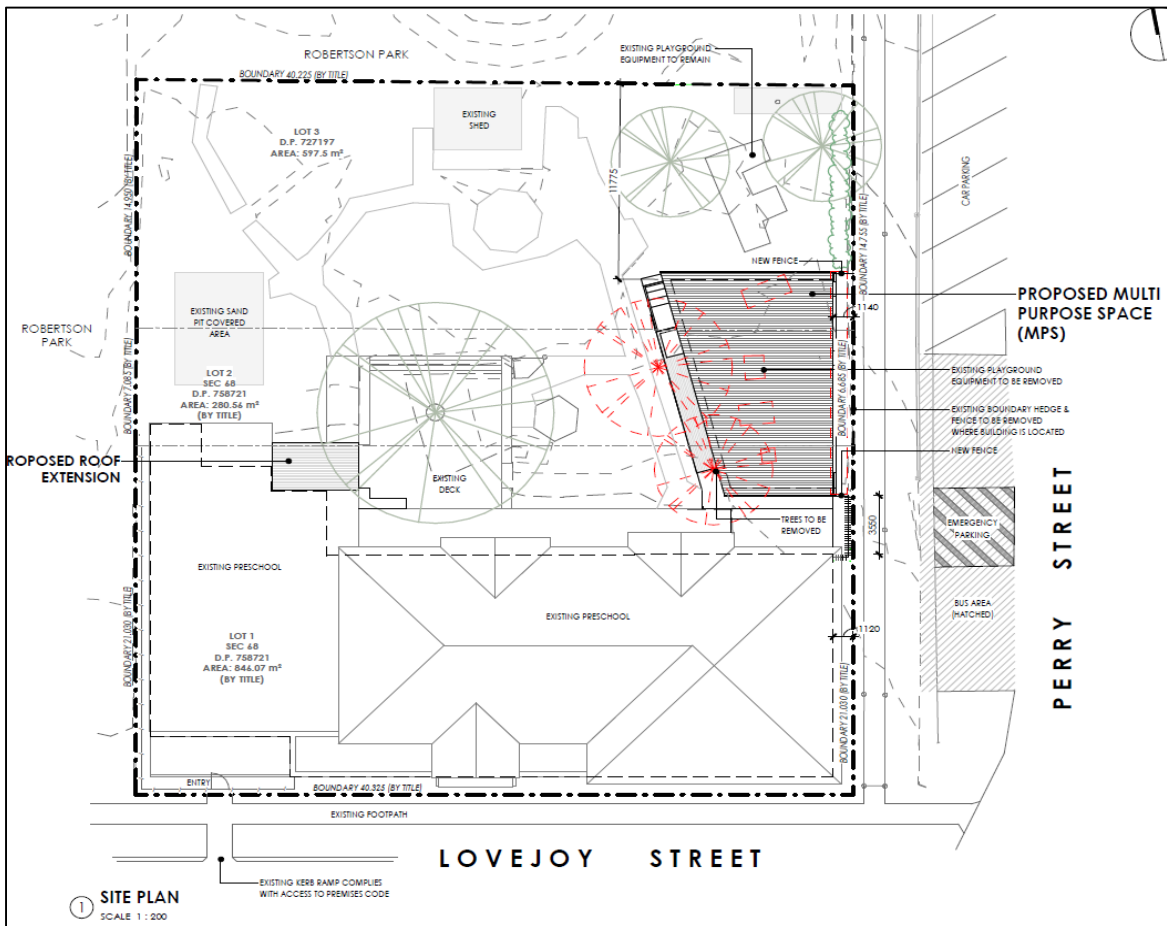


Figure 2: Proposed Site Layout Plan

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days. During the notification period, no submission/s were received.

The proposed development has been assessed in accordance with Council’s DCP and the LEP. The proposed development is considered generally consistent with Council’s planning controls however, a variation to Council’s LEP clause 6.7 ‘active street frontage’ provision is sought by the applicant. The proposed variation is discussed later in this report.

The application has been referred to Council for consideration as it exceeds staff’s *Delegation of Authority*, in that the proposed development includes a variation to a non-numerical standard pursuant to clause 4.6 of the Mid Western Regional Local Environmental Plan 2012. As a result, determination of the application must be made by Council, and not under staff delegation, in accordance with Planning Circular PS 18-003 issued on 5 May 2020 by the NSW Department of Planning and Environment.

