

Form 1: Responsible Authority Report (Regulation 12)

Notes for Author

This template is provided to assist in the formulation of a Responsible Authority Report (RAR) for a Development Assessment Panel (DAP) application under Regulation 12 of the *Planning and Development (Development Assessment Panel) Regulations 2011*. This template should be used for all RARs under r.12 except for applications for a review of the original decision or a reconsideration of the original decision, please use the State Administrative Tribunal (SAT) Reconsideration template for those reports.

This template contains guidance to assist the author prepare a report that is comprehensive, succinct and addresses the key issues required for a decision to be made under the relevant Local Planning Scheme and Region Scheme (where applicable). The guidance notes should be deleted once the RAR is prepared and do not form part of the report.

The RAR template also provides for some sections to be deleted if they are not required. Where other sections are not relevant to a particular report and there are no specific notes, please insert either “not relevant” or “not applicable” under those headings.

Where the RAR template is submitted to a Council meeting, please note:

- The Officer’s recommendation may be placed either first or last in accordance with the usual requirements of the Council meeting.
- For the submission of the RAR to the DAP Secretariat, the heading “Responsible Authority Recommendation” must contain the Council’s recommendation.
- If the Officer recommendation is different from the Council recommendation, this should be shown under the heading “Officer Recommendation”.
- The “Reasons for Responsible Authority Recommendation” section should be completed after the Council meeting and should reflect why the recommendation differs from the reasons as shown in the minutes of the Council meeting.
- Where local government Officers have delegation to provide the RAR to the DAP secretariat, only the “Responsible Authority Recommendation” should be completed and the “Officer Recommendation” section can be deleted.

**Beenyup Road, Nos. 34 & 36 (Lots 15 & 16) Byford
Child Minding Centre**

**Form 1 – Responsible Authority Report
(Regulation 12)**

| | | |
|--|---|--|
| DAP Name: | Metro Outer Joint Development Assessment Panel | |
| Local Government Area: | Shire of Serpentine Jarrahdale | |
| Applicant: | Rowe Group - Mr Nathan Stewart | |
| Owner: | Liem Thanh Bui, Rose Marie Nguyen & Luke Broere | |
| Value of Development: | \$2.1 million <input type="checkbox"/> Mandatory (Regulation 5) <input checked="" type="checkbox"/> Opt In (Regulation 6) | |
| Responsible Authority: | Shire of Serpentine Jarrahdale | |
| Authorising Officer: | Ashwin Nair Manager Statutory & Compliance | |
| LG Reference: | PA21/646 | |
| DAP File No: | DAP/21/02042 | |
| Application Received Date: | 14 July 2021 | |
| Report Due Date: | 28 September 2021 | |
| Application Statutory Process Timeframe: | 90 Days | |
| Attachment(s): | 1. Initial Development Plans 2. Revised Development Plans 3. Schedule of Submissions and Applicant Response 4. Environmental Noise Assessment 5. Traffic Impact Assessment 6. Waste Management Plan 7. Genius Demand Analysis 8. Landscape and Revegetation Plan 9. Council Minutes | |
| Is the Responsible Authority Recommendation the same as the Officer Recommendation? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A | Complete Responsible Authority Recommendation section |
| | <input type="checkbox"/> No | Complete Responsible Authority and Officer Recommendation sections |

Responsible Authority Recommendation

That the Metro Outer Joint Development Assessment Panel resolves to:

- **Refuse** DAP Application reference DAP/21/02042 and accompanying plans (dated 5 July 2021 and 25 July 2021) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* the Metropolitan Region Scheme, and the provisions of the Shire of Serpentine Jarrahdale Town Planning Scheme No.2, subject to the following reasons:

Reasons

1. The development is considered to be an inappropriate scale that is incompatible with the 'Residential' character and will detrimentally impact on the preservation of the amenity of adjoining and nearby landowners.

2. Noise generated from the development will adversely impact upon the existing amenity of the general locality and the adjoining neighbouring properties.
3. The commercial nature of the development is not considered compatible with the low density of residential development (R20 - 35) within the immediate locality.
4. Insufficient information has been provided to demonstrate that the onsite parking is sufficient for the proposed development.
5. The proposal does not comply with the Shire of Serpentine Jarrahdale Byford Townsite DAP in regard to the expected overall built form outcome which not considered to be sympathetic to the surrounding residential area.

Reasons for Responsible Authority Recommendation

Details: outline of development application

| | |
|---|---|
| Region Scheme | Metropolitan Region Scheme |
| Region Scheme - Zone/Reserve | Urban |
| Local Planning Scheme | Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 (TPS2) |
| Local Planning Scheme - Zone/Reserve | Urban Development Zone |
| Structure Plan/Precinct Plan | Byford Structure Plan |
| Structure Plan/Precinct Plan - Land Use Designation | Byford Townsite Local Development Plan |
| Use Class and permissibility: | Residential – Discretionary 'SA' |
| Lot Size: | Lot 15: 1295.939m ² Lot 16: 1295.891m ² |
| Existing Land Use: | Single House and vacant land |
| State Heritage Register | No |
| Local Heritage | <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area |
| Design Review | <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Local Design Review Panel <input type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other |
| Bushfire Prone Area | No |
| Swan River Trust Area | No |

Background:

Existing Development

The subject site comprises of two land parcels with a total area of 2591.93m² located within the 'Byford Old Quarter'. The site is bound by Beenyup Road to the south, Amy Street to the east and by unconstructed Corbel Lane to the north. Lot 15 to the west is developed with residential single dwelling and outbuilding, Lot 16 to the east is vacant.

The general locality predominantly comprises of modest residential dwellings constructed of face brick with tile or corrugated iron roofing. There is an existing 'Child Minding Centre' and Primary School both located approximately 100m to the north as shown in Figure 1 below. The locality also comprises of new in fill residential development. The site is nestled within the Byford Old Quarter, at a mid point between the Darling Scarp to the east and South Western Highway to the west.



Figure1: Aerial Photo

Proposal:

The proposal seeks approval to construct a single storey building, purpose built 'Child Minding Centre' on Lot 15 and Lot 16 Beenyup, Byford. The proposed building would be constructed of concrete panels with timber aluminium look cladding and colourbond roof. Vehicle access to the site is proposed via a new crossover to the north eastern boundary of the subject site off Amy Street.



Figure 2: Site Plan

The applicant provided information that the centre will accommodate up to 120 children falling within the following age groups:

- 24 babies (less than 24 months old);
- 30 toddlers (24 – 26 months old); and
- 66 kindergarten age children (greater than 36 months old).

Specifically, the proposal comprises of the following:

- Demolition of the existing single dwelling and all structures on Lot 15;
- Construction of a 'Child Minding Centre' building with a floor area of 800m² across Lot 15 and Lot 16;
- Building comprising of five activity rooms/playrooms, kitchen, staff room, reception, foyer, meeting rooms, prep rooms, amenity rooms, sleeping room, laundry, amenities, café seating area;
- Construction of a car park with 31 car parking bays comprising of 12 spaces for pick-up and drop-off, 19 staff car parking spaces including one (1) universal access bay, a shared space vehicle;
- Construction of two new crossovers from Amy Street to provide access to the car parking area and Corbel Lane way;
- Widening, construction and upgrading of the Corbel Lane way abutting to the development to the Shire standard, constructed and drained at the full cost of the applicant;
- Construction of solid fence (up to 2 metres) along the western boundary;
- Operation hours of the centre proposed from 6:30am to 6:30pm, Monday to Saturday;
- Employment of up to 19 full-time staff members on-site at any one time;
- Construction of outdoor play areas with a total area of 846m² provided to the north western, south western and south portions of the subject site as shown in Figure 2 above;
- Building setback 5.02m from the primary street and 1.5m from the eastern boundary;
- The proposed development incorporating landscaping within the subject site.

