



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via teleconference on

WEDNESDAY 17 NOVEMBER 2021

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager Development Assessment

Panel Members

David Crofts	Chair
Robert Hussey	Town Planner
Lisa Bella Esposito	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 17 November 2021

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5.0	NON PUBLIC MEETING ITEMS	
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
	Nil	

ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 3 NOVEMBER 2021

Panel note that the Minutes of the Northern Beaches Local Planning Panel held 3 November 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 CATEGORY 3 APPLICATIONS

ITEM 3.1	DA2021/0340 - 194 FOREST WAY, BELROSE - CONSTRUCTION OF A BULKY GOODS SHOP
AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2021/783983
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Independent Public Hearing Panel for to make a Panel recommendation to then be referred to the Director, Planning and Place for determination.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0340 for construction of a bulky goods shop at Lot 2672 DP 752038 & Lot 1 DP 1026189 & Lot 100 DP 1144988, 194 Forest Way, Belrose for the reasons set out in the Assessment Report.



DEVELOPMENT ASSESSMENT REPORT

Application Number:	DA2021/0340
Responsible Officer:	Peter Robinson – Executive Manager
Land to be developed (Address):	• Lot 1 in DP 1026189 (194 Forest Way) • Lot 2672 in DP 752038 (194 Forest Way); and • Lot 100 in DP 1144988 (192 Forest Way).
Proposed Development:	Construction of a bulky goods shop
Locality:	Warringah LEP 2000 – C8 Belrose North
Category:	Category 3
Referred to DDP:	No
Referral to IPHP:	Yes
Land and Environment Court Action:	No
Owner:	• The Christmas Fair Pty Ltd • June Dawes & Malcolm Henry Dawes
Applicant:	Cosimo Graziani
Application Lodged:	03/05/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	23/07/2021 to 06/08/2021
Advertised:	23/07/2021 (Integrated Development)
Submissions Received:	Nil
Recommendation:	REFUSAL
Estimated Cost of Works:	\$2,020,000.00

EXECUTIVE SUMMARY

This report has been submitted for an Independent Public Hearing Panel for consideration of Development Application No. DA2021/0340 for the construction of a bulky goods shop at 194 Forest Way, Belrose. The application will be determined under delegation following consideration of the findings and recommendations of the panel.

The site is located in an area identified as the "Deferred Lands / Deferred matter" under Clause 1.3 (1A) of the Warringah Local Environmental Plan 2011 (WLEP 2000) and therefore the WLEP 2000 is the prevailing LEP.

The site is located within the C8 Belrose North locality pursuant to the WLEP 2000 and the use of that land for the purpose of a bulky goods shop is considered a 'Category 3' land use. Clause 12 of the WLEP 2000 states that Category 3 development is a development that is generally inconsistent with the desired future character of the locality but does not create a prohibition on the carrying out of development.

Clause 15 (2) requires that the consent authority must not grant consent to an application that includes development classified as Category 3 unless the consent authority has considered the findings and recommendations of an independent public hearing into the application, including reasons for its recommendations. For this reason, the application is submitted to the Panel.

This report details that the development of the site for a bulky goods shop is an inappropriate land use for the Locality and is of a disproportionate bulk and scale to surrounding buildings and therefore fails to respect the desired future character of the area.

The site is on Forest Way which is a classified road and requires the pump out of water from the site to the road and therefore requires approval from Transport for NSW (TfNSW). The Development is classified of Integrated Development pursuant to s.4.56 of the EP&A Act 1979.

During the course of this application plans were submitted three times to TfNSW. In their final response (October 2021) TfNSW noted that their previous concerns had not been addressed and included several new concerns about traffic safety and the location of the basement car park.

Given the inappropriate land use, design of the building, and the absence of any concurrence or General Terms of Approval from TfNSW, it is recommended that the development application is not considered to be in the public interest and is therefore recommended for **refusal**.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted from the public domain (due to the COVID-19 pandemic) and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- No submissions were received in response to the exhibition of the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

LOCALITY PLAN (not to scale)



SITE DESCRIPTION

The subject site consists of two Lots identified as Lot 1 in DP 1026189 and Lot 2672 in DP 752038 and part of Lot 100 in DP 1144988. The two whole Lots (being Lots 1 and 2672) are collectively known as 194 Forest Way, Belrose. The part Lot is known as 192 Forest Way, Belrose. For the purpose of this report, these lots are described as the 'site'.

The site is generally square in shape with a street frontage to Forest Way of 30.175m, depths of 46m and 56m and a rear boundary of 40m. No. 194 Forest Way has a total surveyed area of 2,247m² and the part of Lot 100 has an area of approximately 21m² which results in a total site area of 2,268m².

A dilapidated two-storey building exists on the site, formally used as a dwelling house but approved and used as an office building. That building has been vacant for over one year.

The site has a number of trees throughout of varying heights and species, however it is noted from the submitted arboricultural findings that only one tree on site is native. That native tree is in a poor structural condition.

The site has a slight cross fall of 2.13m from north to south (RL191.17 north to RL189.04 south).

SITE HISTORY

Building Approval 348/51

Approval for the erection of a fibro dwelling and garage on Portion 2070, No. 196 Forest Way, granted by Council in 1951.

Subdivision

On 29 November 1963 the Land Titles Office subdivided Portion 2070 to create Portion 2672 being an 'L' shaped allotment (now identified as Lot 2672 DP 752038).

Building Approval 669/68

Approval for a three-bedroom dwelling house with garage, laundry and store at ground level. Prior to the erection of this dwelling a fibro dwelling and garage was erected under Approval 348/51 to which Council had then acknowledged that the dwelling house benefitted from existing use rights, as the land was (then) proposed to be partly recreational land.

Development Application No. 1985/717

Application for the additions to the existing dwelling to provide a double car garage and conversion of the existing garage into liveable space. Refused by Council on 02 April 1986.

Development Application No. 1986/415

Application for the use of the existing garage as domestic storage and erection of a swimming pool and double carport ancillary to the dwelling house. Approved by Council on 18 September 1986 (Consent No. 86/378)

HB1767/194-A

Application for the erection of a double carport. Refused by Council on 25 September 1989.

Development Application No. 1996/133

Application for the addition of a lecture hall to the existing premises. Refused by Council on 10 April 1997.

Development Application No. 2004/433

Application for alterations and additions, erection of shed and change of use from office to showroom for the display of swimming pool designs and water features.

The application involved six car parking spaces, seven staff members at any one time and operational hours of 7.00am to 5:30pm Monday to Friday and 8.00am to 12pm Saturday.

Consent granted on 14 March 2005.

PROPOSED DEVELOPMENT

The application seeks Development Consent for the demolition of all existing improvements on site and for the construction of a bulky goods shop.

A bulky goods shop is defined in the WLEP 2000 as:

“...a building or place used for the sale by retail or auction of goods or materials which are of such a size, shape or weight as to require:

- a) a large area for handling, storage or display, or*
- b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase,*

but does not include a building or place used for the sale of foodstuffs or clothing.”

The proposed building is single storey, has a footprint of approximately 409m² with an internal ceiling height of 6.7m and sits over one level of basement car parking. The basement accommodates 16 x customer car parks, bathrooms and lift/stair access to the ground floor. The building accommodates an ancillary café for customers.

Northwards of the proposed building is a driveway and turning bay leading to a covered loading dock area to the rear of the building.

The bulky goods shop is for the retailing of Christmas trees ranging from 1.5m to 5.0m in height (both natural and artificial), Christmas lights, decorations, and other associated goods.

The trees identified on the site currently as Trees 12 to 36 and 40 & 41 are scheduled for removal and are to be replaced by 32 new trees, 14 of which are considered canopy trees (>20m in height).

The proposal seeks consent for the following hours of operation:

February – September

Monday – Friday – 10am to 4pm

October – January (“Christmas Season”)

Monday – Sunday – 7am – 7pm

The nature of the business lends the February to September months to generally comprise of ‘out of season operations’ including administration functions and receipt of imported goods.

The business is expected to employ up to four employees at any one time.

AMENDMENTS TO THE SUBJECT APPLICATION

Council wrote to the applicant on 7 June 2021 and raised concern with the developments front building setback, building height, side and rear setbacks, landscaping, internal access to sunlight and failure to obtain concurrence from Transport for NSW.

Subsequent to the above correspondence Council met with the applicant to discuss the issues raised in further details, and revised plans were formally accepted by Council on 16 July 2021 and again on 16 August 2021. The 16 July revised plans were renotified to neighbours.

The August revised plans were not renotified as the amendment was minor and did not require notification in accordance with Council’s Community Participation Plan.

The August revised plans were re-referred to Transport for NSW (TfNSW) who wrote on 18 October 2021 that they are unable to support the application and provide concurrence under section 138 of the Roads Act 1993 for several reasons (expanded on later in this report).

It is the architectural plans received in August (Revs. E and F) that are assessed within this report.

STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- Environmental Planning and Assessment Regulations 2000;
- Roads Act 1993;
- State Environmental Planning Policy No 55 - Remediation of Land;
- State Environmental Planning Policy (Infrastructure) 2007; and
- Warringah Local Environmental Plan 2000.

PUBLIC EXHIBITION

The subject application has been publicly exhibited twice in accordance with the EPA Regulation 2000, and the Northern Beaches Community Participation Plan.

The first public exhibition occurred between 7 May 2021 and 26 May 2021 (the second occurrence resulting from the submission of revised plans). The second public exhibition occurred between 22 July 2021 and 6 August 2021.

Furthermore, the application was advertised on 23 July 2021 and a notice was placed on the site.

As a result of both public exhibition periods, no submissions were received in response.

REFERRALS

External Referrals

External Referral Body	Comments
Ausgrid	Supported subject to Conditions <i>Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.</i> Underground Cables <i>Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.</i> <i>Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.</i> <i>Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.</i>
Aboriginal Heritage Office	Supported subject to Conditions <i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>

External Referral Body	Comments
	<i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</i>
Transport for NSW	Not Supported <i>Reference is made to Council's referral, regarding the above-mentioned application which was referred to Transport for NSW (TfNSW) for comment in accordance with Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007 and concurrence under Section 138 of the Roads Act 1993.</i> <i>TfNSW has reviewed the submitted information and cannot provide concurrence under Section 138 of the Roads Act, 1993 for the following reasons:</i> <i>Swept paths shall be provided for medium rigid vehicles ensuring ingress and egress movements can occur concurrently when the driveway is occupied by another vehicle.</i> <i>Updated swept path plans need to be provided to indicate that proposed vehicle movements do not impact the safety and efficiency of Forest Way (classified road).</i> <i>Concern is raised regarding the current access layout due to the proximity of the basement carpark access to Forest Way. Vehicles will need to decelerate from 80km/h in the through lane (as the shoulder is narrow), turn left into the driveway and then immediately turn left again to access the basement carpark. Safety implications for the access design are of concern and in view of the above, it is strongly suggested that the basement access location design is reviewed.</i> <i>The merge from the northbound seagull treatment ends at the location of the property. This will exacerbate the safety implications and will need to be considered as part of the access design.</i> <i>The kerb and gutter shall be extended to the northern property boundary. The neighbour's access is immediately north of the property boundary. The subject developments driveway will need to this into account in the design.</i> <i>The existing vehicle crossing, and driveway shall be removed/reinstated, and the footway regraded and turfed to suit new kerb line levels.</i>

External Referral Body	Comments
	Drainage discharge points need to each state individual discharge rates. It should also be noted that the post development OSD pipe flow (m3/s) value of 0.039 is too high to be discharged from one single location as it will adversely impact Forest Way. <u>Planner Comment</u> The development is Integrated Development pursuant to Section 138 of the Roads Act 1993 and Council has no authority to consent to the application without the approval of TfNSW. For this reason, the application is recommended for refusal.

Internal Referrals

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	Supported subject to Conditions <i>The applicant proposes to install a septic tank with a collection well to cater for waste water from the operation of the commercial business.</i> <i>Appropriate design and location details have been provided therefore Council will provide relevant conditions of consent.</i>
Landscape Officer	Supported subject to Conditions Council's Landscape Officer provided comments on the proposal as submitted and raised concern with several issues. Revised comments were received on 6 August 2021 in response to revised plans. Those revised comments read: <i>Amended plans, including amended Landscape Plans prepared by JCA Landscape Architects are noted.</i> <i>The amended plans are considered to address the issues raised previously, including additional shrub species in the front setback, additional canopy trees, improved rear setback with additional soft landscape area and additional planting to the southern side of the site via deletion of previously proposed access drive.</i> <i>In view of the amendments provided following discussions, no objections are raised to approval subject to conditions as recommended.</i>
(NECC) Bushland and Biodiversity	Supported subject to Conditions <i>Council's Biodiversity Department have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</i> Warringah LEP 2000 - C8 Belrose North

Internal Referral Body	Comments
	• Warringah LEP 2000 cl. 56 Retaining distinctive environmental features on sites • Warringah LEP 2000 cl. 58 Protection of existing flora <i>The Development Application seeks consent for demolition of existing structures, tree removal and construction of a bulky goods facility with basement car parking and associated landscaping.</i> <i>As the proposal is located in the 'deferred lands' the WLEP 2000 applies and is assessed under the C8 - Belrose North Locality. In accordance with WLEP 2000 C8, the development must align with the desired future character of the Belrose North Locality. The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.</i> <i>The Arboricultural Report (About Trees 2021) submitted with the Development Application demonstrates that a large proportion of vegetation within the development site is exempt, with the exception of one (1) prescribed tree, a Eucalyptus haemastoma. This tree requires removal as the Arborist has identified it to be in poor structural condition.</i> <i>In accordance with the required bushland setting prescribed by C8 - Belrose North Locality, a minimum of 50% of the site area is to be kept as natural bushland or landscaped with local species. A Landscape Plan (JCA Urban Designers Landscape Architects 2020) has been submitted with the Development Application which identifies that 50% of the site will be landscaped. The proposed planting schedule is largely comprised of locally indigenous native species and is considered appropriate for landscaping.</i> <i>As a large majority of vegetation within the development site is considered exempt, only one (1) prescribed tree requires removal. As such, and in accordance with WLEP 2000 cl. 56, it is considered that the development has been designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land. In accordance with WLEP 2000 cl. 58, the development has been designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</i> <i>Subject to these conditions of consent, Council's biodiversity referrals team are satisfied that the proposed development complies with the controls listed above.</i>

Internal Referral Body	Comments
NECC (Development Engineering)	Not Supported In their third response dated 1 November 2021, Council's Development Engineer advised that: <i>Previously requested below information is not provided;</i> • <i>Amended plans with provision of kerb and gutter along full frontage of site</i> • <i>Longitudinal section of the centre line of the driveway at an interval of 2m showing existing and proposed levels and grades.</i> • <i>A swept path diagram for the amended plan for the single vehicular access is required, demonstrating that the largest vehicles are able to simultaneously enter and exit the site in a forward direction.</i> • <i>Lane allocation of Forest Way Road should be included on the swept path plans and swept paths should demonstrate manoeuvres from the kerb side lane. Movements should not impact traffic flows on adjacent lanes.</i> <i>In the absence of requested information and in addition to TfNSW's latest letter, Reference: SYD20/00580/06, dated 18 Oct 2021, Development Engineer is unable to assess and finalise the application.</i> The above matter is included as a reason to refuse the application.
Strategic and Place Planning (Urban Design)	Supported subject to Conditions Council's Urban Designer provided comments on the proposal as submitted and raised concern with several issues. Revised comments were received on 6 August 2021 in response to revised plans. Those revised comments read: <i>The amended drawings (Rev F) submitted on 13 August 2021 have addressed all the issues highlighted previously.</i>
Traffic Engineer	Supported subject to Conditions and concurrence being granted by TfNSW Council's Traffic Engineer provided comments on the proposal as submitted and raised concern with several issues. Revised comments were received on 6 August 2021 in response to revised plans. Those revised comments read: <i>The proposed amendment includes the provision of 16 parking spaces plus a trailer parking / loading area at the rear of the building, the parking provision satisfies the parking requirements for a bulky Good Retail.</i>

Internal Referral Body	Comments
	<i>Traffic generation of the site is not considered to have significant impact on overall road network.</i> <i>The proposal can be supported subject to the TfNSW concurrence.</i>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on "Draft Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	A Development Control Plan does not apply to the site.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	- The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent. - Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent. - Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter can be addressed via a condition of consent. - Clause 54 and 109 of the EPA Regulations 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration	Comments
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	Whilst no objections are raised to the proposed land use (i.e. bulky goods shop) and operation of the site, the lack of concurrence from TfNSW renders the site unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in response to the public exhibitions of the application.
Section 4.15 (1) (e) – the public interest	Transport for NSW has not granted concurrence to the development application. The matters raised by TfNSW imply potential impacts and safety implications which have not been fully addressed and therefore, it cannot be considered that the application is in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs) – As Applicable

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and retail purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the retail land use.

SEPP No. 64 – Advertising and Signage

The application does not propose any advertising or signage.

State Environmental Planning Policy - Infrastructure

Ausgrid

Clause 45 of the SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment

Ausgrid has raised no objections to the development but notes that the development shall have to take care in construction due to underground cables.

Transport for NSW (TfNSW)

Clause 101 - Development with frontage to classified road states:

"The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - i. *the design of the vehicular access to the land, or*
 - ii. *the emission of smoke or dust from the development, or*
 - iii. *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment

Forest Way is a classified road. TfNSW has raised concern the safety, efficiency and ongoing operation of the classified road will be adversely affected by the development for the reasons elaborated upon in their External Referral comments, earlier in this report.

Roads Act 1993

Section 4.46 of the Environmental Planning and Assessment Act 1979 requires that approval from TfNSW is granted pursuant to Section 138 of the Roads Act 1993 for any of the following works:

- a) *erect a structure or carry out a work in, on or over a public road, or*
- b) *dig up or disturb the surface of a public road, or*
- c) *remove or interfere with a structure, work or tree on a public road, or*
- d) *pump water into a public road from any land adjoining the road, or*
- e) *connect a road (whether public or private) to a classified road*

The development requires the pumping of water into a public road from the subject development site and is therefore classified as Integrated Development.

Section 138 (2) of the Roads Act 1993 states that:

"A consent may not be given with respect to a classified road except with the concurrence of TfNSW."

As detailed in the External Referrals section of this report (earlier) TfNSW has not granted concurrence to the development application pursuant to Section 138 and therefore the application cannot be approved.

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011)

The C8 Belrose North locality (which covers the land subject to this Application) under the WLEP 2000 was proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning, Industry and Environment deferred land in the Oxford Falls Valley and Belrose North areas from the Warringah Local Environmental Plan 2011 (WLEP 2011) in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

Locality:	C8 Belrose North
Development Definition:	bulky goods shop <i>means a building or place used for the sale by retail or auction of goods or materials which are of such a size, shape or weight as to require:</i> <i>a) a large area for handling, storage or display, or</i> <i>b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase,</i> <i>but does not include a building or place used for the sale of foodstuffs or clothing.</i>
Category of Development:	Category 3

Desired Future Character Statement:

"The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour."

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment

The subject site is vacant of use and accommodates a two-storey brick building with several large trees centrally located on the site. The development has a poor address to the street with no buffer landscaping and is not considered to enhance the streetscape.

The development, whilst removing mature trees and excavating the landform, would result in a formalised landscape buffer between the street and the development with the building being setback 20m from the road. The building footprint measures 20m by 20m and represents less than 20% of the total site area.

The building is centrally located to allow the establishment of vegetation along the sites edges to screen the development both immediately, and into the future once the landscaping matures.

The development proposes a simple and contemporary material palette of off-form concrete and Colorbond cladding to the exterior of the building, both in darker muted tones. These materials and colours will blend in with the landscape over time. However,

the proposed built form will present as an industrial style building within the locality which is not consistent with the current or desired future character of the area. Whilst the development proposes to improve landscape treatment to Forest Way, this does not provide justification for an industrial style building with large areas of concrete driveways surrounding the building which changes the character of the locality and how the site is perceived from surrounding properties.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment

The development is for the construction of a bulky goods shop. The site shall not accommodate any housing and therefore the housing density standards do not apply to the development.

As the proposal is not a conventional detached dwelling house, the development is required to conform as a "low intensity, low impact" use as described in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*. The following definition was provided in that judgement:

Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it.

Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

Low Intensity assessment

In consideration of whether the impact and intensity of the development would change the character of the C8 Belrose North locality it is first prudent to establish what that character is.

In 2018 a detailed analysis of the pattern of land use within the C8 locality surmised the land uses to be follows:

- 13 x dwelling houses (including 1 dual occupancy).
- 1 x 35 room boarding house.
- 1 x riding school.
- 1 x Optus satellite communication facility.
- 1 x sandstone quarry.
- 3 x plant nurseries.
- 1 x plant nursery / landscape wholesaler / restaurant.
- 1 x electricity substation.

- 5 x schools.
- 1 x childcare centre.

The locality also has an additional two x childcare centres and one x boarding house development approved but unbuilt. More than 50% of the land within the C8 locality is undeveloped bushland owned by the Metropolitan Local Aboriginal Land Council.

A recurring theme among these land uses is their continuity of use throughout the year, i.e. it would generally be anticipated that they experience the same intensity of use on all days of the year (with schools being the obvious exception).

This development is for a bulky goods shop. By nature of the limited and specialised proposed use of the premises (i.e. retail of Christmas merchandise) it can be reasonably assumed that customers would generally only visit the premises once per year, and that those visits would be around the Christmas period (October to January). This is reflected in the proposed hours of operation.

The Traffic and Parking Assessment report anticipates 11 vehicle movements per hour to the site, generally outside of peak hours. This again is reflected by the provision of 16 customer parking spaces in the basement.

By virtue of the low number of vehicle movements and hours of operation, it can be concluded that the frequency and intensity of use of the site is significantly lesser than that of other land uses in the C8 locality, and that the use as a bulky goods shop can be described as Low Intensity.

Low Impact assessment

The relevant potential impacts of the proposed development are addressed as follows:

Built Form

The proposed building is centrally located on the site and is sited a compliant distance from all boundaries. The proposal provides a curtilage of landscaping to the street which shall help screen the building and provide an enhanced landscaped setting commensurate to the existing building.

The development creates shadows to the south, however that overshadowing is reasonably minimal and creates no unreasonable impacts. The scale of the building proposed is consistent with that envisaged by the development controls.

The impact of the built form on neighbouring properties and the wider locale is considered to be minor, however the built form is not consistent with the current or desired future character of the C8 locality.

Operational

The development is proposed to operate weekdays for most of the year, with operations extending to 7 days a week for longer hours during the Christmas season.

The use of the site (as a bulky goods shop generally) is not anticipated to create any unreasonable acoustic impacts either through deliveries, vehicle movements or general

customer noise. The site is on a busy road and both adjoining properties are also partially commercial in nature thereby creating their own noise.

Traffic impacts detailed in the Traffic and Parking Assessment report have been considered by Council's Traffic Engineers as not having a significant impact on the overall road network.

On balance the nature of the business, the location of the site and the design of the building result in a low impact development.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment

The existing site does not have a bushland buffer to Forest Way. The majority of the site frontage is free of vegetation with the exception of several tall trees in the north-eastern corner that are proposed to be removed.

The proposal provides a new landscaped buffer along Forest Way that is free of fencing. The buffer comprises of numerous plantings including canopy trees that grow in excess of 20m in height. The landscaping will appear formalised once planted, but shall develop a bushland character more consistent with the streetscape once it matures.

The proposal is considered to be an enhancement to the site and the landscaped vista of the streetscape.

Development in the locality will not create siltation of pollution of Middle Harbour.

Comment

The development shall not create siltation of pollution of Middle Harbour. Appropriate conditions pertaining to sediment and erosion control can be enforced should the application be recommended for approval.

As detailed above the proposed development is not considered to be consistent with the Locality's DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Compliance Table C8 Belrose North Locality Statement				
Built Form Standard		Required	Proposed	Compliance
Building Height	Ridge	8.5m	8.5m	Yes
	Ceiling	7.2m	7.2m	Yes
Housing Density		1 dwelling per 20ha	N/A	N/A
Front Setback		20m	20m	Yes

Built Form Compliance Table C8 Belrose North Locality Statement			
Built Form Standard	Required	Proposed	Compliance
Side Setback (north east)	10m	10m	Yes
Side Setback (south west)	10m	10m	Yes
Rear Building Setback	10m	10m	Yes
Rear Setback Area	Free other than fence and driveway	Driveway	Yes
Bushland setting	50% (1,123.5m ²)	51% (1,147m ²)	Yes

The proposed development is considered to satisfy the Locality's Built Form Controls; accordingly, no further assessment will be provided in this regard.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	Conditions are imposed requiring the external finishes of the roof to be of a medium to dark range colour in order to minimise glare and reflection.	Yes
CL39 Local retail centres	No	The site is not in a local retail centre.	N/A
CL40 Housing for Older People and People with Disabilities	No	The development does not propose housing for older people and / or people with disabilities	N/A
CL41 Brothels	No	The development is not for a brothel.	N/A
CL42 Construction Sites	Yes	If approved, the construction of the proposed development on the site is not expected to cause any unreasonable impacts on the amenity of surrounding land, pedestrian safety or the natural environment. Waste management can be appropriately controlled by conditions of consent.	Yes
CL43 Noise	Yes	The development is not expected to result in noise emission which would unreasonably diminish the amenity of the area.	Yes
CL44 Pollutants	Yes	It is not considered that the operation of a bulky goods shop would contribute any unreasonable pollutants to the environment that would diminish the amenity of adjoining and nearby properties.	Yes

General Principles	Applies	Comments	Complies
CL45 Hazardous Uses	No	The proposal is not a hazardous use.	N/A
CL46 Radiation Emission Levels	Yes	The building will likely have some form of antenna on the roof, however the radiation emissions levels from that are considered to be negligible and consistent with what already exists on the site.	Yes
CL47 Flood Affected Land	No	The site is not flood affected land.	N/A
CL48 Potentially Contaminated Land	No	The site is not potentially contaminated land.	N/A
CL49 Remediation of Contaminated Land	N/A	As above.	N/A
CL49a Acid Sulfate Soils	N/A	The site is not identified as being affected by acid sulfate soils.	N/A
CL50 Safety & Security	Yes	The development is considered to have reasonably considered, and be capable of operating in a manner that is safe.	Yes
CL51 Front Fences and Walls	Yes	The site does not propose any front fencing. A small retaining wall is proposed to be constructed for a portion of the sites frontage, however that retaining wall will be screened by landscaping over time (once established).	Yes
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	The site is bound by privately owned land.	N/A
CL53 Signs	Yes	The application does not seek consent for any advertising signage. The only signage sought is 'ENTRY' and 'EXIT' signs to the car park.	Yes
CL54 Provision and Location of Utility Services	Yes	Acceptable utility services are afforded to the site.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	The site is not in a medium density area.	N/A
CL56 Retaining Distinctive Environmental Features on Site	Yes	The site is not considered to have any distinctive environmental features. The proposed removal of trees has been assessed as acceptable by Council's Landscape Officer.	Yes
CL57 Development on Sloping Land	Yes	The proposal does not include any excessive levels of excavation of fill and is supported by a Geotechnical Report.	Yes
CL58 Protection of	Yes	The proposal does seek to remove most of	Yes

General Principles	Applies	Comments	Complies
Existing Flora		the vegetation on site, however only one existing tree is a native tree (which has been identified as being in a poor structural condition) and the remaining vegetation is not of a high quality. The proposal seeks to significantly enhance the landscaping and potential for habitat on the site through more plantings including 14 canopy trees that can grow in excess of 20m in height. Any impact caused by the development to existing flora is outweighed by the newly proposed landscaping.	
CL59 Koala Habitat Protection	N/A	The site is not greater than 1 hectare in area and therefore this clause does not apply.	N/A
CL60 Watercourses & Aquatic Habitats	Yes	There are no identified watercourses of aquatic habitats on the site.	Yes
CL61 Views	Yes	The proposal will not unreasonably obstruct any existing views from the public or private domain.	Yes
CL62 Access to sunlight	Yes	The development provides an acceptable level of sunlight to neighbouring properties.	Yes
CL63 Landscaped Open Space	Yes	The site provides a landscaped area in excess of the control requirements. The landscaping proposed generally consists of native and indigenous species with 14 large canopy trees that shall significantly enhance the site from a landscape perspective.	Yes
CL63A Rear Building Setback	Yes	The site does not have a rear yard as described in the control as it is not a residential development. The building provides a 16m setback to the rear boundary and a 10m setback to the driveway which is compliant, and provides for appropriate spatial separation between developments.	Yes
CL64 Private open space	Yes	The development is not required to provide private open space as it is not residential but is it also not to impact on the private open space on adjoining land. The development does not unreasonably shadow adjoining private open space.	Yes
CL65 Privacy	Yes	The development is not considered likely to cause any detrimental impacts to the privacy of neighbouring developments. The building is commercial and internal in nature with minimal window openings.	Yes
CL66 Building bulk	Yes	Clause 66 requires that setbacks should be increased as wall height increases, that large areas of walls are broken up to provide visual relief and that landscaping should reduce the	Yes

General Principles	Applies	Comments	Complies
		visual bulk of any new building. The nature of a bulky goods shop typically lends itself to a larger format building that is simple and efficient in design. In this instance that is the case whereby the design is a square building with a large internal area to accommodate retail items. The proportions of the proposed development combined with the material palette do not reflect a building blends in with the natural landscape. The bulk of the development is significantly greater than surrounding buildings on sites of similar sizes and, given the extent of driveway and at-grade concreting proposed, an inadequate landscaped buffer is able to be established to mitigate the bulk. It is for these reasons that the bulk and scale of the building are not supported.	
CL67 Roofs	Yes	The roof is of a compliant height and design to complement the local skyline.	Yes
CL68 Conservation of Energy and Water	Yes	Appropriate solutions are included to make the most efficient use of energy and water including large skylights for internal lighting and water management.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The development is capable of complying with the relevant accessibility requirements of the Disability Discrimination Act 1992 and the relevant Australian Standards.	Yes
CL70 Site facilities	Yes	The site has sufficient areas to accommodate waste storage and collection.	Yes
CL71 Parking facilities (visual impact)	Yes	The proposed car parking is located wholly underground and therefore has no unreasonable visual impact from the street. The proposed loading dock is to the rear of the site and is setback from the rear boundary by 10m. Whilst parked trucks in this area may be visible from surrounding sites the impact of that temporary parking is not considered to result in any adverse visual impact. Further, the loading dock at the rear (covered by a lightweight awning 10m from the boundary) has resulted in the building being pushed a further 6m (16m in total) from the rear	Yes

General Principles	Applies	Comments	Complies
		boundary which lessens visual impact.	
CL72 Traffic access & safety	Yes	For the reasons listed earlier in the referral response by Transport for NSW the development is not considered to achieve a satisfactory outcome with regards to traffic, access and safety. The development is therefore recommended for refusal on the grounds of this Clause alongside the TfNSW response.	No
CL73 On-site Loading and Unloading	Yes	Appropriate on-site loading and unloading is provided to the rear of the site and is screened from public view.	Yes
CL74 Provision of Car parking	Yes	Schedule 17 of the WLEP 2000 which prescribes the relevant car parking provisions requires that comparisons be drawn with developments for a similar purpose. The proposed provision of 16 car parking spaces and loading bays have been deemed acceptable by Council's Traffic Engineer.	Yes
CL75 Design of Car parking Areas	Yes	Deemed acceptable by Council's Traffic Engineer.	Yes
CL76 Management of Stormwater	Yes	The provision of stormwater management is not acceptable as the post development OSD pipe flow value is too high to be discharged from one single location as it will adversely impact Forest Way.	No
CL77 Landfill	Yes	The proposal does not necessitate any landfill. If any filling of the site is required then it is likely that the soil to be excavated for the basement would be utilised.	Yes
CL78 Erosion & Sedimentation	Yes	Appropriate erosion and sediment controls can be imposed via condition if the application is to be approved.	Yes
CL79 Heritage Control	Yes	The development does not affect a heritage item.	Yes
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No	N/A	N/A
CL81 Notice to Heritage Council	N/A	Repealed.	N/A
CL82 Development in the Vicinity of	N/A	The development is not within the vicinity of	N/A

General Principles	Applies	Comments	Complies
Heritage Items		heritage items.	
CL83 Development of Known or Potential Archaeological Sites	N/A	The development is not identified as a known or potential archaeological site.	N/A

SCHEDULES

Schedule 6 - Preservation of Bushland

The development necessitates the removal of the majority of vegetation on the site, including one native tree (all other trees are identified as exempt species).

The native tree to be removed is identified as being in a poor structural condition and has been recommended for removal by an arborist.

The current landscape quality of the site is considered to be of limited value both aesthetically and with regards to habitat for wildlife.

