

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1758
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot B DP 369977, 11 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of centre-based child care facilities
Zoning:	Manly LEP2013 - 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:	Yes
Owner:	Guy Alexander Reardon Joanna Corrie Reardon
Applicant:	George Antoniou

Application Lodged:	07/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/02/2021 to 19/02/2021
Advertised:	05/02/2021
Submissions Received:	101
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,947,731.00
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EXECUTIVE SUMMARY

Council is in receipt of development application DA2020/1758 for demolition works and construction of centre-based child care facilities.

The site is zoned R2 Low Density Residential under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the proposed development is permissible with consent.

The application was notified in accordance with Council's Community Participation Plan and one hundred and one (101) submissions were received; one hundred (100) submissions oppose the application, whilst one (1) submission supported the application. The issues that were have been raised

in the submissions include: traffic and parking, pedestrian safety risks, streetscape, amenity impacts and built form non-compliances.

The application involves the construction of a three (3) level centre-based child care facility to accommodate 57 children, a total of 11 staff and has provision for 16 car parking spaces. The basement parking area will accommodate 12 of the spaces provided by 4 single car stackers and 1 with a dual platform. Six (6) drop-off/pick-up car spaces are provided, two located underneath the dual platform stacker. 10 staff spaces are provided within the remaining spaces of the car stackers.

Council is not satisfied with the reliance on mechanical car stackers, the number of drop-off/pick-up spaces, nor the design of the proposed car parking bays. The additional vehicular and pedestrian traffic generated by the childcare centre is also expected to adversely impact upon safety in Lewis Street.

The proposed childcare centre is seen to result in a poor urban design and built form outcome that is unsuitable within the surrounding low density residential streetscape. In particular, the breach to the front building line, wall height and side setback controls are seen to contribute towards the building appearing institutional with an unacceptable bulk and scale, whilst also impacting on the amenity of adjoining properties.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs), State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP) and Council policies.

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 due to the unacceptable impacts on the locality and neighbouring properties.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of centre-based child care facilities. In particular, the application includes:

- Demolition of the existing dwelling house, swimming pool and vegetation removal
- Construction of a centre-based child care facility to accommodate 57 children, a total of 11 staff including 9 core child care staff and 2 staff for administrative and cooking duties
- Hours of operation 7:00am to 7:00pm Monday to Friday (with staff on premises from 7:00am to 7:30pm to allow for afterhours cleaning and administration)
- The proposed centre-based child care building will comprise:

Basement Level

- Vehicle access from Lewis Street with parking area accommodating a total of 16 car spaces with 12 of the spaces provided by 4 single car stackers and 1 with a dual platform. Six (6) parent car spaces are provided, two located underneath the dual platform stacker. 10 staff spaces are provided within the remaining spaces of the car stackers.
- Pedestrian access via internal stairs and a lift
- Garbage area to the rear

Ground Floor

- Pedestrian entry walkway and steps from Lewis Street, Lift, 2 x internal stair access and a

- fire escape stairs to the rear
- Office and staff room,
- Accessible WC, WC/Nappy change area for 0-2 years,
- 0-2 years old room for 12 children
- Cot room
- Outdoor storage area
- 0-5 year old outdoor play area for 57 children

First Floor Level

- Lift, 1 x internal stair access and a fire escape stairs to the rear
- Kitchen, Laundry and accessible WC
- Accessible WC, WC/Nappy change area for 0-2 years,
- 2-3 years old room for 15 children
- Combined childrens bathroom and nappy change room
- 3-5 year old room for 30 children
- Plant area and a non-trafficable landscaped area

- Landscaping

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

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.6 Accessibility

Manly Development Control Plan - 3.10 Safety and Security

Manly Development Control Plan - 4.1 Residential Development Controls

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.4.6 Child Care Centres

SITE DESCRIPTION

Property Description:	Lot B DP 369977 , 11 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site is known as 11 Lewis Street, Balgowlah Heights and is legally referred to as Lot B in DP 369977.</p> <p>The site is regular in shape with a frontage of 15.09m along the western side of Lewis Street and a depth of 51.815m. The site has a surveyed area of 781.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two (2) storey dwelling house with an in-ground swimming pool located within the rear yard. Pedestrian and vehicular access is currently gained via the Lewis Street frontage.</p> <p>The slope of the site is measured at 7.1%, falling approximately 3.7m from the rear boundary to the road frontage.</p> <p>The site is of a modified landscape setting, with vegetation consisting of lawned areas, hedging, and palms. An established native Brush Box tree is located to the front of the site within Council's road reserve.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The property immediately to the south of the site is Balgowlah Heights Public School. Balgowlah Heights Public School is divided by Lewis Street into the Eastern and Western campus.</p> <p>Adjoining properties to the north, east and west are characterised by dwelling houses of varying age and scale within landscaped settings.</p>

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:

1 April 2010

Development Application No. 20/10 for a swimming pool, deck and landscaping was granted consent.

10 June 2010

Complying Development Certificate No. CDC 2010/0370 issued for demolition of existing patio & construction of a new patio.

APPLICATION HISTORY

7 January 2021

The subject application was lodged with Council.

12 January 2021

Photo confirmation received by Council of the notification sign being erected on site at the beginning of the notification period.

28 January 2021

The assessing officer met with the property owner and a neighbour for an inspection at No. 13 Lewis Street, Balgowlah Heights.

29 January 2021

Photo confirmation received by Council of the notification sign being erected on site at the end of the notification period.

1 February 2021

The assessing officer met with the applicant for an inspection at No. 11 Lewis Street, Balgowlah Heights (Subject Site).