Full details of the initial proposal are contained with .

| | |
|----------------------------|----------------------|
| Proposed Land Use | Child Minding Centre |
| Proposed Net Lettable Area | NA |
| Proposed No. Storeys | One |
| Proposed No. Dwellings | NA |

Consultation:

Public Consultation

The application was advertised for a period of 21 days from 21 July 2021 to 11 August 2021 to surrounding landowners within a 200m radius of the subject site, in accordance with LPP1.4 - Consultation for Planning Matters. The application was also advertised on the Shire's website for the same period. In addition, a notice of the development proposal on a sign was placed on site for the same period.

At the conclusion of the consultation, 11 submissions consisting of seven objections, two letters of concern and two letters of support were received. The objections and concerns relate to the following

issues, which are discussed in the relevant headings of the report and form part of the Officer assessment:

- Potential noise from the 'Child Minding Centre';
- Potential noise impacts due to increased traffic movements on the road network;
- Suitability of the subject site to accommodate up to 120 children;
- Sufficient Child-Minding Centres in the locality to cater the need;
- Insufficient parking;
- Upgrading of Corbel laneway and signage.

In response to objections received during the consultation period, particularly with noise concerns, the applicant provided an amended site plan and elevations which can be viewed within **attachment 2**. These plans were subsequently re-advertised for a period of 14 days from 26 August 2021 to 11 September 2021. The initial site plan and amended design, subject to this application, is shown in Figure 3 below.

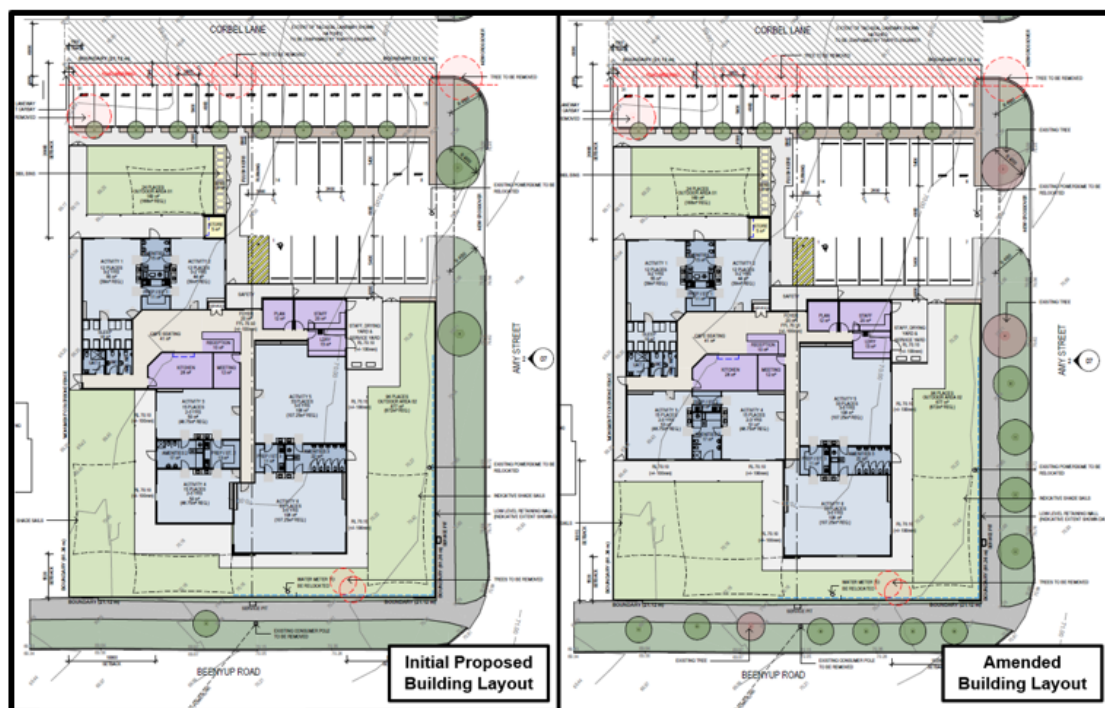


Figure 3 Site Plans

The amended layout shows the relocation and reorientation of two outdoor play space areas abutting the western neighbouring property being Activity Rooms No. 3 and 4. The applicant provided information that the rationale to move child play areas was to minimise the extent of the outdoor play space that abuts the western lot boundary and potentially noise impact on the amenity of the neighbouring property. Activity Rooms No. 3 and 4 were to be reoriented to face Beenyup Road.

As seen in the table below, the breakdown of internal areas for the various activity areas remained the same except for a small increase of floor area for activity rooms and slight reduction of planning room.

| Areas | Initial Layout | Amended Lay out |
|--------------------------|-------------------|--------------------|
| Activity Rooms (1-6) | 415m ² | 419 m ² |
| Outdoor Areas | 846m ² | 846 m ² |
| Kitchen | 28m ² | 28 m ² |
| Reception area and Foyer | 30m ² | 30 m ² |

| Areas | Initial Layout | Amended Lay out |
|--------------------------|------------------|-------------------|
| Meeting and planning | 24m ² | 23 m ² |
| Laundry | 13m ² | 13 m ² |
| Amenities and Prep rooms | 89m ² | 89m ² |
| Sleeping Room | 18m ² | 18 m ² |
| Café Seating | 41m ² | 41 m ² |
| Staff Room | 20m ² | 20 m ² |
| Other Amenities | 15m ² | 15 m ² |
| Bin Area and Store | 15m ² | 15 m ² |

The applicant has also provided amended elevations plans which be viewed within **attachement 2** and discussed in the built form section of the report.

At the conclusion of the second round of advertising, six submissions consisting of five objections and a submission from the Department of Education were received. The objections and concerns relate to the following issues:

- Potential noise from the 'Child Minding Centre';
- Increase of traffic movements during the peak periods within the locality;
- Safety concerns due to traffic congestion from the proposal and from the primary school;
- Insufficient parking to cater for additional staff;
- Increase of Child-Minding Centres within the locality.

The applicant's response to submissions received during consultation is included in **attachment 3**.

| Issue Raised | Officer Comments |
|--|---|
| <p>Noise</p> <p>120 children will generate noise from the child playing areas</p> <p>Noise emissions from the development would impact on the existing amenity</p> <p>Cumulative noise concerns from the existing child care minding centre in Clifton Street and the Byford Primary School</p> | <p>The predicted noise generated from the development has been assessed in the applicant's Environmental Noise Assessment (refer attachment 4). Whilst the noise assessment demonstrates that acceptable noise levels can be met, Officers consider that noise emissions generated from the development to pose an unreasonable impost on the existing amenity of the area. Officers consider that making a decision purely on meeting the assigned levels of the Regulations does not reflect proper and orderly planning. This is discussed further in the assessment section of the report.</p> |
| <p>Traffic</p> <p>Increase of traffic moments and the proximity to the existing Byford Primary School which generates significant number of vehicular movements</p> <p>Safety concerns to students who walk to school arising from the increased traffic</p> | <p>A Transport Impact Statement (TIS) was provided with the application demonstrating that the existing road network can cater for the additional traffic generated by the development. attachment 5)</p> <p>Notwithstanding the findings of the report concluding that the road network has the capacity</p> |