To compensate for the loss of bushland and to screen the development once built the application proposes the addition of a dense landscaped curtilage around the site, generally comprising of native and indigenous species inclusive of 14 canopy trees capable of reaching a height greater than 20m.

This new landscape arrangement has the potential to vastly improve the ecological values of the site commensurate to the existing situation.

Therefore whilst there is some removal of vegetation, it is to be replaced by more appropriate species in a denser arrangement which is considered to be a superior outcome to how the site exists today, and thus Schedule 6 can be satisfied.

Schedule 8 - Site analysis

Site Analysis	The development application is accompanied by an appropriate site analysis both in drawing form and in the Statement of Environmental Effects.
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Schedule 9 - Notification requirements for remediation work

Notification requirements for remediation work	There are no known or identified remediation works required to be carried out to facilitate the proposed development.
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Schedule 10 - Traffic Generating Development

Traffic Generating Development	The development is not Traffic Generating Development pursuant to Schedule 10. For the purpose of that Clause the development is considered a 'shop' with a gross floor area (GFA) of 405sqm (note: car
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	parking is not included in the calculation of GFA). The proposal therefore does not meet the spatial threshold of Schedule 10 subclause (1) (b) of a GFA of 2,000sqm, or subclause (2) (a) of 500sqm fronting an arterial road.
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Schedule 11 - Koala Feed Tree Species and Plans of Management

Koala Feed Tree Species and Plans of Management	The site is not identified as being in a koala habitat protection area pursuant to Clause 59 as the site area is lesser than 1 hectare.
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Schedule 14 - Guiding Principles for Development near Middle Harbour

Consideration of the Matters under Schedule 14 of WLEP 2000	
(a) the desirability of increasing public access to, and use of, land on the foreshore,	N/A no foreshore in the vicinity of the site.
(b) the retention, management and use of land made available for public access or the use of other appropriate tenure mechanisms where public ownership is not possible,	The site is and is bound by private land.
(c) the retention and enhancement of public access links between existing foreshore open space areas,	N/A no foreshore in the vicinity of the site.
(d) the conservation of significant bushland and other natural features along the foreshore, where consistent with conservation principles, and their availability for public use and enjoyment,	N/A no foreshore in the vicinity of the site.
(e) the suitability of the site or part of the site for significant open space that will enhance the open space network existing along the Harbour foreshores,	N/A no foreshore in the vicinity of the site.
(f) the protection of significant natural and cultural heritage values, including marine ecological values,	The site is not on the foreshore. The proposal does not impact on any significant natural or cultural heritage items.
(g) the protection and improvement of unique visual qualities of the Harbour, its foreshores and tributaries,	The site is not visible from the harbour or its foreshores.

Consideration of the Matters under Schedule 14 of WLEP 2000	
(h) the relationship between use of the water and foreshore activities,	N/A no foreshore in the vicinity of the site.
(i) the conservation of items of heritage significance identified in an environmental planning instrument or subject to an order under the Heritage Act 1977 ,	The site has no heritage items.
(j) the scale and character of any development, derived from an analysis of the context of the site,	The scale and character of the development has been considered in the Statement of Environmental Effects and is appropriate for the site by virtue of full compliance with the built form controls and by compatibility with the proportions of nearby existing and approved development.
(k) the character of any development as viewed from the water and its compatibility and sympathy with the character of the surrounding foreshores,	The site is not visible from the harbour or foreshore.
(l) the application of ecologically sustainable development principles,	Achieved.
(m) the maintenance of a working-harbour character and functions by the retention of key waterfront industrial sites or, at a minimum, the integration of facilities for maritime activities into development and, wherever possible, the provision of public access through these sites to the foreshore,	N/A no foreshore in the vicinity of the site.
(n) the feasibility and compatibility of uses and, if necessary, appropriate measures to ensure co-existence of different land uses,	Not applicable to this development.
(o) increasing opportunities for water-based public transport	N/A no foreshore in the vicinity of the site.

Schedule 15 - Statement of Environmental Effects

Clause 15(1) of WLEP 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The applicant has submitted a Statement of Environmental Effects, prepared by JV Urban, which addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	A Statement of Environmental Effects has been submitted with the application as prepared by JV Urban which adequately addresses the proposals consistency with all relevant planning controls.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	The applicant has addressed the consistency of the proposal with the Desired Future Character Statement of the C8 Belrose North locality and the General Principles of Development Control. In summary, the applicant has concluded that the proposal is consistent with the DFC statements (despite by a Category 3 development) and is also consistent with the General Principles. For the reasons described in this report, Council does not concur that the development is consistent with the DFC Statement.
(3) Objectives of the proposed development.	The applicant has advised that the primary objectives of the proposed development are: <i>"The proponent is a long established, local business in the northern beaches area who has operated from various locations within the Northern Beaches local government area for the last 22 years and now seeks to establish a permanent, purpose-built facility for the orderly conduct of the business."</i> The objectives of the development are considered adequately justified.
(4) An analysis of feasible alternatives. (including (a) Consequences of not carrying out the development and (b) Justification for the development)	The applicant has provided the following comments in response to subclause (4): <i>"Clause 15 of the LEP requires the Statement of Environmental Effects for a Category 3 development to include alternatives to the development. Which in this case would be:</i> <i>1. Leave the site vacant and unused, in its current condition.</i> <i>2. Reinstate a single dwelling use on the site – either via demolition and a new dwelling or major renovations of the existing dwelling.</i> <i>3. Seek approval for a different type of development, being one that is not prohibited by the LEP and can satisfy Council that it is consistent or at least compatible with the desired future character of the C8 Belrose North Locality. However, there is no known demand for such alternate uses.</i> <i>Given the objectives of the development outlined in Section 3.2 above, the alternatives to the proposed development as not favoured by the applicant and not considered warranted in this case. The site is well positioned to provide for the new development and new land use without undue environmental impacts on either the adjoining properties or the wider Belrose area. The assessment provided in this SEE leads to a considered</i>

Consideration	Proposed
	<i>conclusion that the proposal can operate on the subject site without undue impacts on the area, thereby being supported as a low impact, low intensity use."</i> The applicant's justified for carrying out the development is adequate.
(5) Development and context analysis.	The applicant's SEE has adequately addressed the matters referred to in sub-clause (5).
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	The applicant has adequately addressed the requirements of subclause (6) within Section 4.3 (page:50) of the submitted SEE.
(7) Measures to mitigate any adverse effects of the development on the environment	With regard to Point 7 of Schedule 15 the applicant has provided the following: <i>1. Compliance with the LEP front, side and rear setback controls to address potential streetscape visual impacts of the development close to the front boundary and Forest Way.</i> <i>2. Location of the on-site parking for the site under the building, at basement level to reduce the hardstand area needed at the front of the building, thereby allowing for significant increase in the amount of landscaping and composition of planting regime able to be achieved.</i> <i>3. Excavation of the car park level to reduce the overall height of the building while providing natural ventilation to the basement level, thereby addressing potential bulk and scale impacts of the development.</i> <i>4. The scale and bulk of the building is not excessive (being only 20m x 20m) thereby reducing the visual bulk and scale of the development when viewed from the public domain and creating a singular land use, not a multifunctional outlet. The size of the proposal reduces the traffic generated to the site.</i> <i>5. Fifty percent (50%) of the site is to contain landscaping, including extensive planting of trees over 4-5m in height thereby reducing the visual impact of the site and conserving the green backdrop and 'bushland' appearance of the site.</i> <i>6. Concentration of landscaping around the boundaries of the site providing screening, privacy to neighbours (each is well separated from the new building), including a new stand of trees along the Forest Way frontage. This reduces the visual impact of the site and significantly softens the view of the site from either direction when travelling along Forest Way.</i> <i>7. Optimisation of on-site collection and detention of stormwater on-site prior to drainage to Council's on street drainage system thereby reducing the quantity of water and improving the quality of water exiting the site."</i>

Consideration	Proposed
	Council's Assessment Officer concurs with the findings with exception to Point 7 which conflicts with the issues raised by TfNSW in water discharge rates onto Forest Way are too high.
(8) Other approvals required	The applicant notes that approval is required from TfNSW pursuant to Clauses 101 and 102 of SEPP Infrastructure and Section 138 of the Roads Act 1993. Comment The applicant has correctly identified other approvals required. The application has been unsuccessful in obtaining approval from TfNSW and is therefore recommended for refusal on that basis.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2021

The proposal is subject to the application of the Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of **\$20,200** is required for the provision of new and augmented public infrastructure. The contribution is calculated at 1% of the total development cost of \$2,020,000.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and results in unreasonable impacts on a classified road and is therefore not in the public interest.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

The built form and operation of the building as a bulky goods showroom has been assessed, and whilst enhanced landscaping is proposed, the industrial style building does not fit within the existing or desired future character of the Belrose North Locality. The locality identifies housing and agriculture as Category 2 (may be consistent with DFC). Whilst the current proposed use may be able to demonstrate a low impact activity, the building and any future uses such as recreation facilities industrial, retail are also Category 3 and presents a future issue should the Christmas Tree Bulky Goods retailing cease. Such future uses could present further impacts from noise and traffic presenting a building which may not be able to be occupied. Category 3 uses became prohibited uses under WLEP 2011 and as such future occupation may become difficult.

Additionally, due to traffic safety and other issues TfNSW is unable to provide concurrence and General Terms of Approval and the development application is unable to be approved.

Therefore, it is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

The application is referred to an Independent Public Hearing Panel with a recommendation for refusal.

RECOMMENDATION - REFUSAL

Part A:

That the Independent Public Hearing Panel makes its findings and recommendation on Development Application DA2021/0340 for demolition works and construction of a bulky goods shop at 194 Forest Way, Belrose having regard to the assessment and recommendation for refusal in the Assessment Report.

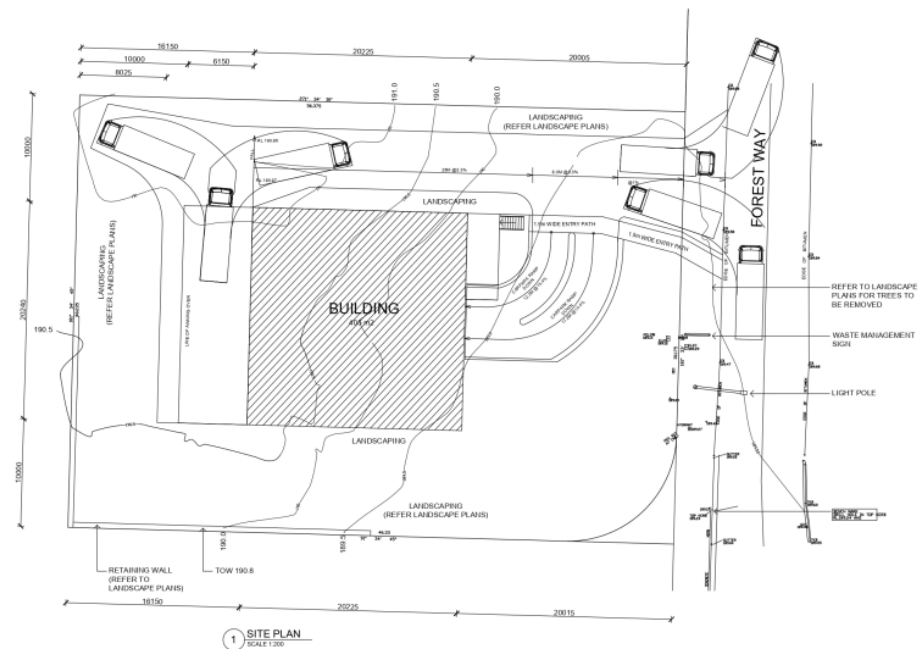
Part B:

That the outcome of the Independent Assessment Panels findings and recommendations be reported to the Director or Planning and Place for determination of Development Application DA2021/0340.

Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Desired Future Character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
2. Pursuant to Section 4.47(4) of the Environmental Planning and Assessment Act 1979, Transport for NSW has not granted its concurrence or General Terms of Approval that are required in order for the development application to be consented to.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development fails provide sufficient information to satisfy the requirements of Clause 72 'Traffic Access & Safety' of the Warringah Local Environmental Plan 2000. In particular, the following requested information has not been provided:
 - a) Provision of a kerb and gutter along full frontage of site.
 - b) Longitudinal section of the centre line of the driveway at an interval of 2m showing existing and proposed levels and grades.
 - c) Swept path diagram(s) for the single vehicular access is required to demonstrate that the largest vehicles are able to simultaneously enter and exit the site in a forward direction.
 - d) Swept path diagram(s) to include lane allocation of Forest Way, and to demonstrate manoeuvres from the kerb side lane and no impact to traffic flows on adjacent lanes due to movements.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



SITE DETAILS

LOT 1 IN D.P. 1026189
LOT 2672 IN D.P. 752038
LOT 100 IN D.P. 1144988
AREA= 2,247m²

GFA for parking calculations		TOTAL m ²
BASEMENT FLOOR	CARPARK	498
GROUND FLOOR	SHOWROOM	348

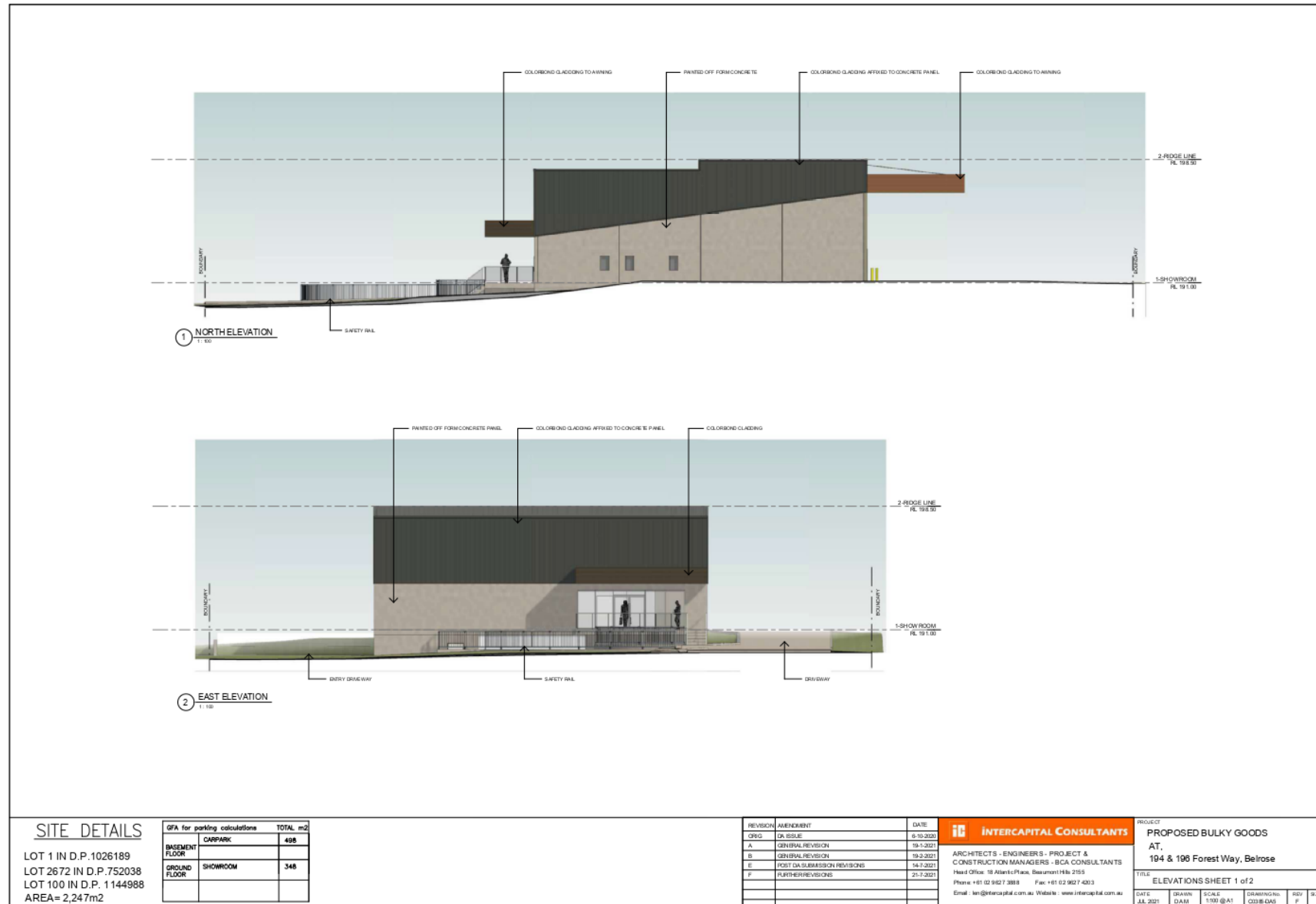


REVISION	AMENDMENT	DATE
ORG	DATE ISSUE	6-10-2020
A	GENERAL REVISION	19-1-2021
B	GENERAL REVISION	19-2-2021
E	POST DA SUBMISSION REVISIONS	14-7-2021

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PROJECT
**PROPOSED BULKY GOODS
AT,
194 & 196 Forest Way, Belrose**

TITLE SITE PLAN					
DATE	DRAWN	SCALE	DRAWING No.	REV	SIZE
AUG 2021	D A M	1:300 @ A1 1:400 @ A3	C0385-DA1	E	A1





4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/0545 - 8 LADY PENRHYN DRIVE BEACON HILL - CONSTRUCTION OF 10 INDEPENDENT LIVING UNITS AS HOUSING FOR 'OLDER PEOPLE OR PEOPLE WITH A DISABILITY', INCLUDING ANCILLARY SITE WORKS
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/778655
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Design & Sustainability Advisory Panel Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0545 for construction of 10 independent living units as housing for 'older people or people with a disability', including ancillary site works at Lot 806 DP 752038, 8 Lady Penrhyn Drive, Beacon Hill for the reasons for refusal set out in the Assessment Report.



DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property	Lot 806 DP 752038, No.8 Lady Penrhyn Drive, Beacon Hill
Description:	Construction of 10 independent living units as housing for 'older people or people with a disability', including ancillary site works
Development Application No:	DA2021/0545
Application Lodged:	2/7/2021
Plans Reference:	Dwg 001 to P06 dated 25/3/2021 and 18/8/2021, drawn by <i>Vigor Master Pty Ltd</i>
Amended Plans:	Yes (dated 18/8/2021)
Applicant:	Vigor Master Pty Ltd – c/o Ivy Wang
Owner:	8 Beacon Hill Investment Pty Ltd

Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Warringah Local Environmental Plan (WLEP) 2000
Variations to Controls (CI.20/CI.18(3)):	No
Referred to DDP:	No
Referred to NBLPP:	Yes
Land and Environment Court Action:	No

SUMMARY

Submissions:	Yes (23)
Submission Issues:	Overdevelopment, Desired Future Character, notification, land owner site management, Locality Statement, Built form controls, privacy, streetscape impact, traffic, construction impact, General Principles of WLEP 2000
Assessment Issues:	NSW LEC Court approved development, Desired Future Character, Built form controls, privacy, streetscape impact, traffic, construction impact, design amenity, accessibility, General Principles of WLEP 2000
Recommendation:	Refusal
Attachments:	Design & Sustainability Advisory Panel Minutes



EXECUTIVE SUMMARY

The subject development application is referred to the NBLPP for determination as more than 10 submissions of objection have been received and the proposal is a class 2 residential flat building. The proposal involves the construction of a new part 2 storey building containing 10 independent living units (ILU's) for the purposes of *housing for older people or people with a disability* as a "Category 2" development within the B2 Oxford Falls Locality. The proposal includes basement carparking and ancillary site work.

The proposal will formally re-route the driveway access approved by the NSW LEC under DA2009/0800. Under the original NSW LEC approved development of the site, 32 ILU's within 8 buildings, and a community centre building was granted consent with an overall masterplan layout for the site. The number of ILU's on the site was recently increased to 34 by way of a modification to the development consent. Development work approved under DA2009/0800 is not yet completed, however most of the existing ILU's on site are already occupied.

The principal concerns with the current development proposal for the building containing 10 additional ILU's relate to changes required to the approved 'master plan' scheme for the driveway access (existing unauthorised works), loss of landscaping between buildings, increased intensity of residential use, inconsistency with the Desired Future Character, amenity impacts on the existing ILU residents and insufficient information provided to address engineering requirements.

The scheme is not supported as it has not satisfactorily responded to considerations under the Warringah LEP 2000, including concerns raised by Council's Design and Sustainability Advisory Panel.

SITE DESCRIPTION

The site has a total site area of 2.6 hectares being an irregular triangular shape, having a dual frontage to Willandra Road and Lady Penrhyn Drive. The principal access is from Lady Penrhyn Drive with a second entry / exit point also off Willandra Road.

The site has the following maximum dimensions:

<u>Direction</u>	<u>Length / Depth</u>
East – West	282 metres (m)
North – South	153 metres

The site contains an existing dwelling house situated at the north-west corner of the site addressed to Lady Penrhyn Drive. There are eight (8) other existing detached buildings for the purposes of housing for older people or people with a disability. These buildings are identified as "A2", "B1", "B2", "C1", "C2", "C3", "C4", and a private community centre. The majority of residential units are occupied.

An internal road access and stormwater detention system has been constructed and is operational. The construction of a ninth building identified as "A1", similar to the other residential buildings, is also approved for the site but building "A1" is yet to be completed. The north eastern area of the site has been landscaped with paths, lawn and garden areas.



Part of the internal road system is incomplete and an alternative direct entry / exit point constructed from Lady Penrhyn Drive.

To the north the site adjoins vacant dense bushland and therefore the subject site is subject to bushfire hazard.

Extensive tree removal, excavation works and reshaping of the land has occurred for the retirement complex. No heritage items are identified on the site.

Land uses surrounding the subject site comprise of:

- Bushland, adjacent the site's northern, eastern and southern boundaries;
- Urban low density development (detached housing) to the west of the site;
- "Willandra Village" retirement complex, is located to the 130m north east of the site along Willandra Road (within Narraweena suburb); and
- Residential land (Narraweena suburb) supporting typically one and two storey detached style dwelling houses located to the east of Willandra Road within the Warringah LEP 2011 urban area.

LOCALITY PLAN (not to scale)

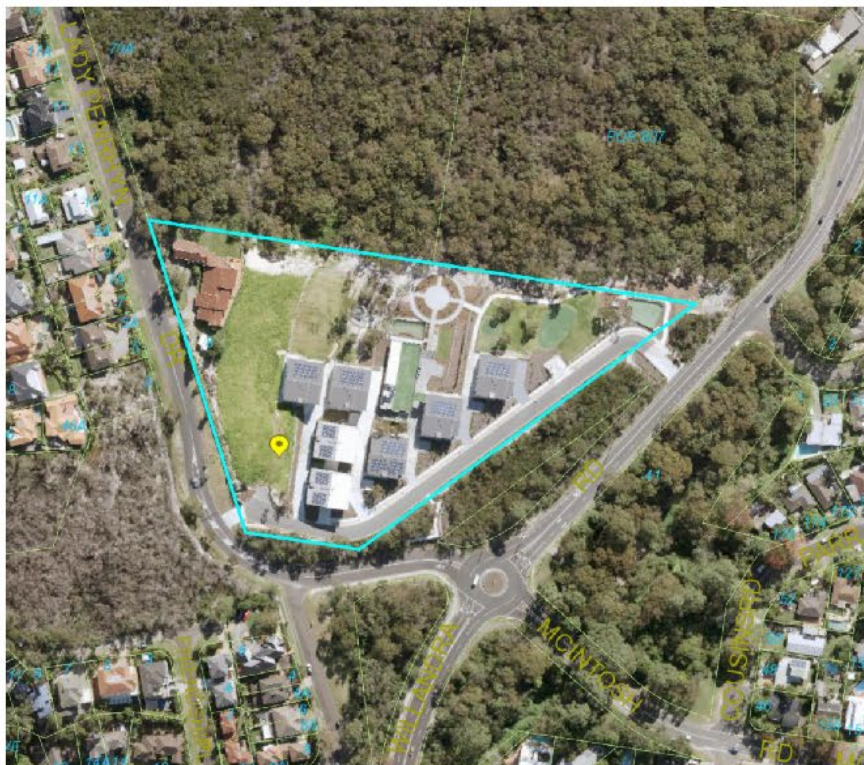


Figure 1: Site Map



RELEVANT BACKGROUND:

Development Application No.DA2009/0800 - Council refused consent for “housing for older people or people with disabilities” comprised of 32 Units clustered as 4 Units per detached residential building, common amenities building, car parking, driveway access, landscaping and conservation works, bushfire hazard management, a 2 Torrens title subdivision and strata subdivision of the residential units.

Following Appeal proceedings No.10974 of 2009 in the NSW Land and Environment Court (LEC) in *Lipman Properties Pty Ltd v Warringah Council [2010]* the NSW LEC issued development consent on 30/12/2010. The appeal decision also included consent details for **DA2009/1221** for the construction of pedestrian paths, ramps, service line works, and civil works in Lady Penrhyn Drive, Willandra Road and McIntosh Road associated with DA2009/0800.

Modifications of Consent - DA2009/0800 has been subject to various modifications of consent involving changes to the lot boundary, roadworks, selected building elements, building alignment, landscaping, enlargement of the community amenities building and stormwater drainage. The modifications include: MOD2016/0334 (no plan changes), MOD2017/0080 (LEC amended plan set – Court approval), MOD2018/0086 (refused), MOD2018/0087 (amended plans of community centre), MOD2018/0212 (amended subdivision plan) and MOD2018/0551 (amended subdivision plan).

The external appearance of the building was changed by construction certificate materials used and modification MOD2017/0080

During site works the access road off Lady Penrhyn Drive has been re-routed from the original “S” shaped entry to a direct / straight entry way as an ‘interim’.

Development Application No.DA2019/0447 was refused consent by Council on 10 June 2020. An Appeal by the Applicant was dismissed (refusal of consent) by the NSW Land and Environment Court in the Judgment for Proceeding No.2019/239478.

Modification Application No.MOD2021/0451 was approved by Council on 31/8/2021 to make administrative changes to selected conditions, including deletion of a redundant access handle, intended for a sewer line, on the approved Torrens title subdivision plan. This application modified development consent No.DA2009/0800.

Modification Application No.MOD2021/0172 was approved by Council on 24/6/2021 to modify development consent No.DA2009/0800 with regard to the design of building “A1” to contain ten (10) independent living units. Therefore, the total number of aged care ILU’s for the site was increased from 32 to 34.

PROPOSED DEVELOPMENT

The application seeks development consent to construct a building containing ten (10) independent living units, for “housing for older people or people with a disability” (‘aged care’). The building is configured with two ‘modules’ connected by a central access area and single basement carpark. The subject development application relies on the existing site infrastructure of DA2009/0800 and therefore also amends the road layout and increases the overall number of ILU’s on the site to 42.

Details of the development work proposed for the new building "D" is as follows:

- **Basement Carpark** (RL97.12) - parking for 12 cars, lift, stair access, bin storage and domestic storage; (ceiling level 99.72 EGL100)
- **Ground Floor** (RL99.92) - lift and stair access, 1 x 1 bedroom and 4 x 2 bedroom ILU's with bathroom, kitchen / living area, study room, storage.
- **First Floor** (RL103.70) - lift and stair access, 1 x 1 bedroom and 4 x 2 bedroom ILU's with bathroom, kitchen / living area, study room, storage..
- **Upper Roof level** (RL106.72 ridge);
- Landscaping and stormwater works to integrate / connect with the existing services;
- Driveway connection, ancillary site works, including retaining walls and earthworks; and
- Strata Title of the units by separate private certification.

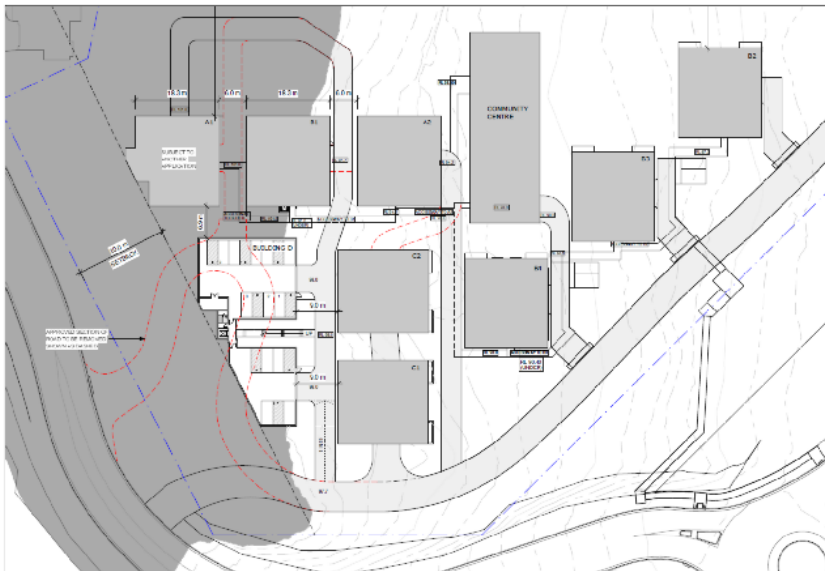


Image 2: Position of building "D" proposed positioned in the location of the approved "S" shaped driveway. Note that the existing driveways either side of "C1" and C2" (middle centre buildings) have been constructed differently to DA2009/0800 (as modified) without lawful consent. (see image 3 below)



Image 3: The approved road layout as per CC2018/1419

AMENDMENTS TO THE SUBJECT APPLICATION

Amendments to the plans were made in response to the DSAP's review of the plans. This includes resolving matters relating to privacy, access, solar access, building separation and SEPP 65 to clarify that the SEPP and *Apartment Design Guide* is not triggered.

The amended plans dated 18/8/2021 drawn by the applicant show a revised entry area, additional details of view lines, solar access and context of the ILU's with adjacent buildings. Additional information also included a detailed site analysis statement, formal response to DSAP and amended Design Verification Statement by a registered Architect.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000. (EPA Regulations)
- c) State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- d) State Environmental Planning Policy BASIX
- e) Warringah Local Environmental Plan 2000 (WLEP 2000)
- f) Community Participation Plan
- g) Warringah Section 94A Development Contributions Plan (S94A Plan)

*Note: SEPP Senior Living does not apply by virtue of LEP 2000 not having an "equivalent zone" as detailed within the SEPP.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment (EPA) Regulation 2000, Warringah Local Environment Plan (LEP) 2000 and Council's *Community Participation Plan*. As a result, the application was notified to adjoining properties from 14/7/2021 to 28/7/2021. The "Friends of Narrabeen" community group were also notified by letter. A notification sign was erected on front the site for the notification period and an advertising notice made in the *Manly Daily* newspaper.



The site was advertised / notified as integrated development pursuant to Section 100B of the *Environmental Planning and Assessment Act 1979* (for Bushfire safety).

Twenty three (23) submissions of objection were received. The majority of submission have been made by the internal residents living within the development site. The site is under single ownership of the DA applicant and therefore Council does not have access to NSW Land Title Office records for the current lease / unit occupancies, since the Strata Title of the existing development complex has not yet been registered. Notwithstanding this all submissions received have been equally accepted and considered by Council with formal acknowledgment letters provided by Council.

Matters raised with regard to the public interest for the assessment of the proposal considered in context of the detailed assessment under WLEP 2000 and the development application.

The amended plans and supplementary information provided related to matters relate to routine assessment matters whereby Council may seek additional information or clarification to assist with the assessment. The changes are of a routine nature and do not warrant re-notification pursuant to the *Community Participation Plan*.

