

AUSTRALIA / JUDGMENT

Bouzeid v Fairfield City Council

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Land and Environment Court

New South Wales

Medium Neutral Citation:

Bouzeid v Fairfield City Council [2026] NSWLEC 1156

Hearing dates:

4, 5 and 9 December 2025

Date of orders:

26 March 2026

Decision date:

26 March 2026

Jurisdiction:

Class 1

Before:

Espinosa C

Decision:

The Court orders:

- (1) Pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW), the Applicant is to pay the costs of the Respondent that have been thrown away as a result of the amendment of the application referred to at [3] as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development consent is granted to development application No. 287.1/2024 for the demolition of existing structures and construction of a two (2) storey childcare centre accommodating fifty (50) children and six (6) educators, above one (1) level of basement carpark containing eleven (11) car spaces, site works and landscaping at 1 Macarthur Street, Fairfield East subject to the conditions of consent in Annexure A.

(4) All exhibits are retained except Exhibit 2 which will be returned.

Catchwords:

DEVELOPMENT APPEAL – centre based child care facility – ventilation to indoor spaces – ratio of children – proportion of stacked parking – whether adverse acoustic impact – whether acoustic fences result in unacceptable visual impact – orders

Legislation Cited:

Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 8.7, 8.15

Land and Environment Court Act 1979 (NSW), s 39

Education and Care Services National Regulations (2011 SI 653)(NSW) regs 107, 108, 110

Environmental Planning and Assessment Regulation 2021 (NSW), s 38

Fairfield Local Environmental Plan 2013, cl 4.3, 4.4, 4.4A, 6.9

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12

State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6

State Environmental Planning Policy (Transport and Infrastructure) 2021, Ch 3, ss 3.23, 3.26, 3.27

Cases Cited:

Basevski v City of Ryde Council [2022] NSWLEC 1387

Texts Cited:

Australasian Acoustical Consultant's Guideline for Child Care Centre Acoustic Assessment, September 2020

Fairfield Development Control Plan 2024

Fairfield City Council, Community Engagement Strategy, 2024

NSW Government, Child Care Planning Guideline, September 2021

Category:

Principal judgment

Parties:

Jason Bouzeid (Applicant)

Fairfield City Council (Respondent)

Representation:

Counsel:

J Reid (Applicant)

A Seton (Solicitor)(Respondent)

Solicitors:

Miller Prince (Applicant)

Marsdens Law Group (Respondent)

File Number(s):

2025/68825

Publication restriction:

No

Judgment

COMMISSIONER: This is a Class 1 Development Appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) being an appeal against the refusal of Development Application No. 287.1/2024 (DA) seeking consent for the demolition of existing structures, removal of trees, construction of a 2 storey centre-based child care facility accommodating 50 children, 1 level of basement car parking accommodating 11 vehicles, and associated site and landscaping works (Proposed Development) at 1 Macarthur Street, Fairfield East legally described as Lot 24 in DP 35269. (the Site).

The Site is zoned R4 High Density Residential under the Fairfield Local Environmental Plan 2013 (FLEP). Tree removal, demolition, and centre-based child care facility are each development permissible with consent in the R4 High Density Residential Zone pursuant to the Land Use Table of the FLEP.

On the second day of the hearing the Applicant made an application to the Court to amend the Development Application. Consent is sought for the “Demolition of existing structures and construction of a two (2) storey childcare centre accommodating fifty (50) children and six (6) educators, above one (1) level of basement carpark containing eleven (11) car spaces, site works and landscaping” and the Applicant sought to rely on amended documents. Exercising the function of s 39 of the Land and Environment Court Act 1979 (NSW), the Court approved, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021, to the Applicant amending its development application by relying on the following documents:

The architectural plans, revision F (Ex F);

The landscape plans, revision E, dated 4 December 2025 (Ex G);

Amended acoustic report, being revision D, 3 December 2025 (Ex J); and

The plan of management dated 2 December 2025, revision 4 (Ex H).

The Court will make an order pursuant to s 8.15(3) of the EPA Act, that the Applicant is to pay the Respondent's costs thrown away as a result of those amendments as agreed or as assessed.

At the end of the second day of hearing, the proceedings were adjourned part heard to 4 pm on 9 December 2025 for the parties to file a final Draft/Proposed Conditions of Consent and to provide joint written submissions on the satisfaction of the jurisdictional prerequisites to enable the court to exercise its function grant consent pursuant to s 4.16 pf the EPA Act. That listing was vacated because the parties filed the documents and I reserved my judgment.

The Respondent filed an Amended Statement of Facts and Contentions (ASOFAC) on 7 November 2025 (Ex 1) and contends that the Proposed Development should be refused for a number of reasons. Following the conclusion of the evidence and as a result of the amendments to the development application, the Respondent submits that the major issue is the acoustic impact of the Proposed Development and the suitability of the Site because of the proposed acoustic barriers (Transcript 5 December 2025 p 125). The following seven contentions in the ASOFAC remain unresolved for determination by the Court:

Contention 5: limited to natural ventilation relying on the terms of s 110 of the Education and Care Services National Regulations (2011 SI 653) (NSW) (National Regulations) and section 4.4 of the Child Care Planning Guideline (CCPG) and section 13.1.21 of the Fairfield Development Control Plan 2024 (FDCP). The Respondent and contends that it has not been demonstrated that the Proposed Development achieves adequate cross ventilation to provide a high level of amenity for children in care.

Contention 7: in relation to the car parking layout and specifically to the proportion of stacked parking provided relying on cl 12.3.2(d) of the FDCP.

Contention 8: there remains an issue between the planners in relation to the landscaping provided in particular in terms of the ability to properly maintain the proposed landscaping over the life of the development within the corridors on the northern and eastern sides where the planting is proposed between what is an acoustic barrier and the 1.8m boundary fence.

Contention 10: the ratio of children in terms of the failure to provide any accommodation for children within the 0 – 2 years age group: cl 13.1.2, FDCP.