4 February 2021

Photo confirmation received by Council of the notification sign being erected on site at the start of the re-notification period.

5 February 2021

The development application was re-notified and advertised from 5 February 2021 to 19 February 2021 due to a clerical error associated with the advertisement of the application.

17 February 2021

The assessing officer met with the president and a member of the Balgowlah Heights Public School P&C. The principal of Balgowlah Heights Public School was also present at the start of the inspection. An inspection was undertaken at both the western and eastern school campuses along with the surrounding streets of Lewis Street and Radio Avenue.

23 February 2021

The Applicant files a Class 1 Appeal with the NSW Land and Environment Court.

8 March 2021

A letter was issued by Council to the applicant, advising that the development application was unable to be supported in its current form due to inconsistencies with State Environmental Planning Policy Educational Establishments and Child Care Facilities 2017, Manly Local Environment Plan 2013 and Manly Development Control Plan 2013.

12 March 2021

The applicant sent an email response to the assessing officer requesting an extension for amended documents to be submitted and for a meeting to be held with Council officers.

15 March 2021

Instructions are received that the applicant does not want to have a without prejudice meeting with Council to discuss an amended proposal.

16 March 2021

The assessing officer sends an email response to the applicant advising that the development application is to be determined as lodged (without amendment) at the 7 April 2021 meeting of the Northern Beaches Local Planning Panel.

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	<p>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 is for a childcare centre, and is not considered a contamination risk.</p> <p>The NSW Government is currently reviewing the Education SEPP. It is proposed to introduce provisions to prevent child-care centres within close proximity of each other in low density residential zones (R2). A separation distance of 200m between child-care centres is being considered. The amendment seeks to address concerns raised about amenity impacts, such as noise and traffic, arising from child-care centres being in close proximity to one another.</p> <p>Aside from the Arabanoo at Balgowlah Heights Public School which operates as a before and after school care, there are no other known childcare centres within 200m of the subject site.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 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. No additional information was requested.</p> <p><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.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><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 can be addressed via a condition of consent.</p> <p><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 clause is not relevant to this application.</p>
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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered unsuitable 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	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 to built form, 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 05/02/2021 to 19/02/2021 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 101 submission/s from:

Name:	Address:
Beatrice Jackson	5 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Macquarie Gapes	71 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Kara Therese Kernahan	51 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Livinus Lawira Ms Natividad Josefina Fernandez	77 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Alexandra Maria Cowie	102 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Jane Ann Davies	24 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Withheld	BALGOWLAH HEIGHTS NSW 2093
Jasmine Mullineaux	1 B Magarra Place SEAFORTH NSW 2092
Ms Deborah O'Sullivan	8 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Catherine Jane Felsman	31 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Marie Colette Donn	22 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Christine Maree Atkins	8 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Mario Alfonso Contreras Roman	3 / 66 West Street BALGOWLAH NSW 2093
Ms Sarah Barlow	69 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Joanne Lisa Davies	37 Lower Beach Street BALGOWLAH NSW 2093
Mrs Bridget Irene Cameron Mr John Stewart Cameron	49 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Karen Lesley Moore	7 Hunter Street NORTH BALGOWLAH NSW 2093
Mr Vahan Batmanian	81 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Paul Donald Rintoule Mrs Gai Maree Rintoule	33 Jamieson Avenue FAIRLIGHT NSW 2094
Mrs Louise Mary Harvey	20 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Jennifer Ann Apps	1 / 5 Griffin Street MANLY NSW 2095
Mrs Sevil Djaffer Cuthbert	4 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Osha Rudduck	Address Unknown
Ms Amanda Joy Phillips	55 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Cherrise Valerie Skea	5 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Darren Richard Crichton- Browne	44 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Patricia Joan Gordon Mr Rodney Stephen Gordon	43 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Cecile Marie Herbert- Jones	1 Nield Avenue BALGOWLAH NSW 2093
Mrs Debra Anne Close	89 Gurney Crescent SEAFORTH NSW 2092

Name:	Address:
Mrs Deanna Louise Byrne	19 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Ms Camilla Margaret Galwey	118 Wanganella Street BALGOWLAH NSW 2093
Mrs Lisa Caroline Leigh Young	70 A Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr John Louis Mills Mrs Leanne Carroll Mills	17 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Paul Nicholas Poteris	44 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Peta Duff Mr Peter Gordon Duff	3 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Justine Perry	Address Unknown
Mr William Alfred Templeman	22 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Mr Ashley Stuart McPhee	72 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Anthony William Halse	8 Condamine Street BALGOWLAH HEIGHTS NSW 2093
Ms Gai Cooper	1 / 73 Fairlight Street FAIRLIGHT NSW 2094
Ms Maxine Anne White	21 White Street BALGOWLAH NSW 2093
Mr Darren John Thorpe	1 / 105 A Woodland Street BALGOWLAH NSW 2093
Ms Jillian Lee Makaroff	9 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Ms Katherine Jane Clarke	10 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Ms Linda Jane Holliday	47 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Sylvan Rudduck	1 / 18 Edwin Street FAIRLIGHT NSW 2094
Jill Rudduck	73 Fairlight Street FAIRLIGHT NSW 2094
Mr David Alan Fletcher	41 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Penelope Breadman	54 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Justine Ruth Battersby	77 New Street CLONTARF NSW 2093
Mrs Vivienne Ruth McClean	67 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Tara Nichole Auchterlonie	34 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Bianca Dominique Fera	7 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Mrs Alison Fay Gerber	27 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Allan Robert Styner	9 Waterview Street MONA VALE NSW 2103
Mrs Heather Anne Bush	16 A Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mr Grant Matthew Harrison	11 Bungalow Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Penelope Alice Coulter	15 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Ms Cheryl Ann Baker	6 A Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Craig Francis Edwards	23 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Diane Merle Cronin	39 Gurney Crescent SEAFORTH NSW 2092
Mr Trent Edward Larcombe Mrs Nicole Louise Larcombe	3 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Rebecca Demmery	23 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Grahame Thomas Coote	75 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Peter Coventry	41 Gurney Crescent SEAFORTH NSW 2092