Submissions Received

A total of twenty three (23) submission were received in response to the application. All submissions have been read and considered. Submissions were received from the following:

Name:	Address:
Mr Gaven Milnes	1/8 Lady Penrhyn Drive BEACON HILL NSW 2100
Mr David Ferguson	11 A Lady Penrhyn Drive BEACON HILL NSW 2100
Mr John Myers Mrs Barbara Myers	12 Gardere Avenue CURL CURL NSW 2096
Dr Geoffrey Martin Mrs Christiane Martin	12 Valley View Road FRENCHS FOREST NSW 2086
Mrs Louise Wilson	22 / 84 Dee Why Parade DEE WHY NSW 2099
Elizabeth Dewhurst	26/8 Lady Penrhyn Drive BEACON HILL NSW 2100
Stephen Perry	27 The Greenway DUFFYS FOREST NSW 2084
Robert Yates	29 Derna Crescent ALLAMBIE HEIGHTS NSW 2100
David Vawser	3 / 8 Lady Penrhyn Drive BEACON HILL NSW 2100
Mr Peter Beattie	3 Tisane Avenue FRENCHS FOREST NSW 2086
Mr John Elliot Mrs Janet Elliott	34 McKillop Road BEACON HILL NSW 2100
Mr Rodney Hooper Pamela Hooper	34 Toronto Avenue CROMER NSW 2099
Mr Steven Wannell Ms Hazel Wannell	38 Wallumatta Road NEWPORT NSW 2106



Name:	Address:
Mr John Chubb Mrs Jill Chubb	46 Rednal Street MONA VALE NSW 2103
Ms Anne O'Connell Mr Peter Fishburn	53 Castle Circuit SEAFORTH NSW 2092
Mr Leonard Sutton Mrs Pamela Sutton	62 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Ann Sharp	77 Brighton Street CURL CURL NSW 2096
Mrs Rhonda Virgona Mr Sam Virgona	9 Iluka Road PALM BEACH NSW 2108
Barry Smith	Address Unknown
Finn Thorvaldson	Address Unknown
Robert Bayless	Address Unknown
Dr Cornelia Harris	Lot 2671 Morgan Road BELROSE NSW 2085
Friends Of Narrabeen Lagoon Catchment	PO Box 845 NARRABEEN NSW 2101

Collectively, the following issues were raised in the submissions, in summary, each has been considered and addressed below:

1. Sales 'agreements'
2. Property maintenance
3. Parking and traffic
4. Water flow and drainage
5. Privacy and overlooking
6. Construction impacts
7. Community centre use
8. Lifestyle health and amenity
9. Access
10. Overshadowing
11. Inadequate landscaping
12. Notification
13. Desired Future Character
14. Site analysis
15. Site coverage and bulk
16. Bushfire safety
17. Density of buildings
18. Wildlife habitat
19. DSAP review

1. **Issue:** *Concern that residents were led to believe during the ILU's lease purchase process that the overall development limit on the site was only for the 8 ILU buildings and community centre and there would be no additional buildings where building "D" is now proposed.*

Comment:



This is a civil matter between the land owner / management company and resident occupiers and not relevant to the assessment of the current DA as it relates to property / unit sales processes and whether purchasers were or were not appropriately informed by real estate / purchase information or contracts.

This issue is considered not relevant to the application assessment as it relates to private arrangements / civil matters.

2. **Issue:** *Concern that current occupants are not satisfied the maintenance, building defects and inadequate completion of landscaping within the subject site.*

Comment:

This is a civil matter between the land owner / management company and resident occupiers and not relevant to the assessment of the DA as it relates to property management. The works associated with DA2009/0800 are incomplete and no final occupation certificate is therefore available to demonstrate satisfactory completion of all works.

This issue is not considered relevant to the assessment of the current DA as it relates to existing property maintenance and ongoing site works under separately approved works and workmanship.

3. **Issue:** *Concern regarding the adequacy of carparking for residents and visitors as well as traffic safety and access during construction, including emergency access.*

Comment:

The proposed building "D" has a compliant number of resident and visitor parking spaces. The total road network within the site is incomplete and parts of the existing road network have been constructed without development consent. Council's Traffic Engineer have assessed the road widths, carparking and access for the proposed building. Conditions may be applied to address construction traffic, compliance with *Australian Standards*, loading and related issues. See assessment details under the heading "Internal Referrals" within this report and "Clause 71" and "Clause 72" under the heading Warringah LEP 2000 within this report.

This issue is addressed by Council's Traffic Engineering referral response and does not warrant refusal of the application.

(Note: See separate discussion within this report regarding unauthorised road works being relied on to facilitate the current proposal vehicle access to building "D" and other parts of the site)

4. **Issue:** *Concern regarding waterflow runoff and drainage.*

Comment:

This matter has been assessed by Council's Development Engineer regarding stormwater capacity and Water Management Team (for Water Sensitive Urban Design) within Council. See details under the heading "Internal referrals" within this report and Clause 60, Clause 76, Clause 78 under the heading Warringah LEP 2000 within this report. Areas of the site have been illegally paved for unapproved roadworks and other unauthorised site works that disrupt the integrity of the parent engineering works / plans approved with DA2009/0800.



In summary, insufficient information has not been provided by the applicant to satisfy this assessment issue.

5. **Issue:** *Concern that the construction of building "D" will have an adverse impact on privacy and increase overlooking toward the existing adjacent ILU's adjacent the proposal.*

Comment:

This issue has been considered in detail by DSAP and within the assessment report pursuant to "Clause 65" of the WLEP 2000. The applicant has provided a detailed response with diagrams to represent the privacy and overlooking impacts and consideration of building separation, balcony screens and offset positions between adjacent buildings.

In summary, privacy impacts and overlooking are considered to be acceptable for internal rooms and for balcony spaces, being outdoors and within the context of the pattern of development across the complex a balcony to balcony separation of 9m is consistent with single site 'retirement village' style of development in Warringah. Additional privacy analysis from the applicant is also provided in the Design Verification Statement submitted.

While the construction of building "D" would replace an area of the site that is currently landscaped the privacy impact on outdoor space is consistent with the spatial separation approved by the NSW LEC with DA2009/0800, and the applicant has amended the plans to limit overlooking as far as practicable.

Therefore, this issue has been addressed and does not warrant refusal of the application.

6. **Issue:** *Concern that the proposal for building "D" will create construction impacts on traffic, emergency access, parking, noise, dust and general amenity. Concern that this is compounded by building "A1" not yet having been constructed either.*

Comment:

Standard conditions of consent are able to be applied to address this issue in relation to construction hours and noise to manage expected activity as a consequence of the site works and building processes associated with the development. Security fencing during construction will maintain safety and the building design considered to be acceptable design for "Crime prevention through environmental design guidelines". Additional conditions may be applied to ensure the preparation and implementation of a *Construction Traffic Management Plan*, compliance with the *Protection of the Environment Operations Act*, site management requirements and defined work / delivery hours for the duration of the works as well as any Emergency services access considerations.

In summary, this issue is discussed in within the Traffic Engineering Referral comments provided as well as "Clause 42", "Clause 72" and "Clause 50" of the "WLEP 2000" under the relevant heading within this report.

Therefore, this issue has been addressed and does not warrant refusal of the application.

7. **Issue:** *Concern that the proposed increase in ILU's and occupancy will impact other residents ability to use the community centre facilities within the retirement village complex.*

Comment:

Under a previous modification of consent to DA2009/0800 the community centre was substantially enlarged and is capable of serving the day to day needs of residents with the site. The facility is for the private use of residents within the site and access to and from the building is administered within the management arrangements for the site. No information is available as to whether physical access to the on-site community centre should be altered to assist accessibility and convenience of the existing residents.

This issue is considered and does not warrant refusal of the application.

- 8. Issue:** *Concern that the additional development on site for building "D" impacts the lifestyle health and amenity of existing residents.*

Comment:

This issue relates to lifestyle of occupants, personal health and amenity they are currently accustomed to, living within the existing complex. The construction of building "D" would create a short term disruption during works and also permanent change to the visual outlook from some ILU's and increase the residential housing density on the subject land. "Lifestyle" and personal health issues are not matters that can be feasibly assessed in terms of the applicable planning controls. General amenity issues of privacy, safety, solar access, traffic, parking, landscaping, noise and the like are considered under the relevant heading of the "General Principles" pursuant to WLEP 2000 within this report.

This issue is considered and does not warrant refusal of the application, where sufficient information has been provided by the applicant to address that issue.

- 9. Issue:** *Concern that access to the existing ILU's in the vicinity of building "D" will be obstructed during works and in the longer term create parking and traffic safety issues as well as potential difficulty for ambulance and fire appliances.*

Comment:

Access for vehicles is required to comply with Australian Standards and *Planning for Bushfire Protection* within the site. The proposed building and internal pathway connections area also required to comply with AS1428 for disabled person access. Detailed consideration has been provided by the NSW RFS referral response, Council's Traffic Engineer and Access Report (prepared by PSE Consulting). This issue is able to be addressed by conditions.

Therefore, this issue has been addressed and does not warrant refusal of the application

- 10. Issue:** *Concern that the proposed building will create overshadowing to adjacent ILU's.*

Comment:

This issue is discussed in detail under heading for "Clause 62" and "Clause 64" pursuant Warringah LEP 2000 within this report, including solar access considerations made by DSAP referral. In summary, the proposal has not provided sufficient information to accurately delineate the solar access to proposed private open space requirements of building "D" and the impact on the existing ILU buildings of "C1" and "C2". In particular this applies to ground lower floor level ILU's and identifying hourly change in direct sunlight on 21 June.



Insufficient information has been provided to address this issue and therefore warrants refusal of the application.

- 11. Issue:** *Concern that the proposal will result in inadequate landscape space between the ILU's and that there is incomplete landscaping works on the site that will be further delayed from completion in accordance with the original site 'master plan' scheme.*

Comment:

The proposal complies with the net landscaping area component of 30% required for the subject land as per the applicable Built Form Controls.

Substantial inconsistencies with the NSW LEC approved landscape master plan for the site and what has currently been undertaken as landscape works exist. A landscape plan has been provided to address landscaping works surrounding the proposed building "D". See detailed comments provided by Council's Landscape assessment under the heading "Internal Referrals" and "Clause 63" of the WLEP 2000 within this report. This issue is also discussed in detail under the heading 'Desired Future Character' and within the DSAP comments provided. Site works and landscaping are currently incomplete on the site due to the situation whereby building "A1" and associated road works that are yet to be constructed.

This issue has been considered and does not warrant refusal of the application.

- 12. Issue:** *Concern that existing occupants with the subject site and a notification sign was not erected.*

Comment:

Exhibition was undertaken in compliance with Council's *Community Participation Plan* and using official NSW Land Titles Office records which Council relies on for letter notifications. As the site is not yet Strata subdivided the subject site remains under the single land ownership of the development company with its business address for correspondence. The applicant provided a photo taken on 13 July 2021 demonstrating that the sign was properly secured to the front fence of the property along Lady Penrhyn Drive. The development application was also notified in the local newspaper of the *Manly Daily*.

Regardless of the notification limitations all submissions to Council have been considered and acknowledged in writing. Adequate time was permitted for any person to make a written submission, including after the notification period ended.

This issue has been addressed and does not warrant refusal or re-notification of the application.

- 13. Issue:** *"Concern that the proposed development is not consistent with the desired future character of the locality or General Principles of Development Control for WLEP 2000" and the increase of 10 units does not retain the existing low intensity low impact development threshold on the site approved by the NSW LEC.*

Comment:

The proposal in part seeks to change the approved intensity the development density from 34 ILU's to 44 ILU's. This results in a concentration of built form in terms of the visible



building mass and scale, tightly spaced, with roads in between the buildings. The buildings and concrete road sections between detracts from the DFC by the intensified development pattern.

This issue has been addressed under the heading 'Desired Future Character' assessment in terms of the particular concerns relevant to the proposed development. In summary, the concentrated intensity of use and cumulative associated impacts of a massed building form, intensity and impact demonstrate the proposal is not consistent with the WLEP 2000.

This issue warrants refusal of the application.

- 14. Issue:** *Concern that a site analysis should be done and this would preclude the site from further development.*

Comment:

The applicant has provided a site analysis that is sufficiently detailed to address the relevant parts of *Schedule 8 – Site analysis* pursuant to WLEP. A site analysis should influence the design response of a development however it is not intended to prevent prohibit development.

Therefore, this has been addressed and does not warrant refusal of the application.

- 15. Issue:** *“Concern that the site coverage and bulk of the building is detracts from the approved development complex and surrounding amenity”.*

Comment:

This issue is addressed in context with the assessment discussions provided under the heading “Desired Future Character’ within this report. In summary the development proposal concentrates and intensifies the use of the site by a significant increase in built form. While the building intends to present as 2 modules it is in effect 1 building with at 40m long western wall and building footprint that is substantially larger than the other ILU buildings already on the site.

Therefore, this has been addressed and does not warrant refusal of the application.

- 16. Issue:** *Concern that the site is affected by bushfire hazard and the proposal compromises fire safety requirements for the NSW RFS.*

Comment:

The NSW Rural Fire Service have advised that the building surrounds (including the setback to Lady Penrhyn Drive) is to be managed as part of the inner protection area (IPA), and landscaping is to comply with landscape restrictions under *Planning for Bushfire Protection 2006*. The NSW RFS requirements include evacuation and fire-fighting access requirements as detailed in the referral response provided.

This issue has determining weight and warrants refusal of the application.

- 17. Issue:** *Concern that the change in density of buildings is not consistent with the approved pattern of development on the site and detracts from landscape residential amenity.*

**Comment:**

This issue is considered in context with the DFC locality statement under the heading "WLEP 2000" within this report. The concrete driveway areas constructed between the existing buildings and proposed building "D" prevent any large canopy trees and dense plantings to enhance the residential amenity within the development complex. The constructed driveways beside buildings "C1" and "C2" were not approved with DA2009/0800 and therefore unauthorised works. The proposal therefore depends on illegal site works to facilitate the development application in access to building "D". This is not acceptable as it requires the use a development application to provide tacit approval for unlawful site works.

This issue has determining weight and warrants refusal of the application.

- 18. Issue:** *Concern that proposal reduces landscape space that is potential habitat for native wildlife from impact of clearing and the approved landscape scheme.*

Comment:

The application has been provided with a detailed landscape plan that includes a mix of native trees and other plant species to provide potential habitat for wildlife which includes a 20m wide front boundary setback on the western side of building "D" proposed. The existing broader landscaping 'master plan' works for DA2009/0800 are incomplete due to unfinished buildings and road works with that development consent. Retaining landscape open space contributes to the desired future character of the B2 Oxford Falls Locality and in particular the integration of new development into the bushland characterisation. This development removes crucial elements of revegetation of the site which was required to establish the consistency of the development with the DFC in order to gain consent. This is addressed under the WLEP 2000 later in the report under heading "Desired Future Character". The landscape spacing between buildings is also important for internal site amenity and providing habitat for native wildlife, just as does the landscape distribution and quality along the setback zones assists to achieve wildlife corridors toward the boundary with adjacent properties. This proposal removes the possibility of vegetation to the west of buildings "C1 and c2 that afforded a wide buffer around the "S" shaped driveway. The proposal therefore does not contribute positively towards this goal of the wide landscape buffer being retained as a backdrop to the developed core area of the site.

This issue has been addressed under DFC and "Clause 58" within this report and in summary is a reason for refusal of the application.

- 19. Issue:** *Concern that the proposal was not supported by the Design and Sustainability Review Panel (DSAP) and therefore is inappropriate for further development on the site.*

Comment:

The applicant has provided a detailed response and amendments to the plans in order to address the critical design review by DSAP. In summary, this issue is addressed under the heading "Internal Referrals – Design and Sustainability Review Panel" including any matters that not been satisfactorily resolved.

This issue has been considered and any matters that have not been resolved are identified as reasons for refusal.



NSW LAND AND ENVIRONMENT COURT ACTION

Nil

REFERRALS

EXTERNAL REFERRALS	Referral Response / Comments
NSW Rural Fire Service <i>(NSW RFS)</i>	Supported with conditions The site is identified as bushfire prone land. In accordance with Section 100B of the <i>Rural Fires Act, 1979</i> the application was referred to the NSW Rural Fire Service (NSW RFS). In their response dated 26/8/2021, the NSW RFS issued <i>their Bushfire Safety Authority and General Terms of Approval</i> which are to be included with conditions should the development application be determined for approval.
Ausgrid	Supported with conditions The application was referred to Ausgrid service provider under clause 45(2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>. <i>Ausgrid</i> did not raise any objection and referral advice is provided as per the Ausgrid response on 20/7/2021 are to be included with conditions should the development application be determined for approval. Due to existing buildings on site the property already has electrical mains service connections.
Aboriginal Heritage Office	Supported with conditions There are known Aboriginal sites in the area although no sites are recorded in the current lot. One area of potential was identified on of the property, a sandstone overhang. Provided that this area is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal. If the area would be impacted, then the Aboriginal Heritage Office would recommend further investigation ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional prior to any development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Strategic and Place Planning (Urban Design) Design and Sustainability Review Panel	GENERAL 1. <u>Strategic context, urban context: surrounding area character</u> "The proposal is for ten (10) additional independent living units (ILU) within an existing development complex for 'older people or people with disabilities', currently approved as a development for 34 units, a community centre and ancillary site works. The proposal is in the 'deferred area' of the Warringah LEP 2000 and in the B2 Oxford Falls Valley Locality. The Panel notes that housing for older people or people with disabilities ('aged / disabled persons') is permitted adjacent to "urban land" that borders the B2 Oxford Falls Valley Locality. The Panel's principal charter is related to the design quality of development, not its permissibility. The design quality is related to its relationship to neighbours (in this case primarily the existing dwellings on the site), relationship to them and any adverse impacts, relationship to the public domain, and where the desired future character of the area has been articulated, how the design responds to, and fits with the desired future character, and the internal and external amenity of the design for occupants and visitors. The Panel has been briefed by council officers about the context and the history of the development. Although it has not been possible to visit the site, due to COVID restrictions, the architectural drawings, Google street-view, and most importantly the images of the existing development that are part of the landscape set of drawings has provided a good understanding of the existing development and site conditions, despite there being no supporting site analysis being provided. For future reference the applicant should note that the Panel considers a thorough site analysis to be an <i>essential part of any design presentation and DA documentation</i>. A thorough site analysis is required by cl 22 WLEP 2000: <i>'Consent must not be granted for any development, except complying development, involving the erection of, or additions to, a building, or the subdivision of land unless the consent authority has considered a site analysis'</i>. Appendix 1) of the <i>Apartment Design Guide</i> provides a good indication of what is required in a site analysis and the Panel expects the analysis to clearly demonstrate how the design has taken into account the constraints and opportunities of the site, not simply describe climatic and topographic conditions etc. This is also specifically required by the WLEP2000: <i>'A site analysis should be accompanied by a written statement explaining how the design of the proposed development responds to the site analysis, and the relevant general principles of development control in Part 4 and the Locality Statement.'</i>
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	This is a very significant omission in the documentation provided to the Panel. Additionally, there is no clarity on the successive changes that have been made since the original approval, and exactly what building (siting and forms) and landscaping is currently approved. Noting that the site works are yet to be completed. This lack of clarity makes any assessment extremely difficult / impossible. <u>2. Desired future character</u> The 'deferred lands' has a 'bushland character'. The desired future character is worth reiterating in full: The WLEP 2000 requires that Council be satisfied that the development is consistent with the desired future character (DFC) prior to granting consent. Of relevance to the building design, the DFC for the locality requires: <i>The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows. Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.</i> It is not clear to the Panel how the existing development is consistent with this desired 'future character' which does not resemble 'detached style housing' in any respect. There are many examples of single storey ILUs around Sydney, the existing development more closely resembles 'residential flat buildings' <i>There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.</i> N/A <i>The natural landscape including landforms and vegetation will be protected and, where possible, enhanced.</i> It is not clear to the Panel how the proposed development achieves this based on the cumulative impacts from the existing development and how this responds to the original development passing this test. <i>Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.</i> It appears that the entire site within the mandatory setbacks has been erased. The proposal continues this erasure, removes all existing vegetation, and provides a very low proportion of deep soil. Additionally, the introduced landscaping does not seem to have any relationship to the existing or originally approved conditions.
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	<i>Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.</i> Council has provided the Panel with the material palette of the original approved DA. This does not appear to have been adhered to, and the justification for these changes that have significantly reduced the quality of the design, has not been provided. <i>A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.</i> N/A <i>Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.</i> N/A Recommendation: It has not been demonstrated to the Panel how, in the context of the Desired Future Character, the proposed works which further erode the landscape setting, rather than enhance it, from the original application. <u>3. Scale, built form and articulation</u> The scale is not consistent with the desired future character specifically 'detached housing' that is almost without exception in Sydney a maximum of 2 storeys – the proposal has a 3 storey form and presentation to the majority of the access ways and approaches. The built form has been determined entirely by conforming with the absolute minimum setbacks required. Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot. <u>4. Landscape</u> Buildings are proposed to be built right up against and cut back to align with the setback, and opens onto landscaping that includes unspecified evergreen trees, which are not part of the desired future character. This results in poor design outcomes and indicates over development. Site calculations for landscape seem to rely on the setbacks. However, these are not usable spaces for residents as they are inaccessible and are to be designed as screening. While providing outlook, this is not able to utilise the required landscape to its full positive effect. Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot. <u>5. Access</u> Accessibility around the site is not provided except via contorted routes along linear concrete driveways and through other buildings. The only
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	lobby accessibility is either via stairs or through car parks. This is not acceptable. Comfortable, accessible, and pleasant pedestrian access for the new residents to the community centre and wider landscaping is required. The applicant suggested in the presentation that the driveways would be 'convivial meeting places for residents to interact' or words to that effect. This is not evident in the existing development where the 'shared' ways provide very little amenity, are designed solely for the movement of vehicles, do not include well designed landscaping, and are very unlikely to ever be used as gathering or meeting spaces. The proposal removes the approved curved driveway and an extension of the northern driveway into the basement carparking of Block A1. This curved driveway would retain the more direct access to the basement parking for Block A1, and could remove the need for the northern driveway which will further decimate the existing landscaping and natural rocks features of the site and cause unnecessary and negative impacts on the apartments of blocks A1 and B1 which look out to the north. Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot. <u>6. Amenity</u> The amenity of the proposed dwellings is poor. They have with pitiable outlook, orientation, and little solar access for a number of the dwellings. The larger sections of the balconies are off the bedrooms rather than the living rooms. In addition, they reduce the amenity and outlook of existing dwellings on the site. Driveways are immediately adjacent to bedrooms with little opportunity for screening The built form that has been determined entirely by conforming with the absolute minimum setbacks required, means the lower level units have very little outlook, or look directly at other buildings or onto unshaded drive ways. The upper level units' views to the east will be dominated by the roofs of the units below. Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that the proposal could be supported; it cannot. <u>7. Façade treatment / Aesthetics</u> Refer to previous comments. The panel notes that the materials, composition, cladding, roof forms and external shading devices in the original DA attempted and were reasonably successful in responding to the bushland setting and achieving the 'desired future character'. The current built form and proposal has none of these qualities or characteristics.
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	Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot. <u>8. Sustainability</u> No sustainability measures in excess of minimum compliance have been included. Any additional apartments would require reasonable passive design initiatives (such as north facing living rooms) and sustainability initiatives (such as total electrification of the apartment and rooftop PV panels for onsite renewable energy production). Recommendation: The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot. PANEL CONCLUSION The existing buildings bear little resemblance to the original approved DA and shown on drawings dated 19-06-2009 provided to the Panel for reference. It is not clear to the panel how the original DA met or was consistent with the 'desired future character' of the area. The Panel notes that the existing development is significantly different to that originally approved in terms of quality of materials, architectural detailing, environmental controls and built form that were more sympathetic to the bushland setting. The proposal intends to extend the unsympathetic forms and materials. The Panel cannot see any benefit or justification for any additional development on the site beyond what has already been approved, which has already been increased since the initial approval. The Panel does not support the proposal for any additional development on the site, and would be very unlikely to given its lack of design quality, its inability to demonstrate qualities consistent with the "desired future character" of the area, and the impact it would have on the existing residential accommodation." <u>Response to DSAP Referral</u> The applicant has provided amended plans and detailed information in response to the above DSAP comments: <i>"Following the meeting with Council's Design and Sustainability Advisory Panel and in response to the comments and recommendations provided by the Panel, the proposed architectural design has been revised. Below is a summary of the Panel's comments and the changes have been made in response to each comment.</i> 1. A thorough site analysis is required under clause 22 of Warringah LEP 2000. It should be accompanied by a written statement.
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	<u>Applicant Response:</u> An additional Site Analysis Statement is prepared to provide all information required by clause 22 and schedule 8 of WLEP2000 and appendix 1 of ADG. <u>Planning Assessment comment:</u> A site analysis has been provided to satisfy the requirements of the Warringah LEP 2000. Therefore this issue has been satisfactorily addressed by the applicant. 2. Desired Future Character needs to be considered and complied with. <u>Applicant Response:</u> A detailed assessment against the desired future character requirements is contained in the Statement of Environmental Effects prepared by PPD Planning Consultants. The new amendments made to the building design also address the concerns about the compliance of desired future character. <u>Planning Assessment comment:</u> The proposal would be required to be substantially amended and downsized to address the DSAP comments. The information provided by the applicant does not satisfy this issue by DSAP. 3. Scale, built form and articular need to be consistent with the desired future character specially 'detached housing' <u>Applicant Response:</u> Building D is redesigned by dropping approximately 800mm to all levels. It is now a two-storey building under the definition of SEPP 65 that complied with the desired future character particularly conforming with the detached styled housing requirement. <u>Planning Assessment comment:</u> The proposal would be required to be substantially amended and downsized to address the DSAP comments regarding scale, built form and articulation. The building design remains substantially the same and while SEPP 65 and the ADG do not apply the revisions made to the plans do not satisfy this issue by DSAP. 4. Concerns about landscape design and calculations. <u>Applicant Response:</u> As illustrated on page 4/4 of the Landscape Plan, dense landscape plantings are installed to maintain leafy setting of the site. The proposed additional landscaped area will enhance the current situation and could be also considered as an improvement comparing to the lengthy curved road as currently approved. The landscaped area available to the residents of building D is not limited to the adjacent areas around building D but the entire village including the large landscaped open space at the northeast part of the village. <u>Planning Assessment comment:</u>
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	Landscaping design has been addressed by Council's Landscape assessment officer with details provided under the heading "Internal Referrals" within this report. While the proposal complies with the numerical built form controls the loss of landscaping that reduces the landscape setting and DFC has not been addressed to maintain the appearance of "low intensity / low impact development and a bushland character within the central area of the site. 5. Accessible pathway connecting the new building D to the community centre is required. <u>Applicant Response:</u> <i>The main entrance of building D is redesigned to include an accessible pathway with direct entrance to the centre lobby on basement level and another direct entrance with stairs to the ground floor. The accessible pathway connecting building D to the community centre is also shown on the plans. 10km/h shared zone signage will be installed for the section of the internal road that shared by pedestrians and vehicles.</i> <u>Planning Assessment comment:</u> This issue relies on the unauthorised driveway construction being approved as part of the development application. The development application cannot approve unlawfully constructed works as part of the proposal. Therefore this issue is not satisfactory for approval. 6. Concerns about internal amenity, outlook and solar access. <u>Applicant Response:</u> <i>Additional drawings P04 to P06 are prepared to illustrate the design of sill height, window location and screening device. Considerations have been given to avoid any unreasonable overlooking issue.</i> <i>Additional drawings P01 to P03 are prepared to demonstrate the calculation and compliance against ADG requirements on natural ventilation and solar access.</i> <u>Planning Assessment comment:</u> Additional detailed sections and diagrams have been provided by the applicant to satisfy the information requirements of this issue. Refer to details under "Clause 64" within this report. 7: The new building needs to have similar façade treatment as in the original DA approval. <u>Applicant Response:</u> <i>Building D is designed to have similar façade treatment as in the original DA approval. The proposed external finishes, materials and colours are the same with the original DA approval.</i> <u>Planning Assessment comment:</u> This issue is superseded by subsequent modification of consent that changed the colour palette for the buildings and the majority of the development complex. Therefore this issued does not warrant refusal of the application as muted tones of mid-green and earthy colours are used.
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	8: Sustainability measures need to be provided. <u>Applicant Response:</u> No gas heater or cooking appliance is proposed. The new building D will be the same with the existing buildings by using ducted aircon system and electric cooktop. All existing buildings have solar panel installed on the roof. Solar panels will be installed to new building D as well. <u>Planning Assessment comments:</u> This issue has been addressed by the information provided by the applicant for the development application. BASIX and NatHERS compliance have been demonstrated as being satisfactory. This issue is suitable to be addressed by conditions. <u>Summary of Planning Assessment comment:</u> The applicant has provided amended plans and additional information where appropriate which generally address DSAP comments. These matters are further addressed under the relevant heading sections of the "Warringah LEP 2000" within this report.
Landscape Officer	Supported with conditions. The proposal seeks consent for construction of an additional seniors living building accommodating ten (10) independent living units with associated basement car park and landscaping. Council's Landscape Referral section has assessed the application against WLEP2000, B2 Oxford Falls Valley Locality. The proposal has been presented following discussions during LEC proceedings relating to DA2019/0447, which was refused by the Court. The landscape plans provided with the application are considered acceptable with regard to the relevant planning controls and previous discussions. No objections are raised to approval with regard to landscape issues subject to conditions. <u>Planning Assessment comments:</u> Landscape conditions recommended are concurred with.
Natural Environment & Climate Change - Biodiversity	Supported conditions. The application seeks approval for the construction of a new building in the existing retirement village, including new soft landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: • Biodiversity Conservation Act 2016 (BC Act) • Warringah Local Environmental Plan 2000 • B2 Oxford Falls Valley Locality

	The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. NEU-Biodiversity have no objections to the proposed landscaping (Paul Scrivener Landscape 2021). Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls. <u>Planning Assessment comments:</u> Biodiversity conditions recommended are concurred with.
Natural Environment & Climate Change - Water Management	Not supported - Insufficient information The proposal seeks consent for construction of an additional seniors living building accommodating ten (10) independent living units with associated basement car park and landscaping. The supplied documentation is insufficient to demonstrate compliance with the water quality requirements of Council's Water Management Policy. The applicant is to submit a WSUD Strategy in accordance with Council's WSUD & MUSIC Modelling Guidelines available from the link below. The site updated MUSIC Model files <u>must</u> be submitted to the Council for review. <u>Planning Assessment comments:</u> Water management information is required to be submitted at DA lodgement. This issue cannot be conditioned and therefore warrants refusal due to insufficient information.
Development Engineering	Not supported – Insufficient information A review of the submitted drainage report and plans indicates that there is insufficient information to assess the application to ensure the design complies with Council's Water Management Policy. The proposal relies on connection of stormwater from the new buildings and road system into the existing drainage system on the site. No calculations or drainage model has been provided with the submission to determine if the system will meet the requirements of the policy. The catchment plan submitted does not include all the impervious areas for the site and a summary table detailing the area bypassing the OSD tank etc. to assess if the existing system will function as designed. It is considered further details of the existing system including the as constructed OSD tank, pipe system and impervious areas must be provided with the application. The proposal relocates the originally approved driveway crossing on Lady Penrhyn Drive to the current as constructed location. This issue has not been addressed by Council's Traffic Engineer. It is

	considered that the current line marking will need to be adjusted adjacent to the crossing to permit vehicles to turn safely into the site. This issue is to be addressed by Council's Traffic Engineers. Development Engineers cannot support the application due to insufficient information. <u>Planning Assessment comments:</u> Stormwater runoff and OSD information is required to be submitted at DA lodgement. This issue cannot be conditioned and therefore warrants refusal due to insufficient information. Traffic engineering issues are addressed by the Traffic Engineering referral response.
Waste Officer	Supported with conditions. Waste Management Assessment Acceptable - subject to conditions. Bin room of acceptable size located in underground carpark. Note: Council does not provide waste collection services to this retirement village. <u>Planning Assessment comments:</u> Waste management conditions recommended are concurred with.
Building Assessment – Fire and Disability	Supported with conditions. As the works are all new, compliance with the National Construction Code can be achieved. There are no objections or special conditions (standard conditions applicable). <u>Planning Assessment comments:</u> Building assessment conditions recommended are concurred with.
Traffic Engineer	Supported with conditions <u>Proposal description:</u> Expansion of an existing seniors living. The proposal is for the construction of a new building on the south-western portion of the site, to be known as building "D", comprising a total of 10 Independent Living Units (ILUs) including eight x 2-bedroom+study apartments and two x 1-bedroom+study apartments with an associated basement car park. Off-street parking for building "D" for a total of 12 cars will be provided. Vehicular access to the parking area is provided via an internal driveway and service road that currently services the site and provides direct access to Lady Penrhyn Drive and Willandra Road. Development Approval has previously been obtained under DA2009/0800 for the construction of a seniors living development on the site, comprising a total of 32 ILUs across 8 seniors living buildings,

	with the inclusion of a central community centre for residents. This development is complete Warringah LEP 2000 applies to the subject site. Under the WLEP, the development cannot be refused on the grounds of parking supply if it provides at least 0.5 car spaces for each bedroom in a development for Housing for older people or people with a disability. Similarly, if the development comprises 8 or more dwellings and provides visitor parking it can also not be refused. The plans prepared by VIGOR MASTER Pty Ltd dated 25.03.2021 have been reviewed by Traffic team. Parking Requirement and Design - Onsite parking is provided in the basement for a total of twelve (12) cars which exceeds the WLEP 2000 off-street minimum parking requirements by 3 spaces however, no designated visitor parking spaces are proposed. For residential unit development 1 visitor space for every 5 units would normally be required and for a 10 unit development is therefore considered appropriate that no less than 2 of the car parking spaces be designated for visitor parking. This can be conditioned. - The design of the internal car park is in accordance with the Australian Standard AS2890.6:2009 <i>Parking Facilities-Off Street Parking for People with Disability</i> Section 2.2 Parking space-dimensions Point 1 Angle parking spaces. - Although parking space and carpark dimensions are compliant with Australian Standard requirements no swept path analysis has been provided in the traffic report. It is suggested that this be undertaken for B99 cars accessing both basement carparks on building "D" North and South to demonstrate that forwards entry and exit is possible from all spaces to the internal roads. - A circulation roadway width of approximately 4.5m has been noted on the plans however it is noted that the roadway as constructed is approx. 5.8m to 5.9m in width. As the roadway is more than 30m long in order to access building "D" and is also used to access building B1 and potentially building A1 (if approved) it must provide passing opportunities for two way traffic and a width of at least 5.5m would be required. This would ensure compliance with AS2890.1:2004 <i>Off Street Car Parking</i> Section 3.2.2. The circulation roadway width should be confirmed on amended plans. - There is no information provided on servicing, loading and unloading area/delivery area and emergency vehicle spots on the site plans. An onsite facility for the loading and unloading of service, delivery and emergency vehicles are to be screened from public view and designed so that vehicles may enter and leave in a forward direction.
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	Traffic Impact - The proposal will generate minimal traffic (4 vehicle trips per hour) during the weekday peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. Conclusion The traffic team has no objection to the proposal in principal, and it can be supported subject to the following conditions: - visitor parking spaces be labelled on the car park layouts. - swept path analysis be undertaken for B99 Cars accessing both basement car parks on building "D" North and South from/to the internal roads. - some information about loading/unloading area, delivery area and emergency vehicle spots be provided on the plans. <u>Planning Assessment comments</u> Traffic engineering have provide detailed conditions to address the above traffic assessment. These matters are achievable since the site is also required to maintain access for Fire Fighting Appliance vehicles and the existing infrastructure / driveway space is available.
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ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "SEPP 55" "Sepp BASIX" and "Warringah LEP 2000", "SEPP 65" and SEPP (Housing for Seniors or People with a Disability) 2004
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential (aged care) purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Nil
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed

Section 4.15 'Matters for Consideration'	Comments
	conditions" of development consent. These matters can be addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. The proposal has been submitted with a design review by a qualified architect. (See details under the heading SEPP 65) <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Following the completion of the notification period some minor additional information was sought in relation to considerations regarding urban design, solar access, privacy, access, setback / height compliance, and amenity considerations. The information is of a routine nature for assessment consideration and does not substantially change any elements of the design plans or environmental impacts. Re-notification of the plans is therefore not required by the <i>Community Participation Plan</i>. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is able to be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter is able to be addressed via a condition of consent as applicable,

Section 4.15 'Matters for Consideration'	Comments
	specifically to internal fit-out requirements for this type of housing .
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of Development Control” in this report. The development assessment addresses the proposal relating to DFC and General Principles of Development; including visual amenity, building bulk, landscaping building setbacks and streetscape impacts for the B2 Oxford Falls Valley Locality for Warringah LEP 2000. (ii) The development will contribute to the available stock of housing for aged or disabled persons in the locality the development. WLEP 2000 permits the use of the land to be used for the social support in the available supply of housing for Warringah and the wider area. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use. The proposal seeks to increase the economic supply of housing for aged or disabled persons.
Section 4.15 (1) (c) – the suitability of the site for the development	The site has physical constraints which are influenced by existing buildings, appropriate setbacks to meet the DFC, accessibility and bushfire management. In this regard the proposal seeks to utilise the area was to be taken up by the “S” shaped driveway. The building footprint is in a similar position of the site that was subject to extensive site works and there are no trees in the area to be disturbed. The proposal seeks to maintain the existing approved use of the land for housing for aged and disabled persons. The site includes special provisions for bushfire safety that came into effect with the Rural Fires Act 1997 and the particular requirements / allowances given to “housing for older people or people with a disability” on the urban to rural interface. The NSW RFS provided a referral response pursuant to Section 100B, dated 16/8/2021.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations	See detailed consideration of submissions within this report under the heading “submissions”.
Section 4.15 (1) (e) – the public interest	The public interest is considered in the context of the proposal, submission issues raise and the provisions applying to the B2 Oxford Falls Valley Locality for Category 2 development. The assessment has found that the proposal is not justified for approval in the public interest for reasons listed in the recommendation of this report.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No.55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant bushland for a significant period of time with and only a dwelling house no substantial other prior development having been undertaken.