Contention 13: it has not been demonstrated that the proposed development will not have an unacceptable acoustic impact on the surrounding residences, in particular

Firstly, the potential sleep disturbance to the south across the road at 16 to 20 MacArthur Street resulting from staff vehicles entering the Site before 7 am; and

The second issue relates to whether the background noise level that is measured for logger B which is the elevated logger at the 4.5 m height is, in fact, representative of the background that would be experienced at the upper floor windows of any of the units at number 3, so 3A, 3B, 3C and number 3, and also at number 7.

Contention 14: the Site is not suitable for the development because the acoustic barriers that are required to facilitate this development are too high and out of character.

Contention 17: public interest where it is contended that approval of the proposed development would create an undesirable precedent for similar inappropriate development in the area.

I will deal with the contentions in the following order:

planning contentions:

natural ventilation (contention 5) from [16];

Ability to maintain landscaping (contention 8) from [28];

Ratio of children (contention 10) and undesirable precedent public interest (contention 17) from [35];

followed by proportion of stacked parking (traffic contention 7) from [44];

acoustic contention 13 Site suitability: contention 14 – acoustic barriers and the disputed noise conditions 2H and 65 (Ex L) from [52].

I will also set out my reasons for finding that the jurisdictional prerequisites have been satisfied from [87].

The parties rely on the evidence in the following Joint Expert Reports:

Prepared by experts traffic engineers Stephen Rajathurai for the Respondent and Ramy Selim for the Applicant filed 25 November 2025 (JER Traffic), (Ex 3).

Prepared by expert town planners Liam Hawke for the Respondent and Jonathon Wood for the Applicant filed 28 November 2025 (JER Town Planning), (Ex 4).

Prepared by acoustic experts Richard Haydon for the Respondent and Stephen Gauld for the Applicant filed 1 December 2025 (JER Acoustic), (Ex 5) and Supplementary Joint Report Acoustic (Supplementary JER Acoustic) filed 3 December 2025 (Ex 6).

The proceedings commenced on site on the first day of the hearing and there were no objectors present. The DA had been notified in accordance with the Respondent's 2024 Community Engagement Strategy between 5 November 2024 and 18 November 2024. Four (4) submissions were received during the notification period. In accordance with the Respondent's 2024 Community Engagement Strategy, the Amended DA was renotified from 29 October 2025 to 12 November 2025. A copy of written submissions is included in the Respondent's Bundle of Documents (Ex 2).

The planning controls for centre-based child care facilities are set out in the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP), Chapter 3 Educational establishments and childcare facilities. Section 3.23 of the Transport and Infrastructure SEPP requires a consent authority to consider the CCPG when determining a development application. The matters for consideration under the CCPG have been addressed in the Statement of Environmental Effects (SEE) dated 10 September 2024 prepared by Think Planners (Ex A, Tab 5), which includes a table at pages 38 to 63 demonstrating how the Proposed Development as amended complies with the CCPG. The expert evidence before the Court also addresses the CCPG in response to the contentions.

Section 3.26 of the Transport and Infrastructure SEPP sets out non-discretionary development standards for the purpose of s 4.15 of the EPA Act in relation to the carrying out of development for the purpose of a centre-based child care facility. Relevantly, cl 107 and 108 of the National Regulations provide the requirements for indoor or outdoor space being a minimum of 3.25m² of unencumbered indoor play space per child and 7m² of unencumbered outdoor play space per child. The Proposed Development provides a compliant 166m² of unencumbered indoor play space and a compliant 368m² of unencumbered outdoor play space.

The maximum height of building (HOB) of the Proposed Development, as amended is 7.4m and therefore, complies with the maximum HOB development standard of 20m for the Site pursuant to cl 4.3 of the FLEP.

Although the floor space ratio (FSR) development standard would ordinarily be 2:1 pursuant to cl 4.4 of the FLEP, the Site is eligible to the exception provided in cl 4.4A(2)(a) of the FLEP which prescribes the maximum FSR development standard at 0.8:1. The total gross floor area of the Proposed Development is 313.2m² which is a proposed FSR of 0.46:1 and is therefore compliant with cl 4.4A(2)(a) of the FLEP.

There are no jurisdictional prerequisites which remain unsatisfied as set out below from [87]. The remaining issues relate to a merits review. I will now address the elements of the Proposed Development that the Respondent contends do not comply with various controls or guidelines giving my reasons why, in exercising my discretion, I conclude that consent should be granted.

Planning contentions

Natural ventilation contention 5

The issue arises from the noise control recommendation in the Environmental Noise Impact Assessment Rev D dated 3 Dec 2026 at p36 in relation the indoor activity areas that:

“• Doors in the northern and eastern façade of the ground floor 3-5 Year Old indoor play room should be closed during noise indoor play, to limit noise emission to nearby residential receivers;

- Doors and windows in the norther, western and southern facades of the first floor 3-5 Year Old indoor play rooms should be closed during noisy indoor play, to limit noise emissions to nearby residential receivers;
- Doors and windows in the northern, eastern and southern façade of the ground floor 2-3 Year Old indoor play room should be closed during noisy indoor play, to limit noise emission to nearby residential receivers. Windows and doors not nominated above may remain open when the rooms are in sue, in order to provide adequate ventilation. .. ”

Noise management is incorporated into the Plan of Management (POM) (Ex H) and in relation to indoor active areas repeats the above recommendations, although it is agreed that the third bullet point in the POM requires updating to be consistent with the third bullet point quoted above.

The Respondent submits that the “difficulty for this case is that for 7 out of the 11 hours of the day, the windows and doors of the relevant playrooms seem to have to be closed” (Transcript 5 December 2025, p 124(25)).

The relevant playrooms are the two ground floor rooms depicted in drawing 03.02 Rev F dated 4 Dec 2025 because the first floor indoor play room may have the eastern door/window remain open at all times (Transcript 5 December 2025, p 110(45) and p 111(46)). The two ground floor indoor play areas are shown in the Ground Floor architectural drawing 03.02 Rev F dated 4 December 2025 an extract of which I reproduce below at Fig 1.

Fig 1: Ground Floor Drawing 03.02 Rev F dated 4 Dec 2025

The planning experts agree that Part 4.4 of the CCPG sets out design guidance on Ventilation and Natural Light and that in relation to ventilation the CCPG provides on p 27 as follows:

“Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.