The application is recommended for Approval.

Legislative Requirements

Environmental Planning and Assessment Act 1979

Designated Development

The development proposal is not considered to be Designated Development, in accordance with Schedule 3 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regs).

Integrated Development

The development proposal is not considered to be Integrated Development, in accordance with section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Assessment

The application has been assessed in accordance with **Section 4.15** of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

4.15(1)(a) Requirements of Regulations and Policies

(i) Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Development Application relates?

STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021

The proposed development does not involve Advertising or Signage nor is the development impacted by any other requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 Pursuant to section 4.6 of the Policy, a site inspection and a search of council's records did not reveal any potentially contaminating activities upon the site. Accordingly, no further consideration is necessary.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Pursuant to section 2.48, the development will not have impact on underground electricity power lines, distribution pole or tower. There are no electrical easements that constrain the subject site and therefore no further consideration of this SEPP is considered necessary.

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)

The following clauses of Mid-Western Regional Local Environmental Plan 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The application is not contrary to the relevant aims and objectives of the plan.

Clause 1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as alterations and additions to an existing 'centre based child care facility'. A centre-based child care facility is defined as:

centre-based child care facility means—

- (a) a building or place used for the education and care of children that provides any one or more of the following—
 - (i) long day care,
 - (ii) occasional child care,
 - (iii) out-of-school-hours care (including vacation care),
 - (iv) preschool care, or
- (b) an approved family day care venue (within the meaning of the *Children (Education and Care Services) National Law (NSW)*).

Clause 2.2 Zoning of Land to Which Plan Applies

The land at the time of lodgement of the application is zoned B3 Commercial Core and is therefore subject to the Plan.

It should be noted that the Minister for Planning altered the zoning for “employment zones” under all NSW Standard Instrument Local Environmental Plans via the State Environmental Planning Policy Amendment (Land Use Zones) (No. 4) 2022 which commenced on the 26 April 2023.

However, in accordance with clause 1.8A of the LEP;

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

Clause 2.3 Zone objectives and Land Use table

The land is zoned B3 Commercial Core pursuant to MWRLEP 2012. The proposal, being alterations and additions to an existing centre-based child care facility is permissible with consent in the zone and complies with the relevant objectives.

The objectives of the zone and how the proposal satisfies the objectives is addressed below:

B3 Commercial Core

1. *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment The proposal contributes to the range of land uses available within the downtown area.

2. *To encourage appropriate employment opportunities in accessible locations.*

Comment The proposal will continue to provide for additional employment opportunities in the downtown area.

3. *To maximise public transport patronage and encourage walking and cycling.*

Comment The proposal will not alter pedestrian movements around the commercial enterprises in the downtown area, which is expected to encourage walking and cycling and the use of public transport to a central location.

4. *To promote the central business district of Mudgee as the major focus for retail and commercial activity in Mid-Western Regional.*

Comment The proposal will continue to contribute to the central business district of Mudgee providing child care services for the region.

5. *To consolidate business development in the Mudgee town centre and avoid unnecessary or inappropriate expansion of business-related land uses into surrounding residential neighbourhoods.*

Comment The proposal will not impact on surrounding residential neighbourhoods and will continue to provide a service within the immediate fringe of the CBD area.

6. *To ensure that new development is compatible with the historic architectural character and streetscapes of the Mudgee commercial core area.*

Comment The proposed works contribute positively to the heritage streetscape in the immediate vicinity. Refer to comments under clause 5.10 below.

7. *To ensure that the form and layout of new development is designed to encourage free pedestrian movement and connectivity within the commercial core.*

Comment The proposal continues to provide for the free pedestrian movement throughout the CBD. No alterations to existing footways are proposed.

Clause 2.7 Demolition requires development consent

In satisfaction of this clause, the development application seeks approval for internal demolition works to facilitate the upgrades required to the existing preschool building whilst also removing fencing, landscaping and two (2) trees within the site to enable the new building work to be undertaken.

Clause 4.3 Height of buildings

The subject site is mapped for a maximum height limit of 8.5 metres above existing ground level. The new addition to the rear of the existing preschool is proposed at an overall maximum height of 4.73 metres and therefore complies.