The requirements of SEPP 55 were addressed for the aged care development on the site with development application DA2009/0800. During site preparation and construction works for DA2009/0800 the land was cleared, developed and is now occupied for residential purposes. No site contamination issues have been notified to Council (such as buried waste or the like). The site is not adjacent a potentially contaminating use (e.g. service station) that might lead to future contamination risks and the area of the building footprint contains soil disturbed during site works.

State Environmental Planning Policy – BASIX (2004)

The development application was submitted with a BASIX Certificate No.1195179M dated 16 April 2021 to address the requirements of this SEPP.

The performance rating scores for water (42), thermal comfort (Pass) and energy (45) comply with the target scores required under the SEPP.

State Environmental Planning Policy – Infrastructure (2007)

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,



- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal to modify the existing facility swimming pool.

In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

The application was referred to *Ausgrid* who did not raise any objection and referral advice is provided as per the Ausgrid response on 20/7/2021.

Clause 101 of *SEPP Infrastructure* requires the Consent Authority to consider any development application for development with frontage to a classified road. Lady Penrhyn Drive is not listed as a classified road for the purposes of the SEPP.

Any requirements of Sydney Water for water and sewer connections are administered by separate processes directly through Sydney Water (Section 73 Certificates where applicable).

State Environmental Planning Policy- Design Quality of Residential Apartment Development

This Policy applies to the State for development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) *the development consists of any of the following:*

- (i) *the erection of a new building,*
- (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) *the conversion of an existing building, and*

(b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*

(c) *the building concerned contains at least 4 or more dwellings.*

- i. The development comprises 10 attached dwellings and is technically 2 storeys being partly excavated into the slope of the site with the basement *less than 1.2m* above existing ground level. Ground level is taken as the existing ground (survey) level, since earthworks visible on site have occurred by artificial modifications of the landform as being 'temporary' with a lot of surrounding civil works still being incomplete or changed during the construction phases of DA2009/0800).
- ii. At per the survey plan dated 2/6/2021 drawn by Survcorp, the existing ground level along the eastern side of the basement wall is RL99.74 to RL99.13 along the front of



- the basement (41m length) of building "D". The finished level for the basement ceiling is RL99.72
- iii. Alternatively the original site survey plan dated 16/3/2009 drawn by Craig & Rhodes Surveyors, the natural ground line (as per original survey) is RL99.5 to RL100.0 along the front of the basement (41m length) of building "D".
 - iv. The building does not trigger (b) to qualify as a 3 storey residential flat building under the SEPP.
 - v. While the proposal is "housing" in the form of a residential flat building within the B2 Oxford Falls Locality the configuration of the building for aged or disabled persons is permitted on the site (as Category 2 land use) and meets the requirements of *Clause 40 Housing for older people or people with disabilities* (including Schedule 16)
 - vi. Development for the purposes of flat buildings (pursuant to SEPP 65) is not considered to be consistent with the B2 Oxford Falls Valley locality, or the semi-rural setting, regardless of the density relaxation permitted for 'aged care' housing.

State Environmental Planning Policy - Housing for Seniors or People with a Disability (2009)

Sections of the SEPP do not apply where that part of the SEPP is preceded by the words "a development application made pursuant to this Chapter" (See *Mete v Warringah Council* [2004] NSW LEC 273)

Part 1 General

The development proposal is consistent with the applicable clauses under this Part.

Part 1A Site Compatibility Certificates

Not required for the proposal as it replaces an existing approved building for the same purpose.

Part 2 Site-related requirements

The proposal is required to demonstrate consistency with the applicable clauses under this Part where there is no provision in the WLEP 2000 for that site related requirement.

Part 3 Design Requirements

Applied under WLEP 2000 (see *Mete v Warringah*)

Part 4 Development Standards to be complied with

Applied under WLEP 2000 (see *Mete v Warringah*)

Part 5 Development on land adjoining land zoned primarily for urban purposes

Applied under WLEP 2000 (see *Mete v Warringah*)

Part 6 Development for vertical villages

Not applicable

Part 7 Development standards that cannot be used as grounds to refuse consent

Applied under WLEP 2000 (see *Mete v Warringah*)



Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this application) were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure nominated the land in the Oxford Falls Valley and Belrose North localities as a "deferred matter" from WLEP 2011 in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality.

The Desired Future Character (DFC) statement for the B2 Oxford Falls Valley locality states:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Definition and Category of Development

The proposal seeks consent for "Housing for older people or people with disabilities". The land use is identified as a specific Category 2 use and is permissible within the B2 Locality only on land described in paragraph "C" of the Housing density control. Paragraph C states



that:

“(c) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability” and the development complies with the minimum standards set out in clause 29.”

The LEP provide an explanatory note on “categories” of development which reads:

“To assist with understanding: Category One development is development that is generally consistent with the desired future character of the locality, Category Two development is development that may be consistent with the desired future character of the locality, and Category Three development is development that is generally inconsistent with the desired future character of the locality.”

Consideration of the development against the Desired Future Character

Before granting consent to the proposal, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement. As the proposal is a ‘Category 2’ use it must maintain consistency with the Desired Future Character (DFC) Statement and General Principles of development control. As such, the following provides consideration of the development when tested against the various parts of the above DFC statement:

- ***The present character of Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.***

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.”

Comment:

The new building covers a larger building footprint than the other existing ILU buildings but is similar in appearance in terms of external materials, parking location, height, roof form and window and balcony style. Development for the purposes of large, multi-storey residential flat buildings is not considered to be consistent with *low intensity* development for the non-urban locality, regardless of the density relaxation permitted for ‘aged care’ housing. In this regard SEPP 65 is intended to deal with apartment style development normally seen in medium density zones, and not a rural fringe / semi-bushland setting. Maintaining a two storey detached style in small modules that are “consistent with structures on adjoining or nearby land” has not been adequately demonstrated. In this case the building is some 40m x 20m in its footprint that is substantially larger than any adjacent or nearby buildings.

The DFC requires that all “future development be limited to detached style housing” and that the housing density standards are required to be conformed too. The built form controls permit that “on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability”. As such the proposed use is specifically granted discretion against the housing density standard. However, the DFC still requires aged care development to be “detached style” and be of “low intensity, low impact” use.



As the proposed development is not a conventional single detached dwelling house, the development is required to conform as a "low intensity, low impact" use as described in the Land and Environment judgement "*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*". The following definition was provided in the judgement:

- **Intensity** - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it.
- **Impact** - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

Low Intensity assessment

Occupation Intensity:

The proposal may be assumed to have an occupancy of 2 persons per unit, being up to 20 persons for the building as a maximum. Intensity considerations must also extend to the whole of the site also, as the development controls apply in context of the whole of the site. Therefore, the proposed building should not just be considered in isolation as a 'stand-alone' building. The DFC is seeking to create a detached and dispersed development pattern, with development dispersed within a semi-rural / bushland setting. Development application No.DA2009/0800, originally sought the limitation of 32 Units (likely 64 persons) in small detached 'pavilions' or small 'modules' dispersed on the site, with landscaping dispersed between the building and wide setback zones to the north and west, in order to characterise a bushland setting. This was depicted within DA2009/0800 as a form of 'master plan' for the site. A number of modifications have occurred to the original master plan concept and most other principal buildings have been completed, including the 'community building'. The addition of building "D" creates a highly concentrated development pattern that is intensive in terms of its urbanised character, loss of landscaping between buildings for road works and completely 'building out' most buildings on 2 or 3 sides for many of the ILU modules and all 4 sides to building "C2".

Traffic Intensity:

The proposal raises the threshold of traffic intensity generated by the existing development on the site. Traffic to and from the building is intensified by the additional 10 dwellings, or 29% dwelling uplift / numerical change to the site as whole (not including visitors). It is therefore, a significant change to the existing "low intensity" approved by the NSW LEC with DA2009/0800 and not substantially the same as the approved 34 dwellings (as modified).

Density:

In terms of density, the requirement for the B2 Oxford Falls Valley Locality is 1 dwelling per 20 hectares (ha) and the subject property already contained a dwelling house within Lot 806 DP 752038. The existing dwelling house was excised as part of DA2009/0800 by two lot subdivision.



The WLEP allows housing for aged care on the subject site to avoid the strict numerical density control, but retains the limitations of the DFC that seek “low intensity/low impact”. The proposed building “D” does not encroach into the front setback. The wall height, building height, and building separation is similar to adjacent residential buildings (as they currently appear on site). The physical size of the building itself however is not consistent with built form outcomes expected with the approved master plan of DA2009/0800. While the proposal has 2 ‘modules’ the overall outer footprint span is 41.5m x 22m.

The scale and shape of the new building “D” form creates a substantial density impact on the site and intensification from the approved development under DA2009/0800.

Accordingly, the proposed DA does not maintain ‘low intensity’ use and consistency test required for Category 2 development against the DFC.

Low Impact assessment

The relevant potential impacts of the proposed development are addressed as follows:

Built Form Impact:

The physical impacts of the building form on the natural landscape is substantially within the area to be used for road works associated with DA2009/0800. The proposed building “D” is to be substantially embedded into the hillside and the likely external impacts affect the pattern of development for the existing buildings due to the similar spatial separation, style of building, and completely building out the south-western area of the site. Building C2 is proposed to be completely surrounded by buildings and other closer modules to building “D” bordered on 3 sides in terms of built form surroundings with roads in-between.

While the DFC covers the expansive area of Oxford Falls Valley Locality, the DFC applies to each property within it and specifically, the particulars of all new development to maintain a “low impact”. The increased concentration creates an adverse built form impact on surrounding ILU’s that are loose a wide landscaped open outlook.

Noise Impact:

The proposal does not require a noise assessment, and existing conditions address civil works for excavation and construction hours. Internal building plant, such as air conditioners, lift motors, garage door mechanisms and the like are subject to NSW noise impact regulations and addressed within this report under *General Principle 43 Noise*.

Traffic Impact:

The proposal is not considered to adversely impact on the performance of the surrounding road network. The assessment concludes that car parking for 10 resident car spaces plus visitor spaces in the basement and will be accommodated by the internal driveway arrangements (shown on the *Basement Plan* Dwg 101 dated 18/8/2021). The parking provision and traffic access arrangements proposed are concurred by Council’s Traffic Engineer, subject to conditions.

The submitted plans show the vehicle entry to the building depends on the existing unauthorised driveway along the western side of building “C1”. This driveway was built without consent and is unlawful. Therefore, planning assessment cannot support the DA as



it depends on illegal development work that occurred with DA2009/0800 to enable traffic / access to now further intensify the land use for new housing.

- ***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

Comment:

The DFC seeks to exclude development from ridgetops as these higher areas are much more visibly exposed in the broader bushland setting and landscape surrounding of the Locality. Buildings and associated development like tree clearing maintain consistency with the building set low against the backdrop with Lady Penrhyn Drive. The visual impact when viewed from surrounding urban land and near the site (such as Macintosh Road, Willandra Road, Cousins Road and Cormack Road) is ameliorated by 20 landscape buffer whereby the "S" shaped driveway is to be replaced with landscape area. The site is not visible from Narrabeen Lagoon or Wakehurst Parkway.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment:

Vegetation and Landform:

The Asset Protection Zone (APZ) for bushfire protection purposes limits vegetation planting and therefore compromises the ability to "protect" and where possible, 'enhance' the natural landscape. The landscape buffer to the road is retained at 20m for the building walls to allow opportunities for non-interlocking trees within the APZ. The density of landscape planting on the site required to address desired landscape character as per the approved landscape plans (despite some visible changes having occurred with the completion of the existing buildings previously).

In LEC Judgement of 2009/10973, when discussion regarding the DFC in paragraphs 96-97 the applicant argues that the removal of 147 trees would be replaced by 100 new trees propagated from soil removed from the site and that this revegetation of the site would result in a "negligible impact" upon the bushland appearance of the site from surrounding properties and therefore have negligible impact upon the bushland character of the B2 Locality.

In Paragraph 98 of Judgement of 2009/1093 the Commissioner is persuaded by the applicant's evidence. Below is the landscaped plan approved by the LEC which involves new tree plantings (dark green) to restore the bushland character of the site as well as the many trees (light green) purported to be retained in situ to maintain the DFC. Although the driveway winds through the area where the proposed building is to be located, there is significant number of trees proposed to be planted. The construction of a building in the proposed location destroys the original intent of the court consent and substance of the applicant's argument of retaining a bushland character by now with further in-fill development by exploiting areas revegetated around the existing development.



The current development, although not complete, does not achieve the original intent of the Court Consent in being consistent with the DFC, nor does the proposal contribute to this outcome required in the DFC to maintain the existing character, nor enhance or protect the natural landscape (landforms and vegetation)



Amenity: The DFC prescribes an overall density of “1 dwelling per 20 hectares”, whilst age care development is permissible, if adjoining land for urban purposes, this density control defines the expected character and intensity of development within the B2 locality. The



resultant amenity should therefore demonstrate a response to the distribution of the development across the site in balance with compliance to the built form controls.

The proposed development results in an increase of 10 ILU's (by 29.4%) to the intensity of use relating to impacts of higher occupancy by the total number of aged care ILU dwellings on site. The site is in a fringe location to the urban zone however the Locality Statement (or LEP 2000) still requires the bushland landscape of the DFC to be given appropriate weight. The visual influence of development adjacent the site (west and east) is not considered to carry determinative weight. However, the proposal intensifies the development pattern of the site within the core areas, (i.e. not encroaching the front or side boundary setback areas). The transition to the bushland amenity is retained on the northern interface where the site adjoins bushland.

Visual Materials: The proposed aged care building presents as a part 2 / part 3 storey building when finished but is 2 storeys above existing and natural ground level. The bulk and scale is split into two modules of 21.7m x 18m and 15m x 17.3m. The chosen colours and materials are to match the existing buildings on site.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.***

The site does not front Forest Way or Wakehurst Parkway, therefore specific issues relating to these road corridors as Main Roads (MR) do not apply the site.

Rural Fire Service requirements affect the landscape plan in so far as fire protection will partly limit tree planting along the frontages of the building, including areas of the Inner Protection Area (IPA). Therefore, the proposal maintains 20 setback for landscaping to assist in screening the building and reducing the visual impact of the proposal on the surrounding landscape.

Boundary fencing for the majority of the western frontage along Lady Penrhyn Drives has already been constructed. No change to boundary fencing style is proposed as part of this development application.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment:

The site has permanent erosion control devices and drainage infrastructure constructed as part of DA2009/0800. Subject to effective erosion control during construction, the risk of further erosion and sedimentation impacts on waterways and riparian land should be 'low', including water quality impacts on Narrabeen Lagoon. The subject DA has been provided with an erosion control plan for the site works.

Conclusion on the DFC



Based upon the above considerations, the development, as a "Category 2" use, is considered to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. Overall the proposal detracts from the characteristic of "low intensity low impact" including inconsistency with the development 'master plan' as originally approved for the site.

Clause 12 of the WLEP 2000 requires that before consent is granted the consent authority must be satisfied that the development is consistent with the DFC. This is a pre-condition to ensure that future development complies with Part 2 and 3 of the WLEP and the applicable development standards set out in the applicable Locality Statement. Further to this, before granting consent any Category 2 development must be consistent with the DFC. In this case the proposal is not satisfactory.

Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Control	Required	Proposed Development	Compliance
Housing Density	1 dwelling per 20ha	"Housing for aged persons or persons with a disability". (WLEP 2000 Exception to Housing density restriction for land adjacent urban land)	Yes
Building Height	8.5m	7.1m Measured from Natural Ground Level	Yes Refer to "WLEP Clause 29".
	7.2m	6.8m	Yes
Front Building Setback	20m (All roads)	Lady Penrhyn Drive 20m to building façade	Yes
		20.0m to basement carpark and upper wall plane	Yes
		Other frontage setbacks – 62.5m due east, 23.5m due south.	Yes
		(Existing buildings B2, B3, B4 & C1: 20m to Willandra Road reserve)	N/A
Rear Building Setback	10m	N/A	N/A
Side Setback	10m	86.5m (north boundary)	Yes
Landscape Open Space	30% of site to be landscaped	70%(18,443sqm) Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes



Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy.”

The proposal does not make any variations to LEP permitted setbacks, height, wall height or landscaping pursuant to the built form controls of the Locality Statement.

WLEP 2000 General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of *WLEP 2000* are applicable to the proposed development:

Clause 29 On what grounds can applications for housing for older people or people with disabilities not be refused?

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
Building Height	Yes	8 metres or less in height when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point	Yes
Density and Scale	Yes	0.75:1 or less, for hostels and residential care facilities located within 400 metres walking distance of a public transport node (being a public transport facility such as a railway station, bus stop, or ferry / wharf that is serviced on a frequent and regular basis in daylight hours.	Yes (Pathway link approved with DA2009/1221)
Landscape Area	Yes	a minimum of 35sqm of landscaped area per dwelling	Yes
Parking	Yes	in the case of dwellings, at least 0.5 car space for each bedroom	Yes
Visitor Parking	Yes	For less than 8 dwellings, (and not on a clearway) no visitor parking is required. <u>Comment:</u> The proposed development has more than 8 dwellings and is therefore required to provide at least 1 visitor space.	Yes Communal visitor site parking available and 2 spaces in basement

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
Landscaped Areas	Yes	Soil of a sufficient depth to support the growth of trees and shrubs on an area (preferably located at the rear of the site) of not less than the width of the site multiplied by 15% of the length of the site. <u>Comment:</u> Planting of canopy trees is subject to NSW RFS requirements that permits limited tree distribution within the APZ.	Yes Landscape surroundings for building as per landscape plan drawn by 'Paul Scrivener' dated 27/4/2021
Private Open Space for Infill Housing	Yes	(ii) Any dwelling that is located partly or wholly at ground floor of a multi-storey building must have 15 sqm of private open space with dimensions of at least 3 m wide and 3 m long . The open space must be accessible from a ground floor living area . (iii) Any other dwelling must have a balcony not less than 6 sqm and no less than 1.8 m . The balcony must be accessible from a living area.	No Units 1 to 4 are at ground level but use balconies instead of 15sqm of private open space. First floor balconies comply

The proposal achieves numerical compliance with Clause 29. Further development assessment is required pursuant to Schedule 16 as specified to aged care development under WLEP 2000. See "Schedule 16" assessment within this report.

WLEP 2000 General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of *WLEP 2000* are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	This General Principle seeks to ensure that development does not result in excessive glare and solar reflections. The roof finish will be within the medium green colour range ('colorbond') to blend with the bushland setting for the roof and external colours similar to the existing adjacent ILU buildings.	Yes

General Principles	Applies	Comments	Complies
		Accordingly, the development proposed is considered to satisfy this General Principle.	
CL42 Construction Sites	Yes	The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality subject to construction management. It is recommended that a detailed construction management plan (CMP) be prepared prior to works commencing to co-ordinate internal traffic, dust and construction related matters during site works. Accordingly, the development proposed is considered to satisfy this General Principle.	Yes (subject to condition)
CL43 Noise	Yes	Clause 43 of LEP 2000 provides <i>"Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants"</i>. There will be construction noise generated from the site works during the construction phase and this is able to be addressed by conditions for standard industry hours and a construction management plan. The level of noise is appropriately managed by conditions to ensure that there is no unreasonable impacts on the amenity of nearby dwellings (within the site and fronting Lady Penrhyn Drive). Standard requirements already apply for installed equipment (lift plant / A/C units and the like. The position of the building on the site is adequately separated from neighbouring properties in Lady Penrhyn Drive to buffer noise the building services. For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43.	Yes
CL44 Pollutants	Yes	The proposal is located within the headwater catchment to South Creek and will be connected to a new sewer line to the Sydney Water sewer mains link in Willandra Road north east of the site.	Yes

General Principles	Applies	Comments	Complies
		Therefore, the development proposed is satisfactory against the requirements of this clause to manage domestic sewerage disposal.	
CL45 Hazardous Uses	No	No comment	N/A
CL46 Radiation Emission Levels	No	No comment	N/A
CL47 Flood Affected Land	No	No comment	N/A
CL48 Potentially Contaminated Land	Yes	The site of the proposed building was previously undeveloped bushland which has now been significantly modified by civil earthworks and landscaping associated with DA2009/0800. No contamination has been identified on the site and this clause was addressed prior to development of the existing aged care building's being approved on the subject property. See assessment details provided under the heading 'SEPP 55'	Yes
CL49 Remediation of Contaminated Land	No	No comment	N/A
CL49a Acid Sulfate Soils	No	No comment	N/A
CL50 Safety & Security	Yes	The proposal maintains an acceptable level of safety and security through the site design and layout. Assessment of the proposal with regard to clause 50 is provided as follows: - The proposed building will have open surroundings for the building and partly visible towards Lady Penrhyn Drive to maintain passive surveillance within the site, due to the proximity of existing aged care buildings within the same property. - Entrance to the building is clearly accessible from the driveway and parking is contained with a basement area Accordingly, the development proposed is considered to satisfy this General Principle.	Yes

General Principles	Applies	Comments	Complies
CL51 Front Fences and Walls	Yes	The site already has a brick and batten fence constructed along the frontage of Lady Penrhyn Drive between the entry and the north western corner of the site constructed in association with existing building work on the site. No change is proposed to the fencing.	Yes
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
CL53 Signs	Yes	No advertising signs are proposed.	Yes
CL54 Provision and Location of Utility Services	Yes	The site has access to electrical and water services with connections to be managed by the relevant service provider. <i>Sydney Water</i> connection is administered separately by Sydney Water for water and sewer. Service connection is available to the site due to the existing aged care development on the property. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	No comment. Not within a medium density locality.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land. The subject site has been extensively modified such that there are no significant rock outcrops or trees in the location of the proposed building footprint. Insufficient information has been provided to address the site works that have covered backfilled the edge of the rock cliff features in the western half of the site and how they may be restored / reinstated. The evidence to the Court in paragraph 90 of the	No Insufficient information

General Principles	Applies	Comments	Complies
		judgement proceedings under 2009/10974 portrayed that <i>"the majority of prominent outcrops are retained and the site will remain characterised by these..."</i> The proposal however seeks to increase the fringe 'urbanisation' of the site following extensive unauthorised civil earthworks that has back filled or covered the main rock outcrops / escarpment feature. The subject proposal alters the internal road network access and insufficient information is provided to address the requirements of this clause and maintain the integrity of natural features of the site. Accordingly, the proposal is not considered to satisfy this General Principle.	
CL57 Development on Sloping Land	Yes	This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation by requiring development to step down the site. The subject site has a variable (and artificially modified) fall from west to east approximately 3m within the building footprint. The eastern wall base is positioned between RL99.74 to RL99.13. The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL58 Protection of Existing Flora	Yes	This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and on remnant native ground cover species. The development proposal work will not require the removal of any trees as the land has already been extensively cleared for civil works associated with DA2009/0800. The landscape plan provides for a mix of trees, shrub and native plant that are endemic to the area as well as other suitable plants. However the proposed building will remove the capacity to re-vegetate parts of the site due to the additional restrictions of bushfire protection	No Insufficient information

General Principles	Applies	Comments	Complies
		In this regard insufficient information has been provided to demonstrate that the integrity of the protection of flora has been maintained on balance with the loss of landscape area for driveway and hard surface zones. This concern is influenced the present situation that areas of hard surface driveways are not approved and would otherwise be landscaped open space intended to be retained and not used for later "infill" development. Accordingly, the proposal is not considered to satisfy this General Principle.	
CL59 Koala Habitat Protection	No	Site has been developed for aged persons housing and is not identified as Koala habitat.	N/A
CL60 Watercourses & Aquatic Habitats	Yes	The site has existing drainage infrastructure and a water detention system. Runoff water is required to be directed to this system which manages all runoff from the adjacent buildings within the complex as a whole to protect the water catchment habitat quality of Narrabeen lagoon. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL61 Views	Yes	There are coastal and district views across the site. The site is overlooked from other houses that are much higher in elevation above the site. This avoids any unreasonable view impact for adjacent land. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL62 Access to sunlight	Yes	The proposed has insufficient details to demonstrate compliant sunlight to both adjacent dwelling and private open space within building "D" Adjacent aged care dwellings Building "B1" and "A1" will overshadow the ground floor balconies. Insufficient information is provided to clearly show no less than 2 hours of sunlight retained between 9am and 3pm on 21st June. Building C2 and C1 will also lose solar amenity in the late afternoon. Accordingly, the proposal is considered to satisfy this General Principle.	No Insufficient information

General Principles	Applies	Comments	Complies
CL63 Landscaped Open Space	Yes	This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site is subject to NSW RFS requirements that can override the amount of permitted tree planting on site. Therefore, the opportunities to provide effective dense landscape screening, commensurate the size and scale of the building proposed, is subject to RFS considerations. Further details are provided under the Referral Response by Council's Landscape Officer. Due to RFS requirements, the establishment of appropriate planting to maintain and enhance the streetscape and the desired future character of the locality is diminished on this site. In this regard the approved landscaping on site is critical to maintaining consistency with the Desired Future Character. The loss of any landscaped areas to additional building works beyond the original consent is in conflict with the court consent, including evidence provided by the applicant in the proceedings for 2009/10974 in consideration of WLEP 2000. Insufficient information is provided to address the objectives of this clause. The proposal is considered to not satisfy this General Principle.	No Insufficient information
CL63A Rear Building Setback	N/A	Natural bushland areas adjacent the northern boundary will remain unchanged as this forms part of the 60m APZ. This is a side setback for the triangular shaped lot.	Yes
CL64 Private open space	Yes	This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants. The site has sufficient land area to accommodate private open space for occupants (ground level courtyards), however these courtyards are not provided. The ground floor balconies area overshadowed for some units. The site has other communal open space areas around the shared community facilities	No

General Principles	Applies	Comments	Complies
		available within the site for the private complex as a whole. Accordingly, the proposal is considered to satisfy this General Principle.	
CL65 Privacy	Yes	The closest dwelling houses that are not related to the use of the site are toward the north-west along Lady Penrhyn Drive. These dwelling houses are 60m or more from proposed building "D". Building "D" is positioned so that the upper storey will overlook the adjacent buildings of C1 and C2. The horizontal separation is 6m to 9.0m This vertical separation between the buildings is assisted by offset balconies and privacy screen to restrict overlooking. The east facing balconies seek to also seek to gain morning sunlight. Visual privacy with buildings C1 and C2 is similar to the spatial separation balcony positions throughout the site. Given the visual separation between the buildings, the formal/informal outlooks it is proposed to mitigate any minor visual conflicts with screens and suitable devices. Privacy screening is provided for the balcony side edges. Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent dwelling houses in Lady Penrhyn Drive. Balcony and terraces for the building proposed generally overlook roof areas at the upper level but face the masonry side wall for Building 'B1', 'C1' and 'C2' at ground level. Accordingly, the proposal satisfies this General Principle.	Yes
CL66 Building bulk	Yes	<i>This General Principle of Development Controls seeks that:</i> <i>side and rear setbacks are to be progressively increased as wall height increases,</i> <i>large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</i>	Yes

General Principles	Applies	Comments	Complies
		• <i>appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i> The size and appearance of the proposed development articulated into 2 modules. These modules are similar in height and bulk to the adjacent ILU buildings on the site. The western wall of building "D" is mostly below EGL and appears as single storey from the west. Therefore, the building bulk and scale is consistent with the character of the site having already been developed for aged care housing in the style of a retirement village complex. Accordingly, the proposal is considered to satisfy this General Principle	
CL67 Roofs	Yes	This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development. The building is a low profile pitched roof similar to the shape and style other buildings on site. The colour is of a mid-green "colorbond". Accordingly, the proposal is considered to satisfy this General Principle	Yes
CL68 Conservation of Energy and Water	Yes	As the proposed development is classified as a Class 3 Building in accordance with the Building Code of Australia (BCA) and a design compliance certificate has been provided pursuant to SEPP BASIX. Conditions requiring compliance with the BCA / NCC and BASIX are contained within the recommended conditions.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The building is not a public building. Accessibility is required to be maintained to satisfy Schedule 16, including compliance with current standards under AS1428 and the <i>Disability Discrimination Act 1992</i> (DDA). Sufficient details have been provided to demonstrate the requirements of AS1428 and the DDA can be met in terms of footpath	Yes (Subject to condition)

General Principles	Applies	Comments	Complies
		links, internal lift and car parking appropriate to persons with aged or disability access limitations, subject to conditions to ensure compliance. Accordingly, the proposal is considered to satisfy this General Principle	
CL70 Site facilities	Yes	The site facilities include bin storage in the basement and the site already has an operational waste handling service. Each unit has access to balcony and internal laundry for domestic clothes drying. The site facilities proposed are adequate to satisfy this general principle.	Yes
CL71 Parking facilities (visual impact)	Yes	This General Principle seeks to ensure that parking facilities are sited and designed so as not to dominate the street frontage. The proposed parking facilities are provided as an excavated garage under the building with landscaping along the entry area. The garage entry is located facing east and does not create an unreasonable visual impact on Lady Penrhyn Drive. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL72 Traffic, access & safety	Yes	This General Principle seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety. The approved internal driveway network provides direct access to Lady Penrhyn Drive and Willandra Road for construction purposes meets Australian Standard 2890.1. The access from Lady Penrhyn Drive will remain as constructed with some minor adjustment to layback delineation. The existing entry was constructed as a "temporary" alternative during the construction phase of the existing buildings on site. The approved entry involved a sweeping "S" shaped driveway down the steep slope below the western site boundary. The western front building setback has been	Yes (Subject to condition)

General Principles	Applies	Comments	Complies
		grassed and a new masonry fence erected along the frontage to Lady Penrhyn Drive. Therefore, the proposal will augment and formally replace the original driveway access design from Lady Penrhyn Drive, including the link driveway to building "A1". The "U" shaped link to building "A1" was originally a west to east (clockwise) link but is not proposed to be the reverse (anticlockwise) link for vehicles. This link extends past buildings "B1" and "A2" then around to a northern elevation of building "A1". A minor modification of consent to DA2009/0800 would be required in the future by the applicant to change the garage door to the northern side of "building A1" basement. Building A1 is not constructed yet, since the vehicle approach was originally from the "S" shaped main driveway. Council's Development Engineers raised no objections to the proposed works, subject to conditions. Council's Traffic Engineers raise no objection to the development with respect to traffic, access and safety. Considerations has been made in accordance with Hussey C in "<i>Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128</i>" for the proposal with regard to <i>low intensity low impact</i> development Therefore, the proposal is satisfactory against the requirements of this clause.	
CL73 On-site Loading and Unloading	No	Not applicable	N/A
CL74 Provision of Carparking	Yes	The proposal is considered to comply with Clause 21, Clause 74 and Schedule 16 and Schedule 17.	Yes
CL75 Design of Carparking Areas	Yes	This General Principal seeks to ensure that carparking is designed to minimise visual impact and provide a safe and efficient environment for both vehicles and pedestrians. Car parking, motorcycle spaces, and the disabled person's parking space are within the basement structure. Willandra	Yes

General Principles	Applies	Comments	Complies
		Road is capable of accommodating traffic from the site as a whole. Council's Traffic Engineer has reviewed the proposed parking and traffic conditions on the site and raised no objections to the design safety of the parking area. Accordingly, subject to conditions the proposal satisfies this General Principle.	
CL76 Management of Stormwater	Yes	This General Principal seeks to ensure that adequate provision is made for the management of stormwater volume The application has been assessed by Council's Development Engineers and all stormwater will be connected to the existing on-site detention system and drainage network within the site. Insufficient details are provided to address the additional runoff design details, including Water Sensitive Urban Design The new driveway links constructed plus the new building add 825sqm of hard surface to the site when offset with the sections of driveway that are now shown to be replaced with landscaping (see site plan and landscape plans). Accordingly, the proposal satisfies this General Principle.	No Insufficient information
CL77 Landfill	Yes	Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works. No new fill material is proposed to be brought from outside the site. Accordingly, the proposal satisfies this General Principle.	Yes
CL78 Erosion & Sedimentation	Yes	Appropriate management of erosion and sedimentation works on the site have not been provided that are satisfactory for the scale of civil works required considering the steep slope and potential impact on drainage infrastructure within the site	Yes



General Principles	Applies	Comments	Complies
		Accordingly, the proposal satisfies this General Principle.	
CL79 Heritage Control	No	No comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	No aboriginal relics have been identified on the site, however conditions are suitable to address the appropriate action should any potential relics be uncovered Accordingly, the proposal satisfies this General Principle.	Yes
CL81 Notice to Heritage Council	No	No comment	N/A
CL82 Development in the Vicinity of Heritage Items	No	The proposal is not within close proximity to any local heritage items identified in the Warringah LEP 2000 or Warringah LEP 2011 (applies to adjacent land).	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The work is located within an area that is already substantially disturbed by previous clearing and earthworks. There are no known aboriginal sites recorded on the subject land.	Yes

SCHEDULES

Schedule 8 - Site analysis

The Site Analysis dated 1/10/2021 has been provided pursuant to meeting the minimum requirements of Schedule 8.