To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.”

The planning experts also agree at 48 of the JER Planning (Ex 4) that the “indoor play rooms are required to achieve good ventilation – through a mixture of natural ventilation and air conditioning.” The experts rely on regulation 110 of the National Regulations, which requires the approved provider of an education and care service to ensure that the indoor spaces used by children are well ventilated and have adequate natural light and are maintained at a temperature that ensures the safety and wellbeing of children.

The planning experts agree that in the context of the climate of Fairfield, a suburb in Western Sydney, which can be cold in winter and hot in summer “there is clearly going to be a need for alternate means of ventilation and the use of heating/cooling to maintain a suitable temperature. A combination of natural ventilation and mechanical ventilation will satisfy the provisions requiring the indoor rooms to be well ventilated”: JER Planning at par 48.

However, Mr Hawke is concerned that the recommendations within the Acoustic report prevent the relevant rooms from being naturally ventilated when the rooms are in use. Mr Wood is of the view that the windows being closed during use to the rooms is acceptable and they can be open when the children are playing outside to ventilate the rooms naturally. His conclusion at par 57 of the JER Planning is that he does not consider it to be necessary for the rooms to be cross ventilated at all times and “a combination of natural ventilation and mechanical ventilation is acceptable and usual in a child care centre context.”

The control at reg 110 and Pt 4.4 of the CCPG does not call for cross ventilation, just requires “good ventilation”.

The Applicant relies on *Basevski v City of Ryde Council* [2022] NSWLEC 1387 [74]-[81], I reproduce from [76] – [81] below:

“76. As previously observed, cl 23 of ESEPP instructs the consent authority to take into consideration any applicable provisions of the Guideline prior to determining a DA for development for the purpose of a centre-based childcare facility.

77. The Guideline contains ‘guidance’ on the subject of ventilation. Design quality principles 4 and 6 are relevant.

“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.

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 wellbeing of students and staff. Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy ...”

78. The Guideline Pt 4 cl 4.4 provides design guidance by way of commentary upon EReg 110

“Design Guidance

Ventilation

Good ventilation can be achieved through a mixture of natural cross ventilation and air-conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.”

79. There is some linguistic tension between EReg 110 and the Guideline, and also, within the Guideline itself. The Guideline is more expansive than EReg 110, which only requires childcare premises to be ‘well ventilated’. It does not, in terms, require ‘natural ventilation’ and it further states that such premises must be ‘maintained at a temperature that ensures the safety and wellbeing of children’. Obedience to the last-mentioned requirement will inevitably result in sources of natural ventilation being closed except when weather conditions are mild. Further, the Guideline refers to the desirability of natural ventilation and of cross ventilation in the design quality principles, but with respect to design guidance when commenting upon EReg 110, speaks of a mixture of natural cross ventilation and air-conditioning, but acknowledges that there will be circumstances where ‘mechanical ventilation will be essential to creating ambient temperatures within a facility’.
80. The acoustic and planning experts and the childcare expert were asked to comment on their experience with ventilation of modern childcare centres. They agreed that it was not unusual for childcare centres to rely upon mechanical ventilation in order to maintain optimum internal comfort levels. In particular, Ms Barnes, with whom Mr Moroz agreed, advised that a controlled atmosphere was desirable for young children so as to maintain appropriate comfort levels and their attention levels. She said that many centres rely entirely upon mechanical ventilation notwithstanding that accompanying outdoor areas are less open to the sky than what is proposed in the subject DA.
81. It is also of relevance that the respondent did not submit that the level 1 ventilation restrictions were, of themselves, a reason to refuse the DA.”

I have taken into consideration the CCPG and I accept the evidence of the experts that a combination of natural ventilation and mechanical ventilation will satisfy the provisions requiring the indoor rooms to be well ventilated and I accept the evidence of Mr Wood that windows can be open when the children are playing outside to ventilate the rooms naturally and that a combination of natural ventilation and mechanical ventilation is acceptable and usual in a child care centre context.

Accordingly, I conclude that regulation 110 of the National Regulations is sufficiently complied with by the implementation of the combination of natural ventilation and mechanical ventilation and that Contention 5 is resolved.

Ability to maintain landscaping (contention 8)

The expert town planners disagree as to whether the planting between the northern and eastern boundary between 2 barriers is acceptable as noted in Contention 8(e) of the ASOFAC. Neither of the expert planners hold landscape qualifications however Mr Hawke's concern is that

"it is unknown how the proposed Narroe Lilly Pilly (spread of 1500mm) and Bottle Brushes (spread of 1000mm) within the 1000mm and 900mm strip can be maintained in order to ensure is longevity and free of vermin" Mr Hawke is of the view that the proposed landscaping between the boundary fence and acoustic barrier that is raised above the Natural Ground Level "would be difficult to access and therefore difficult to maintain." JER Planning at par 75

The Applicant identifies that the question marks over the landscaping scheme are raised by the council's town planner and that both expert town planners acknowledge that they do not have qualifications in landscaping (Transcript 5 December 2025, p 120(40)).

The Respondent, while acknowledging that the town planners are not experts in landscape maintenance, asks the court to look at the evidence and makes the observation that the strips of land where the landscaping is proposed between two walls are 900 millimetres apart on the eastern side and about a metre apart on the western side, and that maintenance of those trees that are proposed to provide screening is not adequately addressed (Transcript 5 December 2025, p 125(5)). The Respondent concedes that the Conditions are in evidence and that condition 8 provides for a landscape plan to be prepared in accordance with the approved concept landscape plan prior to the issue of a construction certificate and that that landscape plan is to contain, among other things:

"g. how maintenance access will be provided to all landscaped areas located behind or immediately adjacent to acoustic barriers or solid boundary fencing . The details must include:

- a) The design and location of removable access panels or equivalent maintenance openings within the acoustic barrier;
- b) confirmation that the proposed access method maintains the acoustic performance, height, and structural integrity of the barrier as specified in the approved acoustic report;
- c) certification from a suitably qualified acoustic engineer confirming that the access solution does not diminish the acoustic requirements; and
- d) demonstration that all landscaping behind the barrier can be safely and effectively maintained for the life of the development.