Clause 4.6 Exceptions to development standards

It is proposed to vary Clause 6.7 of the LEP which relates to the provision of an 'active street frontage' at the ground floor of a premises within land zoned E2 Commercial Centre. An 'active street frontage' relates to a building facing the street being used for the purposes of business premises or retail premises.

The variation to clause 6.7 of the LEP can be considered under this clause as it is not expressly excluded under any subsection of clause 4.6(6) or 4.6(8) of the LEP as follows:

- *The development does not relate to subdivision of the land in a rural or environmental zone (excluded under subclause 6).*
- *The development does not contravene any of the following (excluded under subclause 8)*
 - (a) a development standard for complying development*
 - (b) a development standard in connection with a commitment set out in a BASIX certificate.*
 - (c) clause 5.4 (relating to "controls relating to miscellaneous permissible uses)*

Previous Land and Environment Court decisions have clarified the correct approach to consideration of clause 4.6 requests. In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ stated:

- *Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- *The first opinion of satisfaction in clause 4.6(4)(a)(i) is whether the clause 4.6 request has adequately addressed the matters required to be demonstrated in clause 4.6(3). Those matters are:*
 - *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
 - *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- *The consent authority does not have to directly form the opinion of satisfaction regarding these matters, but only indirectly form the opinion of satisfaction that the written request has adequately addressed these matters.*
- *The second opinion of satisfaction in clause 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.*
- *The consent authority must be directly satisfied that the clause 4.6 request adequately addresses the matter in clause 4.6(4)(a)(ii), which is not merely that the proposed development will be in the public interest, but that it will be in the public interest because it*

is consistent with the objectives of the development standard and the objectives for development in the zone.

- *The final precondition in clause 4.6(4) that must be satisfied is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained.*

Given the above, an assessment has been made taking into consideration the above points and the requirements of Clause 4.6 as follows:

1. **Clause 4.6(4)(a)(i)** - *The consent authority satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in clause 4.6(3) being:*
 - *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
 - *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has provided an appropriate written request that compliance with the 'active street frontage' clause is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard as outlined below. A copy of the written request is available in **Attachment 2**.

In the judgement of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) five ways of demonstrating compliance with a development standard is unreasonable or unnecessary were set out. This has been confirmed in subsequent cases including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Randwick Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 which confirm that adopting the '*Wehbe*' principles when assessing a clause 4.6 submission in respect of clause 4.3(2) is an appropriate approach.

In this case, the applicant has utilised the "*Wehbe*" principle that:

"the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary".

The applicant argues that:

- *Despite the breach of the active street frontage control, the proposal achieves the objective for active street frontages in Clause 6.7 as outlined below.*

"The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages on land in Zone B3 Commercial Core."
- *The proposal will not hinder other sites within the zone from providing an active street frontage. The site does not generally relate to the accepted primary pedestrian routes through the Mudgee CBD that are of importance. This is as a result of the isolated and disjointed nature of the site from the CBD and the existing non-commercial use upon the site.*

The applicant also argues that the proposal satisfies the zone objectives as follows:

1. *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment: *The proposed alterations and additions will allow the site to continue to be used for the purposes of a child-care centre serving the needs of the surrounding area.*

2. *To encourage appropriate employment opportunities in accessible locations.*

Comment: *The proposed alterations and additions will allow the site to continue to be used for the purposes of a child-care centre and therefore generating employment.*

3. *To maximise public transport patronage and encourage walking and cycling.*

Comment: *The proposed alterations and additions will allow the site to continue to be used for the purposes of a child-care centre within the downtown area, which is accessible for walking, cycling etc.*

4. *To promote the central business district of Mudgee as the major focus for retail and commercial activity in Mid-Western Regional.*

Comment: *The proposal will not impact on the ability of the downtown area of Mudgee to continue to be the focus for retail and commercial activity. The site will continue to be used for the purpose of a child-care centre, which performs an important supportive role in the function of the downtown area and the various businesses and employees that rely upon it.*

5. *To consolidate business development in the Mudgee town centre and avoid unnecessary or inappropriate expansion of business-related land uses into surrounding residential neighbourhoods.*

Comment: *The proposal is an upgrade of an existing child care facility, which is permissible with consent. Subsequently, the proposal will not create additional risk to pushing other businesses outside of the town centre area.*

6. *To ensure that new development is compatible with the historic architectural character and streetscapes of the Mudgee commercial core area.*