Schedule 16 - Principles and Standards for housing for older people or people with disabilities

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
Identification	Yes	House numbering to be provided.	Yes (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
Security	Yes	Pathway lighting, height and LUX.	Yes (Suitable to be addressed by condition)
Letterboxes in multi-dwelling developments	Yes	Lockable, central location and situated in hardstand accessible location.	Yes (Suitable to be addressed by condition)
Private car accommodation	Yes	Each car parking space must be not less than 6 metres 3.2m with internal clearance 2.5m Power operated roller door.	Yes (Suitable to be addressed by condition)
Accessible entry	Yes	Must not have a slope that exceeds 1:40 Must comply with clauses 4.3.1 and 4.3.2 of AS 4299. Entry door handle and other hardware that complies with AS 1428	Yes (Suitable to be addressed by condition)
Exterior: general	Yes	External doors to any one dwelling must be keyed alike.	Yes (Suitable to be addressed by condition)
Interior: general	Yes	Must have a clearance of at least 820 millimetres (mm), a width of 1000 mm. Internal door approaches must be at least 1 200 mm.	Yes (Suitable to be addressed by condition)
Living room and dining room	Yes	Bedroom must comply with parts (a) and (b) including circulation space AS4299, telephone connections and lighting.	Yes (Suitable to be addressed by condition)
Kitchen	Yes	Kitchen must comply with parts (a) to (j) (ii), including circulation space, power outlets, bench space and cupboard design.	Yes (Suitable to be addressed by condition)
Main bedroom	Yes	Bedroom must comply with parts (a) to (e) including bedside circulation space power outlets and lighting.	Yes (Suitable to be addressed by condition)
Bathroom	Yes	Bathroom must comply with parts (a) to (h). Including compliance with AS1428, AS3740 and AS4299.	Yes (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
Toilet	Yes	Complies with clause 1.4.12 of AS 4299, and AS1428 including wall clearance and can accommodate a grab rail in compliance with Figure 4.5 of AS4299 and AS1428	Yes (Suitable to be addressed by condition)
Access to kitchen, main bedroom, Bathroom and toilet	Yes	The kitchen, main bedroom, bathroom and toilet must be located on the ground floor or if not on ground floor the living space is accessible to the same floor, or a stair climber provided for a wheelchair. All units have living areas on the same floor as bedrooms.	Yes
Laundry	Yes	Must have provision for an automatic washing machine, clothes dryer with access space of 1300mm clearance, thermostatic mixing valves, slip resistant floor and accessible path of travel to any clothesline provided.	Yes (Suitable to be addressed by condition)
Storage	Yes	Must be provided with a linen cupboard 600mm wide with adjustable shelving.	Yes (Suitable to be addressed by condition)
Doors	Yes	Door handles able to be operated with one hand and located between 900mm and 1,100 mm above floor level.	Yes (Suitable to be addressed by condition)
Surface finishes	Yes	External paved areas must have slip-resistant surfaces.	Yes (Suitable to be addressed by condition)
Ancillary items	Yes	Switches must be located between 900mm and 1,100mm above floor level. General purpose outlets must be located at least 600mm above floor level.	Yes (Suitable to be addressed by condition)
Garbage	Yes	Outside garbage storage area must be provided in an accessible location. Garbage room is in basement accessible by lift and stairs and ramp to outside area.	Yes
Applications by certain housing providers	No	Not applicable to this application.	N/A
Neighbourhood amenity and streetscape	Yes	(a) <i>contribute to an attractive residential environment with clear character and identity, and</i>	Yes (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		The building design is consistent with this requirement and the character of the approved use of the site. The approval of DA2009/0800 relied on a clear character of small pavilions separated and spaced within the site in a bushland setting. The two modules of "building D" have a similar mass and spatial separation to the adjacent buildings. See discussion of the desired future character and the approved built form of aged care development on the site (pursuant to WLEP2000) within this report. (b) <i>where possible, retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i> There are no urban conservation areas or heritage items in the vicinity of the proposal. (c) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing, and</i> The building curtilage for the basement and units are outside the front 20m building setback area as required including carparking and site facilities that are integrated to the building. (d) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by using building form and siting that relates to the site's land form, and</i> The site is 2.6 hectares and sufficiently large in area and dimensions to ensure it is possible to not require buildings to be located within setback areas and ensure wide landscape buffers are maintained to the road frontages. A landscape plan has been provided to show the new landscape area that has replaced parts of the "S" shaped driveway. (e) <i>where possible, maintain reasonable neighbour amenity and appropriate</i>	

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		<i>residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i> The site is within a bushland locality and therefore it is required to maintain consistency with the Oxford Falls Valley DFC. In this regard the DA cannot rely on transposing the adjacent urban character to address residential amenity, setbacks, scale and streetscape. The building presents as a low two storeys structure to the west and part 3 storeys to the east. The building form is of the same character to the rest of the existing site buildings within the development complex. (f) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i> No walls are located on the boundary as this clause may consider appropriate in urban locations. Building structures on or close to the boundary in the bushland localities are not be considered to be consistent with the DFC. (g) <i>be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</i> The DFC requires a 20m building setback to Lady Penrhyn Drive which currently varies from 50m ("building C2") to 20m ("building A1"). The front building setback complies with the Oxford Falls Locality building line of 20m. There are no driveway areas directly in front of the building and Lady Penrhyn Drive, as the previous "S" shaped driveway is to be replaced with landscaping. (h) <i>embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</i> The proposal has a landscape plan to ensure substantial landscape planting that	



Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		is commensurate with the height and scale of the building to provide an effective screen to Lady Penrhyn Drive.	

Schedule 17 - Carparking Provision

See assessment under Clause 74 of the General Principles of this report which demonstrates the proposal's ability to satisfy the requirements of this Schedule (and any associated concerns).

POLICY CONTROLS

Northern Beaches 'Section 7.12' Contributions Plan 2019.

The monetary contribution is based on the development cost of \$4,932,308.00.

A monetary contribution of **\$49,323.08** is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to 'section 7.12' of the *Environmental Planning & Assessment Act 1979* and the *Northern Beaches Section 7.12 Contributions Plan 2021*.

This may be addressed by a condition of consent.

OTHER MATTERS FOR CONSIDERATION

Department of Planning Concurrence

The proposal does not require concurrence from the Director of the *NSW Department of Planning* for variation to housing density pursuant to WLEP 2000 for the reasons stated in "paragraph C" of the B2 Locality statement, detailed previously in this report.

CONCLUSION

This report provides a comprehensive assessment of the proposal for ten (10) independent living units ('building "D"') to provide housing for older people and people with disabilities and particulars of the development that simultaneously augment the existing development complex approved under DA2009/0800 on the site known as No.8 Lady Penrhyn Drive, Beacon Hill.

Housing for older people or people with disabilities ('aged care') under WLEP 2000 is regarded as a "Category 2" development and facilitates the supply of purpose built housing along the fringe of the urban zones. All development however is subject to demonstrating consistency with the DFC Statement, Built Form Controls and General Principles. The proposal does not comply with Clause 12(2) whereby the proposal is not satisfactory in terms of meeting the "low intensity and low impact" development characterisation, fails to maintain the character of the locality and does not enhance the natural landscape. Additionally the proposal has insufficient information to comply with Clause 12(3) of the WLEP 2000.



The site already has approval for 34 aged / disabled persons independent living units, with ancillary structures distributed across the site in smaller detached buildings of 4 or 6 units grouped together. The proposed 10 units within building "D" are grouped into one semi-detached building module of 6 attached units and one of 4 attached units. The location of building "D" is situated on part of the site that was to be used for an "S" shaped driveway area that served as an important vegetation buffer and was to provide replacement vegetation identified in the Court Consent active on the site.

Substantial elements within the site that were approved under DA2009/0800 (as modified) have been subject to unauthorised changes. These works have been constructed to a permanent standard without approval and the subject development application relies on those works for fundamental aspects of access, drainage, landscaping and the like. Approval of the subject development application would therefore be giving tacit development approval to those unauthorised works. Critically this applies to the driveway access to the building and other ancillary works within the site that are inconsistent with the approved site plan and layout. Therefore, the proposal cannot lawfully be approved with the present state that the site is in, following major works having being completed that are erroneous or inconsistent with the NSW LEC consent for DA2009/0800.

The B2 Oxford Falls Valley Locality states that, '*future development will be limited to new detached style housing conforming with the housing density standard*'. In this case, the proposal is considered to be inconsistent with maintaining 'low intensity low impact'.

Public submission raised in objection to the proposal have been addressed.

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan 2000;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, as amended, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Insufficient in information to satisfy the requirements of the General Principles of Warringah LEP 2000
- Inconsistent with the Desired Future Character of the Warringah LEP 2000, including requirement for 'low intensity, low impact' development
- Inconsistent with the requirements to demonstrate consistency with the DFC for 'Category 2' development of Warringah LEP 2000 – B2 Oxford Falls Valley
- Inconsistent with the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.

It is considered that the appropriate controls and assessments procedures have been satisfactorily addressed to enable determination of the development application.

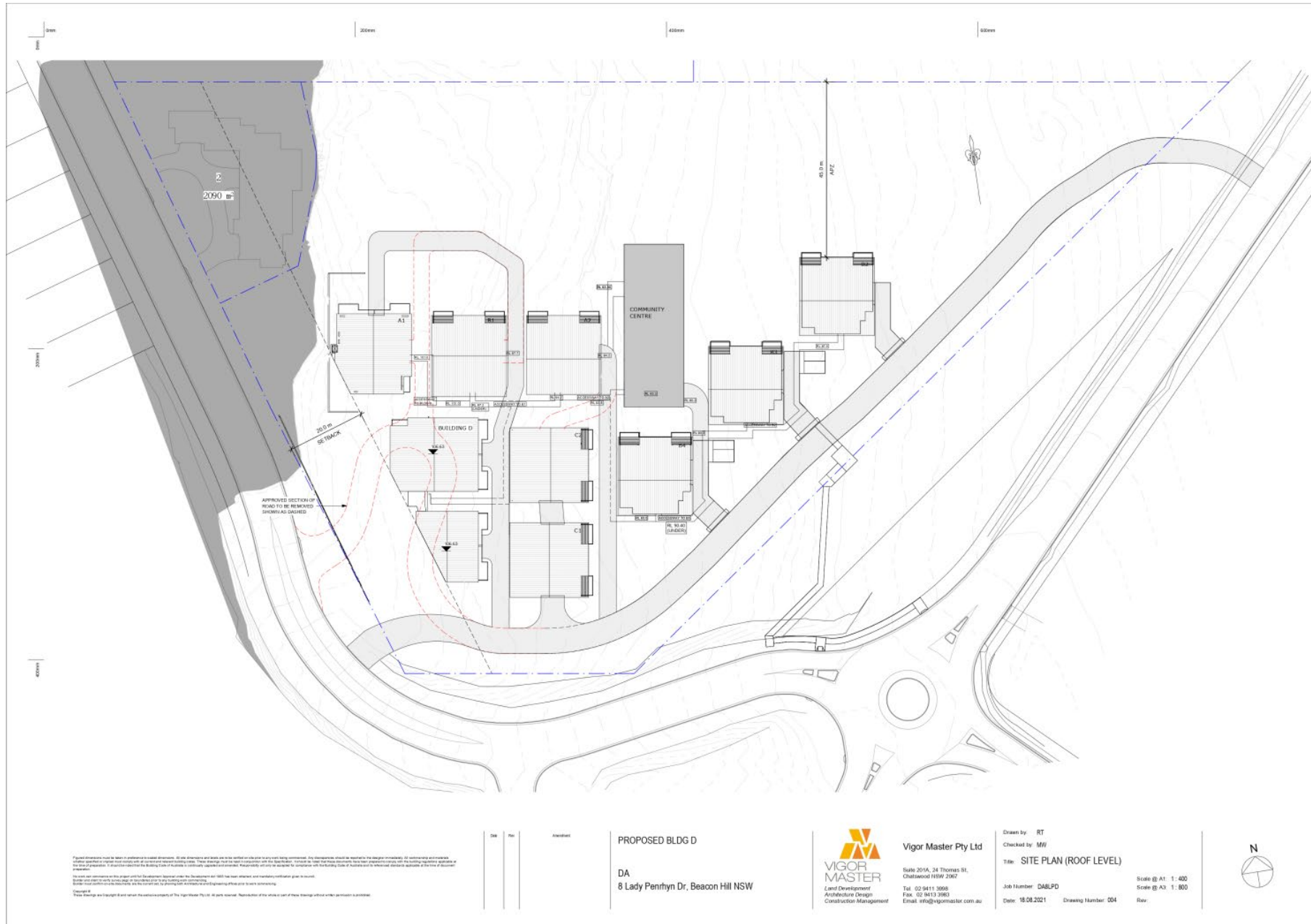


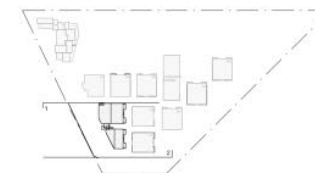
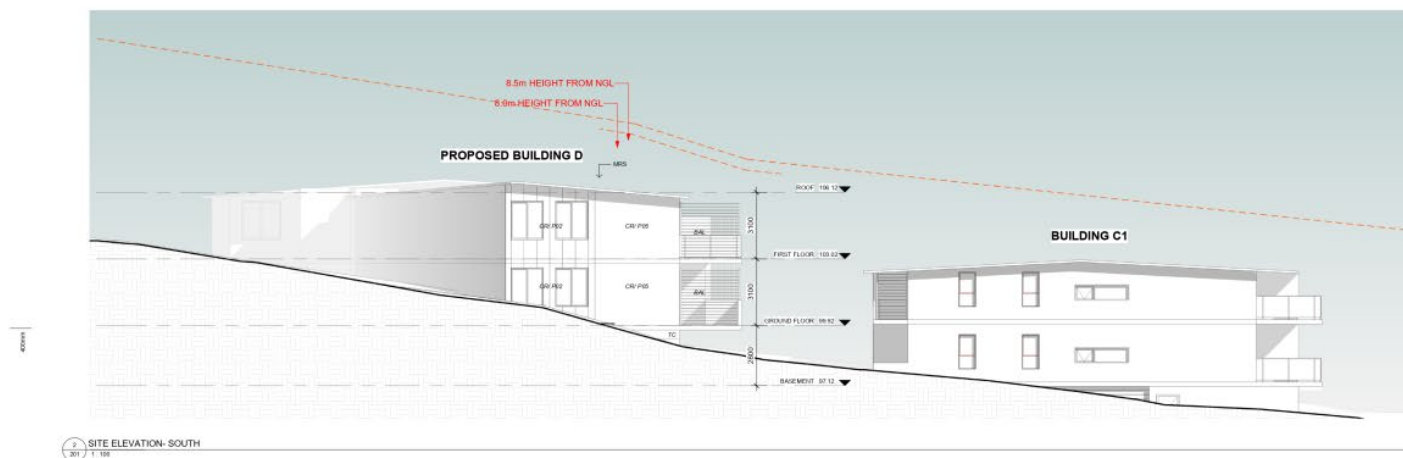
THAT Development Application No. DA2021/0545 for housing for older people or people with disabilities, at No.8 Lady Penrhyn Drive, Beacon Hill, be REFUSED for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development application relies on unauthorised works undertaken without consent to enable vehicle access to the proposed building. The development application cannot lawfully be approved given the dependency of access on the illegal existing driveway structures and associated site works constructed contrary to the NSW LEC approval of DA2009/0800 and associated construction certificate.
2. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 12 of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the Desired Future Character (DFC) Statement of the B2 Oxford Falls Valley Locality. In particular, the proposal does not satisfy DFC requirements for a "Category 2" development to conform with:
 - i. *Low intensity and low impact characteristics;*
 - ii. *Detached style appearance for housing; and*
 - iii. *Enhancing the natural landscape;*
3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the 'General Principles of Development Control'. In particular the proposal does not satisfy the requirements and sufficient information to comply with:
 - i. *Clause 29 (g) Private open space*
 - ii. *Clause 62 Access to sunlight*
 - iii. *Clause 56 Retaining Unique Environmental Features on Site*
 - iv. *Clause 58 Protection of Flora*
 - v. *Clause 63 Landscape open space*
 - vi. *Clause 74 Private open space; and*
 - vii. *Clause 76 Management of stormwater.*
4. Pursuant to Section 4.15 (1) (b) and (c) of the *Environmental Planning and Assessment Act 1979* the proposed development is unsuitable for the site. In particular the proposal exceeds the threshold considerations for 'low intensity low impact' development as established within *Vigour Master Pty v Warringah Shire Council [2003] NSWLEC 1128*.
5. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest. In particular, the proposal does not meet the provisions of the relevant local environmental planning instrument



for the creation of a better environment and maintaining the Desired Future Character of the B2 Oxford Falls Valley locality.



[illegible][illegible]

PROPOSED BLDG D

DA
8 Lady Penrhyn Dr, Beacon Hill NSW



Vigor Master Pty Ltd
Suite 201A, 24 Thomas St,
Chatswood NSW 2067
Tel. 02 9411 3698
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Drawn by: RT
Checked by: MW
Title: ELEVATIONS
Job Number: DABLPD
Date: 18.08.2021

Scale @ A1: 1:100
Scale @ A3: 1:200
Rev:





Design + Sustainability Advisory Panel Meeting Report – Date 22 July 2021

1 DA2021/0545 – 8 Lady Penrhyn Dr. BEACON HILL

PANEL COMMENT AND RECOMMENDATIONS

General; Strategic context, urban context: surrounding area character

The proposal is for ten (10) additional independent living units (ILU) within an existing development complex for 'older people or people with disabilities', currently approved as a development for 34 units, a community centre and ancillary site works.

The proposal is in the 'deferred area' of the Warringah LEP 2000 and in the B2 Oxford Falls Valley Locality.

The Panel notes that housing for older people or people with disabilities ('aged / disabled persons') is permitted adjacent to "urban land" that borders the B2 Oxford Falls Valley Locality.

The Panel's principal charter is related to the design quality of development, not its permissibility.

The design quality is related to its relationship to neighbours (in this case primarily the existing dwellings on the site), relationship to them and any adverse impacts, relationship to the public domain, and where the desired future character of the area has been articulated, how the design responds to, and fits with the desired future character, and the internal and external amenity of the design for occupants and visitors.

The Panel has been briefed by council officers about the context and the history of the development.

Although it has not been possible to visit the site, due to COVID restrictions, the architectural drawings, Google street-view, and most importantly the images of the existing development that are part of the landscape set of drawings has provided a good understanding of the existing development and site conditions, despite there being no supporting site analysis being provided.

For future reference the applicant should note that the Panel considers a thorough site analysis to be an **essential part of any design presentation and DA documentation**.

A thorough site analysis is required by cl 22 WLEP 2000:

Consent must not be granted for any development, except complying development, involving the erection of, or additions to, a building, or the subdivision of land unless the consent authority has considered a site analysis.

Appendix 1) of the Apartment Design Guide provides a good indication of what is required in a site analysis and the Panel expects the analysis to clearly demonstrate how the design has taken into account the constraints and opportunities of the site, not simply describe climatic and topographic conditions etc.

This is also specifically required by the WLEP2000:

A site analysis should be accompanied by a written statement explaining how the design of the proposed development responds to the site analysis, and the relevant general principles of development control in Part 4 and the Locality Statement.



This is a very significant omission in the documentation provide to the Panel.

Additionally, there is no clarity on the successive changes that have been made since the original approval, and exactly what building (siting and forms) and landscaping is currently approved. Noting that the site works are yet to be completed. This lack of clarity makes any assessment extremely difficult impossible.

Desired future character

The 'deferred lands' has a 'bushland character'. The desired future character is worth reiterating in full:

The WLEP 2000 requires that Council be satisfied that the development is consistent with the desired future character (DFC) prior to granting consent. Of relevance to the building design, the DFC for the locality requires:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

It is not clear to the Panel how the existing development is consistent with this desired 'future character' which does not resemble 'detached style housing' in any respect. There are many examples of single storey ILUs around Sydney, the existing development more closely resembles 'residential flat buildings'

There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

N/A

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced.

It is not clear to the Panel how the proposed development achieves this based on the cumulative impacts from the existing development and how this responds to the original development passing this test.

Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.

It appears that the entire site within the mandatory setbacks has been razed. The proposal continues this erasure, removes all existing vegetation, and provides a very low proportion of deep soil. Additionally, the introduced landscaping does not seem to have any relationship to the existing or originally approved conditions.

Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Council has provided the Panel with the material palette of the original approved DA. This does not appear to have been adhered to, and the justification for these changes that have significantly reduced the quality of the design, has not been provided.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

N/A

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.



N/A

Recommendation

It has not been demonstrated to the Panel-how, in the context the Desired Future Character, the proposed works which further erode the landscape setting, rather than enhance it, from the original application.

Scale, built form and articulation

The scale is not consistent with the desired future character specifically 'detached housing' that is almost without exception in Sydney a maximum of 2 storeys – the proposal has a 3 storey form and presentation to the majority of the access ways and approaches.

The built form has been determined entirely by conforming with the absolute minimum setbacks required.

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.

Landscape

Buildings are proposed to be built right up against and cut back to align with the setback, and opens onto landscaping that includes unspecified evergreen trees, which are not part of the desired future character. This results in poor design outcomes and indicates over development.

Site calculations for landscape seem to rely on the setbacks. However, these are not usable spaces for residents as they are inaccessible and are to be designed as screening. While providing outlook, this is not able to utilise the required landscape to its full positive effect.

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.

Access

Accessibility around the site is not provided except via contorted routes along linear concrete driveways and through other buildings. The only lobby accessibility is either via stairs or through car parks. This is not acceptable.

Comfortable, accessible, and pleasant pedestrian access for the new residents to the community centre and wider landscaping is required.

The applicant suggested in the presentation that the driveways would be 'convivial meeting places for residents to interact' or words to that effect. This is not evident in the existing development where the 'shared' ways provide very little amenity, are designed solely for the movement of vehicles, do not include well designed landscaping, and are very unlikely to ever be used as gathering or meeting spaces.

The proposal removes the approved curved driveway and an extension of the northern driveway into the basement carparking of Block A1. This curved driveway would retain the more direct access to the basement parking for Block A1, and could remove the need for the northern driveway which will further



decimate the existing landscaping and natural rocks features of the site and cause unnecessary and negative impacts on the apartments of blocks A1 and B1 which look out to the north.

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.

Amenity

The amenity of the proposed dwellings is poor. They have with pitiable outlook, orientation, and little solar access for a number of the dwellings. The larger sections of the balconies are off the bedrooms rather than the living rooms. In addition, they reduce the amenity and outlook of existing dwellings on the site.

Driveways are immediately adjacent to bedrooms with little opportunity for screening

The built form that has been determined entirely by conforming with the absolute minimum setbacks required, means the lower level units have very little outlook, or look directly at other buildings or onto unshaded drive ways. The upper level units' views to the east will be dominated by the roofs of the units below.

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.

Façade treatment/Aesthetics

Refer to previous comments. The panel notes that the materials, composition, cladding, roof forms and external shading devices in the original DA attempted and were reasonably successful in responding to the bushland setting and achieving the 'desired future character'. The current built form and proposal has none of these qualities or characteristics.

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.

Sustainability

No sustainability measures in excess of minimum compliance have been included. Any additional apartments would require reasonable passive design initiatives (such as north facing living rooms) and sustainability initiatives (such as total electrification of the apartment and rooftop PV panels for onsite renewable energy production).

Recommendation

The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.



PANEL CONCLUSION

The existing buildings bear little resemblance to the original approved DA and shown on drawings dated 19-06-2009 provided to the Panel for reference.

It is not clear to the panel how the original DA met or was consistent with the 'desired future character' of the area.

The Panel notes that the existing development is significantly different to that originally approved in terms of quality of materials, architectural detailing, environmental controls and built form that were more sympathetic to the bushland setting. The proposal intends to extend the unsympathetic forms and materials.

The Panel cannot see any benefit or justification for any additional development on the site beyond what has already been approved, which has already been increased since the initial approval.

The Panel does not support the proposal for any additional development on the site, and would be very unlikely to given its lack of design quality, its inability to demonstrate qualities consistent with the "desired future character" of the area, and the impact it would have on the existing residential accommodation.

ITEM 4.2	DA2021/1541 - 20 ALBERT STREET FRESHWATER - USE OF PREMISES AS A RESTAURANT
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2021/778675
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1541 for use of premises as a restaurant at Lot 21 DP 226287, 20 Albert Street, Freshwater subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1541
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 21 DP 226287, 20 Albert Street FRESHWATER NSW 2096
Proposed Development:	Use of premises as a restaurant
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Dominic Seeto Rose Seeto
Applicant:	David Moody
Application Lodged:	30/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	09/09/2021 to 23/09/2021
Advertised:	Not Advertised
Submissions Received:	56
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 730,000.00

EXECUTIVE SUMMARY

The proposal relates to a change of use from a takeaway food and drinks premises with 8 patrons and internal alterations previously approved under CDC2021/0324 to use as a restaurant, with increased operating hours and patrons to 71. Some internal and external alterations and additions are also proposed as part of the development application.

Following preliminary assessment the applicant was requested to provide additional information including amendments to the architectural plans to remove the outdoor seating area, provide information and architectural plans to detail the exhaust system, provide additional bathrooms in compliance with the BCA standards and update the plan of management to reflect reduced patronage and hours of operation and further operational management of the premise.

During public notification 56 submissions were received. Of these submissions 32 were received in support and 24 in objection to the proposal. Most submissions objected to the proposal on the grounds of noise, amenity impacts and traffic and parking. Due to the number of submissions received, the application is referred to the Northern Beaches Local Planning Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the change of use from a take away food and drinks premise to a restaurant with increased number of patrons and change in hours of operation. The proposal comprises of some minor alterations and additions to the internal and external walls of the building.

Following preliminary assessment of the application Council requested amendments to the development application. The applicant provided the amendments as required. Further detailed operation of the restaurant is outlined below:

Operating Hours

Monday to Wednesday/Sunday: 12 noon - 10pm
Thursday to Saturday: 12 noon - 12 Midnight

Patron Capacity

71 seated patrons and 10 staff on duty at any one time.

Parking and Loading/Unloading

The two existing car parking spaces on site will be retained to be used for staff/customer parking and deliveries. The applicant has also provided bicycle car parking within the hardstand car parking area adjoining the building. All deliveries will be made between 8am to 12 noon to ensure car parking will be available during the business operating hours.

Operational Waste Management

Operational waste will be stored within a bin room within the tenancy in an enclosed space to ensure all offensive smells are minimised. These bins will be placed out in the mornings on Tuesdays and Thursdays after 8am within the outdoor area to be picked up.

Signage

There is no signage proposed as part of this development application.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - G5 Freshwater Village
 Warringah Development Control Plan - 3. Street activation
 Warringah Development Control Plan - 4. Street facades and shopfront design
 Warringah Development Control Plan - 5. Access and loading
 Warringah Development Control Plan - 6. Lighting
 Warringah Development Control Plan - 7. Safety and security
 Warringah Development Control Plan - 8. Signage
 Warringah Development Control Plan - 13. Roofs and building form

SITE DESCRIPTION

Property Description:	Lot 21 DP 226287 , 20 Albert Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the north eastern side of Albert Street, Freshwater. The site is irregular in shape and has a surveyed area of 260m². The site is located within the B2 Local Centre zone and accommodates a two storey brick building with two on site car parking spaces. The site has been previously cleared and there is no vegetation or significant environmental features on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low and medium density development providing for a range of commercial and residential uses.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Application CDC2021/0324 for Change of use from a business premises to a take-away food premise with maximum seating capacity of 8 patrons, including internal alterations - 200341/01 was issued on the on 14 April 2021.
- Application BLD2021/02223 was lodged to investigate building works. This has been investigated by Council and no further action was required.

A site visit was conducted on the 19 October 2021.