Name:	Address:
Mrs Valerie Selina Sally Sobko	3 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Joseph Stewart Harvey	C/- Hobbs Jamieson Architecture 2/536 Sydney Road SEAFORTH NSW 2092
Anthony Paul Mehta Colleen Joy Mehta	28 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093
Mrs Katja Irina Key	43 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Diana Worman	7/7 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Ms Sandra Sorenti	1 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Angela Fong- Clark Mr Graeme Douglas Clark	15 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Ms Megan Barton Jones	73 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Colco Consulting Pty Ltd Mr James Michael Coventry Ms Alison Pignon	20 Amiens Road CLONTARF NSW 2093
Mr Garry McGregor	11 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Kenneth Charles Ambler	PO Box 760 BALGOWLAH NSW 2093
Mr James Christian Iliffe	44 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Chris King	40 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr James Allister Lugsdin	25 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Neil Watson Cavill	30 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Ian Macleod	94 Clontarf Street NORTH BALGOWLAH NSW 2093
Mr Andrew David Farrell Ms Sasha Alexis Fegan	1 / 67 West Street BALGOWLAH NSW 2093
Mr Ryan Glen Hewlett Mrs Sarah Lynne Hewlett	22 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Jaxon Kenny Rudduck Mrs Clare Jean Rudduck Perica & Associates Urban Planning	C/- Stephen Grech & Associates Suite 7 121-123 Military Road NEUTRAL BAY NSW 2089
Mr Eric Louis Serge Lalauze Ms Chandu Anushka Lalauze	79 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Vivienne Kaye Shafto	1/105 Woodland Street South BALGOWLAH NSW 2093
Balgowlah Heights Public School P & C	9B/ Lewis Street BALGOWLAH HEIGHTS NSW 2093
Punchinello Kindergarten	118 Wanganella Street BALGOWLAH NSW 2093
Sinsw - Department Of Education - Narrabeen North Public School	PO Box 822 HORNSBY NSW 1630
Mr Maxwell Charles Cooper Mrs Patricia Jan Cooper	75 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Julie Gunning	Address Unknown

Name:	Address:
Mrs Susan Trathen	14 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Julian Alexander Bosman	29 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Elizabeth Anne Harding	3 / 7 Brighton Street BALGOWLAH NSW 2093
Amber Faye Howison	81 Gordon Street CLONTARF NSW 2093
Ms Vanessa Ann Davies	13 / 4 A Boyle Street FAIRLIGHT NSW 2094
Kirsty Robison	Address Unknown
Ms Sally Ruth Tomlinson	17 Kareema Street BALGOWLAH NSW 2093
Paul Andrew Grzanka	11 Seaview Street BALGOWLAH NSW 2093
Ms Annelies Hodge	20 Jackson Street BALGOWLAH NSW 2093

The Development Application was publicly exhibited in accordance with Council's Community Participation Plan. The Development Application was notified from 13 January 2021 to 27 January 2021. The application was re-notified and advertised from 5 February 2021 to 19 February 2021 due to a clerical error associated with the advertisement of the application. As a result of the public exhibition and advertising, 101 submissions were received; one hundred (100) submissions against the application and one (1) submission in support of the application.

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 Lewis Street and surrounding streets. Neighbouring residents highlighted that existing traffic congestion led to long wait times at school drop off/pick up, associated dangers with increased traffic at the Lewis Street and Ernest Street intersection as well as alleged inconsistencies, errors and underestimations within the submitted *Traffic and Parking Impact Assessment*.

Concerns were also received with regards to an insufficient number of staff and drop-off/pick-up parking spaces. In particular, issues were raised with regards to the appropriateness and safety of utilising car stackers. Additional concerns were raised with regards to the access arrangements for vehicles entering and existing the car park as well as acceptability of the dimensions of the parking spaces. It was noted that there had been a recent scaling down of public bus routes in the area that may further impact upon the demand for parking.

Council's Traffic Engineer has considered the submitted *Traffic and Parking Impact Assessment* and has recommended the refusal of the development application. Detailed comments in this regard are provided in this report under the "Referrals" section. See also discussion under Clause 4.4.6 Child Care Centres of the MDCP for further discussion.

- **Pedestrian safety risks**

Comment:

Issues were raised with regards to risk of accident or injury to local residents, as well as Balgowlah Heights Public School students, who utilise the Lewis 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 flow on implications as a result. Council's Traffic Engineer has considered the submitted *Traffic and Parking Impact Assessment* and has recommended the refusal of the development application. Detailed comments in this regard are provided in this report under the "Referrals" section.

- **Overdevelopment of the site**

Comment:

Concerns that a three (3) storey building would set an undesirable precedent and that the aesthetic of the childcare centre is not in harmony with the surrounding residential area. A detailed discussion concerning the appearance and built form of the development is undertaken later in this report. The proposal is considered to have an unacceptable impact and is therefore a reason for refusal.