All works must be implemented prior to Occupation Certificate and maintained thereafter."

In addition, condition 10 and the POM also provide for maintenance of the landscaping.

The Respondent maintains scepticism as to “Whether that solves the problem of practically being able to do it, there is no evidence about that. That's a way that has been put forward to try and address it, but who knows whether that can be done or not.” (Transcript 5 December 2025, p 125(29))

I accept that the landscape plans have been prepared by a landscape architect and that the proposal is to screen the interface between the residential properties and the proposed childcare centre and that the boundary landscaping is intended to achieve that screen “particularly from what Mr Hawke says is the most affected premises, 3C MacArthur, and once that is established, the acoustic barriers that are behind the 1.8 metre boundary fence and the landscaped hedge of Syzygium will be screened by that matter, and in the conditions of consent, there are conditions that are proposed and accepted by both parties as to the maintenance of those areas, and that includes a hatch to make sure that there's access into the areas.” (Transcript 5 December 2025, p 120(46))

I conclude that Contention 8 of the ASOFAC is resolved because I agree with and adopt the Applicant's submission that the conditions require maintenance of that landscaping, “and that includes making sure that there are access doors to those areas and water available to them. It doesn't need to be any more than that.” (Transcript 5 December 2025, p 128(29))

Ratio of children (contention 10) and Public interest where it is contended that approval of the proposed development would create an undesirable precedent for similar inappropriate development in the area (Contention 17)

The Proposed Development is for a total of 50 children comprised of the following ratio of children:

10 children aged 2-3 years

40 children aged 3-5 years

The FDCP, cl 13.1.2.1 Overview of the Objectives and Controls for Childcare Centres in Residential Zones provides as follows:

“Whilst child care centres are a permitted land use in the residential zones, they are also a commercial activity and must not result in any adverse impacts upon neighbours and the existing residential area. In this regard, Council considers that it is necessary, among other things, to limit the capacity of child care centres in residential zones. Additionally, in acknowledging that larger centres create greater impacts, provide for varying controls for child care centres of different scales.

Council is also aware of a general shortage in the provision of child care places for the 0-2 year's age group and would seek to redress the imbalance.”

The FDCP classifies child care centres in Control (a) of cl 13.1.2.1 as follows:

The Respondent relies on Control (d) of cl 13.1.2.1 of the FDCP which provides as follows:

The council's position is that s 3.27 of the Transport and Infrastructure SEPP does not oust the particular provision of cl 13.1.2.1 of the FDCP, which “is seeking to encourage the provision of spaces for zero to two year olds” (Transcript 5 December 2025, p 124(12)). The Respondent does not contend non compliance with control (b) of cl 13.1.2.1 of the FDCP which seeks to limit the maximum number of children “that a child care centre, located in any zone, may accommodate at any time” to 40 whereas the Proposed Development is for 50 children. The issue is limited to the fact that the Proposed Development will not cater for children in the 0-2 years age group.

The Applicant's position is that the FDCP control simply does not apply because of the terms of s 3.27 in the Transport and Infrastructure SEPP which read as follows:

3.27 Centre-based child care facility—development control plans

- (1) 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 services,
 - (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, or
 - (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).
- (2) This section applies regardless of when the development control plan was made.

The Applicant submits that in s 3.27(1)(b) it particularly goes to “demonstrated need or demand for childcare services”, and that when Mr Hawke was taken to the objectives and the overview of the control in the FDCP, and that control is to limit or to encourage a particular ratio of 0-2 year old children and “that goes exactly to what the control in s 3.27 says is not a control that can be applied in a DCP because it seeks to deal with a demand by reference to age group and ratios on a particular site, and that is a control which can't be applied as a result of the SEPP.” (Transcript 5 December 2025, p 121(13,17))

In the alternative, the Applicant submits that the FDCP control is a control that you would apply flexibly

“because this is a control that has been prepared on the basis of the council's understanding of a need or demand that flows from its assessment that they're rolling out 40 place childcare centres across the locality as opposed to the state policy which provides for larger centres in these locations, and notwithstanding that, if we're talking about technical application of controls, there is no control that applies because the type A and type B classifications only relate to centres up to 40 children, and there is not a provision for a type C centre that would otherwise apply where a centre is proposed perhaps in accordance with SEPP transport and infrastructure.” (Transcript 5 December 2025, p 121(22))

I find that this contention is resolved and I adopt the reasoning of the Applicant and find that the FDCP control does not apply for 2 reasons:

It purports to impose a control to redress a perceived imbalance resulting from an unspecified awareness of a “general shortage in the provision of child care places for the 0-2 year's age group” which is a provision in a DCP that would have no effect pursuant to s 3.27(1)(b) of the Transport and Infrastructure SEPP; and

Even if the control were to apply, notwithstanding the terms of s 3.27 of the Transport and Infrastructure SEPP, there is no control applicable for the “type” or classification of child care centre proposed, namely a child care centre for more than 40 children.

Traffic Contention: Parking layout and proportion of stacked parking (Contention 7)

The only outstanding traffic issue is in relation to stacked parking. The Proposed Development proposes parking for 11 car spaces with 3 of those being in a stacked format. Mr Selim confirms that it is only 3 staff car spaces that are restricted in that stacked format and relies on the Plan of Management: JER Traffic, para 10.

Mr Rajathurai's only evidence with respect to stacked parking is that he is of the opinion that

“the three stacked parking spaces proposed are not proportionate to the overall number of parking spaces provided and therefore it's not acceptable.”