| Issue Raised | Officer Comments |
|--|--|
| <p>movements and potential congestion especially during the peak periods</p> | <p>to accommodate the extra traffic, Officers are concerned that the increase traffic movements will adversely impact upon the residential amenity of the locality. This is discussed further in the assessment section below.</p> |
| <p>Parking Insufficient parking bays to cater for 120 children and additional staff</p> <p>Insufficient parking would potentially lead to verge parking along neighbouring existing residential properties</p> | <p>Officers consider that although the parking requirements have been met, there are still concerns that insufficient information has been provided to demonstrate that the development will be able to deal with the peak hour demand and overall trips generated by the development. This is discussed further in the assessment section below.</p> |
| <p>Scale of the centre Suitability of the centre of the scale in the residential zone.</p> <p>Scale of the centre is more suited to a commercial zone</p> <p>The centre is not big enough to accommodate 120 children, insufficient space.</p> | <p>Officers consider that the proposed bulk and scale of the development presents a commercial design that is not sympathetic with the surrounding residential context. It is considered that the proposal will impact the amenity of the surrounding properties.</p> <p>The overall design and materials proposed do not replicate the existing residential dwellings, thereby imposing on the existing built form.</p> <p>This is discussed further in the assessment section below.</p> |
| <p>Demand Over supply of Child-minding Centres in locality</p> <p>Existing child care centre on Clifton Street.</p> | <p>Generally, the existence of similar childcare centres is not a valid planning matter. However, the applicant also provided a demand analysis study (attachment 7) which concluded that there is a need for an early learning centre in this locality currently and in the future.</p> <p>The planning framework does not specifically limit the number of business types to an area, recognising competitive neutrality as an important component of a market led economy. While there are some narrow circumstances in which competition may be considered a relevant planning consideration, such circumstances do not relate to this proposal. These matters have been discussed in the assessment section of the report.</p> |
| <p>Upgrading of Corbel Lane Way is required</p> | <p>The applicant has provided a site plan showing sufficient land set aside for the upgrade of the Lane Way to the satisfaction of the Shire. The applicant has provided information that the lane way will be ceded to the Shire if the application were to be approved.</p> |

| Issue Raised | Officer Comments |
|---|---|
| Devaluing of properties as a result of the proposal | The impact on property values is not a valid planning consideration that should be taken into account as part of decision-making. |

The comments received in support of the proposal were:

- The development will modernise the design of the street and would make great and efficient service for the close by locals.

Referrals/consultation with Government/Service Agencies

The application was referred to the Department of Education who provided a no in principle objections to the proposed Child Care Premises subject to the following matters being given due consideration.

Land Use

- *The proposed Child Care Premises is considered acceptable in principle as the siting of such a use within close proximity of a primary school is consistent with the State Government's EduCare commitment. The EduCare commitment seeks to provide more child care, before and after school and holiday care within close proximity of each new public primary school site. Whilst Byford Primary School is an existing school, the benefits associated with locating child care premises adjacent to existing school sites is consistent with the intent and objectives of the EduCare commitment.*
- *Notwithstanding this, there is an existing Child Care Premises at No. 27 Clifton Street and a separate application has been submitted for a potential third Child Care Premises within the area at nos. 13-15 Beenyup Road). It will be the responsibility of the Shire of Serpentine Jarrahdale (Shire) and the JDAP to consider whether the number of Child Care Premises within the area would be consistent with the intent and objectives of the Shire's Town Planning Scheme No. 2 and draft Local Planning Scheme No. 3 (LPS3).*

Traffic Impact Statement

- *The Department notes that at peak drop-off/pick-up times, primary schools generate a significant number of vehicular movements in and around the sites. It is therefore critical to ensure that any development within close proximity of a school does not compromise the ability for staff, students and parents to safely and efficiently access the site.*
- *In this instance, the Traffic Impact Statement fails to provide any detailed commentary on the impacts on the Local Access Streets surrounding the application site and the Byford Primary School site. The proposal has therefore failed to demonstrate that the local street network will be able to adequately accommodate for the projected increase in vehicular movements generated by the proposed Child Care Premises.*
- *To address these concerns, the Department requests that additional information is provided prior to a determination being made on the application. The additional information should demonstrate that traffic generated by the proposal will not result in unreasonable levels of traffic congestion around the school site at peak drop-off/pick-up times. It should also consider the traffic generated from the Primary School, as well as the existing and proposed additional Child Care Premises at Nos. 13-15 Beenyup Road.*

Car Parking and Access

- *The Applicant's report indicates that the number of car parking bays provided complies with the requirements of draft LPS3. However, the report advises that the Child Care Premises will operate with a minimum of 19 staff on site at any given time, whereas the car parking ratio of draft LPS3 requires one bay per staff member for the maximum number of employees on the premises at any given time.*
- *It would therefore appear that the proposal does not comply with LPS3 if more than 19 staff members are likely to be on site at any given time. The Department would not be supportive of the proposal relying on the on and off-street car parking embayments associated with the school site being used to accommodate for overflow car parking generated by the Child Care Premises. The Department would therefore request that a condition of approval be imposed which would either:*
 - *Require the requisite number of car parking bays to be provided on site and/or the maximum number of children on site at any given time being reduced; or*
 - *Require a car parking management plan being submitted and implemented prior to the initial occupation of the development. A car parking management plan should ensure that the proposed number of bays are appropriately managed so as to not have a reliance on the school's on and off-site car parking bays.*

Waste Management

- *The Waste Management Plan submitted in support of the proposal indicates that waste and recycling bins will be moved by staff to the Amy Street verge and collected twice per week (four collections in total). Whilst the Department has no in principle objections to this, it is requested that a condition of approval is imposed which would require collections to occur outside of the Byford Primary School's peak drop-off /pick-up times to ensure that there is no conflict between vehicles accessing the school site and waste collection vehicles.*

Construction Management

- *Due to the application site's close proximity to Byford Primary School, it is important the school is not burdened by the impacts associated with construction works. Therefore, it is requested that a condition of approval is imposed which would require a Construction Management Plan to be submitted prior to any works being undertaken on site. The Construction Management Plan should address the following matters:*
- *Management of car parking, delivery vehicles and traffic associated with the construction of the development. Construction and delivery vehicles should not utilise the bays surrounding the Byford Primary School site during peak drop-off/pick-up times.*
 - *How dust, odour and noise will be mitigated so that it does not materially affect the students and staff of Byford Primary School.*

Legislation and Policy:

Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- *Environmental Protection (Noise) Regulations 1997*
- *Planning and Development (Development Assessment Panel) Regulations 2011*
- *Metropolitan Region Scheme*

Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No.3
- Draft Shire of Serpentine Jarrahdale Local Planning Strategy

State Government Policies

- South Metropolitan Peel Sub-Regional Framework Towards Perth and Peel 3.5 Million;
- Planning Bulletin 72/2009 – Child Care Centres;
- Environmental Protection Authority Draft Environmental Assessment Guideline for Separation Distances Between Industrial and Sensitive Land Uses;

Structure Plans/Activity Centre Plans

- Byford Structure Plan
- Byford Townsite Local Development Plan

Local Policies

- Local Planning Policy 1.4 - Public Consultation for Planning Matters (LPP1.4)
- Local Planning Policy 1.6 - Public Art for Major Developments (LPP1.6)
- Local Planning Policy 2.4 - Water Sensitive Design (LPP2.4)
- Local Planning Policy 4.15 - Bicycle Facilities Policy (LPP 4.15)
- Local Planning Policy 4.16 - Landscape and Vegetation Policy (LPP4.16)
- Local Planning Policy 4.18 – Street Tree Policy (LPP4.18)

Design Review Panel Advice

Not applicable

Swan Valley Planning

Not applicable

Other Advice

The proposal is for a single storey development on two lots. A condition for amalgamation of the site is recommended as a condition of approval. The subject site abuts an unconstructed Corbel Lane way to the north and this would need to be constructed and upgraded if the development were to be approved.