Additional information was requested by Council in relation to the following:

- Amended Plans to remove outdoor seating area
- Revised Plan of Management
- Further clarification on issues raised by Environmental Health in regard to noise, sanitary facilities, food premise design, smoke and odour
- Amended Traffic Report

The applicant responded to Council's request providing the amended information.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans, traffic and parking, operational information and the proposed exhaust system. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/09/2021 to 23/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 56 submission/s from:

Name:	Address:
Miss Qingliang Zhong	3 / 18 Albert Street FRESHWATER NSW 2096
Mrs Alicia Colette Ryan	29 Woorarra Avenue NORTH NARRABEEN NSW 2101
Miss Maree Portanger	22 Undercliff Road FRESHWATER NSW 2096
Daniel James Kitt	9 / 22 - 26 Albert Street FRESHWATER NSW 2096

Name:	Address:
Edmond Jung-Min Park	64 Waragal Avenue ROZELLE NSW 2039
Mr Frank Minnici	17 Bennett Street CURL CURL NSW 2096
Ms Danielle Anne Adlam	112 / 22 Albert Street FRESHWATER NSW 2096
Silvino Alves Farinha Angela Conceicao Farinha	106 / 22 - 26 Albert Street FRESHWATER NSW 2096
Christopher John Vlahos	22 / 18 Albert Street FRESHWATER NSW 2096
Mr Ross Malcolm Locket	406 / 2 Sylvan Avenue BALGOWLAH NSW 2093
Mr Sonny Tunganemaru Ryan	29 Woorarra Avenue NORTH NARRABEEN NSW 2101
Mr Daniel Thomas Cape	2 / 8 Lawrence Street FRESHWATER NSW 2096
Vitor Reprowski Garcia Rodrigues	1 / 85 Lawrence Street FRESHWATER NSW 2096
Fiona Wise	Address Unknown
Brett Wise	Address Unknown
J Hudsson	Address Unknown
David Cain	2 / 104 Soldiers Avenue FRESHWATER NSW 2096
Ms Anne Louise Shillington	12 B Charles Street FRESHWATER NSW 2096
Mrs Virginia Paige Mounsey	8 Glen Street FRESHWATER NSW 2096
Elaine O'Brien	Address Unknown
Jason Langendam	Address Unknown
Mr Norman David Thomson	1 / 18 Albert Street FRESHWATER NSW 2096
Ms Georgia Frances Shillington	17 / 28 Cavill Street FRESHWATER NSW 2096
Katherine Bullock	9 Evans Street FRESHWATER NSW 2096
Mrs Narelle Louise Urquhart	36 Carlton Street FRESHWATER NSW 2096
Mrs Janice Irene Waters	21 / 18 Albert Street FRESHWATER NSW 2096
Mr Francis Gerald Smith	17 / 28 Cavill Street FRESHWATER NSW 2096
Mrs Katrina Barbara Parlevliet	21 Brighton Street CURL CURL NSW 2096
Mr Jonathan Robert Morton	5 / 129 Queenscliff Road QUEENSCLIFF NSW 2096
Belle Tomasetti	10 / 105 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Maxwell John Parker	10 / 105 Queenscliff Road QUEENSCLIFF NSW 2096
Mr James Hunt	20 / 128 Lawrence Street FRESHWATER NSW 2096
Mr Ross Theodore George Capsanis	9 / 21 Cavill Street QUEENSCLIFF NSW 2096
Thomas Henley	Address Unknown
Mr John Gerald Parker	33 Carlton Street FRESHWATER NSW 2096
Peter Portanger	22 Undercliff Road FRESHWATER NSW 2096
Ella Mary Shillington	6 / 42 Waine Street FRESHWATER NSW 2096
Toya Lazarevic	7 / 157 Queenscliff Road QUEENSCLIFF NSW 2096
Geoff Bullock	9 Evans Street FRESHWATER NSW 2096
David Matthew Hundt	12 / 104 Soldiers Avenue FRESHWATER NSW 2096

Name:	Address:
Rachel Joan Said Pullicino	37 Grover Avenue CROMER NSW 2099
Ms Lydia Park	Address Unknown
Adrian Denis O'Hagan	586 A Pittwater Road NORTH MANLY NSW 2100
Alexandra Jane Cordukes	45 Charles Street FRESHWATER NSW 2096
Ms Margot Danielle Hazard	11 A Oceanview Road FRESHWATER NSW 2096
Mr Mosese Tea	2 Oceanview Road FRESHWATER NSW 2096
Dr Caroline Padget	33 Oceanview Road FRESHWATER NSW 2096
Miss Courtney Leanne Hurst	2 Fuller Street COLLAROY PLATEAU NSW 2097
Ms Nicole Cassidy	169 Willandra Road CROMER NSW 2099
Mr Adam Hill	46 Martin Street FRESHWATER NSW 2096
Alecia Grace De Angelis	5 Bolta Place CROMER NSW 2099
Mauricio Franceschi	Address Unknown
William Anslow Clarke Tompson	104 Wyuna Avenue FRESHWATER NSW 2096
Brooke Cavallaro	Address Unknown
Mrs Anne Elizabeth Foster	104 / 11 Lawrence Street FRESHWATER NSW 2096
Chris Thomas	Address Unknown

From these 56 submissions, 32 were of support and 24 raised objections to the proposed development.

The matters raised within the submissions are addressed as follows:

- **Noise**

Comment:

Concern has been raised by neighbouring residential receivers that the proposed use of the site as a restaurant with outdoor seating will result in unreasonable noise impacts late into the night.

Following assessment of the application Council requested the that the application provide amended information. This information included the removal of the outdoor seating area, detailed exhaust system and reduction in overall patrons and operating hours.

Subject to the removal of the outdoor seating area, exhaust control and reduction in overall patrons and operating hours it is considered there will not be any unreasonable impacts on the nearby residential receivers. Conditions have been recommended should the application be approved.

- **Exhaust pollution**

Comment:

The applicant has provided amended plans and information to detail the proposed exhaust system to ensure noise and odour pollution is mitigated. This has been reviewed by Council's Environmental Health officer.

- **Parking**

Comment:

Council received multiple submissions raising concern over the removal of the existing on site car parking spaces and the intensification of the use of the site resulting in an increased demand for car parking within the Freshwater Village. The outdoor seating area has been deleted from the proposal and therefore the two on site car parking spaces will be reinstated.

The proposal is seeking use of the existing site as a restaurant and some internal works. Given the location of the site within the Freshwater Village Centre and close proximity to residential areas it is not expected that the proposed use as a restaurant requires any additional on site car parking above existing. It would be unreasonable for small commercial zoned sites to require additional on site car parking spaces that would ultimately result in an unreasonable level of bulk and scale on site.

The site presents a deficit of on site car parking spaces required in accordance with the Car Parking Requirements within the Warringah Local Environmental Plan 2011. It is considered the deficit of on site car parking spaces will not result in any unreasonable impacts given the availability of public transport options within Freshwater. Additionally, the operation of the restaurant as a licensed premise will encourage car pooling and public transport thereby reducing the demand on car parking.

The proposal has reduced its overall patron capacity and is considered to reduce the intensification of the development to a level that is acceptable within the Freshwater Village Centre.

- **Loading and Unloading**

Comment:

Concern has been raised over no unloading/loading facilities available on site. The existing on site car parking spaces have been reinstated and will be used for unloading/loading during approved delivery hours as detailed in the conditions of consent. The use of the on site spaces will also reduce demand on existing loading zones available within the Freshwater Village.

- **Sanitary Facilities**

Comment:

Concern has been raised that the proposal only provides for one on site bathroom. The proposal has been reviewed by Council's Environmental Health Officer who provided comments requesting further clarification. The applicant provided additional information which has been reviewed by Council's Environmental Health Officer.

- **Hours of Operation**

Comment:

Multiple submissions were received raising concern over the proposed operating hours of 11:30am to 12:00am Monday to Sunday. The proposed hours of operation are not suitable for the proposed development and its location within the vicinity of nearby residential receivers. A condition has been recommended to reduce the proposed hours of operation to be in accordance with the recommendations by NSW Police. The recommendations will limit the proposed hours of opening from 11:30am to 10:00pm Monday to Sunday.

- **Waste Management**

Comment:

A concern was raised in regard to operational waste management of the proposed restaurant. The two existing on site car parking spaces have been reinstated and will provide for the loading of operational waste during approved hours detailed in the development consent. Additionally further information including operational waste management has been detailed in the plan of management and will be done in accordance with Council requirements.

- **Diversity of restaurants**

Comment:

The proposal comprises of the use of the site as a restaurant. Council is supportive of an additional indoor restaurant to provide additional services for the residents and visitors of the Freshwater Village.

Amended Plans and Information

Amended Plans and information was received to resolve concerns raised by Council during the preliminary assessment of the application. Renotification was not required as per the Northern Beaches Community Participation Plan, however courtesy was extended to the general public who previously made submissions advising of the changes and the Northern Beaches Local Planning Panel meeting date. The amended plans and information, along with this assessment report will also be made available online prior to the Northern Beaches Local Planning Panel.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	General Comments New Information – Additional Review 2 November 2021 The applicant has made some amendments and provided further information in relation to concerns raised in Environmental Health's Referral Response on 14 September 2021. Some of the amendments/further information includes: • Removing the outdoor seating area and therefore reducing noise concerns on surrounding receptors. • Altering the proposed hours of operation to the following: ○ Monday: 12 Noon - 10pm ○ Tuesday: 12 Noon – 10pm ○ Wednesday: 12 Noon – 10pm ○ Thursday: 12 Noon – 12 Midnight ○ Friday: 12 Noon – 12 Midnight ○ Saturday: 12 Noon – 12 Midnight ○ Sunday: 12 Noon – 10pm • Amended plans indicate additional sanitary facilities located upstairs. • The applicant has provided details on odour control from the mechanical ventilation. This includes a system is designed with a single ESP (Electrostatic Precipitator) to help control odours and particulates from cooking. The acoustic report and the plan of management provide a number of different maximum music levels based on the time of day. Providing different music levels based on time of day and scenario will be difficult to effectively manage during operations. In order to maintain

Internal Referral Body	Comments
	acoustic amenity, Environmental Health recommend that amplified music does not exceed a maximum output 65dB(A) when measured at any point inside the premises and that an electronic limiter be fitted. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff. Furthermore, in a referral response from NSW Police they have recommended that due to the location and licence type, trading hours be restricted to 11:30am to 10:00pm Monday to Sunday. If this hours are adopted this will further reduce acoustic concerns. Recommendation Supported - subject to conditions <u>Planner Comment:</u> The proposed operating hours have been conditioned in accordance with the recommendations from NSW Police to ensure a high level of residential amenity is maintained. Any proposed changes to the operating hours should the development application be determined as approved will be subject to a separate modification application.
Traffic Engineer	Proposal description: Proposed change of use from takeaway food premises to a restaurant with an increased number of patrons, change in hours of operation and conversion of 2 car spaces to outdoor seating. A complying Development Application No 20034/01 for change of use from the current business premises to takeaway food premises with a maximum seating capacity of 8 patrons was approved on 14/4/2021. Under the new proposed modification DA, the approved floor plan with eight (8) seats will be changed to a floor plan accommodating 58 internal seats and 28 external seats in the undercover courtyard where the current car park is located. The gross floor area (GFA) of the development, as outlined in the <i>Traffic and Parking Assessment</i> prepared by Lyle Marshall & Partners Pty Ltd dated July 2021, is 217.33sqm excluding outdoor/stair and circulation areas. The hours of operation are Monday to Saturday: 11am to 12:00am, and Sunday: 11am to 10:00pm. The site is zoned B2 Local Centre according to Warringah LEP.

Internal Referral Body	Comments
	The Warringah DCP applies to the subject site. Under the DCP, 15 parking space per 100sqm of GFA or 1 space per 3 seats is required for restaurants although consideration can be given to a reduced rate if there is available parking in the vicinity at the restaurants hours of operation. Bicycle parking stands are also required at a minimum rate of one stand for every three car parking spaces, with a minimum provision of one stand for each premise. The <i>Traffic and Parking Assessment</i> prepared by Lyle Marshall & Partners Pty Ltd dated July 2021, the plans designed by FiveFootOne dated 24/05/2021 and the <i>Plan of Management</i> prepared by Jack Leary of Alma have been reviewed by the Traffic team. <u>Parking requirement</u> The DCP outlines that for restaurant uses the parking requirement is either 15 spaces per 100sqm of GFA or 1 space per 3 seats. This equates to either 34.5 spaces or 28.7 spaces. The development proposes to remove the two parking spaces provided to serving the existing take away food premises to allow for the creation of an external seating area for 28 people. The developer seeks to justify the absence of any offstreet parking to support the use on the basis of available parking in nearby on and offstreet locations. • The consultant undertook the parking accumulation surveys on 25/6/2021, and the results were described in Section 2.4 of the traffic report. Based on the survey results, it was estimated that 21 to 22 parking spaces (on-street and off-street car parks) within 2 to 3 minutes walk would be available at peak accumulation time (7:00pm) on Friday night (busiest night of the week) with the following breakdown: ○ Public car park: 6 to 7 vacant spaces ○ Vacant spaces on the street: 3 ○ Vacant spaces on off-street car parks: 12 plus 6 to 7 (18 to 19) The parking surveys were undertaken in the middle of the Pandemic just prior to Sydney entering a lockdown when it would be expected that few people would be visiting

Internal Referral Body	Comments
	restaurants. The surveys unsurprisingly, indicated that there were plenty of available parking spaces in the vicinity of the development, particularly the nearby Freshwater Village Shopping complex car parking areas. In order to have reliable on-street and off-street carparks parking utilisation/availability, the surveys are suggested to be undertaken when most pandemic restrictions have been lifted and restaurants and other premises are again able to operate at full or near full capacity. Given the type of the proposed restaurant where duration of stay would be in the range of 1 to 3 hours, any 10minP and 1/2P should not be included in the on-street parking availability analysis. It is also noted that the subject development cannot rely on parking in the adjacent Freshwater Village Shopping complex rooftop and ground-level car park. Those parking spaces are to support the parking demand generated by that complex. Finally it is noted that no parking analysis was undertaken during the weekday or weekend midday periods when parking occupancy rates in the Freshwater Village are anticipated to be high. Given that the restaurant is proposed to operate during these periods such analysis is critical. - Patronage and travel mode surveys were conducted at a similar Alma Restaurant in Avalon managed by the same operator. Peak patronage was reported as 95.8% of seating capacity in the traffic report, and the car driver travel mode by patrons was 13.8% at the time of peak patronage. It is unclear how the travel mode of patrons was determined and this should be clarified. The seating capacity of the Alma Restaurant in Avalon is 68 seats (31 seats internally, 17 in a covered verandah and 20 with no cover). The reported peak patronage would therefore equate to 67.6%, which shows that around 30% of the restaurant was empty at the time of the travel mode survey. In order to have reliable patronage and travel mode, the surveys are suggested to be undertaken when most pandemic restrictions have been lifted and the restaurant operating at close to capacity. Apart from Alma Restaurant in Avalon, surveys of another similar site in a similar environment will also assist in making a better understanding of parking utilisation/availability and patronage travel mode of the similar developments. It is suggested that at least two (2) similar restaurant sites be surveyed, ideally including another site in Freshwater, and the average of the results be used for the subject development. - In the traffic report, it is unclear how many staff are expected

Internal Referral Body	Comments
	to serve the proposed development, and the basis of travel mode assumptions for staff trips has not been explained. It is suggested that some information about the anticipated number of development staff and staff travel mode of the similar surveyed sites be included in the traffic report. • Bicycle parking stands are also required with a minimum provision of one stand for each premise, i.e. one (1) bicycle stand for the proposed development. However, bicycle parking spaces are not presented in the architectural plans. This should be confirmed on the amended plans. • Some limited information about the deliveries/loading and waste management have been included in the <i>Plan of Management</i> prepared by Jack Leary of Alma. It is reported that <i>"All deliveries are being carried out in the morning prior to business hours in order to not impede pedestrians. Drivers will utilise the loading zones available on the street to ensure all deliveries are carried out safely."</i> The location of on-street loading zones that the proposed development will utilise, some analysis of their availability at the times required and details on the frequency of deliveries and size of delivery vehicles is required to demonstrate that the development can operate effectively without access to an offstreet loading bay. <u>Traffic Impact</u> • An indication of the traffic generation potential of the development proposal should be provided by reference to the <i>TfNSW Guide to Traffic Generating Developments, Section 3 - Land use Traffic Generation (October 2002)</i>. Restaurant Trip Generation and the travel mode Surveys (car driver, taxi, car passenger and share/uber trips) should also be used to determine potential trip generation attributed to the proposed development. <u>Conclusion</u> The plans and the traffic report in their current form are unacceptable given the lack of relevant detail to base a traffic and parking impact assessment, as outlined above. The proposal is therefore unsupported. <u>Second Referral</u> The applicant has made some amendments and provided further information in relation to concerns raised in Traffic Referral Response

Internal Referral Body	Comments
	dated 30 September 2021. The amendments/further information includes: • Removing the outdoor seating area and reinstating the two onsite car parking spaces. (The restaurant's seating capacity has been reduced by 15 seats from 86 to 71 accordingly.) • Altering the proposed hours of operation (from Monday to Saturday: 11am to 12:00 midnight, and Sunday: 11am to 10:00pm) to the following: - o Monday to Wednesday: 12 Noon - 10pm - o Thursday to Saturday: 12 Noon – 12 Midnight - o Sunday: 12 Noon – 10pm • 12 staff will be on duty on Fridays and Saturdays and 10 at other times The Traffic team has reviewed the following documents: • Amended traffic report prepared by Lyle Marshall & Partners Pty Ltd dated 1 November 2021, • Peer review of amended traffic report prepared by Traffic and Safety solutions Pty Ltd dated 1 November 2021, • Amended plans (version C) designed by FiveFootOne dated 22.10.2021 • Plan of Management, • NSW Police referral response dated 21 October 2021 (Council ref. 2021/772225). Traffic team Notes: • The amended proposal has reduced its overall patron capacity and hours of operation; therefore, it is considered to reduce the intensification of the development within the Freshwater Village Centre. • The site has a shortfall in terms of onsite car parking spaces required in accordance with the car parking requirements within the Warringah Local Environmental Plan 2011 and the DCP by 22 spaces (the rate is either 15 spaces per 100sqm of GFA or 1 space per 3 seats, whichever is greater. The 1 space per 3 seats rate would equate to a parking requirements of 24 spaces). The amended development proposal only provides two on site car parking spaces. • The consultant undertook further parking accumulation surveys on-street and in Council's public car park within 2-3 minutes walk of the proposed restaurant on Friday 15/10/21 and Saturday 16/10/21. The survey shows that while there is adequate parking to meet generated demands at most

Internal Referral Body	Comments
	surveyed times there is an undersupply (of six spaces) within close proximity to the restaurant for the parking demand at 1pm on Saturdays. It is also noted that the two days surveyed in mid-October were immediately after easing the of Covid lockdown restrictions when traffic and parking patterns may not have completely returned to "normal". The proposal still provides little offstreet parking to cater for generated parking demand and results in a significant increase in on-street parking demand in a location where there is an existing high demand for on-street parking. - It is however acknowledged that: - o the proposed restaurant is located within a local centre that is within close proximity to residential development and that many locals will walk to and from the restaurant and be less reliant on car parking. - o The use of the premises as a restaurant will provide for activation of the Freshwater Village and additional dining options for the residents and visitors of Freshwater and will not lead to an unreasonable intensification of the site - o the operation of the restaurant as a licensed premises will tend to result in many customers choosing to carpool, travel by ride share or public transport particularly for visits in the evening, thereby reducing the demand for car parking. It is noted that the area is well served by Public transport so use of public transport is a viable alternative to private motor vehicle travel. - o During daytime hours many of those visiting the restaurant would also be visiting the Freshwater Village for other purposes such as shopping, appointments etc. This would tend to reduce restaurant parking demands at those times. - It is noted that patronage and travel mode surveys conducted at the Alma Restaurant in Avalon have demonstrated high degrees of travel by modes other than private motor vehicle for both customers and staff. - It is noted that many time restricted parking restrictions in the Freshwater Village cease operation after 6pm and that there is greater on-street parking availability for restaurant patrons and lower parking demand in the evening. - It is noted that patronage survey outputs for the below sites were also included in the amended traffic report: - o Patronage survey of Crooked Tailor Licensed Bar and Restaurant at Castle Hill on Thursday 28/4/2016 from 7pm to 10:00pm. Peak patronage in the 100 seat facility was 53 (53%) from 8:15pm to 8:30pm. - o A patronage survey was conducted at the About Life café at Miller Street Cammeray on Friday 15/4/2016, from 12 noon to 4pm. Peak patronage in the 50 seat café was 18 (36%) patrons from 12:45 to 1:00pm.

Internal Referral Body	Comments
	o The above surveys demonstrate that seating capacity was not reached at those establishments Given the above factor the undersupply of parking is, in this location and for this type of use, considered acceptable. • The proposed parking spaces have not been labelled and are considered most appropriately designated as customer/delivery parking. This will be conditioned. • Two (2) bicycle parking stands are included on the amended plans behind one of the proposed parking spaces. The car parking spaces are wider than normal at 2.7m in width which should ensure there is sufficient space to access the bicycle parking spaces. • It is noted that the onsite car parking spaces will be used for unloading/loading purposes prior to restaurant service hours. This is supported. To ensure that the spaces are available for delivery purposes prior to restaurant opening hours they should be labelled customer parking. The amended proposal is is now considered acceptable given the reduced seating capacity, retention of pre-existing parking on the site and the high likelihood that many customers will either be undertaking combined trips to the Freshwater Village or will walk, catch public transport or use ride share services for travel to and from the restaurant. The proposal is therefore supported subject to conditions.

External Referral Body	Comments
NSW Police – Licensing (Clubs, Hotels, Pubs)	The development application has been reviewed by NSW Police Northern Beaches Police Area Command. The recommendations made by the NSW Police have been incorporated into the conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

There are no changes proposed to the built form of the existing building as part of this development application.

Detailed Assessment

Zone B2 Local Centre

Proposed Use	Permitted or Prohibited
Restaurant	Permitted with consent

The underlying objectives of the B2 Local Centre zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

Comment:

The proposal will serve the needs of the people who live, work in and visit the locality by providing for a restaurant in a town centre.

- To encourage employment opportunities in accessible locations.

Comment:

The proposed restaurant will encourage employment opportunities in an accessible location.

- To maximise public transport patronage and encourage walking and cycling.

Comment:

The proposed restaurant is within 100m of the closest bus stop along Moore Road and will be accessible to pedestrians due to its central location within Freshwater Village.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The proposal will provide for a safe, comfortable and interesting environment through passive surveillance from inside the restaurant and providing an active frontage to Albert Street.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

There are no proposed changes to the built form of the existing building, however the facade approved as part of the Complying Development Certificate will reflect favourably with the neighbouring land uses and the natural environment.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposal will add to the diversity of land uses within the centre of the Freshwater Village. The development application originally proposed an outdoor seating area. This has been removed from the proposal and operating hours reduced to ensure a reasonable level of residential amenity will be maintained for the adjoining residential flat building along Albert Street.

Warringah Development Control Plan

Built Form Controls

There are no changes proposed to the built form of the existing building as part of this development application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes
1. Built form in Freshwater	N/A	N/A
2. Number of storeys	N/A	N/A
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	N/A	N/A
9. Awnings	N/A	N/A
10. Front setback	N/A	N/A
11. Side and rear setbacks	N/A	N/A
12. Other side and rear setbacks	N/A	N/A
13. Roofs and building form	Yes	Yes
14. Building massing	N/A	N/A
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1	Required	Provided	Difference (+/-)
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	Calculation			)
Restaurant	15 spaces per 100m ² of GFA or 1 space per 3 seats whichever is greater	32.5 (15 spaces per 100m ² of GFA)	2	30.5
Total		32.5	2	30.5

The proposal presents a non compliance to the numerical car parking requirements for the use as a restaurant. It should be noted the WDCP 2011 allows for the above rate to be reduced, if there is, in the consent authorities opinion, suitable available parking in the vicinity during the operating hours of the proposed development.

Strict compliance with the control for a restaurant within the Freshwater Village Centre would be unreasonable given the mixed use nature. The site is also located within close proximity to shop top housing and low density residential areas who provide a high patronage to the restaurant. Additionally there is readily available public transport to and from the Freshwater Village for visitors.

The nature of the site as a restaurant with a liquor license will also encourage car pooling and the use of public transport which will also decrease the demand for off site car parking spaces.

Following preliminary assessment Council requested the outdoor seating area be removed to reinstate the two existing car parking spaces and to reduce the overall maximum patrons. It is considered that these measures will appropriately reduce car parking demand and result in a development that is respectful to the mixed use nature of the Freshwater Village.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposal is for the use of the premise as a restaurant and does not provide for the construction of any parking facilities. Existing on site car parking spaces will be retained.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposal does not provide for the construction of any car parking facilities. The existing site constraints, subdivision pattern and the size of the site limit the potential for any redevelopment of the site. The provision of additional car parking facilities on site would most likely result in a bulky development that would dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this

particular circumstance.

D3 Noise

Merit consideration

The proposed use of the site as a restaurant is considered to be appropriate within the Freshwater Village Centre. Appropriate noise mitigation measures have been incorporated into the daily operation of the restaurant, including the removal of the outdoor seating area, reduction in number of patrons and reduction in operating hours. Additionally the exhaust system on the roof has been designed to minimise any unreasonable noise being carried onto the nearby residential receivers.

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has been redesigned to remove any unreasonable impacts on nearby residential receivers. The proposed exhaust system has been detailed in additional plans provided by the applicant.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The original outdoor seating area proposed as part of the application has been removed to ensure a reasonable level of amenity for nearby residential properties. Additionally the operating hours and patron capacity has been reduced. It is considered there will not be an unreasonable level of noise emission.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

G5 Freshwater Village

The proposed change of use to an internal restaurant is considered to be compatible with the objectives of the B2 Local Centre zone and the existing and desired character of the Freshwater Village. The development will activate the shop frontage and provide an additional dining option for the residents and visitors of Freshwater. The location of the restaurant is accessible by foot for surrounding residential areas and the site is serviced by readily accessible public transport in Freshwater Village. Additionally, the removal of the outdoor dining area and reduction in patrons and operating hours will ensure the development responds to the residential uses within the Freshwater Village.

3. Street activation

The proposed development seeks to provide activation to the public domain, including streets, lands and public open spaces. The Albert Street facade has been designed to retain existing significant glazing and appropriate colours and finishes to complement the existing building. The existing windows

will provide opportunities for casual surveillance and overlooking into the public domain.

4. Street facades and shopfront design

The proposal comprises of the use of the existing building as a restaurant. The proposal does not seek to change the façade as approved under CDC2021/0324. The proposed use of colours and materials have been selected to complement the existing building and will result in a development that reflects the character of Freshwater and its local beachside culture. The proposal is considered to respond to the objectives in relation to street facades and shopfront designs.

5. Access and loading

The proposed outdoor seating area has been removed and the existing on site car parking spaces have been reinstated as part of the proposal. The on site car parking area will be used for loading and unloading during approved delivery hours. A condition will also be included to ensure the driveway shall not be blocked at any point to ensure pedestrians safety.

6. Lighting

The proposal is not expected to result in any unreasonable light spill to adjoining residential sites. The proposed lighting along the Albert Street façade will provide lighting for the footpath for customers and pedestrians for effective wayfinding at night.

7. Safety and security

Casual surveillance of Albert Street and the public domain will be available from the subject site. The proposed development also incorporates new lighting along Albert Street.

The proposal has also been reviewed by NSW Police. All recommendations made within the referral have been included as conditions of consent.

8. Signage

No signage has been proposed as part of the development application. All signage for the proposed development is subject to a separate development application or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

13. Roofs and building form

The proposed exhaust system will be integrated into the existing roof form to ensure it is not likely to be visible from Albert Street.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$7,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$730,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

In summary, a detailed assessment was conducted and the following has been included as conditions of consent to ensure a reasonable level of amenity will be maintained:

- Deletion of the outdoor seating area and reinstatement of the two car parking spaces to be used for staff parking and loading/unloading
- Reduced maximum patrons
- Reduced operating hours

The applicant will also provide further clarification in regard to the sanitary facilities and the exhaust system. Evidence to be provided to ensure consistency with relevant BCA standards.

The proposed use of the premise as an internal restaurant only with a maximum patron capacity of 71 people and operating hours of 11:30am to 10:00pm is supported by Council subject to the recommended conditions of consent.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1541 for Use of premises as a restaurant on land at Lot 21 DP 226287, 20 Albert Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.001 Existing Site Plan RevA	11/05/2021	FiveFootOne
DA.100 Demolition Plan RevA	11/05/2021	FiveFootOne
DA.101 General Arrangement Plan RevA	11/05/2021	FiveFootOne
DA.201 Proposed Elevations RevA	11/05/2021	FiveFootOne
DA.202 Proposed Elevations RevA	11/05/2021	FiveFootOne
DA.203 Proposed Elevations RevA	11/05/2021	FiveFootOne
DA.300 Finishes RevA	11/05/2021	FiveFootOne

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	Undated	Jack Leary
Traffic Report	01/11/2021	Lyle Marshall & Partners Pty Ltd
Access Report	03/2021	Access-i
Acoustic Report	26/02/2021	Pulse White Noise Acoustics
Odour Certificate	22/10/2021	Avalier Ventilation
Lighting Schedule	20/08/2021	FiveFootOne
Exhaust Schedule	4/03/2021	Ace Ventilation

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16/02/2021	Jack Michael Leary

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Police	NSW Police Northern Beaches Area Command	21/10/2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

5. **Patron Capacity**

The maximum patron capacity for the restaurant shall be 71 patrons. All patrons must be seated. Any increase to patron numbers shall be subject to a separate development application.

Reason: To protect the amenity of nearby residential sites and reduce parking demand within Freshwater Village.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$7,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$730,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

8. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

9. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the

Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

10. **Plans of Mechanical ventilation**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

11. **Plan of Management Update**

An updated Plan of Management is to be prepared to the satisfaction of Councils Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to include:

- Updates based on approved trading hours; and
- That all speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.
- A dedicated phone number is to be provided within the Plan of Management for complaints. For avoidance of doubt this number should be separate to the business operation phone number used for making bookings and takeaway orders.

The updated Plan of Management is to be available on the restaurants website for the general public to access. A hard copy of the Plan of Management shall also be physically distributed to all residents within 100m of the premise.

A complaints register should be kept and be made available to Council upon request.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team.

Reason: To maintain amenity of the surrounding area.

12. **Noise - Design of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design, specifications and location of the mechanical exhaust fan are to be provided to the Principal Certifying Authority. An acoustic assessment of the proposed mechanical exhaust fan is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine if the proposed exhaust will meet the recommendations within the Acoustic Report prepared by Pulse White Noise Acoustics Pty Ltd dated 26 February 2021 (Reference 210020 – 20 Albert Street, Freshwater – DA Acoustic

Assessment – Rev 2).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To maintain amenity of the surrounding area.

13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

14. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the Freshwater town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the

timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

15. Customer and Delivery Vehicle Parking

Both on-site vehicle parking spaces shall be marked on the plans as “Customer/Delivery Parking”

These amendment(s) must be clearly marked on the plans submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: to ensure such spaces are allocated for their intended use.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are approved, monitored and installed correctly.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

18. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

19. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

20. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to confirm compliance with recommendations within the Acoustic Report by Pulse White Noise Acoustics Pty Ltd dated 26 February 2021 (Reference 210020 – 20 Albert Street, Freshwater – DA Acoustic Assessment – Rev 2) and compliance with any relevant acoustic conditions of the consent.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect the acoustic amenity of neighbouring properties.

21. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure that the kitchen complies with the design requirements.

22. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation and that the odour controls within the Odour Plan prepared by Ace Ventilation (reference: Project 20 Albert Street Freshwater) have been implemented.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

23. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

24. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. **Compliance with the Plan of Management**

The requirements of the approved Plan of Management are to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To protect the amenity of the surrounding area.

26. **Amplified Music**

All speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. The limiter is to be installed in a

tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.

Reason: To protect surrounding residence from any noise generated by the operation of the development.

27. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Sunday - 11:30am to 10:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

28. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

29. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

30. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10:00pm and 7:00am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

31. **Deliveries**

Deliveries to the premises shall only take place prior to the approved trading hours of the restaurant.

Reason: to ensure the parking spaces are available for customers during trading hours.