Mr Hawke gave oral evidence that it is a matter that can be managed. The Applicant submits that this can be “very easily managed in ... that the three full-time staff park at the back and that is a matter that common sense will prevail over in the operation of the centre.” (Transcript 5 December 2025, p 120(35))

The Applicant submits that Mr Rajathurai's opinion “is a matter of compliance or noncompliance rather than giving any merit assessment of the particular matter.” (Transcript 5 December 2025, p 120(29))

The Respondent submits that

“The council says it doesn't like stacked spaces in its DCP. It says though you can have some, but it really depends upon the proportion. In this case, the facts are that 27%, that is 3 out of the 11 spaces are to be provided as stack spaces. There's no real regime that's put before you at the moment as to how they'll be managed, particularly when staff start at different times and there may be overlapping times that the visitor spaces in front of those spaces are used” (Transcript 5 December 2025, p 124(42))

I have referred to Drawing 03.01 Rev F (Ex F) and note that the three rear carparking spaces in the tandem style are in fact labelled “STAFF” and I have also referred to the Plan of Management (Ex H) which at pages 4 and 10 consistently directs the remaining staff to use visitor parking spaces.

I also make the observation, in terms of proportionality, that although it is 3 car parking spaces out of 11, it can also be viewed from the perspective of 3 full time staff members using those restricted stacked parking spaces compared with a potential total of over 50 people looking to park their cars at various times.

I conclude that in the circumstances of this Proposed Development, the proportion of stacked parking is appropriate because I am satisfied that it will be managed in accordance with the plans and the POM.

Acoustic impact (Contention 13) and suitability of the Site (Contention 14)

The Respondent submits in closing submissions that the major issue in these proceedings is the acoustic impact of the Proposed Development and what is described as the suitability of the Site “in the context of the need to provide substantial acoustic barriers around its perimeter that one would say is uncharacteristic and something that is contrary to the council's development control plan in terms of the specification of the kind of acoustic structures and walls in terms of their height that are acceptable” (Transcript 5 December 2025, p 125(38)).

In relation to the acoustic impacts of the childcare centre, the Respondent contends that it is the acoustic impacts of the Proposed Development on the neighbours in terms of the operational noise and the question of whether or not those impacts are acceptable, having regard to relevant noise criteria.

I agree and find that it boils down to the assessment of the acoustic impact on the neighbouring properties and although the acoustic experts disagree on modelling method and noise criteria, there is very little difference between the acoustic experts in terms of the impact on those neighbouring properties.

There are two elements to the acoustic impacts concern. Firstly, whether the impact on adjoining neighbours at the first level above ground has been appropriately assessed and whether that impact is acceptable.

There is the associated contention of site suitability because of the height of the acoustic barriers proposed to achieve that acceptable acoustic impact on the upper level neighbouring windows. I have already addressed the proposed landscape screening above at [33] and I come back to site suitability at [79] when I deal with contention 14.

The second element to the acoustic impact concern is the potential for sleep disturbance resulting from two vehicles prior to 7am, that are going into a basement. The Applicant observes that there will not be opening and closing doors of those staff vehicles out on the street outside habitable windows, which the Applicant submits “is something that is consistent with the expected urban environment in MacArthur Street, and that impact is reasonable in the particular circumstances.” (Transcript 5 December 2025, p 123(3))

There was extensive cross examination and oral evidence from the acoustic experts on the noise criteria and noise modelling in order to attempt to assist the Court on the assessment of the acoustic impact on neighbouring properties of this Proposed Development. The Applicant describes the evidence as a “fairly simple difference between the experts” (Transcript 5 December 2025, p 121(35)) and the Respondent described is as a case of two very experienced acoustical consultants who disagree on three matters:

whether the sleep disturbance criteria in terms of it being specified in the - there's a criteria specified in the Australasian Acoustical Consultant's Guideline for Child Care Centre Acoustic Assessment (AAAC Guideline), whether that is an unacceptable impact in that context, particularly on the premises at number 16 Macarthur Street, which is to the south of the Site;

whether the background level that's been used is in fact representative of the background level at the upper level of the adjoining premises to the west; and

Whether the modelling that has been undertaken in this case is sufficiently representative of what actually happens on a site.

Mr Gauld annexes to the JER Acoustic (Ex 5) at Appendix C the Environmental Noise Impact Assessment Report No 8003-1.1R Rev C (Rev C Report). The experts agree in the JER Acoustics at paras 43 and 44 that:

within the Rev C Report “two locations for noise monitoring were utilised, being Location A and Location B”; and

as detailed within the Rev C Report “The background noise level” “differs significantly”, by 6 dB, between Location A (RBL 37 dB(A) at 1.5m above the ground) and Location B (RBL 43 dB(A) at 4.5m above the ground).

Mr Gauld explains that the background noise level measured at 4.5 m above ground (Location B) is often higher than the background noise level measured at 1.5 m above ground (Location A) which as is true on this Site, is due to the higher exposure and less shielding of noise at higher elevations than at lower elevations. (JER Acoustic, pars 48 and 49). It is Mr Gauld's practise

“to measure the background noise level “at a location most representative of the most affected sensitive receiver locations” (Section 3.1, AAAC Guideline).

The two logger positions (Location A and B) in this matter reflect the background noise level at the two most affected sensitive receiver locations.” (JER Acoustic, para 56 and 57).

Mr Gauld prepared an amended acoustic report, Rev D Report, dated 3/12/2025 that relies on the Rev E drawings and annexed it to the Supplementary JER Acoustic (Ex 6).

The parties agree that the AAAC Guideline is not a statutory document and is a guideline that gives some criteria that have been development by professionals in acoustics (Transcript 5 December 2025, p 126(4))

In relation to the upper level placement of the noise logger and measurement of the background noise level by Mr Gauld, the Respondent submits in closing as follows:

“In that context, Commissioner, on that matter, the placement of the logger, that is if it's to be relied upon by Mr Gauld in this case, is very important, and it's important that it be placed in a location if one logger is to be relied upon for an upper level, it's important that it is placed in a location that is actually representative of what the likely background noise level is at the relevant habitable room that the impact is sought to be - in terms of dealing with what the impact is on that room and the occupants of that room, and in this particular case, Commissioner, Mr Gauld properly conceded that moving that logger, that is the 4.5 metre high logger, further to the south to the location where what is logger A was at ground level, the 1.5 metre logger, is likely to have a different - result in a different background noise level being recorded. (Transcript 5 December 2025, p 126(21))