Planning Assessment:

The proposal has been assessed against the relevant legislative requirements of the Shire of Serpentine Jarrahdale No. 2, Draft Local Planning Scheme No.3 (LPS3) and Draft Local Planning Strategy (LPS), Byford District Structure Plan 2020, Byford Townsite Detailed Area Plan (DAP) and State Policy and Local planning policies

Town Planning Scheme No. 2

The subject site is zoned 'Urban Development' under the Shire's TPS2. Clause 5.18 of TPS2 sets out the objectives of the 'Urban Development' zone, as *"to provide for the orderly planning of large areas of land in a locally integrated manner and within a regional context, whilst retaining flexibility to review planning with changing circumstances"*. This objective is facilitated through the preparation of Structure Plans, which guide land use permissibility and development.

The subject site is identified as 'Residential' within the Byford District Structure Plan 2020 (BDSP), and the Byford Townsite Local Development Plan (LDP) which provide the relevant land use permissibility and indicative land use designation applicable to the site. The proposed land use can be considered within the designation within the Structure Plan and Local Development Plan.

Both documents refer to the subject site falling within the 'Byford Old Quarter' and for development to be sympathetic to the existing rural character and pattern of development within the area. The BDSP states as follows:

"The area east of South Western Highway and north of Beenyup Road is referred to as the Byford Old Quarter or Blytheswood Park, being the original estate concept for Byford influenced by the garden city movement. The area includes traditional larger lots and is contained by a green belt. The spatial development pattern is still relevant as this presents a desirable alternative to urban sprawl. This area is also the historical development approach for Byford that should be celebrated as part of the Shire's heritage."

The relevant objective of the LDP relating to development within the area states:

"To minimise the impact of subdivision and development on the existing character, natural environment and amenity of the area"

In this regard, Officers consider that that the proposal, in its current scale and intensity, is likely to impact upon the existing amenity of the area and is incompatible with the expected form of development of the abovementioned documents. The addition of new development to the Byford Old Quarter, while inevitable over time, should reflect a pattern, scale, layout and intensity that is consistent with the character intended to be preserved. The quintessential pattern of low density, consistently fronted and modestly developed lots of the Old Quarter, is a perceivable aspect of the character that will be changed should this development be approved. This change is considered to detract from the prevailing and intended future character for the Byford Old Quarter.

Land Use

The proposal falls within the TPS2 definition of 'Child Minding Centre', which is defined as follows:

"Child Care Centre – means land and buildings used for the daily or occasional care of children in accordance with the Child Welfare (Care Centres) Regulations, 1968 (as amended) but does not include a family care centre as defined by those regulations, or an institutional home".

The 'Child-Minding Centre' land use is a 'SA' land use in the 'Residential' zone which means *that Council may, at its discretion, permit the use after notice of the application has been given in accordance with Clause 64 of the Deemed Provisions*.

An 'SA' land use requires the Shire to consider all submissions received and the broader planning framework in applying its discretionary powers to determine an application for approval. Subsequent to an assessment and consultation being undertaken, Officers consider that due to the size, scale and intensity of the proposal, the development is not compatible with the existing locality of the area, which is characterised by low density residential development, comprising of forms of development which reflects the traditional rural character of Byford.

Officers consider that although child mining centres can be found within the 'Residential' zones, the proposed development reflects a significantly larger, more intense operation, better located as part of, or immediately adjoining a Neighbourhood Centre. Such centres by their nature are designed with a supporting infrastructure network of roads and access streets that provide for flexible and efficient access, and have a supporting mix of primary and secondary uses which tend to create a

more active urban setting. This compares to the Byford Old Quarter, which is better described as suburban in its setting, with a limited land use mix and prevailing quiet residential amenity.

Draft Local Planning Scheme No.3 (LPS3) and Draft Local Planning Strategy (LPS)

The zoning of the subject site under draft Local Planning Scheme No.3 (LPS3) will remain 'Urban Development'. The proposal would still fall under the land use of "Child Care Premises" which is defined as

"means premises where - (a) an education and care service as defined in the Education and Care Services National Law (Western Australia) Section 5(1), other than a family day care service as defined in that section, is provided; or (b) a child care service as defined in the Child Care Services Act 2007 section 4 is provided".

The relevant objectives of the 'Urban Development' zone under LPS3 is to provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development.

As mentioned above, through the Byford District Structure Plan 2020 (BDSP), and the Byford Townsite Local Development Plan (LDP), the planned development for the area is predominantly associated with low scale moderately sized residential development. Within these documents, there is a strong expectation that development within this area celebrates or is sympathetic to the traditional rural area of Byford, known as the 'Byford Old Quarter'.

Within the 'Urban Development' zone, under the 'Child Care Premise' land use, such is classified as a discretionary ('A') land use and therefore capable of approval subject to the local government exercising its discretion after giving notice in accordance with clause 64 of the deemed provisions.

An 'A' land use requires the Shire to consider all submissions received and the broader planning framework in applying its discretionary powers to determine an application for approval. Subsequent to an assessment and consultation being undertaken, Officers consider that due to the size, scale and intensity of the proposal, the development is not compatible with the planned development for the area, being predominantly residential which seeks to preserve and maintain the traditional character of Byford.

Byford District Structure Plan 2020

The purpose of this Structure Plan is to provide a "broad-district level planning framework for development" which provides the basis for the subsequent preparation of Local Structure Plans. The subject site is designated as 'Residential' under the BDSP.

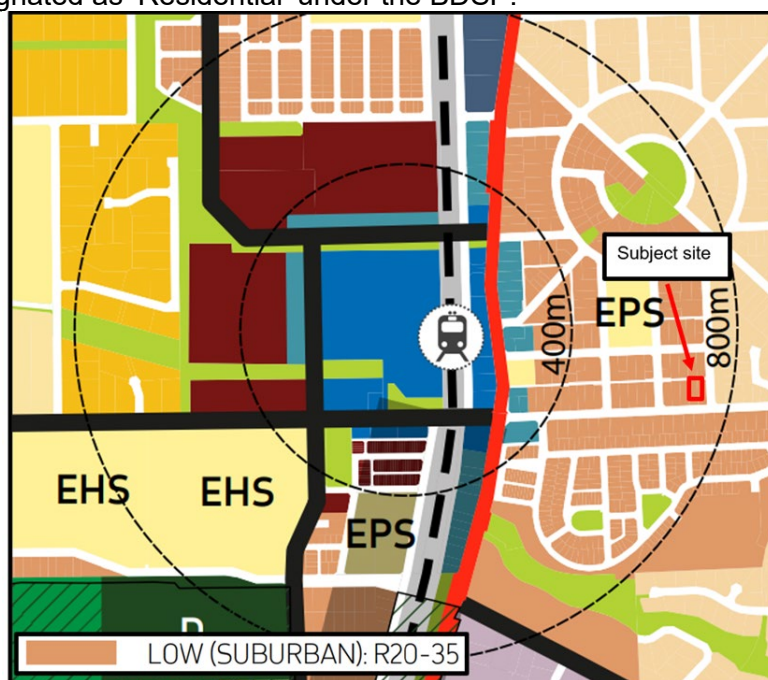


Figure:4 Byford Structure Plan 2020

It is noted as being on the very edge of the walkable catchment to the future Byford Metronet Station, and interfaces with lower dense development to the east. This establishes also a transitional role for the subject land.