- **Streetscape/Compatibility within a residential area**

Comment:

Numerous submissions were received concerning the design of the childcare centre being highly uncharacteristic of a residential area. References were made to the flat roof form, the development being of a commercial appearance, as well as the proposed bulk and scale being unsuitable, unattractive and confronting with the setting of the local area. The proposal also is not seen to maintain the low density residential streetscape character of Lewis Street and is recommended for refusal in this regard. Refer to the assessment under Clause 3.1 Streetscape and Townscapes, and Clause 3.1.1 Streetscape (Residential areas) of the MDCP for further discussion.

- **Non-compliance to wall height requirement**

Comment:

The breach to the wall height requirements lead to an unacceptable visual dominance, bulk and scale when viewed from the Lewis Street frontage and neighbouring properties and has been recommended for refusal in this regard. A detailed discussion of this non-compliance has been undertaken later in this report under Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP.

- **Non-compliance to the front, side and rear setback**

Comment:

Regarding the non-compliances to the front, side and rear setback concerns were expressed as to the resulting streetscape and amenity impacts on surrounding properties. Council's Urban Design Officer has raised particular concerns with these breaches, recommending that the development application be refused. A detailed discussion these non-compliances have been undertaken later in this report under Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP.

- **Privacy impacts**

Comment:

Concerns were raised as the privacy impacts (visually and acoustic) with regards to the operable windows, the proposed exit walkway and the non-trafficable on-slab landscaped roof

along the northern elevation. Non-compliance to the northern side setback further exacerbate these issues along with an intention for the windows and doors being operable. The proposed development is recommended for refusal in this regard. A detailed discussion these non-compliances have been undertaken later in this report under Clause 3.4.2 Privacy and Security of the MDCP.

- **Loss of solar access to classrooms at Balgowlah Heights Public School**

Comment:

Concerns as to additional shadowing impacts towards Balgowlah Heights Public School classroom buildings along the northern side of the western campus were raised. Whilst the proposal is not considered to result in a technical breach with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP, it is recognised that a reduced level of solar access is in part due to non-compliances with the prescribed wall height and setback along the southern side of the childcare centre. A detailed discussion in this regards has been undertaken later in this report.

- **Noise impacts**

Comment:

A number of concerns were raised with regards to the noise impacts associated with both the construction and operation of the proposed childcare centre on the amenity of the surrounding area. Aside from the acoustic privacy concerns raised above, the submitted *Environmental Noise Assessment* has been reviewed by Council's Environmental Health Officer who has considered the proposed development as acceptable subject to conditions.

- **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. Of particular concern, is the appropriateness of the proposed walkway along the northern side boundary that includes two flights of stairs – one of 6 steps and the other with 10 steps as well as the reliance on fire stairs. Access in this regard would appear to be limited and difficult to negotiate for parents/guardians, young children and people with a disability. The Development Application was also not submitted with an *Emergency and Evacuation Plan* as required under Sections 97 and 168 of the *Education and Care Services National Regulations*. The proposed development is recommended for refusal in this regard. A detailed discussion these non-compliances have been undertaken later in this report under Clause 3.6 Accessibility of the MDCP.

- **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 Plan of Management* 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.

- **Site Contamination and Asbestos**

Comment:

Appropriate conditions have been recommended by Council's Environmental Health Officer for a

site specific Environmental Management Plan (EMP) to address potential environmental contaminants on the land.

- **Construction Management**

Comment:

Consideration has been given that conditions are capable of being applied with regards to appropriate documentation being provided prior to the issue of any construction certificate for matters pertaining to construction traffic management plans and dilapidation surveys.

- **Building Code of Australia compliance**

Comment:

A review with respect to aspects relevant to building certification has been undertaken by Council's Building Assessment Officer, who has provided comments that the proposed development is acceptable subject to conditions.

- **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 has been dismissed 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 has been recommended for refusal on this basis.

- **Non-compliance with Floor Space Ratio standard**

Comment:

The proposed floor space ratio has been measured at FSR: 0.44:1 (341m²) and is therefore compliant with the floor space ratio standard of FSR: 0.45:1 (352m²).

- **Stormwater details**

Comment:

The proposed stormwater arrangement has been reviewed by Council's Development Engineer as acceptable subject to conditions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions</i></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><i>Supported, subject to conditions</i></p> <p>The development proposal is for the demolition of the existing dwelling and associated structures and construction of a purpose built childcare centre designed to accommodate 57 children, including basement parking for 16 vehicles, maximum hours 7am to 7pm. Environmental Health is to consider health impacts including:</p> <ul style="list-style-type: none"> • Food Premises • Asbestos from demolition • Noise from the site <p>The Food preparation kitchen will need to comply with Food standards including fit out (AS4674-2004) and the business registered with Council.</p> <p>A site assessment for asbestos for demolition of older buildings is a standard requirement but particularly relevant with a school adjacent. Noise from childcare facilities can be the source of noise complaints, usually from child play and particularly screaming.</p> <p>The applicant has submitted an Acoustic Assessment (Report 7102-1.1R) by Day Design Pty Ltd Consulting Acoustical Engineers and a Management Plan to deal with noise related issues including:</p> <ul style="list-style-type: none"> • Child play inside and outside area • Carpark • Mechanical plant • and building finishes (eg glazing) • Impact on children's sleep within the Centre <p>The building development has been designed to minimise noise exposure to 13 Lewis Street with the main affected sites being 9B Lewis Street (School) and the undeveloped rear yard of 54 Beatrice Street immediately to the rear.</p> <p>Noise control measures are significant, some prescriptive and others discretionary and some difficult to implement and enforce. eg Staff and</p>