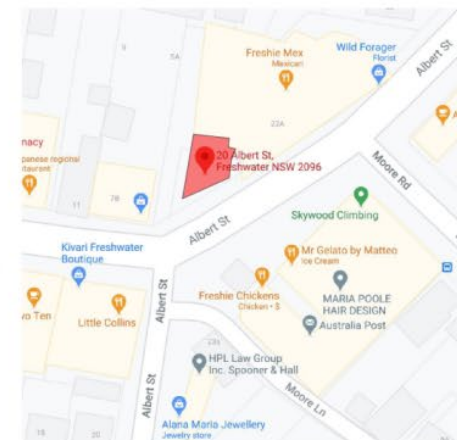
32. **Parking Space Marking**

Both on-site parking spaces shall be marked for use as customer/delivery spaces

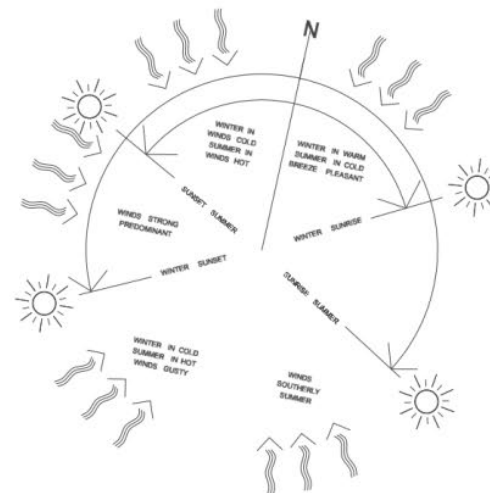
Reason: to ensure the spaces are available for their intended use.



1 Site Plan
1:100 @ A3



2 Location plan- Reference image
NTS

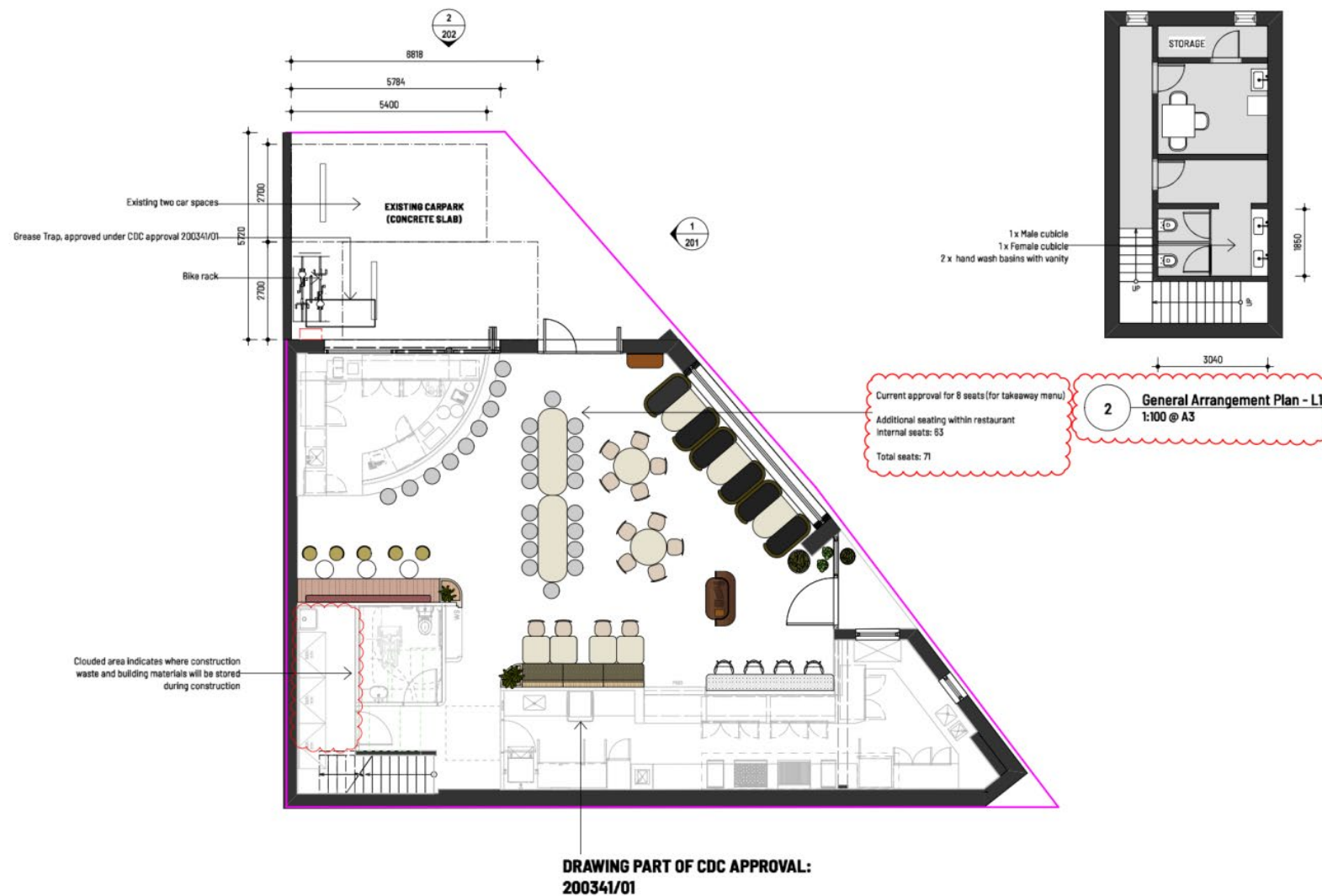


2006
Alpha Freshwater
20 Albert Street
Freshwater
NSW 2096
Jack Leary - Tim Christensen

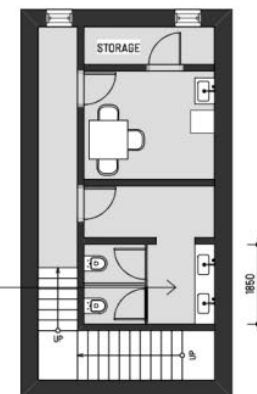
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DATE	DATE	APPROVED
4	20/10/21	FOR DA ISSUE

DESIGNED BY
DA.001
Extending Site Plan
DATE: 11/02/21
SCALE: 1:100 @ A3
DRAWN: TL
REVISION
A
For DA Application Only



1 General Arrangement Plan
1:100 @ A3



2 General Arrangement Plan - L1
1:100 @ A3



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ISSUE	DATE	AMENDMENT
A	24/3/01	FOR SA ISSUE
B	25/9/01	UPDATES WITH FY 02
C	30/10/02	UPDATES CAMPAIN

DA 101

General Arrangement Plan

編號:	日期:
-----	-----

SCALE: 100 gms.

BR 4000	CS
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I

REVIEWS

C

For DA Application Only



1 PP External Elevation - South Facade
1:50 @ A3

DRAWING PART OF CDC APPROVAL:
200341/01



2006
Alma Freshwater
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Freshwater
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Jack Leary - Tim Christensen

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DATE	DATE	APPROVAL
1	20/10/21	FOR DA ISSUE

ISSUED AS:
DA.201
Proposed Elevations
DATE: 11/02/21
SCALE: 1:50 @ A3
OFFICE: CS

REVISION
A
For DA Application Only



1 Elevation - Courtyard (East Facade)
1:50 @ A3

DRAWING PART OF CDC APPROVAL:
200341/01



2506
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Jack Leary - Tim Christensen

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- This drawing is to be read with all associated Five Foot One Design project documentation, including specifications, schedules, drawings & reports.
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DATE	DATE	AMENDMENT
4	28/03/20	TOP DA ISSUE
5	08/05/20	Revised for DA issue
6	28/05/20	SHUTTER COURTYARD DA

ISSUED AS:
DA.202
Proposed Elevations
DATE: 11/02/20
SCALE: 1:50 @ A3
DRAWN: CS

REVISION
C
For DA Application Only

ITEM 4.3	DA2021/0680 - 16 BANGAROO STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE AND USE AS A CENTRE-BASED CHILD CARE FACILITY
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/778697
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0680 for alterations and additions to an existing dwelling house and use as a centre-based child care facility at Lot 111 DP 11936, 16 Bangaroo Street, North Balgowlah for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0680
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 111 DP 11936, 16 Bangaroo Street NORTH BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to an existing dwelling house and use as a centre-based child care facility
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kellie Maree Gielis Craig Stephen Gielis
Applicant:	William Fleming
Application Lodged:	02/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	16/06/2021 to 20/07/2021
Advertised:	21/06/2021
Submissions Received:	151
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 129,030.00

EXECUTIVE SUMMARY

The application involves the change of use of a dwelling house to a centre based child care centre. Other works include the widening of the existing driveway crossing along the southern boundary to accommodate an additional parking space, internal works and associated landscaping within the rear setback. The child care centre proposes to accommodate 20 children, a total of 3 staff and has provision for 3 car parking spaces.

Council is not satisfied with the reliance on on-street parking spaces to facilitate the number of drop-off/pick-up spaces, nor the shortfall off-street parking space provided and the inability to enter and exit

the site in a forward motion. The additional vehicular and pedestrian traffic generated by the childcare centre is also expected to adversely impact upon safety in Bangaroo Street. The location of the child care centre within close proximity to bus stops and a busy intersection at Bangaroo Street and Worrobbil Street to the south is also expected to impact on the traffic expected within the surrounding area, in particular at drop off and pick up times.

The application was notified in accordance with Council's Community Participation Plan and one hundred and fifty one (151) submissions were received, all of which oppose the application. The issues that have been raised in the submissions include traffic and parking, pedestrian safety risks, and amenity impacts.

As more than 10 unique submissions by way of objection were received, the application is referred to the Northern Beaches Local Planning Panel for determination.

For the reasons outlined above and within this assessment report, the proposed development is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks alterations and additions to an existing dwelling house to facilitate the change of use of the premises to a child care facility. In particular, the application includes:

- Internal alterations to accommodate the change of use of a dwelling house to a child care facility to accommodate 20 children aged between 3 and 5 years of age and a total of 3 staff.
- Hours of operation 8:00am to 4:00pm Monday to Friday. The Plan of Management (PoM) states that between 8:00am and 8:30am will be allocated as the drop off time for parents and will enter into an agreement with the child care provider allocating a specific drop off time to ensure the drop off's are staggered.
- A new crossover located along the southern elevation.
- Off-street parking to accommodate three cars. Two cars in a tandem arrangement along the southern boundary with a third car space located towards the centre of the site.
- Child proof gate measuring 1.2m high
- Landscaping within the backyard.

Ground floor

- Meeting room
- Library
- Kitchen
- 2 x WC's

Store room

- Laundry
- Activity Area No. 1
- Activity Area No. 2

First Floor

- 2 x store rooms
- Staff room
- Office
- Staff WC

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D20 Safety and Security

SITE DESCRIPTION

Property Description:	Lot 111 DP 11936, 16 Bangaroo Street NORTH BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Bangaroo Street. The site is regular in shape with a frontage of 12.105m along Bangaroo Street and a depth of 42.67m. The site has a surveyed area of 514.17m². The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling with a driveway crossover located along the southern boundary and does not provide a garage or carport, with hard stand parking located along the southern side to accommodate two cars. The site is relatively flat sloping gently from the northern side boundary to the southern side boundary.

A low masonry retaining wall is located along the front boundary of the site with a garden bed located along the eastern and northern boundary of the front setback and a turfed area within the front setback.

The backyard consists of a turfed area with planting located along the northern, western and southern boundaries consisting of small to medium sized trees.

The site is not identified as a Heritage Item.

The site is not identified as bushfire prone land.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential dwellings of a similar size and scale. A three (3) storey residential flat building is located along the western (rear) boundary with access provided from Worrobl Street.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2020/0087 - Withdrawn on 23 February 2021 given the issues raised by Council's referral bodies. The application was not supported due to traffic and pedestrian safety issues, shortfall of off-street car parking spaces, and an unsupported second crossover along Bangaroo Street.

PLM2020/0087 - Notes were provided for the proposal of a child care centre on 19 June 2020. The notes provided the following advice:

- A detailed acoustic assessment report recommended given the close proximity to residential receivers;
- A detailed Plan of Management (PoM) outlining the operation of the centre around issue on addressing noise, number of children, mechanical plant, vehicle noise, the use of food;
- Traffic concerns in relation to the shortfall of off-street parking space. This would only be supported provided the number of children was heavily reduced to a maximum of 8 - 10 children on site.
- Requirement of a traffic and Parking Study.

DA2021/0680

The subject development application has addressed some of the concerns raised within the PLM notes and the issues raised by Council's internal referral bodies provided in DA2020/1397 (withdrawn). The application has removed the second cross over and proposes to widen the existing crossover along the southern boundary. The number of off-street car parking spaces have also been reduced from five (5) to three (3). Whilst the development has accommodated some of the recommendations provided by Council outlined in PLM2020/0087 and DA2020/1397, Council's Traffic Engineer does not support the proposal.

Council's Development Engineer raised no concerns with the subject proposal given the removal of the second crossover and conditions imposed regarding stormwater disposal

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 Matters for Consideration'	Comments
	Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the Statement of Environmental Effects (SEE) and Plan of Management (PoM) submitted with the development application. The hours of operation in the SEE and PoM were identified as being inconsistent. An email was sent to the applicant requesting both documents be updated to reflect the proposed hours of the daycare centre. This information was received on 11 June 2021 and given the level of community interest and submissions received, the application was re-notified with the notification closing on 20 July 2021. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public	This assessment has found the proposal to be contrary to the requirements of the Manly DCP and will result in a development which will create an undesirable precedent, an unreasonable impact to the surrounding lands with regard traffic and parking as well as being contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/06/2021 to 20/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 151 submissions from:

Name:	Address:
Ms Michele Mary Percival	14 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Antonia Bossi	14 B Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Sinan Kaya	18 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Andrew Clifford Hinton	50 Eileen Street NORTH BALGOWLAH NSW 2093
Mr Alan Michael Johnson	4 Grandview Grove SEAFORTH NSW 2092
Mahtabsadat Aghaeymaybody	35 A Gurney Crescent SEAFORTH NSW 2092
Mrs Nicola Fell	4 Prince Edward Road SEAFORTH NSW 2092
Maree Hanson	Address Unknown
Mark Ian Langley	96 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Kieren Christopher Hutchings	38 Bangaroo Street NORTH BALGOWLAH NSW 2093
Brigitta Marie Hatting Merchant	9 Burringbar Street NORTH BALGOWLAH NSW 2093
Mrs Elizabeth Maree Van Vliet	32 Alto Avenue SEAFORTH NSW 2092
Matthew Robert Longmore	4 Worrobyl Street NORTH BALGOWLAH NSW 2093
Guy Carrington Fisher Alison Fiona Fisher	6 Florence Court NORTH BALGOWLAH NSW 2093
Mr Peter Neil O'Sullivan	7 / 62 - 64 Bangaroo Street NORTH BALGOWLAH NSW 2093

Name:	Address:
Mrs Rowena Helen Casper	4 A Winsome Avenue NORTH BALGOWLAH NSW 2093
Daniel Trevor	98 Old Pittwater Road BROOKVALE NSW 2100
Lisa Mozes	20 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Lisa Yvette Galea	19 A Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mrs Kelly Bartholomew	246 / 117 Old Pittwater Road BROOKVALE NSW 2100
Mrs Kelly Nadine Drew	23 A Mons Road NORTH BALGOWLAH NSW 2093
Mr Matthew Brian Higgs	5 Worrobyl Street NORTH BALGOWLAH NSW 2093
Robyn Joy Heath	7 / 32 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Ms Michaela Utesena	22 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mr Michael Iacobbe	31 Bangaroo Street NORTH BALGOWLAH NSW 2093
Melissa Lindsay-Edwards	8 Winsome Avenue NORTH BALGOWLAH NSW 2093
Michael Anathony Bowyer	11 Worrobyl Street NORTH BALGOWLAH NSW 2093
David George Perks	1 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mrs Amanda Ann Longmore	4 Worrobyl Street NORTH BALGOWLAH NSW 2093
Yvonne Bennett	Address Unknown
Mrs Elizabeth Wendy Webb	77 Bangaroo Street NORTH BALGOWLAH NSW 2093
Miss Reanne Scope	18 Worrobyl Street NORTH BALGOWLAH NSW 2093
Ms Eliza Jane Kirkby	32 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mr Alexander Simon Timothy Jones	C/- Crystal Pools Pty Ltd Po Box 271 PENNANT HILLS NSW 1715
Mrs Catherine Anne Gunton	52 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Stephen Polkinghorne	7 Winsome Avenue NORTH BALGOWLAH NSW 2093
Nikki Gunton	Address Unknown
Mrs Karis Nicola Khatchadourian	15 Penrose Place FRENCHS FOREST NSW 2086
Mr Darren Scott Parkinson	15 Bangaroo Street NORTH BALGOWLAH NSW 2093
Timothy Stephen Hartrick	67 Woodbine Street NORTH BALGOWLAH NSW 2093
Ross Henderson	Address Unknown
Mrs Lynne Greenwood	23 A Woodbine Street NORTH BALGOWLAH NSW 2093
Mr Carl Edward Stanfield	4 Eureka Avenue NORTH BALGOWLAH NSW 2093
Gisela Elisabeth Moser	20 Coramba Street NORTH BALGOWLAH NSW 2093
Withheld	NORTH BALGOWLAH NSW 2093
Mr Kim Reginald Peacock-Smith	18 Worrobyl Street NORTH BALGOWLAH NSW 2093
Ms Lucy Thorpe	4 Judith Street SEAFORTH NSW 2092
Mr David Richards	53 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Gordon Robert Soling	17 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Victoria Ruth Simpson	12 Kempbridge Avenue SEAFORTH NSW 2092
Mrs Georgia Ann Godley	1 / 2 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mr Aidan Cameron Webb	77 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Camilla Mary Pattison	7 Gloucester Street NORTH BALGOWLAH NSW 2093

Name:	Address:
Stewart	
Mrs Carla Rocio Castro Conde	50 Eileen Street NORTH BALGOWLAH NSW 2093
Ms Julie Hodder	4 Sandy Bay Road CLONTARF NSW 2093
Mr Stephen Michael Tilston	12 Coramba Street NORTH BALGOWLAH NSW 2093
Ms Nicole Maree Marusic	12 Coramba Street NORTH BALGOWLAH NSW 2093
Kim Salter	4 / 2 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Michelle Skold	2 Garraween Avenue NORTH BALGOWLAH NSW 2093
Mrs Dorota Asigno	16 Worrobil Street NORTH BALGOWLAH NSW 2093
Mr Jaco Jonker	8 Kalau Street NORTH BALGOWLAH NSW 2093
David John O'Neill	31 / 2 A Campbell Parade MANLY VALE NSW 2093
Ms Sophie Kathryn Swan	73 Woodbine Street NORTH BALGOWLAH NSW 2093
Mrs Sarah West	27 Eileen Street NORTH BALGOWLAH NSW 2093
Mr Richard Anthony John Higgins	70 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Anonymous	N/A
Mr Bernd Johannes Krause	7 Worrobil Street NORTH BALGOWLAH NSW 2093
Ms Margaret Sharman	38 Eileen Street NORTH BALGOWLAH NSW 2093
Ms Claudia Tsiamis	10 Brook Road SEAFORTH NSW 2092
Rein Vanem	22 Bangaroo Street NORTH BALGOWLAH NSW 2093
Janice Anne Hunter	15 A Serpentine Crescent NORTH BALGOWLAH NSW 2093
Nathan Reid	11/34 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mr Mark Andrew O'Sullivan	15 Hunter Street NORTH BALGOWLAH NSW 2093
Andrew Warrington Thompson	3 Coramba Street NORTH BALGOWLAH NSW 2093
Mrs Anita McMahon	26 Bangaroo Street NORTH BALGOWLAH NSW 2093
Peter Valentine	31 St Pauls Road NORTH BALGOWLAH NSW 2093
Adam Young	20 Baringa Avenue SEAFORTH NSW 2092
Jayd Naidoo	6 Soldiers Avenue FRESHWATER NSW 2096
Mr Christopher Paul Smith	12 Winsome Avenue NORTH BALGOWLAH NSW 2093
Ms Alison Jane Mace	12 Winsome Avenue NORTH BALGOWLAH NSW 2093
Adrienne Opal Taylor Weddepohl	41 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Genevieve Margaret Brock	9 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Ms Brooke Louise Midson	6 Bardoo Avenue NORTH BALGOWLAH NSW 2093
Patricia Mary Edna Nugent	10 Eurella Avenue NORTH BALGOWLAH NSW 2093
Selwyn Basil Montgomery Garwell	68 Serpentine Crescent BALGOWLAH NSW 2093
Joanne Alana Cleary	6 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Shelagh Mary Brigid Lubbock	39 Woolgoolga Street NORTH BALGOWLAH NSW 2093

Name:	Address:
Mr Christopher Lachlan Nielson	3 Kimo Street NORTH BALGOWLAH NSW 2093
Mr Kenneth Leslie Churcher	25 Bangaroo Street NORTH BALGOWLAH NSW 2093
Jackie Masters	Address Unknown
Mr Bryan Lawrence	27 Bangaroo Street NORTH BALGOWLAH NSW 2093
Miss Irena Zezelj	2 / 2 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mr Phillip John Bird	3 Florence Court NORTH BALGOWLAH NSW 2093
Mr Barry Keith McLean	2 Wonga Street NORTH BALGOWLAH NSW 2093
Mrs Nicole Lee Lawrence	2/46 Jackson Street BALGOWLAH NSW 2093
Mr Julie Elizabeth Livingstone	1 / 9 Marlee Street NORTH BALGOWLAH NSW 2093
Mr Anthony John Bostock	1 Marlee Street NORTH BALGOWLAH NSW 2093
Corona Projects Pty Ltd	PO Box 1749 BONDI JUNCTION NSW 1355
David Chedburn	1 / 2 Worrobyl Street NORTH BALGOWLAH NSW 2093
Timothy John Concannon	24 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Daniel Scott Butchart	4 / 567 Sydney Road SEAFORTH NSW 2092
Ms Rita Caruana	32 Frenchs Forest Road SEAFORTH NSW 2092
Ms Susan Mary Lumb	4 Burringbar Street NORTH BALGOWLAH NSW 2093
Mrs Louise Pamela Boccanfuso	33 Gurney Crescent SEAFORTH NSW 2092
Mrs Margaret Joy Holt	104 Clontarf Street NORTH BALGOWLAH NSW 2093
Mr Timothy McDonald Dawson	41 Eileen Street NORTH BALGOWLAH NSW 2093
Mrs Linda Diane Whitely	36 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr David Timothy Gorman	13 B Woodbine Street NORTH BALGOWLAH NSW 2093
Jacqueline Alice Daley	15 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Karen Marosa	13 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mrs Honnie Bustos	13 St Pauls Road NORTH BALGOWLAH NSW 2093
Ms Maxine Kay Peacock-Smith	18 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mrs Josephine Iacobbe	PO Box 4031 BALGOWLAH HEIGHTS NSW 2093
Mrs Christie Melanie Peck	106 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Carolyn Grace Leis	23 Hope Street SEAFORTH NSW 2092
Mrs Charmain Nancy Ellis	22 Eileen Street NORTH BALGOWLAH NSW 2093
Ms Jin Hee Lucy Olney	2 / 53 Ethel Street SEAFORTH NSW 2092
Nadine Hazel Blayney	72 Frenchs Forest Road SEAFORTH NSW 2092
David Duke-Smith	15 Kalau Street NORTH BALGOWLAH NSW 2093
Mr Peter William Goodenough	1 Illalong Avenue NORTH BALGOWLAH NSW 2093
Miss Lyndsay Barbara Steadman	30 Myrtle Street NORTH BALGOWLAH NSW 2093
Mrs Katie Ward	17 Carlton Street MANLY NSW 2095
Mrs Kathryn Alison Jerman	50 Baringa Avenue SEAFORTH NSW 2092

Name:	Address:
Anne Fairley Beaton Ottey	35 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Anna Marie Chrysiliou	31 Hunter Street NORTH BALGOWLAH NSW 2093
Mrs Susan Marie Chrysiliou	802 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Paul Robert O'Brien	44 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr John Robson Gregory	2 Water Reserve Road NORTH BALGOWLAH NSW 2093
Ms Jade Kimberley Cerfontyne	2 Kitchener Street BALGOWLAH NSW 2093
Ms Saskia Margaret Emanuel	1 / 1 St Pauls Road NORTH BALGOWLAH NSW 2093
Mr Dean James Linden	27 St Pauls Road NORTH BALGOWLAH NSW 2093
Noise & Sound Services	Spectrum House 3 Cassandra Avenue ST IVES NSW 2075
Peter John Foley	8 Water Reserve Road NORTH BALGOWLAH NSW 2093
Adrian Boyle	Address Unknown
Ms Christina Lee Parks	60 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Bradley James Maurice	12 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Daniel Paul Remblance	29 Prince Edward Road SEAFORTH NSW 2092
Mrs Ulla Kofoed Krause	7 Worrobyl Street NORTH BALGOWLAH NSW 2093
Hugo Fraser Stegmann	76 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Cerry Johnette Kean	C/- Crystal Pools Pty Ltd Po Box 271 PENNANT HILLS NSW 1715
Ms Amanda Margaret Magarey	3 / 2 Worrobyl Street NORTH BALGOWLAH NSW 2093
William Gregory Skelly	5 / 133 - 137 North Steyne MANLY NSW 2095
Mr Malcolm Phillip Morris	29 Bangaroo Street NORTH BALGOWLAH NSW 2093
Dympna Baker	2 St Pauls Road NORTH BALGOWLAH NSW 2093
Miss Rebecca Kate Engel	3 Brisbane Street FAIRLIGHT NSW 2094
Ms Jennifer Gardiner	23 Yatama Street SEAFORTH NSW 2092
Ms Louise Elizabeth Ashley Williams	42 Baringa Avenue SEAFORTH NSW 2092
Mr Sasha Dimovski	19 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Duncan McPherson	6 Worrobyl Street NORTH BALGOWLAH NSW 2093
Mr Benjamin Roy Forrest	17 Carlton Street MANLY NSW 2095
Clare Francis Turner	59 Woolgoolga Street NORTH BALGOWLAH NSW 2093

The Development Application was publicly exhibited in accordance with Council's Community Participation Plan. The Development Application was notified from 4 June 2021 to 23 June 2021. The application was re-notified and advertised from 1 July 2021 to 20 July 2021 due to a discrepancy within the Plan of Management (PoM) and the Statement of Environmental Effects (SEE) regarding the hours of operation proposed for the child care centre. As a result of the public exhibition and advertising, 151 submissions were received in objection to the proposal.

The following issues were raised in the submissions and each have been addressed below:

- Traffic impacts and insufficient off-street parking

Comment: A number of submissions were received with regards to the traffic impacts of the childcare centre on Bangaroo Street and surrounding streets. Neighbouring residents highlighted that there are existing concerns regarding safety due to existing traffic congestion, vehicles exceeding the speed limit, limited sight lines and the limited number of on-street parking spaces. The Subject site is located within close proximity to bus stops which also results in traffic congestion along Bangaroo Street. Concern is also raised in regard to the use of the proposed crossover in close proximity to the busy intersection located to the south at Bangaroo Street and Worribol Street.

Concerns were also received regarding the insufficient number of off-street parking spaces proposed on site and the impact that will have on the number of on-street parking available in the surrounding streets, in particular Worribol Street. In particular, issues were raised with regards to the appropriateness and safety of accessing the off-street parking spaces and the inability to enter and exit the site in a forward direction. The submissions noted the high pedestrian activity along Bangaroo Street given the close proximity to bus stops, Seaforth Public School and the shops located north along Woodbine Street and raise concern that a child care centre in this location will only add to increased pedestrian activity. The submissions raise grave concern for the safety of pedestrians, in particularly children when entering and exiting the centre.

Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and does not concur with the position or recommendations presented in the report. Detailed comments in this regard are provided in this report under the "Referrals" section. See also discussion under Clause C2 Traffic, Access and Safety and C3 Parking Facilities of the WDCP for further discussion.

- Pedestrian safety risks

Comment: Issues were raised with regards to risk of accident or injury to local residents and people accessing the centre who use the Bangaroo Street footpath directly in front of the site. Concerns were expressed as to the volume of vehicles crossing the pedestrian path as well as the resulting flow on implications. Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and does not concur with the position or recommendations presented. Detailed comments in this regard are provided in this report under the "Referrals" section.

- Non-compliance to the front setback

Comment: Regarding the non-compliance to the front setback concerns were expressed as to the resulting streetscape and amenity impacts on surrounding properties. The development proposes a 1.2m high child proof fence 1.2m from the front boundary. A detailed discussion has been undertaken further in this report under B7 Front Boundary Setbacks of the WDCP. The non-compliance is considered reasonable in this instance.

- Privacy impacts

Comment: Concerns were raised regarding the visual and acoustic privacy impacts to the surrounding properties in particular the dwelling located along the northern and southern boundaries and the residential flat building located along the western (rear) boundary. The submissions raised

concern with the recommendations of the acoustic report requiring only eight (8) children to be allowed in the play area at one time, the need for noise barriers and the requirement of doors and windows to be closed during times where more noise is generated i.e singing. This was viewed as indicating that the proposed location for the child care centre was incompatible with the residential nature of the area. Concern is raised with the removal of trees along the western (rear) boundary of the subject site and the high level of visibility from the residential flat building into the play area of the proposed child care centre. The development proposes landscaping along the rear and side boundaries, however inadequate detail of the proposed planting has been provided. No objections have been raised by Council's Landscape Officer.

- Noise impacts

Comment: A number of concerns were raised with regards to the noise impacts associated with the operation of the proposed child care centre on the amenity of the surrounding area. Concern has been raised in the submissions regarding the details outlined in the acoustic report and the Plan of Management (PoM) around managing any noise generated by children within the child care centre. The acoustic report has been reviewed by Council's Environmental Health (Industrial) Officer and is supported subject to conditions which include updating the PoM to limit the maximum number of children to eight in the playground at any one time and to provide the contact phone number of the centre's director to be made available to neighbours.

- Access and Emergency and Evacuation Plan

Comment: Concerns have been raised as to acceptability of the child care centre being designed to be accessible for all potential users. The Development Application was also not supported by an Emergency and Evacuation Plan as required under Sections 97 and 168 of the Education and Care Services National Regulations. This is discussed within the SEPP Educational Establishments and Child Care Facilities 2019, within the report. The proposed development is recommended for refusal in this regard.

- Waste Management

Comment: Concerns were raised as to the waste/garbage management associated with the proposed childcare centre. In this regard, consideration has been given that conditions can be applied to the PoM to ensure waste collection is appropriately managed by a private operator to limit amenity impacts as well as obstruction of footpaths and roads particularly at peak times.

- Construction Management

Comment: Given the nature of the proposed works, no conditions are recommended relating to construction management.

- Need/demand for a childcare centre

Comment: The proposed use as a childcare centre is permitted with consent within R2 Low Density Residential zone. Issues relating to the need, demand or financial viability of the proposed development are not a matter of consideration for the consent authority.

- Impact upon neighbouring property values.

Comment: The proposed use as a childcare centre is permitted with consent within R2 Low Density Residential zone. Concerns specifically relating to any resulting impact on the value of surrounding properties are not relevant as a reason for this development application to be refused.

- Non-compliance with SEPP (Educational Establishments and Child Care Facilities) 2017

Comment: The proposed childcare centre is found to be inconsistent with the provisions of Clause 23 of SEPP (Educational Establishments and Child Care Facilities) 2017 and is recommended for refusal on this basis.

- Stormwater details

Comment: The proposed stormwater arrangement has been reviewed by Council's Development Engineer and has been found to be acceptable, subject to conditions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	No objection with conditions General Comments Application is for alterations and additions to an existing dwelling and change of use to a childcare centre. The childcare centre will cater for a maximum of 20 children aged 3-5 and operate 8.00am to 4pm, Monday to Friday. The applicant has provided an Acoustic Report by Wilkinson Murray Pty Limited dated 17 May 2021 (reference: Report No. 20194 Version C) that includes a number of recommendations. The applicant has also provided an Operation Plan of Management for the centre that includes a Noise Management Policy Section. The Plan of Management however, will need to be updated to include the recommendations from the Acoustic Report including but not limited to: - Allowing only a maximum of eight children to play outside in the play area. - Contact phone number of the centre's director to be made available to neighbours.