Planning Bulletin 72/2009 – Child Care Centres

The bulletin provides guidance of planning considerations in relation to the location and development of child care centres. It states that broadly, child care centre activities are located in residential areas and that the ever-increasing demand for child care centres and the strong focus on their appropriate distribution and location is closely linked to demographic change. The objectives of the policy are to:

- a) *locate child care centres appropriately in relation to their surrounding service area;*
- b) *minimise the impact a child care centre has on its surrounds, in particular on the amenity of existing residential areas;*
- c) *minimise the impact the surrounds may have on a child care centre; and*
- d) *consider the health and safety of children attending the child care centre within the confines of the planning system.*

The bulletin states that childcare centres should be located to provide the maximum benefit to the community and should be within easy walking distance and serviced by public transport. The proposal is located within a predominately residential area, but does not facilitate a through traffic movement due to the eastern edge of the Byford Old Quarter being hemmed in by the Darling Scarp. The closest bus stop, located in Clifton Street, is approximately 450 metres north west of the proposed development site. There is an existing foot path along Beenyup Road and Amy Street abutting the site.

The bulletin also states that it is crucial in limiting the impact a 'Child Minding Centre' may have on surrounding activities and amenity of existing residential areas. In regard to the level of impact the proposal may have on the amenity of the locality, Officers consider that the area the development is proposed to be located within is an area characterised by low density residential development, with low sized forms of development which reflect the traditional rural suburban character of Byford. The development by way of scale, noise and increased vehicle trips to the site and broader area will negatively impact upon the existing amenity of the area. Therefore, the proposal is not considered consistent with the Bulletin.

During the consultation period, concerns were raised regarding the increasing number of 'Child Minding Centres' in the locality and whether a demand analysis study had been undertaken. The planning framework does not specifically limit the number of business types to an area, recognising competitive neutrality as an important component of a market led economy. While there are some narrow circumstances in which competition may be considered a relevant planning consideration, such circumstances do not relate to this proposal.

Notwithstanding this, the applicant also provided a demand analysis study which concluded that there is a need for an early learning centre in this locality currently and in the future. The study considered projected population growth and other proposed centres in the Byford area.

Car Parking:

Table V of TPS2 sets out the parking requirements for different land uses. The minimum number of car parking bays for a 'Child Minding Centre' is one space per five children accommodated. Accordingly, as the proposal seeks to accommodate up to 120 children, a minimum of 24 parking bays would need to be provided. The plans provided indicate that the proposal is compliant with the minimum TPS2 parking requirements, as it incorporates a total of 31 bays, including one (1) universal bay.

Officers note that parking availability onsite could be significantly impacted upon by the take up of bays by the 19 employed staff, leaving only 12 available for patrons. It is noted earlier that public transport is not conveniently located nearby the subject land, leading to this mode of transport being unlikely to be utilised. This creates a reasonable degree of planning uncertainty as to whether a centre of up to 120 children, and 19 staff, arriving at similar times of the day can occur in a safe

manner. Officers consider that a parking utilisation study should have been completed to demonstrate that the proposed development can achieve a safe operational outcome in respect of parking, drop and pick up activities, noting the prevailing character and amenity of local streets does not see any parking or access spill out in to such streets. For example, a parking utilisation study would help determine if the peak am/pm trips (84) and daily vehicle movements (420) can be efficiently accommodated.

The applicant has provided following table which summarises the parking requirements for the proposed development under LPS3:

| LAND USE | PARKING REQUIREMENT | NO. OF CHILDREN / STAFF | PARKING REQUIRED | PARKING PROPOSED |
|----------------------|---------------------|-------------------------|------------------|------------------|
| Child Minding Centre | 1:10 children, plus | 120 | 12 | 12 |
| | 1:1 employee | 19 | 19 | 19 |
| Total | - | - | 31 | 31 |

Officers consider that although the parking requirements have been met, there are still concerns that insufficient information has been provided to demonstrate that the development will be able to deal with the peak hour demand and overall trips generated by the development.

During the consultation period, these concerns were shared by the Department of Education. The DoE also raised concerns that the development did not cater for additional part-time staff on the premises that may be required.

Development Requirements

Table 11 TPS 2 set out site requirements for selected uses in the Residential Zone

| Child Minding Centre | Required | Provided | Complies |
|--|----------|----------|----------|
| <u>Setbacks</u> | | | |
| Front (Beenyup Road) | 7.5m | 5.02m | No |
| Rear (Corbell Lane) | 7.5m | 20.65m | Yes |
| Side (Western neighbour) | 3.0m | 1.5m | No |
| Plot Ratio (ratio of the gross total of the areas of all internal floors of a building to the area of site) | 0.5:1 | 0.32 | Yes |
| Site Coverage (how much of site is covered by roofed area) | 0.3 | 0.32 | No |

The front and side setbacks of the building are not consistent with Site Requirements of TPS2, which requires a minimum front and rear setback of 7.5m and a 3m side setback. The proposal also exceeds the minimum site coverage.

Officers acknowledge that the development slightly exceeds the prescribed site coverage requirements of TPS 2. The 0.3m site coverage provision reflects the maximum amount of area permitted to be developed upon. This is not a given; site coverage should be considered in context of the scale of development located within the surrounding area to ensure compatibility. In this regard, development within the locality of the subject site, is considered as low scale, moderately sized residential development, with traditional rural character. A development proposal of a commercial nature, which is at the higher end of the site coverage threshold, is considered to impact upon the amenity of the established area.

In terms of the front setback, the proposed development is set back 5.02m from Beenyp Road. The development is also proposed to be a setback of 10.2m from Amy Street, which does not achieve consistency with the existing streetscape. Dwellings along Amy street to the north and east generally have a front setback of 4m. Although the proposed setback of 10m has been increased to allow outdoor play areas further away from the western boundary, it is considered to detract from the existing streetscape.

Officers also consider that the solid wall proposed along Beenyp Road boundary and Amy Street boundary will adversely dominate the existing residential streetscape. Officers consider that the development, in terms of scale, is considered to impact upon the amenity of the area as it is considered out of character from the existing form of development within the area.

Byford Townsite Detailed Area Plan (DAP)

The subject site lies within Character Area A – Old Quarter of the DAP, which predominantly features single storey residential dwellings commonly constructed with face brick, and weather board with iron roofing. The DAP also sets out the aspirations of the future built form of the character area and as such, an assessment against the BDAP provisions under Character A is contained in the table below:

| DAP Requirement | Proposed Development |
|---|--|
| Lot sizes (infill) Lots shall conform with the Residential Design Codes of Western Australia (RCodes) for R20 i.e. minimum 440m ² average 500m ² . (Lots within 400m of the intersection of Beenyp Road and the South West Highway, may be permitted to develop to the R30 code. | Complies – The application does not propose any infill development. The application proposes to amalgamate the two lots if planning approval were secured. |
| Lot Configuration Where rear laneways adjoin a lot, at the time of subdivision, the laneway shall be widened to 10m total width with the widening being shared by lots on both sides of the laneway. | Complies - The site abuts a Right of Way (RoW) Corbel Laneway on its northern boundary, which provide access to the car park to the development. The RoW is proposed to be widened for a depth of 2.5m as shown on the site plan forming part of this assessment. The applicant has provided information that the lane way will be ceded to the Shire. |
| Building Setbacks New buildings constructed fronting the existing streets shall be set back to achieve consistency within the streetscape. | Does not Comply – The proposed development is set back a minimum of 10.2m from Amy Street and 5.02m from Beenyp Road. The proposed setback of 10m along Amy Street does not achieve consistency with the existing streetscape where dwellings along Amy Street generally have a front setback of 4m. Although the proposed setback of 10m has been increased to allow outdoor play areas further away from the western boundary, this is considered to distort the existing streetscape. Officers also consider that the solid wall proposed along Beenyp Road boundary and Amy Street boundary would detract from the existing residential streetscape. |
| Dwelling Placement and Orientation All dwellings shall front the street to maximise casual surveillance of the street or open space, at least one room shall face the street. They | Complies – The proposed building is orientated along a north–south axis. The activity rooms have major openings that would allow natural light. |