Internal Referral Body	Comments
	<p>Parents being provided with a copy of the Noise Management Plan ; discourage loud activities; crying children being comforted and moved inside.</p> <p>Parents (potentially with other children) arriving at the Centre will be almost impossible to control particularly outside the Centre. There will then be implications for affected neighbours to complain to the Centre Management but after such a noise event.</p> <p>Sound barrier walls (up to 2.5m high) on the boundaries are proposed. The visual impact is not a matter for Environmental Health to comment on but appears to address the potential noise impact when taken into consideration with the other proposed measures .</p> <p>Enforcement of "people" noise nuisances is likely only through a breach of DA conditions so the Management Plan needs to be robust and a condition of any approval.</p> <p>A condition of acoustic review , when operating should determine if the theoretical assumptions are correct and then be verified by a suitably qualified person.</p> <p>NB. Environmental Health has not commented on noise in the public street area which needs to be noted with the theoretical potential for 57, 7am vehicle "drop-offs" in the Street and impact on adjoining residents in the residential area. An illuminated sign showing "current available parking" at all times could encourage parents to use the underground car park for drop off.</p>
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The application indicates that no significant landscape features are affected by the proposed works.</p> <p>No objections are raised to approval subject to conditions, including specific tree protection for trees adjacent to the site.</p>
NECC (Development Engineering)	<p><i>Approval subject to conditions</i></p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>However, please refer to Council's Transport Network Team's comment in relation to the car parking.</p>
Strategic and Place Planning (Urban Design)	<p><i>Not supported</i></p> <p>The proposal in its current form cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposal does not comply with the side setback at the southern elevation of the first floor level, providing a setback of 1 metre instead of the 2.3 metres (approx.) required. 2. The northern boundary setback should also be increased to 2.4m around the lift core area and provide more articulations on the generally flat building facade.

Internal Referral Body	Comments
	<p>3. The southern boundary of the subject site adjoins the Balgowlah Heights Public School and the proposal will result in greater visual building bulk and scale and increased solar impacts to the school compound and classrooms.</p> <p>4. In terms of Part 3 and Part 4 of the Child Care Planning Guideline, the general design and choice of material finishes of the building could have more of a residential house look to fit in contextually with the surrounding houses in a suburban neighbourhood. The current street elevation looks institutional with the flat parapet roof form, strong vertical elements of the lift and stair cores, and fully glazed front door area. Other considerations in suburban neighbourhood settings include relationships and interface with existing houses, appropriateness of roof forms, landscape setting, and the pattern of front and rear gardens.</p>
Traffic Engineer	<p><i>Not supported</i></p> <p>The development proposal (DA2020/1758) located at 11 Lewis Street, Balgowlah is for the demolition of the existing dwelling and associated structures; and construction of a purpose built childcare centre designed to accommodate 57 children and 11 staff (9 Educators and 2 administrative cooking staff), including basement parking for 16 vehicles.</p> <p><u>Traffic Generation:</u></p> <p>The proposed childcare centre is anticipated to generate the following trips in accordance with (3.11.3 Child Care Centres) TfNSW Guide to Traffic Generating Developments (2002) and recent supplements. Due to close proximity to Balgowlah Heights Public School, it has been considered by the applicants traffic consultant that 10% of the enrolled children will have a sibling attending the school and therefore some trips will be for a common purpose. Therefore, the peak trip rate will be reduced by 10%. The resultant children will be reduced to 52 (57- 5.7 = 51.3)</p> <p>AM Peak @ 0.8 per child for 52 children = 42 (41.6) trips (23 in and 23 out)</p> <p>PM Peak @ 0.7 per child for 52 children = 37 (36.4) trips (19 in and 19 out)</p> <p>The estimates of traffic generated by the development are considered valid however given the proximity of the site to Balgowlah Heights Public School and the intense drop off and pick up and pedestrian activity generated by the school at times when the childcare centre will also be experiencing heavy arrivals and departures there is concern with regard to the level of impact on pedestrian and vehicle safety at those times. It is noted that traffic data provided with the DA was collected at a time when traffic and pedestrian volumes were impacted by Covid-19 however the data</p>

Internal Referral Body	Comments
	<p>still reveals an am peak volume of 217 vehicles per hour and shows pedestrian volumes using the west side of Lewis Street of 100 or more per hour in peak periods (many of them children given the proximity of the school). Under such conditions the additional vehicular and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street.</p> <p><u>Parking:</u></p> <p>With regard to the Manly DCP parking rates the proposed development requires a parking provision of 11 on site parking spaces for staff plus the provision of convenient on-site drop off and pick up facilities. The applicant intends to provide a total of 16 spaces including 1 Accessible Parking space. Ten (10) spaces dedicated for staff usage and only 5 spaces for parents & visitors. The RMS Guide to Traffic Generating Developments advises that parking must be provided a rate of 1 space for every 4 children. This would equate to 15 spaces. The RMS Guide also outlines that because of the short length of stay any parking must be conveniently located.</p> <p>While the number of parking spaces provided for the childcare centre is acceptable the parking area has an over reliance on the use of mechanical car stackers. While the use of a small percentage of space in a car stacker may be acceptable for all day staff parking, it is not considered acceptable for use for high turnover drop off pick up parking which must be easily accessible. Car stackers have poles and platforms and constrained headroom which would need to be negotiated even if on the lower level of a stacker. This would not be convenient for mothers seeking to load/unload prams, bags and children, ranging in age from newborns through to 5 years of age. It would also not be convenient for staff employed on a part time or casual basis which is often the case in a childcare centres. Further the number of drop off and pick spaces is considered unlikely to meet demand at peak times and that congested conditions within the carpark are likely to develop at peak times. A greater number of offstreet drop off and pick up spaces is considered necessary. If the developer considers that existing numbers of drop off and pick up spaces are adequate this should be demonstrated by occupancy surveys at other similarly located and sized childcare centres.</p> <p>It appears that additional at grade parking parking spaces cannot be accommodated on the site and it is therefore recommended that the number of children accommodated at the centre and staffing levels should be revised to reduce the parking requirement and the quantum of stacked parking reduced. The design of all car parking bays for use by parents and guests should allow for full opening of all doors and follow the dimensions set out in Table 1.1 of AS 2890.1:2004 with drop off/pick up spaces being no less than 2.6m in width.</p>