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	No objection with conditions General Comments Application is for alterations and additions to an existing dwelling and change of use to a childcare centre.
Landscape Officer	No objection with conditions The application proposes alterations and additions to the existing dwelling and the use of the ground floor as a child care centre. Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls: I D1 Landscaped Open Space and Bushland Setting I E1 Preservation of Trees or Bushland Vegetation The SEE indicates that no trees are to be removed to accommodate the proposed works. It is evident that some vegetation will be removed on the southern side of the front yard to accommodate the new driveway and parking area, however vegetation on the northern side can be retained to provide softening of the built form in the streetscape. The Plans indicate that existing retaining walls in the rear yard are to be retained, which enables retention of trees in the rear of the site. In view of the above, no objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	No objection with conditions The proposed increase in impervious area for the proposal is negligible and as such OSD is not required. The proposed minor driveway widening is acceptable. No objection to approval, subject to conditions as recommended.
Traffic Engineer	Not supported The development proposes to create a child care centre serving up to 20 children and with a staffing level of 3. To cater for this use it is proposed to widen the existing vehicle crossing to provide access to 3 off-street parking spaces including one stacked space. Traffic: In terms of traffic generation the development will generate 0.8 trips per child in the am peak and 0.7 trips per child in the pm peak. i.e. 16am peak trips and 14 pm peak trips. The traffic impact assessment report advises that pm peak traffic generation from the centre will not

Internal Referral Body	Comments
	coincide with the broader general peak traffic period and the impact of the centre at this time will therefore be minimal. While that may be true the centre will still generate volumes of 14 vehicles in the afternoon pick up period. Despite the above, the traffic generation from the developed site is however acceptable and considered unlikely to significantly impact on conditions in the surrounding road network. Parking: The DCP parking rate is one space for every four children. This also reflected in the RMS guide to traffic generating development which also requires that parking be supplied at a rate of one space for every four children i.e 5 spaces The development proposes to provide 3 off-street spaces including one stacked space. These spaces are provided by widening the existing driveway (which provides access to two existing off-street stacked spaces) and constructing an additional off-street space. The Traffic Report suggests that there is ample on-street parking to cater for any overflow parking however it is inappropriate to rely on on-street parking for the parking needs generated by a development and the required parking should be accommodated on site. The level of parking provision is considered unacceptable and the DCP parking requirement of 5 off-street spaces (as a minimum) should be provided without the reliance on a second vehicle crossing or loss of on-street parking. The applicant's traffic consultant references other childcare centre developments which rely upon on-street parking for drop off and pick up related parking and claims that this causes no safety issues. This is incorrect. Complaints have been received with regard to at least two of the referenced childcare centres regarding parking activity in No Stopping zones or across driveways, restricted sightlines due to parked vehicles and congested conditions at drop off and pick up periods. If this centre were approved without adequate off-street parking similar issues are anticipated. Pedestrian Impact: The development will generate a number of reversing manoeuvres across the footpath during drop off and pick up times. The development is also sited near bus stops (generating pedestrian activity) and there will be movement of children along the footpath accessing the centre. Vehicles will also be reversing onto the road in close proximity to a busy intersection. These arrangements are not considered ideal and would be improved if there was provision for forwards entry and exit to/from the site. Summary:

Internal Referral Body	Comments
	The development is considered unsuitable as it provides a net increase of only 1 parking space when compared to the existing situation. This is considered insufficient to cater for the increased parking demands generated by the development. The reliance upon only three off-street parking spaces all of which will require reversing either onto or off the site will also impact negatively on pedestrian safety in this location.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response was received by Council from Ausgrid stating that "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including the key natural and built features of an

area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

Comment: Consistent

The proposed development does not dramatically alter the appearance of the building other than the erection of a 1.2m high child proof fence within the front setback. The introduction of additional hard standing car parking within the front setback to create three (3) parking spaces does not comply with B7 Front Boundary Setbacks control as stipulated in the Warringah Development Control Plan (WDCP). This control does not support car parking within the front setback. The development proposes to increase the number of car parking spaces from two (2) to three (3) and whilst this is non-compliant with the control, it is argued that on merit, the additional parking space is not considered to impact on the character with the low density residential character of the surrounding streetscape given no parking structures are proposed and the stacked parking arrangement will minimise the appearance of the third parking space along the southern boundary closer to the building. The front setback will maintain 50% of the area as landscaped open space and will be generally free of any structures (other than the child proof gate) to maintain a sense of openness.

Principle 2: Built Form

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the surrounding area.

Good design achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Good design also uses a variety of materials, colours and textures.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment: Consistent

The overall scale, bulk and height of the proposed childcare centre is consistent with that of the largely low density residential character of Bangaroo Street. As highlighted above, the proposal will breach the front setback control within the WDCP, however this is considered minor and will not impact on the building particularly when viewed from the public domain of Bangaroo Street. Given the design of the building is not dramatically changing, it is not considered to dominate the streetscape or the existing built environment along Bangaroo Street.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for

children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment: Consistent

The design of the proposed child care centre appears to deliver learning spaces and an acceptable level of amenity for both children and staff when assessed against the applicable requirements of the *Child Care Planning Guideline*. Concurrence to the NSW Department of Education – Early Childhood Education Directorate was not identified to be necessary at the time of lodgement. Nevertheless, the development would need to meet clauses 107 and 108 which relate to the indoor and outdoor space requirements of the *Education and Care Services National Regulations 2011*. Should the application be approved, conditions can be imposed in this regard.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment: Consistent

The proposed child care centre appears to be well designed in that it provides sufficient amenity for the children. The proposal generously complies with the required minimum unencumbered area as stipulated within the SEPP. The overall landscape design as it relates to the outdoor learning environment for children is considered acceptable

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Comment: Consistent

The development proposes a well designed landscaped open space area within the rear setback. This

area complies with the minimum requirement for an unencumbered space for the children to enjoy and provides a selection of low to medium height trees and shrubs to ensure the landscape character of the development is maintained within the immediate vicinity. In the event that the development is approved, a condition imposed from Council's Environmental Health Section limits the number of children permitted outdoors at any one time to eight (8) which will ensure there is more than adequate area for this area to function sufficiently. The outdoor learning environment for children is therefore considered acceptable

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility.

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment: Consistent

The design of the proposed childcare centre appears to deliver learning spaces and an acceptable level of amenity for both children and staff when assessed against the applicable requirements of the Child Care Planning Guideline.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).

Comment: Consistent

The proposed childcare centre is considered to achieve consistency with the need to provide safe and secure learning spaces as well as appropriate supervision of children. The entries are also clearly defined and allow for controlled access for members of the community. The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		

C1 To ensure that appropriate zone considerations are assessed when selecting a site	For proposed developments in or adjacent to a residential zone, consider: • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity.	Inconsistent The application is accompanied by an acoustic report to address the proposed childcare centre. The report makes recommendations regarding acoustic walls and treatments to mitigate adverse noise impacts to adjoining properties. The proposal is acceptable with regards to noise, subject to conditions. The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in the street. Further, the proposal provides for insufficient off street parking and an unacceptable parking arrangement. This is discussed in detail further in this report.
	When selecting a site, ensure that: • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas	Inconsistent The site is considered safe from risks associated with natural hazards. The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in Bangaroo Street. Further, the proposal provides for insufficient off street parking, in particular with drop-off/pick-up locations and an unacceptable parking arrangement. This is discussed in detail further in

	• where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.	this report. The proposed childcare centre is not located closely to any known incompatible social activities/uses.
C3 To ensure that sites for child care facilities are appropriately located	A child care facility should be located: • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.	Consistent The proposed child care facility is located close to Seaforth Public School, but is not near to any employment areas, town centres, business centres or shops. The nearest shops are Woodbine Street, North Balgowlah, some 350m towards the north of the site. Access to public transport (buses) are nearby along Bangaroo Street adjacent to the subject site and pedestrian connectivity is available via existing footpaths
C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard	A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from: • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses	Consistent The proposed childcare centre is not located in proximity to sites known to incur risks from environmental, health or safety hazards
3.2 Local character, streetscape and the public domain		
C5 To ensure that the child care facility is compatible with the local character and surrounding	The proposed development should: • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding	Consistent The proposed childcare centre does not dramatically change the built

streetscape	land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas.	form of the existing building in character with the locality and existing streetscape. The existing building does reflect the predominant form of the surrounding low density residential context. Whilst the additional off-street car parking does reduce the landscaped open space within the front setback, the openness of the site is retained.
C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	Create a threshold with a clear transition between public and private realms, including: • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing.	Consistent Existing windows towards Bangaroo Street ensure that these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to any childcare centre becoming operational.
	On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	Consistent The proposed childcare centre is a single building with a primary entry point via the Bangaroo Street frontage. As previously mentioned, these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:	N/A The Site does not adjoin any public parks, open space or bushland.

	• clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	
C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	Consistent The application proposes a child proof gate/fence within the front setback. The gate will measure 1.2m in height and will be located 1.2m from the front boundary. The gate will be constructed of visually permeable materials as to reduce the visual impact when viewed from Bangarook Street.
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	N/A Bangarook Street is a local road and therefore would not require high fencing that would otherwise be necessary along a classified road.
3.3 Building orientation, envelope and design		
C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade	Orient a development on a site and design the building layout to: • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.	Consistent The proposed child care centre is located within a R2 Low Density Residential area which is characterised by residential dwellings. Given the location of the site, the outdoor play area is located adjacent to the private open space of residential dwellings. An acoustic report has been submitted with the development application which was reviewed by Council's Environmental Health (Industrial) Section supporting the recommendations outlined in the report. A condition is also recommended to allow a maximum of eight children in

		the playground at one time.
C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised	The following matters may be considered to minimise the impacts of the proposal on local character: • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character.	Consistent The existing building is consistent with the height and setbacks of other buildings in the locality and responds positively to the scale and character of the street.
C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.	Consistent The front building line of the dwelling is not altered as a result of the proposal.
	On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	Consistent No changes proposed to the existing side and rear setbacks.
C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character	The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	Consistent The built form of the proposed childcare centre is seen to respect and respond to its adjacent built form, the character of the neighbourhood or streetscape.
C16 To ensure that buildings are designed to create safe environments for all users	Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible	Consistent The entry to the childcare centre is limited to one secure point and is consistent

	• directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building.	with the requirements of this guideline.
C17 To ensure that child care facilities are designed to be accessible by all potential users	Accessible design can be achieved by: • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.	Consistent The proposal provides an accessible design for wheelchairs and prams and a continuous path of travel to and within the building including access between the street entry and car parking and main building entrance.
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car	Consistent The proposed landscape arrangement includes perimeter native screen plantings along both side boundaries for the site. These plantings have not been included in calculations of unencumbered outdoor space. Consistent The proposed parking area along the southern side of the site within the front setback will provide for three (3) off street parking spaces. Landscaping is proposed

	parking areas within the front setback • using low level landscaping to soften and screen parking areas.	along the northern side of the site within the front setback which will assist in softening the car hard stand parking spaces.
3.5 Visual and acoustic privacy		
C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	N/A The proposal is not a mixed use development.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	Consistent The indoor rooms and outdoor play spaces of the proposed childcare centre are located away from public areas. This has been achieved through largely incorporated these areas internally and towards the rear of the site.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	Consistent The proposal does not minimise direct overlooking towards adjoining residential properties. The acoustic report does recommend solid boundary fencing measuring 1.8 - 3.0m along the northern, southern and western boundaries which would assist in protecting the amenity of the neighbouring properties.
C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.	Consistent Submitted with the Development Application, the DA Noise Assessment, (Report No. 20194 Version C, dated May 2021 prepared by Day Design Pty Ltd) details a 1.8m high noise barrier is to be constructed along part of the southern boundary adjacent to the open space at the rear of the site with a 2.4m high noise barrier constructed along the southern boundary adjacent to the building. A 2.4m high

		noise barrier is proposed along the northern boundary with a 3.0m high noise barrier proposed along the western (rear) boundary. Subject to compliance with relevant recommendations and conditions placed by Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved.
	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met.	Consistent The submitted DA Noise Assessment details that for the development of the subject child care centre in a residential area, the background noise level requirement ranges from 44 dB(A) to 49 dB(A). The report states that to ensure compliance with the standard and to protect the amenity of the surrounding receivers, a maximum of eight children are allowed within the outdoor play area at one time. The report recommends a noise barrier along the northern, western and southern boundaries measuring 1.8m - 3.0m in height to ensure the noise criteria is met. The DA Noise Assessment also details noise emission calculations for the indoor and outdoor play areas, car parks and mechanical plant which factor reductions provided by the fence heights.
3.6 Noise and air pollution		
C25, C26	Adopt design solutions to minimise the impacts of noise, such as: • creating physical separation between	Consistent Submitted with

	buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources	the Development Application, the Environmental Noise Assessment, makes recommendations for measures to mitigate noise impacts. Subject to compliance with relevant recommendations and conditions placed by Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved.
	An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations: • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise.	Consistent Submitted with the Development Application, the Environmental Noise Assessment, consideration has been given that indoor play areas and sleeping areas, the internal noise levels will comply with the Association of Australasian Acoustical Consultants' internal noise limit for Child Care Centres. Subject to compliance with relevant recommendations and conditions placed by Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved
C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	N/A The proposed childcare centre is not located near external sources of air pollution such as major roads and industrial development.
	A suitably qualified air quality professional should prepare an air quality assessment	N/A

	report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as: • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility.	As above, the proposed childcare centre is not close to major roads or industrial developments.
3.7 Hours of operation		
C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	Consistent The hours of operation for the proposed childcare centre are to be 8:00am to 4:00pm Monday to Friday.
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	N/A The proposed childcare centre is not located within a mixed use area or predominantly commercial area.
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates: Within 400 metres of a metropolitan train station: • 1 space per 10 children	Inconsistent The Warringah DCP requires that 1 space per employee of the child care centre be provided on site and provision for drop off and pick up points. The proposed child care facility is to accommodate for 20 children and a total of 3 staff. The application provides for a total of three (3) spaces,

	• 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. In other areas: • 1 space per 4 children. A reduction in car parking rates may be considered where: • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site.	with one (1) space dedicated for staff and two (2) dedicated for parents/carer's. In accordance with the Warringah DCP, the proposal seeks to vary the required number of staff parking by two (2) off street parking spaces as a minimum and should be provided without the reliance on a second vehicle crossing or loss of on-street parking. Council's Traffic Engineer has reviewed the Traffic and Parking Impact Assessment with regards to parking, commenting that the proposed number of off-street car spaces is considered insufficient to cater for the increased parking demands generated by the development See detailed comments within this report.
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	N/A The proposed childcare centre is not located within a commercial or industrial zone and does not form part of a mixed use development.
	A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network.	Inconsistent A Traffic and Parking Impact Assessment has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers the development will impact on pedestrian and vehicle safety, in particular during the intense drop off and pick up times in association with the close location of a bus stop

		and a busy intersection.
C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	Alternate vehicular access should be provided where child care facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. The alternate access must have regard to: • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic.	N/A The Site is not located on a classified road or a road which carries freight traffic or transport dangerous goods or hazardous materials.
	Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	N/A The Site is not located within a cul-de-sac.
C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site	The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: • separate pedestrian access from the carpark to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction.	Inconsistent A Traffic and Parking Impact Assessment has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers that the additional vehicle and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street and pedestrians. The Development Application has not demonstrated pedestrian paths that enable two prams to pass each other, nor has it demonstrated vehicular manoeuvring paths to demonstrate that all vehicles can enter and depart the site in a forward direction.
	Mixed use developments should include: • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the	N/A The proposed development does not form part of a mixed use development.

	facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.	
	Car parking design should: • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking.	Consistent The Development Application has not demonstrated that the design of all car parking bays will allow for full opening of all doors, nor that drop off/pick up spaces are compliant in width against relevant Australian Standards. Council's Traffic Engineer has reviewed the submitted Traffic and Parking Impact

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
Regulation 107 Education and Care Services National Regulation Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered indoor space excludes any of the following: • passageway or	<i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i> Verandahs as indoor space For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space. Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:	Inconsistent The proposed development 65m² requires at least of indoor space. The proposal provides for 106.4m² of indoor space. The proposal requires 6m³ of external storage space. The proposal provides for 4.7m³ of external storage space. The proposal requires 4m³ of internal storage space. The proposal provide for 25.9m³ of internal storage space.

thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children. When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 81 requires that the needs	• a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently. Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance. Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.	An internal laundry is accommodated on the ground floor. The proposed external storage space falls 1.3m² short of the requirement. Whilst this is a non-compliance, the level of internal storage space greatly exceeds the requirement and therefore can be used in the event of this shortfall.
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for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs. Development applications should indicate how these needs will be accommodated. Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.		
4.2 Laundry and hygiene facilities		
Regulation 106 Education and Care Services National Regulation There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children. Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.	<i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i> Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated. On site laundry On site laundry facilities should contain: • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to	Consistent The on-site laundry located on the ground floor appears to contain the appropriate facilities required. Such requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational

	comply with any relevant Australian Standards.	
4.3 Toilet and hygiene facilities		
Regulation 109 Education and Care Services National Regulation A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	<i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i> Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries	Consistent The on-site laundry located on the ground floor appears to contain the appropriate facilities required. Such requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational
4.4 Ventilation and natural light		
Regulation 110 Education and Care Services National Regulation Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be	<i>The proposed development includes indoor spaces to be used by children that:</i> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> • <i>can be maintained at a temperature that ensures the safety and well-being of children.</i> 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. To achieve adequate natural ventilation, the design of the child care facilities must	Consistent The proposed childcare centre appears to contain adequate toilet, washing and drying facilities inclusive of the relevant design considerations. As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.

affected by the capacity of the facility.	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. Natural light Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights. Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	
4.5 Administrative space		
Regulation 110 Education and Care Services National Regulation A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	<i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i> Design considerations could include closing doors for privacy and glass partitions to ensure supervision. When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located	Consistent The proposed childcare centre appears to include adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations. As previously highlighted, these requirements are considered

	adjacent to public areas, or in large rooms where sound can easily travel. Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.	to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.
4.6 Nappy change facilities		
Regulation 112 Education and Care Services National Regulations Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.	<i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i> <i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i> In circumstances where nappy change facilities must be provided, design considerations could include: • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas.	Consistent The proposed childcare centre appears to include adequate area or areas for the purposes of nappy changing. As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.
4.7 Premises designed to facilitate supervision		
Regulation 115 Education and Care Services National Regulations A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children	<i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i> Design considerations should include: • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties	Consistent The proposed children's toilet and change facilities appear to contain windows in appropriate locations to ensure supervision, whilst being located away from view of visitors to the facility, the public or neighbouring properties. As previously highlighted, these

at all times, having regard to the need to maintain their rights and dignity.	• avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities	requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to the childcare becoming operational.
Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.		
4.8 Emergency and evacuation procedures		
Regulations 97 and 168 Education and Care Services National Regulations Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service.	Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency. Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example: • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. An emergency and evaluation plan should be submitted with a DA and should consider: • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios.	Inconsistent The Development Application was not supported by an emergency and evacuation plan.
4.9 Outdoor space requirements		
Regulation 108 Education and Care	<i>The proposed development includes at least 7.0 square metres of unencumbered</i>	Consistent

Services National Regulations An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered outdoor space excludes any of the following: • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not suitable for children. When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 274	outdoor space for each child. Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play. When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered. Verandahs as outdoor space Where a covered space such as a verandah is to be included in outdoor space it should: • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements Simulated outdoor environments Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications. A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment. Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas. Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have: • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to	The proposed childcare centre requires at least 140m² of outdoor open space. The proposed childcare 173.8m² centre provides for of unencumbered outdoor space.
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(Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required. A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.	enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs.	
4.10 Natural Environment		
Regulation 113 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	<i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i> Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space. Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which: • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches The outdoor space should be designed to: • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial	Consistent The proposed landscape arrangement has been reviewed by Council's Landscape Officer as acceptable, subject to conditions. The outdoor space areas appear to have been designed to comply with the relevant requirements of this criteria.

	behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.	
4.11 Shade		
Regulation 114 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	<i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i> Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option. Solar access Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should: • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended. Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade	Consistent The proposed childcare centre provides for at least 30% of the outdoor open space as uncovered areas with solar access available during the day. The proposed childcare centre has less than 60% of the outdoor space covered.

	and solar access is enhanced by: • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. Built shade structures Built structures providing effective shade include: • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.	
4.12 Fencing		
Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age.	<i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i> Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should: • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. Design considerations for side and rear boundary fences could include: • being made from solid prefinished metal,	Consistent The proposed outdoor space to be used by children will be enclosed with fencing of an appropriate height and design to ensure that children preschool age or under cannot go through, over or under it. It should be noted that regulatory procedures would need to be undertaken by the Early Childhood Education Directorate prior to the childcare centre becoming operational.

Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code	timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is	To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process. Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where: • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment. An assessment of soil for a children's service approval application may require three levels of investigation: • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment.	Consistent No excavation is proposed as part of the proposal and therefore an assessment of the soil is required. Council's Environmental Health Officer has also reviewed the Development Application and has raised no objection subject to conditions.

likely to be contaminated in a way that poses an unacceptable risk to the health of children		
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Conclusion

The proposed child care centre fails to comply with Clause 23 of the SEPP Educational Establishments and Child Care Facilities 2017. A detailed assessment of the proposal finds that the child care centre is inconsistent with the traffic and parking requirements of the SEPP. The proposal fails to provide the required five (5) off-street parking spaces for the centre and given the location and configuration of the three (3) spaces provided, does not allow for vehicles to enter and exit the site in a forward motion. Vehicles will be required to reverse over the existing footpath on Bangaroo Street which is considered to jeopardise the safety of pedestrians. The close proximity to bus stops and a busy intersection raises concern regarding the suitability of the site as a child care centre. The proposal is considered to raise significant traffic and parking issues which will significantly impact on the surrounding residential amenity.

The Development Application was not supported by an emergency and evacuation plan which is inconsistent with 4.8 Emergency and evacuation procedures of Clause 23 of the SEPP.

For the reasons stated above, the proposed child care centre is considered inconsistent with the SEPP and is therefore recommended for Refusal.

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use as a child care centre.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. A response was received by Council from Ausgrid stating "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.2m	N/A	Yes
B3 Side Boundary Envelope	N: 4m	No change	N/A	Yes
	S: 4m	No change	N/A	Yes
B5 Side Boundary Setbacks	N: 0.9m	1.2m	N/A	Yes
	S: 0.9m	2.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Hard stand parking area	100%	No
B9 Rear Boundary Setbacks	6m	20m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (205.67sqm)	42.7% (219.5sqm)	N/A	Yes

*Note: The percentage variation is calculated on the overall numerical variation (ie: for LOS - Divide

the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

A detailed assessment of the proposal has found that the day care centre is not consistent with the following provisions of the WDCP 2011:

- *Provide a high level of access to and within development.*

Comment:

The proposal fails to demonstrate compliance with the required number of 5 off-street spaces without the reliance on a second vehicle crossing or loss of on-street parking. There is lack of detail surrounding the practical and safe access to the development with issues such as parking activity within No Stopping Zones or across driveways, restricted sightlines due to parked vehicles and congested conditions at drop off and pick up times. It is also anticipated that the development will generate a number of reversing manoeuvres across the footpath during drop off and pick up times. A bus stop is located in front of the subject site which will also generate pedestrian activity, along with children being dropped and picked up at the centre. Vehicles will also be reversing onto the road in close proximity to a busy intersection. The Traffic Report does not sufficiently address these issues and is not supported by Council's Traffic Engineer.

The proposed development is not considered to sufficiently respond to the characteristics of the site which is evident in the number of non-compliance's relating to traffic, access and safety and the number of objections raised.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of this Clause and is not supported in this particular instance.

B7 Front Boundary SetbacksDescription of non-compliance

The development proposes three (3) hard stand car parking spaces. Two of these spaces are located adjacent to each other and are readily visible from Bangaroo Street with the third space located as part of a stacked parking arrangement and is located closer to the building. The control states that the **front boundary setback** area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, **garbage** storage areas and fences. All three (3) hard stand spaces located within the front setback and are non-compliant with this control.

The development proposes a 1.2m high child proof gate located 1.2m to the front boundary, however the control stipulated this is permitted within the front setback.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The development does not propose any parking structures i.e. a garage or carport within the front setback. Whilst the development proposes to widen the existing crossover located along the southern boundary to allow for an additional parking space, approximately 50% of the front setback will remain landscaped. The stacked parking arrangement along the southern boundary will reduce the visibility of the third car on site and will not contribute to an over development of the site. The absence of any car parking structures will ensure a sense of

openness is maintained.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal maintains sufficient landscaping within the front setback consistent with surrounding properties.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal will protect and enhance the visual quality of the streetscape of Bangaroo Street and the hard standing parking spaces will not alter the appearance of the development within the streetscape to an unreasonable extent.

- *To achieve reasonable view sharing.*

Comment:

The proposed alterations to the existing dwelling are designed and sited to as not to obstruct any views to or from the subject site or adjacent and nearby sites.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

C2 Traffic, Access and Safety

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise traffic hazards.*

Comment:

The proposal fails to provide the required number of off-street car parking space for the proposed daycare centre. The WDCP does not specify the size of the required drop off and pick up area, however the RMS Guide to Traffic generating developments require that parking be supplied at a rate of one space for every four children, i.e. 5 spaces. The development proposesthree off-street space which is not supported by Council's Traffic Engineer. Given the location and configuration of the proposed off-street parking spaces, vehicles are unable to exit the site in a forward motion therefore creating safety concerns for pedestrians accessing the footpath along the western side of Bangaroo Street. The proposed day care centre is within close proximity to bus stops, a busy intersection to the south and there will be a movement of childrenon the footpath accessing the centre. It is therefore concluded that the proposed arrangement will likely exacerbate traffic hazards within the immediate vicinity.

- *To minimise vehicles queuing on public roads.*

Comment:

The Traffic Report states that there is adequate on-street parking to accommodate the increase in cars required to stop at pick and drop off times. Whilst the Traffic and Parking Impact Assessment provides data to suggest there is ample parking available in the surrounding streets, a development should not rely on this entirely and should provide the number of parking spaces as required for the proposed use. Given the busy activity associated with Bangaroo Street and the close proximity to shops, bus stops and Seaforth Primary School, it is anticipated that at pick up and drop off times, traffic congestion may arise given the lack of off-street parking.

- *To minimise the number of vehicle crossings in a street.*

Comment:

The development proposes to widen the existing crossover on Bangaroo Street. This is in keeping with the character of the surrounding neighbourhood.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The development proposes three (3) off street car parking spaces which falls short of the required five (5) spaces required for the proposed day care centre. These spaces are provided by a stacked parking arrangement and an additional space within the front setback. The daycare centre provides space for 20 children and it is anticipated this will result in a number of reversing manoeuvres across the footpath at pick up times. Given the close proximity to bus stops and a busy intersection located south of the site (Worrobil Street and Bangaroo Street), it is anticipated this will give rise to an unsafe environment for pedestrians. Cars being able to enter and exit in a forward motion is encouraged however given the site restraints, this is not possible.

- *To minimise interference with public transport facilities.*

Comment:

The location of the proposed day care centre is not anticipated to interfere with the public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

It is suggested in the Traffic Report (Prepared by Transport and Traffic Planning Associates, Ref: 20035, dated April 2021, Issue F) that there is ample on-street parking to cater for the overflow of parking associated with the proposed child care centre. However, this is not supported by Council's Traffic Engineer who states that it is inappropriate to rely on the availability of on-street car parking spaces and that any proposed works should comply with the required number of off-street parking spaces as required for the use.

Having regard to the above assessment, the proposed development is not consistent with the

objectives of this clause and is not supported in this particular instance.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Child care centre	1 space / 4 children	5	3	-2
Total		5	3	-2

The WDCP parking rate is 1 space per four (4) children. The DCP does not specify the required drop off and pick up area. The RMS guide to traffic generating development requires that parking be supplied at a rate of one space for every four children i.e. 5 spaces. The development proposes three (3) off-street spaces including one (1) stacked space which is a shortfall of two (2) spaces. The existing crossover along the southern elevation is proposed to be widened to accommodate the existing two off-street stacked spaces and to allow the construction of an additional off-street space.

Council's review of the proposed development indicates that the proposal will fall short of the required five (5) car parking spaces providing three (3) off street parking spaces.

A Traffic and Parking Impact Assessment (Prepared by Transport and Traffic Planning Associates, dated April 2021) was submitted with the development application. The report states that the day care centre will generate volumes of 14 vehicles in the afternoon pick up period which is considered unlikely to significantly impact on conditions in the surrounding road network. The report stated that there are a total of 247 on-street spaces provided within the surrounding streets which was surveyed on 2 June 2020. Whilst this number of spaces may be available, it is inappropriate to rely on on-street parking for the parking needs generated by a development and that any parking required should be accommodated on the site.

The lack of adequate off-street parking will also result in significant safety issues for passing pedestrians which includes the movement of children and their carers accessing the centre. The configuration of the on-street car parking spaces results in a number of reversing manoeuvres across the footpath. The location of the crossover servicing the centre is approximately 18m north of a busy intersection at Worribol Street and Bangaroo Street which along with a no stopping sign and bus stops within close proximity to the site, the availability of parking within close proximity to the site is reduced which gives rise to parking activity in restricted areas.

Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and is not in supportive of the proposed development. Detailed comments in this regard are provided earlier in this report under the "Referrals" section

- An assessment of the parking provisions having regard to the requirements under the

Warringah Development Control Plan (WDCP) 2011 and the RMS Guide to Traffic Generating Development

Comment:

The parking rate outlined for child care centres in the WDCP is one (1) space per four (4) children. As outlined above, the development therefore requires five (5) spaces given the centre proposes to cater for a maximum of 20 children. The RMS Guide to Traffic Generating Development proposes the same rate. The WDCP does not specify the required drop off and pick up area. The RMS states that convenient and safe on-street parking should be available and if not, the number of parking spaces should be reduced. In the case that on-street parking is required, such parking should not impact on the amenity of the surrounding area. An assessment of the required parking rate along with the number of submissions raising concern regarding the safety of pedestrians, finds the non-compliance unreasonable and is therefore not supported.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The development proposes three (3) off-street parking spaces, two (2) in a tandem arrangement and additional space within the front setback towards the centre of the site. The development proposes to widen the existing crossover along the southern side of the site to accommodate the additional parking space. The subject site does not currently provide a garage or carport with the proposal providing three (3) spaces as hard stand spaces.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

Given the development does not propose any car parking structures on the site, the hard stand car parking spaces are not considered to dominate the street frontage or other public spaces. The tandem arrangement will also reduce the visibility of three cars parked within the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of this clause and this assessment finds that the proposal is not supported, in this particular circumstance.

D3 Noise

An Acoustic Report prepared by Acoustics and Air Dynamics dated May 2021 for the proposed child care centre was received by Council on 27 May 2021. Council's Environmental Health Officer has reviewed the submitted acoustic report and is satisfied that noise can be mitigated and result in an acceptable outcome for surrounding development, subject to compliance with the recommendations of the report.

D20 Safety and Security

The proposed childcare centre does not satisfy the requirements that seek to ensure the safety and security of all residents, occupants and visitors of various ages and abilities. A number of submissions

including those received from neighbouring residents, have raised concern that the Development Application has not addressed the pedestrian safety outcomes, in particular the risk to pedestrians who utilise the Bangaroo Street footpath. It should also be noted that the pedestrian footpath begins along eastern side of Bangaroo Street directly adjacent the site, which in turn results in a particularly high usage of the footpath directly in front of Site at the drop-off/pick-up periods associated with the bus stop south of the intersection of Bangaroo Street and Worrobbil Street. Council's Traffic Engineer in reviewing the proposal has also raised concern with the level of impact on pedestrian and vehicular safety in the street, observing that the development in its current form is an over development of the site in this location.

Based on the above, the proposed development is inconsistent with this clause in relation the safety objectives and is recommended for refusal on this basis.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$ 645.00 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 129,030.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP

- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

The proposed child care centre fails to provide compliance with C2 Traffic, Access and Safety and C3 Parking Facilities of the Warringah Development Control Plan 2011. The proposal also fails to comply with Clause 23 of the SEPP Educational Establishments and Child Care Centres. The three (3) off-street parking spaces proposed fail to comply with the five (5) spaces required under the required car parking rates outline in Appendix 1 of the WDCP 2011 for child care centres. The shortfall of spaces is not supported by Council's Traffic Engineer with the justification of the reliance on on-street parking spaces outlined in the Traffic Report unable to be relied on. As a result of the shortfall of off-street parking spaces, the configuration of spaces provided on site results in vehicles unable to enter and exit the site in a forward motion resulting in numerous reversal manoeuvres over the existing footpath on Bangaroo Street. Given the busy nature of Bangaroo Street, along with the close proximity to bus stops and the busy intersection of Bangaroo Street and Worribol Street to the south, the pedestrian safety of people is at risk.

In summary, the development is considered unsuitable and is recommended for Refusal. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2021/0680 for the Alterations and additions to an existing dwelling house and use as a centre-based child care facility on land at Lot 111 DP 11936,16 Bangaroo Street, NORTH BALGOWLAH, for the reasons outlined as follows:

1. The proposal is inconsistent with Clause 23 of the SEPP Educational Establishments and Child Care Facilities.
2. The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan 2011 in that it fails to provide a high level of access to and within the development in a safe manner.
3. The proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011 in that in that the proposed access arrangements will give rise to an unsafe environment for pedestrians.
4. The proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan 2011 in that it fails to provide a compliant number of off- street parking spaces for the child care centre.
5. The proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan 2011.