| DAP Requirement | Proposed Development |
|--|---|
| shall be orientated along a north–south or east–west axis to maximise solar access. | |
| <p>Scale, Proportion & Built Form (infill)</p> <p>The existing built form, as described above, is of modest, single storey homes with porches, verandahs and/or awnings and steep roof pitches. New development shall complement this character. All new dwellings and/or additions to existing dwellings shall have:</p> <ul style="list-style-type: none"> - a porch, verandah or fixed window awnings to the front of the dwelling (mandatory); - Roof pitch of no less than 25 degrees. | <p>Does not comply. The proposed scale and built form of the ‘Child Minding Centre’ is not considered to be compatible with the immediate locality, which is characterised by single storey modest homes. The design of the ‘Child-Minding Centre’ does not in any way attempt to mimic the existing architectural designs of the dwellings in the immediate vicinity. The building will stand out as a modern building, which is not sympathetic of the existing built form. The quintessential pattern of low density, consistently fronted and modestly developed lots of the Old Quarter, is a perceivable aspect of the character that will be changed should this development be approved. This change is considered to detract from the prevailing and intended future character for the Byford Old Quarter. While the building incorporates an awning fronting Beenyup and Amy Street, the built form is not considered consistent with the surroundings.</p> <p>The roof pitch is also not compliant.</p> |
| <p>Building Materials and Colour</p> <p>Colours that take inspiration from the local soils and vegetation are most appropriate. The following materials and colours are not supported:</p> <ul style="list-style-type: none"> • Walls of custom orb steel sheeting, or concrete tilt up panels. • Colours that are garish and/or sharply contrasting with neighbouring dwellings and the context of the dwelling. | <p>Does not comply – The building is proposed to be constructed of tilt up concrete tilts and timber cladding. The applicant provided information that Dark grey and timber colours will be used to ensure the building is sympathetic to natural soils and vegetation</p> |
| <p>Corner Sites</p> <p>Due to their prominence in the neighbourhood, new dwellings situated on a corner lot must provide a frontage to both streets. This may be achieved by the use of feature windows, wrap-around verandahs, together with architectural detailing which reduces the visual impact of the façade. There should be no blank building facades facing either street.</p> | <p>Complies – The proposed development incorporates an awning around the periphery of the building fronting Beenyup Road and Amy Street.</p> <p>Officers are however of the opinion that the scale of the building will result in a built form that is not compatible with the existing vicinity.</p> |
| <p>Servicing (bin storage, clothes drying areas, air conditioning units etc)</p> <p>Bin storage, clothes drying areas, air conditioning units, water heating systems and other plant and/or equipment are to be located such that they are not visible from the street,</p> | <p>Complies – a provision for bin storage has been located to the rear of the building on the northern boundary near the main car park away from the and areas of street view.</p> |

| DAP Requirement | Proposed Development |
|--|---|
| and all noisy plant and equipment shall be located and insulated to minimise noise impacts on neighbouring properties. | |
| <p>Landscaping</p> <p>Encouraging a more sustainable or environmentally friendly approach to development should be inclusive of the development of private gardens.</p> | <p>Complies – The applicant has provided a Landscape Plan and Revegetation Plan. The commercial nature of the land use limits the capacity to minimise the extent of outdoor paving to achieve the desired car parking for the site and soft landscaping required for child play areas.</p> <p>The proposed landscaping plan demonstrates through design and plant selection to be drought resistant to significantly reduce the requirement for continual reticulation.</p> |
| <p>Paving</p> <p>The hard landscape component comprises mainly surface treatments in the form of footpaths, kerbs and crossovers and of course the general road pavement.</p> | <p>Complies – The subject site has existing footpath along the verges of Beenyp Road and (Amy Street). Two new crossovers are proposed along Amy street</p> |
| <p>Walls and Structures</p> <p>This incorporates public hard landscaping features, and features on private properties such as landscaping walls, steps, retaining walls, etc.</p> <p>Walls and structures should be constructed of appropriate materials.</p> <p>Limestone or limestone like constructions should not be permitted except where they are not visible from the street. Appropriate materials are timber, metal, red brick and granite or laterite rock constructions. These materials are consistent with the natural environment of the locality.</p> | <p>Complies – The proposed retaining walls along the street boundaries have been included on the Landscape and Revegetation Plan.</p> |
| <p>Street Trees</p> <p>Street trees are an integral part of Byford. Where subdivision occurs, street trees shall be planted by the developer at a rate of 10 per 100m, or proportional amount depending on the width of the subdivided lot. The type of street trees to be planted shall be determined by Council to ensure consistency within the street.</p> | <p>Complies – The proposed development will include the planting of ten (10) new street trees shrubs, and grass. A Landscape and Revegetation Plan has been provided and is forming part of this assessment.</p> |
| <p>Fences</p> <p>Front fences in Byford are not common, and therefore new front fencing is not encouraged.</p> <p>a) No fences over 1.2m high in front of the building setback.</p> <p>In the case of corner lots, fencing over 1.2m shall only be permitted in front of the secondary</p> | <p>Does not comply. The application proposes construction of solid walls with an overall height of 2m. The solid wall with perspex infills is proposed along Beenyp Road to Amy Street. While the wall is required to provide security for children and achieve the acceptable noise levels, Officers note that a 2m solid fence has the potential to visually impact the adjoining properties and distort the streetscape. This</p> |

| DAP Requirement | Proposed Development |
|--|---|
| street building setback, as determined by Council and at its discretion. | proposal is therefore not suited for the residential place. |

Form of Development:

TPS2 does not specifically set out development standards for development in the 'Urban Development' zone. Part VII of TPS2 does however provide general development standards.

The objective of provision 7.1 – General Appearance of Buildings and Preservation of Amenity seeks to ensure architectural style, height, bulk colour, use of materials and the general appearance of buildings are harmonious with existing buildings and the amenity of the locality.

Below are the first set of elevations, as viewed from the north (Corbel lane Way), east (Amy Street) and north Beenyup Road).



The applicant has provided updated elevations which can be fully viewed with **attachment 2** and are as follows:

The proposal presents a commercial design that is not sympathetic with the surrounding residential context. The overall design and materials proposed do not replicate the existing residential dwellings, thereby imposing on the existing streetscape. The scale of the building (800m²) is otherwise considered inconsistent with the surrounding buildings in terms of scale and design. The overall design of the proposal fails to complement the established pattern and character of the general locality.

Clause 67 of the Deemed Provisions, namely clause (n), requires the Local Government to consider the amenity impacts of a development. Noise generated from the proposal has the potential to impact

upon the amenity of the area, given the proximity of the proposal to existing neighbouring residential dwellings (sensitive receptors).

To address noise, the applicant submitted an Environmental and Noise Assessment (ENA) in accordance with the *Environmental Protection (Noise) Regulations 1997* (the Regulations). This can be viewed as **attachment 4**. The report assessed noise emissions from outdoor child play areas, car doors closing in the car park and mechanical plants (air conditioning units, plant and extraction fans), against the prescribed standards of the *Environmental Protection (Noise) Regulations 1997*.

The Regulations set out the maximum allowable noise level that may be emitted, measured from the point of the receiver of that noise. In this case, computer modelling was used to predict noise emissions from the development at all sensitive receptors as shown below and demonstrated within the ENA.