Internal Referral Body	Comments
	<p>It should be noted that council does not encourage the use of mechanical stacked parking facilities. If due to site constraint, mechanical stacked parking is provided, the number of mechanical stacked parking spaces should be minimised and allocated for long term (all day) staff parking only.</p> <p>Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.</p> <p><u>Bicycle Parking:</u></p> <p>The Manly DCP requires bicycle parking to be provided at a rate of one every three car parking spaces. It has been mentioned in the Traffic Report (prepared by McLaren Traffic Engineering & Road Safety Consultants) that bicycle parking will be provided prior to construction certificate. However, the location of bicycle parking should be indicated on the drawings.</p> <p><u>Servicing:</u></p> <p>Servicing and loading will be undertaken within the proposed car parking area outside peak drop off and pick up times. A standard B99 design vehicle or similar will be used for delivery and use the visitor parking spaces. This is considered acceptable.</p> <p>Waste Collection will occur from the Lewis Street frontage of the site which is acceptable.</p> <p><u>Driveway:</u></p> <p>The driveway width of 6.1m is considered satisfactory to cater for concurrent ingress and egress of cars and is graded acceptably.</p> <p>The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) should not be obstructed by landscaping or signage and a pedestrian sightline triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 has been provided at the point where the driveway meets the footpath. The sight line triangle has been indicated on the plans and is acceptable.</p> <p>Given the above, the proposal in its current form is unsupported given the absence of bicycle parking, the over reliance on parking spaces in a mechanical stacker and the level of impact on pedestrian and vehicular safety in the street. It is considered that the development in its current form is an over development of the site in this location.</p>

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

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: Inconsistent

The proposed development is not considered to be of a design that responds to and contributes to its neighbourhood context, streetscape or adjacent sites. The design of the proposed childcare centre is inconsistent with the MDCP, in particular to the front and side setbacks, wall height and the total open space requirements. These breaches attribute to the institutional appearance, particularly with the strong vertical elements to the front façade. Further, breaches to the side setback and wall height controls contribute towards an unacceptable visual bulk and scale while also resulting in amenity impacts on surrounding properties. Whilst it is accepted that the proposed childcare facility takes advantage of being located adjoining to Balgowlah Heights Public School and is in relatively close to bus stops along Ernest Street (nearest cross street), the proposed development overall is considered unacceptable for its context, while also failing to respond to and enhance the streetscape.

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: Inconsistent

The overall scale, bulk and height of the proposed childcare centre is inconsistent with that of the largely low density residential character of Lewis Street. As highlighted above, the proposed seeks to breach a number of built form controls within the MDCP which result in the development appearing institutional, particularly when viewed from the public domain of Lewis Street. The design of the childcare centre is considered to dominate the streetscape without sensitively relating to the spatial characteristics of the existing built environment along Lewis 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 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. 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 development appears to be well ventilated through an open-style ground floor play area and is to be supplemented by air conditioning. In addition, adequate solar and daylight access is achieved through the provision of windows on all elevations as well skylights and glass block glazing. To both the front and rear of the proposed childcare centre are deep soil areas for vegetation and infiltration.

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 breach to the open space requirement under Clause 4.1.5 MDCP results in a lesser overall area for landscaping on site. The non-compliance in this regard has been discussed in detail later in this report. Notwithstanding this breach, the overall landscape design as it relates to the outdoor learning environment for children is 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**

Whilst the proposed development does raises particular concern with regards to accessibility for parents/guardians, young children and those with lesser degrees of mobility, the non-compliance has been assessed under C17 of the *Child Care Planning Guideline* and Clause 3.6 Accessibility MDCP. Despite this, 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 providing a safe and secure learning spaces as well as appropriate supervision of children. The entries and also clearly defined and allow for control 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.

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: <ul style="list-style-type: none"> • 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 <p>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</p>

		<p>acceptable with regards to noise, subject to conditions.</p> <p>Along the northern elevation, two (2) cot room windows on the ground floor and two (2) 3-5 years room windows on the first floor have been raised as a privacy concern for the adjoining property owners to the north. Consideration has been given that these windows are capable of being setback further to restrict direct viewing and to mitigate impacts on privacy.</p> <p>The setbacks to the Lewis Street frontage and both the north and southern sides and rear are inconsistent with the MDCP and unacceptable for its surrounding residential context, particularly with regards to the resultant visual and amenity impacts.</p> <p>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.</p>
<p>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • 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 	<p>Inconsistent</p> <p>Preference is given to childcare centre sites which are adjacent to primary schools (see Clause 4.4.1 Child Care Centres MDCP).</p> <p>The site is considered safe from risks associated with natural hazards.</p>