Comment: *The proposal is sympathetic to the surrounding streetscape with regards to heritage related elements and in particular Robertson Park. This is addressed further in this SEE.*

7. *To ensure that the form and layout of new development is designed to encourage free pedestrian movement and connectivity within the commercial core.*

Comment: *The proposal will not interfere with any existing pedestrian movements throughout the commercial core, with the area already enclosed for the purposes of the child-care centre use.*

In addition, the applicant has also provided an adequate written justification that there is appropriate environmental grounds to justify the variation including the following:

- *The proposed variation allows for improved functionality and amenity for the existing use of the site into the future. The existing child-care centre will benefit from the upgrade by modernising the layout and facilities to reflect the current and future needs of the children and staff including additional internal areas for additional learning and development.*
- *The alternative to the variation proposed would result in a lesser planning outcome. Alterations and additions afford the opportunity to improve a range of aspects of the facility. The alternative to the proposed variation would be to locate the works to another part of the site to the west whereby the active street frontage clause would not likely be triggered (although this is not clear). The proposed addition has been intentionally positioned in the current location to ensure the childrens play areas are orientated in a way that they are internalised to the site thereby ensuring privacy and amenity can still be afforded to the maximum potential possible for the site.*
- *Additionally, the location of the new addition is the most logical in terms of integrating with the rest of the built form of the facility. An imperative design outcome is the close connectivity to the western classroom and allowance for clear visibility over the rest of the site.*

- *The non-compliant elements of the proposal satisfy the relevant matters outlined in section 1.3 of the Environmental Planning and Assessment Act 1979. This is outlined below:*
 - *“(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,”*
Comment: *The proposed building has been designed with regard to ecologically sustainable design measures, with the variation not preventing compliance with other legislative requirements and allowing for improved functionality and amenity for occupants into the future.*
 - *“(c) to promote the orderly and economic use and development of land,”*
Comment: *The design of the addition has been carefully considered and the issue of non compliance will be not be perceptible as a non compliance as viewed from the street and surrounding development given the isolation of the site from the rest of the primary pedestrian routes throughout the Mudgee CBD. The non compliant area promotes the orderly use of land in that it will have no unreasonable environmental impacts on adjoining properties in terms of visual bulk and scale, views, overshadowing or loss of sunlight.*
 - *“(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,”*
Comment: *The proposed building use has no adverse implications with regard to protecting native vegetation or habitats.*
 - *“(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),”*
Comment: *The site is not known to contain any items of cultural heritage, and none are anticipated to be encountered given the location of the development and that the site has been previously cleared and developed. The impacts with regards to the built environment are well considered and discussed within the SEE lodged with the development application.*
 - *“(g) to promote good design and amenity of the built environment”*
Comment: *Despite the ASF breach the proposed alterations and additions are of high architectural merit. They have been sensitively designed and incorporate high-quality finishes. The proposed design is considerate in ensuring compatibility with adjacent and surrounding buildings and is presented appropriately when viewed from the street and parkland area. The appropriate design ensures no unreasonable adverse environmental impacts will result from the proposed works, including in terms of privacy, view sharing, visual intrusion and overshadowing. Given that it will not result in any adverse impacts and will result in a building form that is visually appropriate for its location it will satisfy this object of the Act.*
 - *The ASF breach has no implications for compliance with other key MWRLEP 2012 requirements: The proposal is consistent with all other key MWRLEP 2012 requirements. Building height compliance is ensured, and a low footprint is maintained on site. Overall, the design has been refined and considered in striving to achieve compatibility with both the existing streetscape and the future desired built form of the area. It is also noted that the proposal overall is consistent with the objectives of the B3 zone.*
- 2. **Clause 4.6(4)(a)(ii)** - *The consent authority is satisfied that the proposal will be in the public interest because it is consistent with the objectives of the particular development standard that*

is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

Comment: It is proposed to vary clause 6.7 - Active Street Frontage of the LEP 2012. The proposal relates to an existing preschool establishment that has operated from the subject site for an extended period of time (approvals for building alterations dating back to the 1980's). The proposal also remains consistent with the objectives of the clause and the B3 Zone. Accordingly, the proposed variation is considered to be in the public interest.