The Respondent submits that the concession by Mr Gauld on the different background noise level upon moving the logger creates a problem of uncertainty “when one comes to trying to assess whether a reasonable or an acceptable outcome is achieved in terms of acoustic impacts, particularly on number 3” (Transcript 5 December 2025, p 126(35))

The Respondent submits in relation to modelling of noise from children in the outdoor play space that, if the background level is 43 dBA, which is what Mr Gauld says is achieved, is the background level of the upper level of 4.5 metre in that north-western corner, well, then we're getting levels that are less than 48 dBA as the criteria, but they are levels that potentially change or exceed depending upon how you model:

“It is one scenario that children might all be stationary in very regular spaced locations. But what hasn't been tested and what information hasn't been provided in the context of the current version of the application is what happens if those children are grouped in pairs or maybe they're even in groups of three and they are spread in an irregular pattern across that site, there's potential for exceedances, and those exceedances being more than the 3 dBA that would exceed the criteria of even Mr Gould's criteria of the 48 dBA that he has for upper levels of the premises next door.” (Transcript 5 December 2025, p 127(2))

The Applicant submits, that in respect to the location of the noise loggers, the evidence is that

“if we are taking a commonsense approach to the acoustic assessment of this proposed centre, the ground floor background criteria is agreed between both experts. The upper floor criteria is not agreed. Mr Gould takes his criteria from a measurement that he placed the logger on site in a location which, in his professional opinion, was representative of the acoustic environment, and you also have the evidence from Mr Haydon, although it was difficult to get to that point, that it is, I don't want to overstate the position, I don't know that he said likely, but it is possible that the acoustic environment of the first floor windows would be at a higher level than what you would expect at the ground floor level.” (Transcript 5 December 2025, p 121(41))

I have considered the competing expert evidence and agree with the Applicant that there is in fact very little difference between them other than, in essence, a philosophical approach to the strict application of the AAAC Guide to the assessment of acoustic impact. On balance, I accept the evidence of Mr Gauld and conclude that the impact will be acceptable because of the use of acoustic barriers and the operational management of the child care centre in accordance with the conditions of consent and the Plan of Management (Ex H).

Sleep disturbance

The Proposed Development will have approximately two staff members arriving to the Site prior to 7 am and the issue comes down to whether the acoustic impact of those two cars arriving into the basement of the Site prior to 7 am will create a sleep disturbance, in particular to the neighbour across the road from the Site at number 16 Macarthur Street. Sleep disturbance is not expressly contended in the ASOFAC Contention 13

The Acoustic experts address the AAAC guideline criteria stipulated for sleep disturbance at cl 3.2.3 (Ex 7):

“The noise impact of staff arrivals, setup, cleaning, or other onsite activities prior to 7am or during night-time hours should be assessed at nearby residential premises. The L_{Amax} noise level emitted from vehicles arriving and parking depending on the requirements of the state or territory where the centre is located shall not exceed the background noise level by more than 15 dB outside the nearest habitable room window.”

Mr Gauld gives consideration in the Rev D Report to sleep disturbance caused by noise generated from staff arriving prior to 7 am, and parking within the basement level car park at sections 5.5.2 and 6.4.3 at pp 21 and 32 and Table 11. The assumption is that four staff vehicles will arrive at the Site between 6.30 am and 7 am and park in the designated staff parking spaces in the car park. (Rev D Report, section 6.2, p 24) and Mr Gauld concludes that “the predicted level of noise emission from staff arriving prior to 7 am will comply with the sleep disturbance criteria established in Section 5.5 at receptor locations ‘R3’, and ‘R4b’, and is therefore considered acceptable.” (Rev D Report, p 33). Mr Gauld used the following criteria in Section 5.5.2:

“For residential facades ‘R3’ and ‘R4b’ based on the measured background noise levels at Location ‘B’:

- *(47 + 15 =) 62 dBA LAmax at the closest affected habitable room window of the residential premises between 6.30 am and 7 am.”*

Table 11 from Rev D Report p 33 is reproduced below:

Mr Haydon does not agree with the reliance by Mr Gauld in the Rev C Report on Logger Location B for the establishment of sleep disturbance criteria for the receivers R3 and R4b. (JER Acoustic at par 89). The dispute between the experts is essentially limited to received R3, being 16 Macarther Street.

Mr Haydon in the JER Acoustic at paras 91 and 92 provides as follows:

“91. Within the DA Report Mr Gauld assessed sleep disturbance LAmax noise emission to receiver location R4a, at 59 dB(A) resulting from “Car Pulling Into Driveway”, which would exceed the applicable sleep disturbance criterion of 55 dB(A) by 4 dB(A), however this location is ignored within the Rev C Report. Additionally, the Rev C Report ignores all other ground floor receiver locations.

92. *If the Court is to accept Haydon’s view, then based upon Mr Gauld’s modelling, with reliance upon Logger Location A, sleep disturbance is predicted to exceed the applicable criterion at R4a by 4 dB, at R4b by 2 dB and at R3 by 5 dB.”*

Mr Gauld was cross examined on his assessment of sleep disturbance and his evidence in response to the following question is set out below:

“There are habitable rooms at that ground floor location, but you agree with the principle that I would - consistent with what you said before - adopt the noise logger A background that was 40 dB during the 6.30 to 7am period and add 15 to that.”

“WITNESS GOULD: Yes, I would.

[...]

the next step would be, when you have an exceedance, you go the next step, and you say, "Well, looking at that number and assuming the number at the ground floor is the same as at the first floor" - so it would be 61 outside the ground floor window. Then we would have 51, which is 10 decibels less than that, inside the ground floor window bedroom that you've - you're gonna put to me. And the 51 inside the bedroom is within, or less than, the 50 to 55 - or less than 55 - the upper limit of that range, which is a range that is said not to cause sleep disturbance.