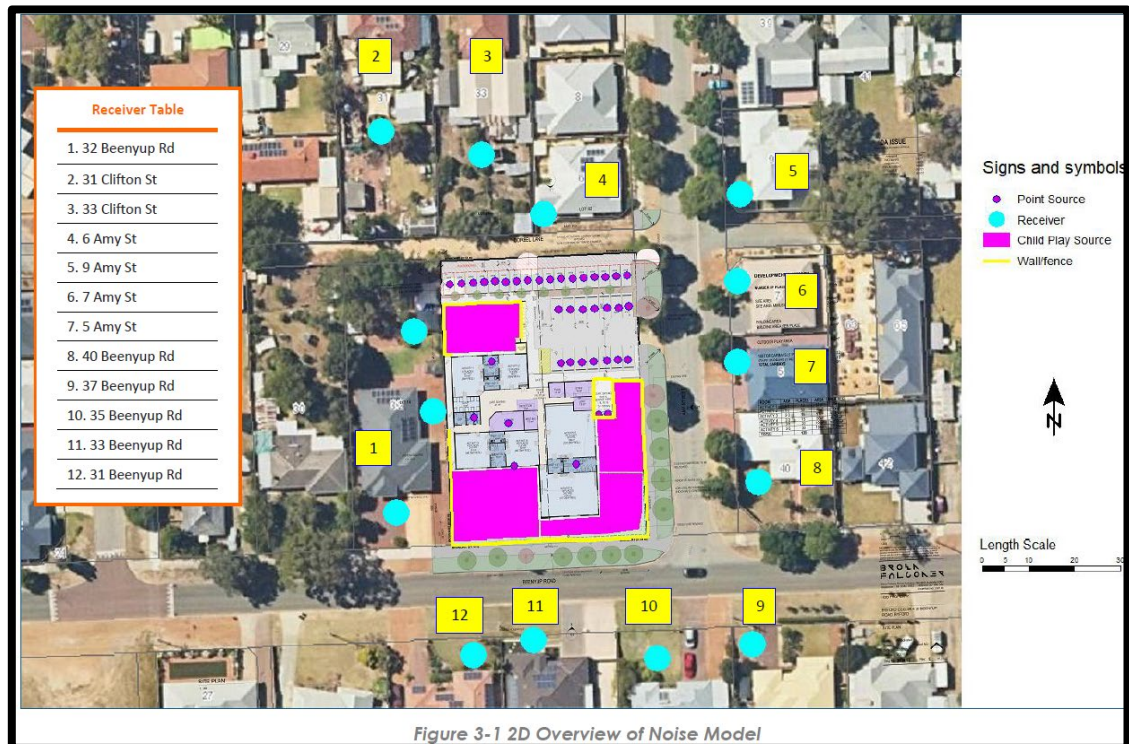


Figure 3-1 2D Overview of Noise Model

The predicted noise levels received at the sensitive receptors within the ENA for the major noise sources has been detailed within tables 5-1, 5-2 and 5-3 of **attachment 4**. The location of the sensitive receptors and noise receivers at this location have been captured in the above plan.

In terms of the child play assessment, the ENA demonstrates the noise receivers located at 1, 6, 7, 8, 9, 10, 11, and 12 will be exposed to noise levels at the higher end of the assigned 47 decibels (dB) level of the threshold. The sensitive receptors within these locations will be exposed to levels between 40 dB – 47 dB.

In regard to the noise emitted from the mechanical plant, the ENA demonstrates that noise receivers located at 1, 6, 7, 8 although comply with the Regulation, will be exposed to noise levels at the higher end of the 37 dB assigned level of the Regulations. The sensitive receptors at these locations will be exposed to noise levels between 27 dB - 30 dB.

In respect to car doors opening and closing, ENA demonstrates that receivers 6 and 7 exceed the 57 dB assigned level of the Regulation. Furthermore, Officers note the receivers at 1, 4, 6, 7 will be exposed to noise levels at the higher end of the 57 dB assigned level of the Regulations.

Officers consider that although the predicted noise levels generally comply with the Regulations, the sensitive receptors, due to the scale and intensity of the development, will be exposed to frequent noise emissions over a duration of the day, which will impact upon the amenity afforded to the occupiers of dwellings. In this regard, section 3(3) of the *Environmental Act 1986* sets out the circumstances where noise will be considered unreasonable (and therefore an offence under the EP

Act). Noise is considered unreasonable when it contravenes the noise regulations, but it is also considered to be unreasonable where, in section 3(3)(b) states:

“having regard to the nature and duration of the noise emissions, the frequency of similar noise emissions from the same source (or a source under the control of the same person or persons) and the time of day at which the noise is emitted, the noise unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person;”

In terms of frequency and duration of noise from car doors, in the SAT matter *Land Alliance Pty Ltd and City of Belmont (205) WASAT 100* it was determined that drop off and pick up events associated with child mining centres would typically require three door openings and closing events.

“The car will be in the car park and the driver will open the driver’s door, alight from the car and close the door. The door where the child is located will then be opened, the child will alight, and that door will be closed, there may also be a requirement for the driver to remove equipment from the boot that child needs for their day. After taking the child into the centre the driver will need to open and close the door.”

The proposed development will generate 84 vehicle trips during the am (7am -10am) and pm (3pm to 6pm) peak times using a conservative amount of three door openings and closing events would trigger 126 events during the peak periods (42 x 3). In terms of the am peak period, Officers consider this to be a significant number of events at a time in the morning where low level activities in a low density residential suburb may be expected. The ENA has already demonstrated noise levels associated with this event being at the higher end of the threshold.

In terms of the outdoor play area, this will be available for use after 7am. There are no other details surrounding the periodic use of these areas subject to groups. The play areas are located around the north, south and west of the building and are in close proximity to residential properties. Within these play areas, there are likely to be number of activity points (such as a sandpit) which will attract children, thereby increasing the likelihood of concentration, frequency and extended periods of noise being received at the nearby sensitive receptors. Again, the ENA already demonstrates noise levels received at a number of the sensitive receptors are at the higher end of the threshold.

The mechanical plant comprises of the kitchen rangehood and exhaust fan to be located on the roof, various exhaust fans (toilets, laundry, nappy room) also to be located on the roof, AC plant to be located on ground level to be operational throughout periods of the day. The ENA stating that *“the most critical mechanical plant noise levels are to the residences to the east”*. The nature of the mechanical plant means that noise would be emitted over the course of the day and before 7am.

Officers therefore consider that the proposed development in respect to the frequency, concentration and duration of the noise emissions generated from the development to pose an unreasonable impost on the amenity of the area afforded to the occupiers of the nearby sensitive receptors. The development in this regard should not be supported.

Officers advise however, even if the applicant argues that the noise emission are not unreasonable as they comply with the Regulations, Officers consider compliance with the Regulations should not be the only test of deeming the appropriateness of a proposal.

Consideration needs to be given to the noise emissions generated from the development in context to the existing levels of noise in the locality, which form part of the amenity of the area to appropriately determine the impacts of a development. This position is consistent with Supreme Court’s decision in *G Rossetto & Co Pty Ltd v District Council of East Torrens (1984) LGRA 390*, Matheson regarding the South Australian Noise Control Act 1976-1977 which was also cited by the Western Australian Town Planning Appeal Tribunal in *BSD Consultants Pty Ltd and McDonalds Australia Ltd v City of Stirling* (Appeal No 1 of 1996, 24 May 1996) as follows:

“The Act is thus an Act to control excessive noise and provides a penalty for breach of its provisions. I can understand the reference to it by the acoustical engineers, but I do not think it by any means follows that emission of noise that is not excessive pursuant to its provisions and to the said regulations has of necessity no effect on the amenity of a particular locality.”

As such, without an assessment demonstrating the existing noise levels, there is insufficient information to assess the impacts of noise and the appropriateness of the development. Making a decision purely on meeting the assigned levels of the Regulations does not reflect proper and orderly planning. Assigned noise levels can be poor measures especially in quieter areas, and the logarithmic nature of noise means for every 3db increase in noise from what currently exists, the noise is perceived as being twice as loud. This explains some of the importance in understand clearly existing noise levels.