3. **Clause 4.6(4)** - *Council must be satisfied is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained.*

Comment: The Secretary's concurrence may be assumed in accordance with Planning Circular PS 18-003 issued on 5 May 2020 which states:

all consent authorities may assume the Secretary's concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plan) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards.*

However, the assumed concurrence is subject to conditions and requires that:

The Secretary's concurrence may not be assumed by a delegate of council if:

- *The development contravenes a numerical standard by more than 10%; or*
- *The development contravenes a non-numerical standard.*

...

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the Council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation. In this case the secretary's concurrence can be assumed given the variation to clause 6.7 is being reported to a meeting of Council and will not be determined by council staff under delegation.

Clause 5.4 Controls relating to miscellaneous permissible uses

The proposal does not include any of the listed uses contained under this clause.

Clause 5.10 Heritage Conservation

As the proposal includes works involving a site within the Heritage Conservation Area, consideration must be given to the relevant heritage significance in accordance with Clause 5.10(4). It is also noted that there are a number of Heritage items in the vicinity of the site, including Robertson Park.

The objectives of the clause and how the proposal achieves the objectives are as follows:

- (b) *To conserve the environmental heritage of Mid-Western Regional,*
- (c) *To conserve the heritage significance of heritage items and heritage conservations areas, including associated fabric settings and views,*

Comment: Council's Heritage Advisor has provided advice in relation to the proposal with the following comments provided:

The proposal is for a contemporary style building linked to the pre-school, which was originally a bowling club. The heritage issue is the impact the proposal will have on the heritage significance of the Mudgee Conservation Area.

A heritage conservation area is more than a collection of individual heritage items. It is an area in which the historical origins and relationships between the various elements create a sense of place that is worth keeping.

The Mudgee Conservation Area includes

- *the historic town centre, an area of largely intact buildings and landscaped public places from the Victorian, Federation and inter-war periods, and*
- *suburban tree-lined streets with a heterogeneous range of Victorian, Federation and inter-war houses, unified by a consistency of siting, scale, form, building elements and materials.*

The Conservation Area has historical significance, demonstrating the pattern of development of the town centre and of suburban housing over those periods; aesthetic significance as a heterogeneous yet coherent group of good examples of architectural styles; and social significance, being highly valued by the community.

The former bowling club has been much altered and extended, but remains a contributory building in the Conservation Area.

A more conservative approach to designing the new building might have used rectilinear forms, traditional proportions and hipped or gabled roofs, while avoiding replication of traditional details. However the designer has articulated a clear rationale for the design, and there is no reason, in principle, why a contemporary approach cannot be successful. The need is to ensure that the new building, while retaining its own integrity, is not unduly dominant, and the visual and spatial relationships with the streetscape and nearby items are satisfactory.

The main question is the view from the public domain, though the new building will also be visible from the park and to its many users from within the site.

The scheme has been refined following discussions on site with the designer. The overall form is a variation on the traditional skillion, the difference being that the main ridge is not horizontal because the plan is not rectangular. In practice, given the sightlines and the presence of landscaping, this will not be a distraction. The length of wall facing Perry Street, relieved by two vertically proportioned openings and another small one, is satisfactory given the commercial scale of this part of the street.

The proposal is supported.

Further to the above, the removal of (2) trees planted by the centre within the boundaries of the site to facilitate the new building work is supported in the circumstances of the case as their removal is not considered to adversely impact on the heritage significance of the Mudgee conservation area.

(d) *To conserve archaeological sites,*

(e) *To conserve Aboriginal objects and Aboriginal places of heritage significance.*

Comment: The proposed development will not impact on any known archaeological sites, aboriginal objects or aboriginal places of heritage significance. Notwithstanding this, a condition will be included on the consent ensuring that works cease should any unexpected artefacts be uncovered during construction.

Clause (4) Effect of proposed development on heritage significance

Comment: Subclause 4 requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned. As mentioned above, the proposal is considered to be appropriately designed and sited with Council's Heritage Advisor supporting the revised design plans submitted to Council.

Clause 5.21 Flood planning

The subject site is not identified as being within the flood planning area in accordance with Council's maps and the Floodplain Study and Management Plan. No further consideration is necessary.

Clause 6.1 Salinity

The proposal only involves minimal earthworks and is not expected to significantly affect the process of salinisation.