[...]

the findings in the road noise policy about whether a noise of 50 to 55 is likely to wake people up. The answer is no, it is not likely to wake people up. It is irrelevant where that noise occurs - whether that traffic noise occurs on the street or on the site. It's about the noise that is occurring - traffic noise - that occurs - that is heard inside the bedroom. We know those numbers. We can calculate them. The policy clearly says that 50 to 55 is unlikely to cause sleep awakenings, and

that's what I would have relied on, if I had have found an exceedance in this assessment.” (Transcript 5 December 2025, p 97 at paras 2 to 41)

The Site is now zoned R4 and Mr Haydon accepted that if there were multiple dwellings that were put on this Site instead of a childcare centre, you would expect that there could reasonably be more than two cars entering or leaving the Site before 7 am (Transcript 5 December 2025, p 93(16))

Mr Haydon sought to distinguish between the impact of 2 cars from a residential site as opposed to the impact of 2 cars from a commercial site. In cross examination he agreed however that “you wouldn’t be able to distinguish the difference between the two.” (Transcript 5 December 2025, p 93(33))

The Respondent seeks to limit the assessment to the criteria in the AAAC Guide (Transcript 5 December 2025, p 126 at par 17) whereas the Applicant submits that the commonsense approach should be applied to determining the likely impacts of the Proposed Development and that “it matters not whether it arises from a commercial enterprise or from a residential function.” (Transcript 5 December 2025, p 122(50))

I accept the evidence of Mr Gauld and find that the Proposed Development will not result in an unacceptable sleep disturbance on the neighbours, particularly from the arrival of vehicles prior to 7 am onto the Site and parking in the basement. I find that any noise from those vehicles arriving prior to 7 am will have an acoustic acceptable impact in the R4 residential zone.

Planners and fence heights (contention 13(d)-(f) and Site suitability (contention 14)

This issue is effectively limited to height of the acoustic fence and whether there will be an unacceptable visual impact. In the JER Planning at par 118 Mr Hawke states as follows:

“The acoustic barriers will sit on a raised level and would have a height of over 3m and will run the length of approximately 16.8m along the northern boundary and 16m along the eastern boundary. Ancillary structure of this length and size that are setback 1m from the boundaries are not considered to be common feature in the locality and a residential zone. The proposed design when viewed from the north and from the east would appear as a series of fences. It is considered that the proposed separation, setbacks and urban form of the structures does not provide a positive relation with the proposed development and the other development on the neighbouring sites. Accordingly, this arrangement is not considered appropriate and would result in unacceptable visual impacts from the north and the east of the site.”

Mr Wood’s opinion at par 111 of JER Planning is as follows:

“In relation to the eastern boundary and the park interface the fact it is a park interface and the barrier is inset off the boundary behind the screen landscaping, means this impact is acceptable in my view from a visual perspective and no amenity impacts arise at the interface. I also do not consider that the visual impact of that is of concern given the design of the eastern elevation – noting the existing interface is a side boundary fence with associated outbuildings. The appearance of a high-quality child

care centre adjacent a park I consider to be a good interface and provides passive surveillance and a good co-location of uses and the raised level to that rear portion in proximity to the park I consider to be acceptable.”

For the reasons given by Mr Wood, I agree in relation to the visual impact when viewed from the east.

When viewed from the north, Mr Wood addresses this at par 112 of the JER Planning, accepting that it is not usual however the impacts have been limited noting the following:

No solar impacts to that property

Landscaping and materials used (glass or Perspex for the cantilever) will soften its appearance “therefore will have no real impact in terms of visual bulk to that top component”

There are only 2 windows to the façade of the adjoining dwelling which currently interface with 2 sheds

The Private open space and primary windows of the adjoining dwelling appear oriented to the north, “therefore the interface is not sensitive ... and the fencing arrangement is acceptable”

The Applicant submits:

“In terms of the site suitability and the height of the acoustic barriers, I've dealt with it in terms of the impact when read with the proposed landscaping, but it is also relevant to understand in the context of the desired future character for the R4 zone which has - contemplates a different distribution of bulk of building, but ultimately is encouraging development of up to 20 metres high in this location. On that basis, the applicant says that this is an application for a small childcare centre of 50 children that will provide an amenity for the day-to-day need of the residents in the R4 zone, and it is a centre which can manage its impacts through the conditions of consent and the plan of management that would ultimately be imposed if the Court were minded to grant consent.” (Transcript 5 December 2025, p 123(16))

I acknowledge that the proposed height of the acoustic barriers are higher than the controls in the FDCP, however those controls are intended to maintain a particular character and I accept the evidence of Mr Wood in relation to visual impact. Accordingly, I find that, on balance, the height of the acoustic barriers will not be so out of character so as to warrant refusal of the development application.

Conditions of consent

Exhibit L contains the Parties' Proposed Conditions of Consent filed 9 December. There is some dispute between the parties regarding the terms of Condition 2H Compliance with Submitted Noise Impact Assessment and Condition 65 Noise Control. These two conditions, the parties agree, "goes to the heart of the matter" in relation to what is the appropriate contributory noise level that should be imposed, having regard to relevant background levels (Transcript 5 December 2025, p 33(17) and p 127(27)). The conditions of consent in Ex L are otherwise agreed.

Conditions 2H and 65 are proposed as 2 competing versions. The Applicant's version of each is supported by the evidence and my findings regarding the assessment by Mr Gauld of the acoustic impact on the neighbours and the various limited concessions by Mr Haydon which relate to the specific conditions of this Site. My finding that the Applicant's version be preferred is expressly limited to the particular circumstances and context of this Site.

Satisfaction of jurisdictional prerequisites

Compliance with the FLEP is addressed generally in the Statement of Environmental Effects prepared by Think Planners Pty Ltd dated 10 September 2024 (SEE) but specific provisions are addressed below.

Consent is sought for earthworks for the basement carparking pursuant to cl 6.2 of the FLEP.

I am satisfied that the essential services specified in cl 6.9 of the FLEP are available or that adequate arrangements have been made to make them available when required because:

The Survey Plan behind Tab 9 of the Class 1 Application confirms that water is available to the Site;

Electricity is available to the Site as the Site is currently used for residential purposes;

Vehicular access to the proposed development at the Site is via Macarthur Street; and

Disposal and management of sewage and stormwater drainage is detailed on the Stormwater Drainage Plans prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit AIJ-1 to the Applicant's Notice of Motion. Stormwater will be disposed via an easement over 50-54 and 48 Tangerine Street, as shown on drawing S500 prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit B and addressed in the deferred commencement condition. Owners' consent and consent to the easement has been provided by Land and Housing Corporation (Ex C). Owners consent of St George Community Housing Portfolio Limited is provided with this statement.