	<p>proposed having regard to:</p> <ul style="list-style-type: none"> - 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 • 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. 	<p>Appropriate conditions have been recommended by Council's Environmental Health Officer for a site specific <i>Environmental Management Plan (EMP)</i> to address potential environmental contaminants on the land.</p> <p>The scale of the proposed childcare centre is not considered suitable with regards to the characteristics of the site.</p> <p>The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in Lewis 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 this report.</p> <p>The proposed childcare centre is not located closely to any known incompatible social activities/uses.</p>
C3 To ensure that sites for child care facilities are appropriately located	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> • 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. 	<p>Consistent</p> <p>The proposed child care facility is located adjoining to Balgowlah Heights Public School, but is not near to any employment areas, town centres, business centres or shops. The nearest shops are along New Street, Balgowlah Heights, some 600m towards the north of the site. Access to public transport (buses) are nearby at Ernest Street and pedestrian connectivity is available via existing footpaths.</p>
C4 To ensure that	A child care facility should be located to	Consistent

<p>sites for child care facilities do not incur risks from environmental, health or safety hazard</p>	<p>avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> - 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 	<p>The proposed childcare centre is not located in proximity to sites known to incur risks from environmental, health or safety hazards.</p>
<p>3.2 Local character, streetscape and the public domain</p>		
<p>C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape</p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding 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. 	<p>Inconsistent</p> <p>The proposed childcare centre has not been designed in character with the locality and existing streetscape, nor does it reflect the predominant form of the surrounding low density residential context. The built form and scale of the proposal is such that it reflects an overdevelopment of the site, breaching a number of built form controls within the MDCP such as those in relation to height and setbacks.</p> <p>The architectural design is considered to be appear institutional with strong vertical elements that does not integrate with the surrounding streetscape. The proposed landscape plan does include plantings within the front setback area to contribute towards the streetscape and neighbourhood amenity, however the breach to the open space control limits area available for landscaping.</p> <p>Car parking has been integrated into the building.</p>

C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • 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. 	<p>Consistent</p> <p>Fencing and windows towards Lewis Street have been proposed as part childcare centre design. Consideration has been given 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.</p>
	<p>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.</p>	<p>Consistent</p> <p>The proposed childcare centre is a single building with a primary entry point via the Lewis 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.</p>
	<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>N/A</p> <p>The Site does not adjoin any public parks, open space or bushland.</p>
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.	<p>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.</p>	<p>Consistent</p> <p>The proposal indicates 1.2m high fencing along the northern and southern boundaries of the front setback. Council's Traffic Engineer has also provided comments indicating that the</p>

		sightlines at the vehicle driveway are acceptable. 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.
	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 Lewis 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	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - 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. 	<p>Inconsistent</p> <p>As discussed throughout this report, the four (4) windows and entry along the northern elevation are considered to result in privacy impacts for the adjoining neighbours at No. 13 Lewis Street, Balgowlah Heights.</p> <p>Consideration has been given that compliant setbacks and conditions pertaining to glazing details are capable to mitigate impacts on privacy. The northern side exit door is not supported in its current form due to noise anticipated and concerns over the suitability of two flights of stairs with regards to equitable and appropriate access.</p> <p>Consideration has been given that the internal and external play areas have been appropriately located way from residential dwellings and largely protected from wind</p>

		<p>and other climatic conditions.</p> <p>Whilst a significant amount of excavation is proposed, it is not considered to have a detrimental impact on environmental functions and processes, neighbouring uses or surrounding lands. Appropriate conditions can be placed to ensure appropriate measures and dilapidation surveys are undertaken to satisfactorily address this particular matter.</p>
<p>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • 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. 	<p>Inconsistent</p> <p>Whilst it is accepted that the proposed childcare centre is compliant with the prescribed building height, the wall heights, roof form and scale of the development is inconsistent with other neighbouring buildings and the character of Lewis Street.</p> <p>The non-compliant northern and southern side setbacks do not appear to provide adequate access for building maintenance, nor does it allow for adequate privacy for neighbours.</p> <p>The proposed rear setback is also inconsistent with the prevailing rear building line and results to additional amenity impacts to adjoining properties.</p> <p>The proposed front setback breaches the prevailing building line and is therefore inconsistent with surrounding suburban neighbourhood character.</p>
<p>C13, C14 To ensure that setbacks from the boundary of a child</p>	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road</p>	<p>Inconsistent</p> <p>The subject site is not located</p>

<p>care facility are consistent with the predominant development within the immediate context</p>	<p>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.</p>	<p>on a classified road and is therefore subject to front setback requirement that is to be taken from the average of the two closest buildings. In this regard, the setback should be 8.16m. The nearest point of the proposed childcare centre to the front boundary is measured at 5.3m and is therefore non-compliant.</p>
	<p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>Inconsistent</p> <p>The proposed childcare centre is non-compliant with the northern side setback control requirement of 2.76m and the southern side setback of 2.6m. The breaches result in an unacceptable visual bulk and scale, whilst also contributing to amenity impacts on surrounding properties.</p>
<p>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</p>	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • 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. 	<p>Inconsistent</p> <p>The built form of the proposed childcare centre is not seen to respect or respond to its adjacent built form, the character of the neighbourhood or streetscape. The subject site does not contain any significant landscape features, nor is it a heritage item, within a heritage conservation area or in the vicinity of a heritage item.</p>
<p>C16 To ensure that buildings are designed to create safe environments for all users</p>	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • 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 	<p>Consistent</p> <p>The entry to the childcare centre is limited to one secure point and is consistent with the requirements of this guideline.</p>