Additionally, as the proposal involves a concrete slab, a condition of consent has been included requiring the slab to be designed appropriately to minimise the impacts of salts in the ground on the building.

Clause 6.3 Earthworks

The proposal involves only minor earthworks to prepare the site for the development. The works are not expected to generate any significant impacts as listed in Clause 6.3(3). Conditions of consent have been included to ensure any earthworks related activities are carried out appropriately and minimise impacts upon neighbouring properties.

Clause 6.4 Groundwater vulnerability

The site is identified as groundwater vulnerable in accordance with Council's mapping. No broad excavation is needed to facilitate the proposal and no significant impacts upon those matters contained within clause 6.4(3) is expected as a result of the proposed development. Given the extent of excavation, it is considered that the development would not cause groundwater contamination, adversely affect any groundwater dependent ecosystems, will not cumulatively impact potable water supply, and therefore no special measures, or conditions of consent would be considered necessary.

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity'.

Clause 6.7 Active street frontages

The subject site is located within the area mapped as 'Active street frontage' pursuant to the LEP mapping. As noted under the clause 4.6 variation assessment above, the proposal will not result in any ground floor area being used for the purposes of a business premise or retail premises, rather, the development seeks alterations and additions to an existing child care centre. The development is considered to continue to attract pedestrian traffic in this location, achieving the objectives of the clause along with continuing to achieve the objectives of the commercial core zone.

Clause 6.8 Airspace operations – Mudgee Airport

The proposal will not penetrate the relevant height limits for safe operation of the Mudgee Airport.

Clause 6.9 Essential Services

All essential services that are relevant to the proposal are available or will be available as a result of the proposed development.

Clause 6.10 Visually sensitive land near Mudgee

The land is not located within the area identified within the visually sensitive land map.

4.15(1)(a) Requirements of Regulations and Policies

(ii) Draft environmental planning instruments (EPI)

No draft environmental planning instruments apply to the land to which the Development Application relates.

(iii) Any development control plans

Mid-Western Regional DCP 2013

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 4.4 Signs

No signage is proposed as part of this development application. Signage currently exists on the subject building to clearly identify the centre.

Part 4.5 Commercial Development

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Building setbacks	
Building setback from the street – no minimum	Yes, compliance is achieved.
Side and rear setbacks must comply with BCA	To be conditioned in accordance with the BCA.
Signage	
Signage complies with relevant provisions in section 4.4 DCP 2013	Not applicable
Design	
Buildings interact with the street	Yes. Windows incorporated.
On active street frontages, ground level of building used for business or retail premises	No – variation sought under clause 4.6 as noted within this report.
Building facades are articulated by use of colour, arrangement of elements, or varying materials	Yes. The proposal seeks to incorporate suitable materials and windows elements within the Perry Street frontage.
Heritage inclusions	Yes. As noted within the clause 5.10 LEP assessment, the siting and design of the development is considered appropriate.
External plant to be screened from public	Yes. Condition of consent to be imposed.
Development on a corner – includes architectural features to address both streets	Yes, compliance is achieved.
Landscape buffers to other zones	Proposed works not on zone boundary portion of the site
Scale form and height	
Complies with LEP height controls – 8.5m maximum height	Yes, compliance is achieved.
Consistent with existing heritage character of the town centres of Gulgong, Mudgee and Rylstone	Yes, compliance is achieved.
Mortimer and Church Street, Mudgee	