Traffic

The category of the vehicles associated with the proposed development will predominantly comprise of small passenger vehicles dropping off and picking up children, as well as staff and waste vehicles. Vehicle access to the subject site is proposed via two crossovers from Amy Street. The northern crossover will provide access to the staff car park abutting Corbel Lane way with 17 bays. The southern crossover will provide access to the main parking area comprising of 14 parking spaces, including two staff spaces plus one Accessible (disabled) space. There are existing footpaths along the northern side of Beenyup Road and the western side of Amy Street, immediately adjacent to the proposed development.

During the consultation period, concerns were raised to increased traffic movements on the road network, and potential safety issues. A Transport Impact Statement (TIS) was provided with the application, which can be viewed in **attachment 5** to this report. The TIS assessed traffic generated by the proposed development and its potential impact on the overall performance of the surrounding local road network, which includes South Western Highway, Clifton Street, Mary Street and Amy Street.

Beenyup Road is classified as a Local Distributor Road and Amy Street is classified as an Access Road, both under the Main Roads Western Australia (MRWA) road hierarchy, and has a speed limit of 50 km/h.

The findings on the volume of traffic likely to be generated by the proposal was estimated using surveyed traffic counts obtained from the Main Roads WA Traffic Map website and available data. The TIS states that the AM and PM peak periods for the early learning centre is 7am to 10am and 3pm to 6pm, respectively. The peak periods were aligned, with the early learning centre having more staggered peak. The TIS provided that the development is estimated to generate a total of 420 vehicle trips per day, with a peak hour flow of 84 vehicle trips per hour during both the AM and PM peaks, which falls under the 'moderate impact' category according to WAPC Transport Impact Assessment Guidelines.

"The TIS assumed that 55 percent of the total trip generation will access the site to/from the west (via Beenyup Road and South Western Highway), while 30 percent is expected to/from the east, leaving 15 percent to/from the north. It also states that a significant proportion of the total traffic generation will be 'passing trips' that are already on the road network, travelling from the surrounding residential area to/from South Western Highway or to/from the nearby Primary School. The report therefore contents that the proposed development is therefore expected to have little or no traffic impact on the current operation of the nearby signalised intersection and surrounding road network. The traffic generated by the proposal will not result in unreasonable levels of traffic congestion around the school site at peak drop-off/pick-up times".

Notwithstanding the findings of the report concluding that the road network has the capacity to accommodate the extra traffic, Officers are concerned that the increase traffic movements will adversely impact upon the residential amenity of the locality. The 420 additional vehicle movements to the site (84 vehicle trips per hour during the AM and PM) would be a significant increase from the existing vehicle movements within the locality which is predominately associated with residential development. The extra vehicle movements and noise associated with it aligns more towards a scale of development which would be better placed within a commercial or centre zone of the Shire where there are the appropriate buffers to sensitive receptors and where the expectation of development is different.

Local Planning Policies

Local Planning Policy 1.6 – (LPP 1.6) – Public Art for Major Developments

The objective of LPP1.6 is to facilitate per cent for art to enhance public enjoyment, engagement and understanding of places through the integration of public art. The policy sets out the requirements for physical and financial contributions for public art for any development valued at \$1 million or greater.

Officers note that the applicant has not provided any details for a public art feature within the design of the development. The applicant acknowledged that the provisions of the LPP further provided a view that the imposition of a condition did not serve a proper planning purpose and made reference advice with DR 87 of 2018 (**the BGC Case**) on 4 September 2018. However, Officers consider that there are differences between the matters. This development, if approved, will be a commercial development within a residential setting. The above case involved public art for industrial development within an Industrial zone. The impacts upon the residential amenity from commercial development being constructed, can be balanced by art which seeks to reflect the broader characteristics of the locality, reducing the overall impact of the development.

In this instance, commercial development is proposed within a residential setting which, by way of its natural form of development, can impact upon the amenity of the area. The area currently comprises of residential development within a traditional rural character area of Byford. The purpose of the public art in this case would be to celebrate this and contribute towards a sense of place.

To this end, should the application be approved, a percentage for art condition of development approval would be recommended by way of a condition, consistent with the policy. The condition would ensure that public art is accounted for and further negotiation with the applicant can be undertaken as part of the ongoing process.

Local Planning Policy 4.11 (LPP4.11) – Advertising

Local Planning Policy LPP 4.11 – Advertising sets out development standards and requirements for advertisements. The plans, as submitted, have identified nominal wall signage for the proposal integrated into the façade of the development. No detailed drawings of the signage were provided with the application.

If the application were to be approved, a signage plan will be required to be prepared and approved prior to operation of the development, to ensure any signage is compliant with the policy.

Local Planning Policy 2.4 – Water Sensitive Design

LPP2.4 aims to maximise water efficiency by encouraging best practice urban water management methods. The policy aims to ensure water sensitive design best management practices are implemented for new developments with the Shire.

A Stormwater and Drainage Management Plan (SMP) will be required, demonstrating how the stormwater incident to the site is managed shall be provided prior to commencement of works. The SMP shall address the stormwater management and treatment system for managing stormwater quality and quantity from small, minor and major rainfall events.

The car park stormwater drainage system to be designed, constructed and managed in accordance with the DWER's *Decision process for stormwater management in Western Australia (November 2017)*. Rain gardens and flush kerbing providing first flush storage and water treatment is considered an important design response for the land. This would be included as a condition of approval if the development were to be approved.

Local Planning Policy 24 (LPP24) – Designing Out Crime

LPP24 encourages commercial development to incorporate principles of Crime Prevention through Environmental Design (CPTED). LPP24 sets out five key crime prevention principles that are to be applied to different levels of the planning framework according to the policy. A development application needs to be assessed against the principles of the policy. The principles relate to

surveillance, access control, territorial reinforcement, target hardening, management, and maintenance.

Officers note that a solid wall has been included, which would normally impact passive surveillance and design out of crime. The use of prospects infill elements appears to address some degree of visual surveillance of the surrounding public realm.

Developer Contributions (DCA3)

This development falls within Development Contribution Area No. 1 (DCA1), which is incorporated into the Town Planning Scheme No. 2 under Plan No.10A (Byford Traditional Infrastructure DCP). It is therefore subject to the provisions of the DCP, and the landowner will be required to make the associated Development Contribution payment when the liability is triggered (the application for the Building Permit).

As the Byford Traditional Infrastructure DCP is currently undergoing an Amendment (Amendment 208) to the Town Planning Scheme, which is considered Seriously Entertained (being adopted by Council and submitted to the WAPC for final approval), the landowner will be required to make a payment in line with the new Amendment, once gazette and the associated DCP Report Revision is in place, at which point the revised Contribution Per Lot value will be confirmed.

As such, the subject site will be subject to Development Contributions if approval of the development were to be issued.

Conclusion:

Officers consider that the proposed 'Child Minding Centre' proposed to cater a maximum of 120 children is a significant scale development that would adversely impact on the surrounding residential amenity property by way of noise. The resultant built form is not considered to be sympathetic to the surrounding residential area which is characterised by contemporary modest single dwellings predominant of the Byford Old Quarter.

Officers are concerned that the proposal in its current form and scale is not compatible with the residential settings of this locality and would adversely impact the amenity of the locality and therefore recommends refusal of the application.

Alternatives

In accordance with clause 17(4) of the Regulations, the JDAP may determine an application by either approving the application (with or without conditions) or refusing the application.

Should the JDAP resolve to approve the application, this determination needs to be made based on valid planning considerations as outlined under clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 and as set out in the Development Assessment Panel Practice Notes: Making Good Planning Decisions.

However, as outlined in the report sections above, the Shire consider that the proposal, in its current scale, will adversely impact upon the existing and intended future amenity of neighbouring properties and the general locality, and is incompatible with the locality and it is therefore recommended that the application be refused.