The experts address design excellence in the Town Planning JER (Ex 3) from par 123 and the Respondent, in opening indicated that it was satisfied that the clause had been addressed.

Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the site is suitable (or will be suitable after undergoing remediation) for the proposed use.

The Amended DA is accompanied by a PSI prepared by Remedis Remedial Engineering dated 17 July 2025 (PSI) behind Tab 12 of Exhibit B which confirms that the Site can be made suitable for proposed development provided that the following recommendations in the PSI are implemented:

Completion of a pre-demolition hazardous materials (HAZMAT) survey in accordance with Australian Standard AS2601-2001 Demolition of Structures and SafeWork NSW requirements. It is presumed hazardous building materials will be detected within the site structures.

A detailed site investigation (DSI) and Remedial Action Plan (RAP) are carried out.

Where hazardous materials are identified, they should be removed prior to demolition of structures (and removal of remaining site soils) in accordance with the NSW WHS Act, Chapter 8 of the WHS Regulation and SafeWork NSW Codes of Practice. The construction phase will require the preparation of an Asbestos Management Plan to inform the removal of asbestos containing building materials and shallow soils in the vicinity of BH06 in accordance with SafeWork NSW requirements. Upon completion of asbestos removal works, clearance certificates must be provided by a SafeWork NSW Licensed Asbestos Assessor, or “Competent Person” as defined by SafeWork NSW’s Code of Practice How to Safely Remove Asbestos.

A waste classification is assigned to any excavated soils.

The data gaps in Section 8.3 are investigated.

A copy of the Hazardous Building Materials Survey, results of the data gaps, the DSI and the waste classification report are provided to Remedis to review and confirm the conclusions of these reports comply with statutory requirements. It is expected the documentation will inform the Principal Certifiers appraisal of the development.

The DSI prepared by Remedis Remedial Engineering dated 9 July 2025 behind Tab 13 of Exhibit AIJ-1 to the Applicant’s Notice of Motion confirms that the Site can be suitable for the proposed development provided that the following recommendations are completed:

A Remedial Action Plan (RAP) is developed based on the results of this investigation

A Data Gap Investigation (DGI) is carried out for the soils beneath the building footprint

A site specific “Unexpected Finds Protocol” is developed for the site once a remediation contractor has been selected

The site is validated following Remediation, and a Site Validation Report is prepared

The Remedial Action Plan prepared by Remedis Remedial Engineering dated 17 July 2025 behind Tab 14 of Exhibit B confirms that “the Site can be made suitable for the proposed development, provided that the Remediation Action Plan (RAP) is implemented as outlined” (see page 36). The Remedial Action Plan also states that “Upon completion of remediation, a Site Validation Report should be prepared and submitted to the consent authority to confirm the successful execution of the remediation works and demonstrate the site’s suitability for the intended land use” (see page 36).

Conditions 1, 2A, 2B, 41 and 58 ensure that the above recommendations are implemented.

Accordingly, I am satisfied that the Site is suitable for the proposed use and that s 4.6 of the Resilience and Hazards SEPP has been satisfied.

As the Site is located in the Georges River Catchment, Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) contains relevant provisions relating to development within regulated catchments. The Applicant submits the following in satisfaction of those provisions as follows:

Section 6.6 (‘Water Quality and Quantity’): The Court can be satisfied that the proposed development will not have the effect of water entering a natural waterbody and will be as close as possible to neutral and will not impact on the water flow in a natural waterbody having regard to the following:

water quality targets and treatment via an OSD tank fitted with water quality devices detailed on Drawing No. S200, S201 and S300 of the Stormwater Drainage Plans prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit B.

the modelling on Drawing No. S301 and S302 and the details on the Erosion and Sediment Control Plan, Drawing No. S400 of the Stormwater Drainage Plans prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit B

Section 6.7 (Aquatic ecology): The proposed development does not involve the clearing on riparian vegetation and is not anticipated to have any impact on aquatic ecology due to the nature and confined scope of the changes proposed.

Section 6.8 (Flooding): The Site is not identified as flood liable land in a regulated catchment and modelling has been carried out (detailed on Drawing No. S301 and S302 of the Stormwater Drainage Plans prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit B.

Section 6.9 (Recreation and public access): The proposed development is not anticipated to have any impact on recreational land uses or the available public access to nearby natural waterbodies. Modelling has been carried out to ensure this (detailed on Drawing No. S301 and S302 of the Stormwater Drainage Plans prepared by Deboke Engineering Consultants, Revision 03 dated 2 October 2025 behind Tab 8 of Exhibit B.

Section 6.10 (Total catchment management): The Site is not in close proximity to any LGA boundaries with a neighbouring local government authority and therefore is not expected to have an adverse environmental impact for adjacent and downstream local government areas.

Section 6.11 (Land within 100m of natural waterbody): The Site is not within 100m of a natural waterbody.

Section 6.12 (Riverine Scenic Areas): The Site is not within a riverine scenic area.

In accordance with my findings regarding the merits of the Proposed Development and my satisfaction that the jurisdictional prerequisites have been satisfied, I conclude that development consent to the Proposed Development can be granted subject to the conditions at Annexure A.

Orders:

The Court orders:

Pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW), the Applicant is to pay the costs of the Respondent that have been thrown away as a result of the amendment of the application referred to at [3] as agreed or assessed.

The appeal is upheld.

Development consent is granted to development application No. 287.1/2024 for the demolition of existing structures and construction of a two (2) storey childcare centre accommodating fifty (50) children and six (6) educators, above one (1) level of basement carpark containing eleven (11) car spaces, site works and landscaping at 1 Macarthur Street, Fairfield East subject to the conditions of consent in Annexure A.

All exhibits are retained except Exhibit 2 which will be returned.

E Espinosa

Commissioner of the Court

Annexure A (516 KB, pdf)

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Decision last updated:

26 March 2026

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