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Maintain the streetscape established in Church Street between Market and Mortimer Streets: – Zero front and side setbacks – Double storey pattern	Not applicable
Provides variance particularly on upper floor levels, every 20-25m	Not applicable
Articulation and Façade Composition	
Breaks visual bulk with fenestration or change in materials etc	The development, in accordance with the clause 5.10 assessment does not result visual bulk or dominate the streetscape.
No excessive blank walls in front façade	Yes, compliance is achieved.
Where blank walls are proposed (side or rear) ,minimise impacts with landscaping, patterning of façade, signage, public art	Not applicable.
Residential–Commercial interface	
Landscape buffer to residential boundaries	Not applicable.
Ground and first floor do not overlook residential properties	Not applicable.
Maintain acoustic privacy through the use of acoustic fencing where vehicles movements adjoin property boundaries	Not applicable.
Reduce visual bulk by locating buildings and structures away from residential boundaries, or where buildings are located along residential boundaries ensure sufficient landscaping is provided	Not applicable.
Development does not reduce sunlight available to north facing windows of living areas, private open space or clothes drying areas of adjoining properties to less than 3 hours between 9am and 3pm at winter solstice	Not applicable.
Utilities and Services	
Building and structures located clear of infrastructure	Yes, compliance is achieved.
Able to be serviced by water, sewer and waste disposal	Yes, compliance is achieved.
Trade waste application required?	Not applicable
Traffic and Access	
All vehicles must be able to enter and exit the site in a forward direction	Not applicable
All vehicle movement paths are sealed	Not applicable
Driveways comply with Australian Standard AS2890.1 Parking Facilities	Not applicable
All loading facilities located within the site	Not applicable
All loading facilities designed to comply with Australian Standards	Not applicable
Application addresses traffic flow and safety issues, e.g. pedestrian, car and truck movements	Not applicable
Pedestrian Access	
Maintain existing covered pedestrian access within town centres	Covered access and pedestrian pathways retained.
Convenient and safe access through parking areas	No changes to parking areas impacted by the proposal.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Convenient and safe disabled access through parking areas, focus on improving links with existing retail	Links to other sites not altered
Parking	
Discussed elsewhere in report	Yes, compliance is achieved.
Landscaping	
Landscaped areas in car parks should be provided incorporating the use of canopy trees and buffer planting to residential boundaries	Not applicable
Landscaping to comprise low maintenance, drought and frost resistant species	Not applicable

Part 4.7 Tree Preservation Order

No trees listed under the Tree Preservation Order are proposed to be removed.

Part 5.1 Car Parking

The Development Control Plan 2013 requires the following parking rates for a child care centre:

- 1 space per 4 children.

The applicant contends that there is no proposed increase to the current number of children attending the centre. As a result, there are no additional requirements for parking to be provided to support the development.

Part 5.2 Flooding

Not Applicable

Part 5.3 Stormwater Management

Council’s Development Engineer has provided comments and conditions concerning adequate disposal of stormwater.

Part 5.4 Environmental Controls

All the relevant considerations have been discussed elsewhere in this report or dealt with through conditions of consent.

Section 7.11 Contributions

Mid-Western Regional Contributions Plan 2019

Pursuant to Council’s Contributions Plan 2019, the development is proposing alterations and additions to the existing child care centre with an estimated cost of works totalling \$556,345.94. In accordance with the Plan, the development requires payment the following contributions in accordance with Section 7.12 of the EP&A Act:

- \$556,345.94 x 1% = \$5,563.46

An appropriate condition has been imposed requiring payment of the contribution.

Section 64 - Water/Sewer Developer Services Charges

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the proposed development will require the payment of DC headworks charges calculated for commercial additions (including bathroom facilities) comprising 105.8m². This results in the following calculations at a rate 0.1ET per 100m² of floor area as follows:

Section 64 Contributions	
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Water Headworks	\$ 1,027.64
Sewer Headworks	\$ 469.12
Total Headworks	\$ 1,496.75

An appropriate condition has been imposed requiring payment of the contribution.

4.15(1)(a) Provisions of any Planning Agreement or Draft Planning Agreement – (1)(a)(iiiia)

No Planning Agreements are applicable.

Regulations –4.15(1)(a)(iv)

Environmental Planning and Assessment Regulation 2021

Clause 61(1) requires Council to consider Australian Standard AS2601-2001: *The Demolition of Structures* when consent is sought for demolition. The application includes demolition and compliance with AS2601 has been included as a condition of consent.

Likely impacts of the development – 4.15(1)(b)¹

¹ Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

(a) Context and Setting

The proposal is appropriate with regards to the surrounding context and setting.

(b) Access, Transport and Traffic

The implications of additional traffic and suitable access are discussed throughout this report. The proposal is considered appropriate.

(c) Public Domain

The development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

(d) Utilities

All relevant utilities are available or can be made readily available to the site.

(e) Heritage

The impact of the development on the Mudgee Heritage Conservation Area and heritage items in the vicinity of the site have been discussed throughout this report. The proposal is considered appropriate.

(f) Other Land Resources

No impact expected on the conserving and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

(g) Water

No significant impact expected.

(h) Soils

No significant impact expected. The land is not known to be affected by subsidence, slip or mass movement, subject to contamination, and will not result in significant soil erosion or degradation.

(i) Air and Microclimate

The development is not expected to impact air quality or microclimatic conditions.

(j) flora and fauna

The vegetation proposed to be removed has been discussed throughout this report.

(k) Waste

Waste service available.

(l) Energy

Not applicable.

(m) Noise and Vibration

The proposed additional building for use by children of the facility is not considered to increase any noise or vibration in this location. Further, no increase in children numbers are sought by the proposal.

(n) Natural Hazards

The development site is not identified as bushfire prone or flood prone and there are no known subsidence, slip or mass movement issues.

(o) Technological Hazards

There are no known risks to people, property or the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

(p) Safety, Security and Crime Prevention

Increased passive surveillance as a result of the proposed development.

(q) Social Impact in the Locality

Generally positive.

(r) Economic Impact in the Locality

Generally positive.

(s) Site Design and Internal Design

Adequate as discussed throughout this report.

(t) Construction

To comply with the BCA where relevant.

(u) Cumulative Impacts

Nil. There are no known impacts that have the potential to act in unison, in terms of space or time, or owing to their repetitive nature, that would produce an effect greater or different than the sum of the separate parts.

Suitability of Site for Development – 4.15(1)(c)

(a) Does the proposal fit in the locality?

Yes. There are no hazardous land uses or activities nearby, there are no constraints posed by adjacent developments and there are adequate utilities and transport facilities in the area available for the development.

(b) Are the Site Attributes conducive to Development?

Yes. The site is not subjected to any natural hazards, and the project will not impact any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

Submissions made in accordance with Act or Regulations – 4.15(1)(d)

(A) Public Submissions

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days. During the notification period, no submission/s were received.

The applicant lodged amended plans during the assessment process as a result of the Heritage and Health and Building referral responses received. However, the changes were not considered significant enough with regards to implications on adjoining neighbours and re-notification of the proposal was not considered necessary.

(b) Submissions from Public Authorities

No submissions were sought or received from public authorities.

The Public Interest – 4.15(1)(e)

(a) Federal, State and Local Government interests and Community interests

No significant issues in the interests of the public are expected as a result of the proposed development.

Consultations

(A) Health and Building

Council's Health & Building Surveyor has not raised any concerns with the proposal, subject to standard conditions.

(B) Technical Services

Council's Development Engineer has not raised any concerns with the proposal subject to standard conditions.

(C) Heritage Advisor

Council's Heritage Advisor has not raised any concerns with the proposal subject to standard conditions.

(D) Access committee

No consultation necessary.

Summary

The proposed development generally complies with the requirements of the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021*, relevant State Environmental Planning Policies, Mid-Western Regional Council Development Control Plan 2013 and Mid-Western Community Participation Plan 2019.

The variation to clause 6.7 of the Mid-Western Local Environmental Plan 2012 is supported by staff as strict compliance with the non-numerical standard for an 'active street frontage', given the historical use of the site as a child care centre, is considered unreasonable and unnecessary in the circumstances of the case whilst also achieving compliance with the objectives of the zone.

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days. During the notification period, no submission/s were received. The development is therefore considered to be within the public interest.

The application is therefore recommended for approval subject to the attached conditions of consent.

Community Plan implications

Theme	Protecting Our Natural Environment
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Goal	Protect and enhance our natural environment
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Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage
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Strategic implications

Council Strategies

Not Applicable

Council Policies

Mid-Western Development Control Plan 2013
Community Participation Plan 2019
Mid-Western Regional Contributions Plan 2019

Legislation

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulations 2021
Mid-Western Regional Local Environmental Plan 2012

Financial implications

Nil.

Associated Risks

Should Council refuse the application, the applicant may seek further review of this decision or appeal through the Land and Environment Court.

KAYLA ROBSON
PLANNING COORDINATOR

ALINA AZAR
DIRECTOR DEVELOPMENT

LINDSAY DUNSTAN
MANAGER PLANNING

6 September 2023

Attachments:

1. Development Plans. (separately attached)
2. Clause 4.6 Variation Report. (separately attached)
3. Statement of Environmental Effects. (separately attached)
4. Access Report. (separately attached)

APPROVED FOR SUBMISSION:

JULIAN GEDDES
ACTING GENERAL MANAGER ACTING GENERAL MANAGER