	defined and separate from entrances to other uses in the building.	
C17 To ensure that child care facilities are designed to be accessible by all potential users	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>	<p>Inconsistent</p> <p>The proposal is reliant upon one internal lift and does not link all key areas of the site by ramped pathways that are accessible to prams and wheelchairs. In particular, the exit walkway along the northern side boundary includes two flights of stairs – one of 6 steps and the other with 10 steps, thus making access limited and difficult to negotiate for parents/guardians, young children and people with a disability.</p>
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>Consistent</p> <p>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.</p>
	<p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • 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 parking areas within the front setback • using low level landscaping to soften and screen parking areas. 	<p>N/A</p> <p>The proposed car parking on site is to be located in the basement of the childcare centre. The incorporation of these landscaping requirements are therefore not considered applicable.</p>
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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening. 	Inconsistent The proposed development does not incorporate appropriate setbacks, off-sets or glazing details along the Northern Elevation to mitigate overlooking towards the private open space areas of No. 13 Lewis Street, Balgowlah Heights.
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: <ul style="list-style-type: none"> • 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 <i>Environmental Noise Assessment</i> , (Ref. 7102-1.1R, dated 21 December 2020 prepared by Day Design Pty Ltd) details a 1.8m high solid boundary fence is to be constructed along the entire northern boundary of the outdoor play area to the front setback to Lewis Street. Along the rear boundary of the site, a 2.5m high fence is also indicated. The Environmental Noise Assessment goes onto state that an "Assumed 1.2m high parapet wall around the entire boundary of the Level 1 plant area". 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.
	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • 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. 	<p>Consistent</p> <p>The submitted <i>Environmental Noise Assessment</i> details that for the development of child care centres in residential areas, the background noise level within these areas can at certain times, be low. Thus, a base criterion of a contributed: eq,15min 45 dB(A). The assessment of outdoor play areas is recommended in locations where the background noise level is less than 40dB(A). The <i>Environmental Noise Assessment</i> 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.</p>
3.6 Noise and air pollution		
C25, C26	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between 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 	<p>Consistent</p> <p>Submitted with the Development Application, the <i>Environmental Noise Assessment</i>, 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</p>
	An acoustic report should identify appropriate	Consistent

	<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>Submitted with the Development Application, the <i>Environmental Noise Assessment</i>, consideration has been given that indoor play areas and sleeping areas, the internal noise levels will comply with the <i>Association of Australasian Acoustical Consultants' internal noise limit for Child Care Centres</i>. 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.</p>
<p>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</p>	<p>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.</p>	<p>N/A</p> <p>The proposed childcare centre is not located near external sources of air pollution such as major roads and industrial development.</p>
	<p>A suitably qualified air quality professional should prepare an air quality assessment 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.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • 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. 	<p>N/A</p> <p>As above, the proposed childcare centre is not close to major roads or industrial developments.</p>
<p>3.7 Hours of operation</p>		

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 7:00am to 7:00pm Monday to Friday. Staff will be on premises from 7:00am to 7:30pm to allow for afterhours cleaning and administration.
	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	<p>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.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> • 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> • 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 	<p>Inconsistent</p> <p>The Manly 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.</p> <p>The proposed child care facility is to accommodate for 57 children and a total of 11 staff.</p> <p>The application provides for a total of 16 spaces, including 10 staff parking spaces and 6 drop off and pick up space, one of which is an Accessible Parking space.</p> <p>In accordance with the Manly DCP, the proposal seeks to vary the required number of staff parking by 1 parking space.</p>

	at appropriate times within proximity of the site.	<p>Council's Traffic Engineer has reviewed the <i>Traffic and Parking Impact Assessment</i> with regards parking, commenting that the proposed car stacker arrangement would not be convenient for parents or staff employed on a part time or casual basis. Further, the number of drop off and pick up spaces are unlikely to meet demands at peak times.</p> <p>See detailed comments earlier in this report.</p>
	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.	<p>N/A</p> <p>The proposed childcare centre is not located within a commercial or industrial zone and does not form part of a mixed use development.</p>
	<p>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:</p> <ul style="list-style-type: none"> • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network. 	<p>Inconsistent</p> <p>A <i>Traffic and Parking Impact Assessment</i> 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 associated with Balgowlah Heights Public School.</p>
C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic. 	<p>N/A</p> <p>The Site is not located on a classified road or a road which carries freight traffic or transport dangerous goods or hazardous materials.</p>
	Child care facilities proposed within cul-de-	N/A

	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.	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	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> • separate pedestrian access from the car park 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. 	<p>Inconsistent</p> <p><i>A Traffic and Parking Impact Assessment</i> 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. 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.</p>
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> • 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 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. 	<p>N/A</p> <p>The proposed development does not form part of a mixed use development.</p>
	<p>Car parking design should:</p> <ul style="list-style-type: none"> • 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 	<p>Inconsistent</p> <p>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</p>

	<p>appropriate Australian Standards</p> <ul style="list-style-type: none"> • include wheelchair and pram accessible parking. 	<p>off/pick up spaces are compliant in width against relevant Australian Standards. Council's Traffic Engineer has reviewed the submitted <i>Traffic and Parking Impact Assessment</i> considering that the proposed car stackers have constrained headroom's which would need to be negotiated even if on the lower level of a stacker. Such an arrangement would not be convenient for parents seeking to load/unload prams, bags and children.</p>
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APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
<p>Regulation 107 Education and Care Services National Regulation</p> <p>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.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set 	<p>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. <p>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.</p>	<p>Consistent</p> <p>The proposed development requires at least 185.25m² of indoor space.</p> <p>The proposal provides for 186.03m² of indoor space.</p> <p>The proposal requires 17.1m² of external storage space.</p> <p>The proposal provides for 18.8m² of external storage space.</p> <p>The proposal requires 11.4m² of internal storage space.</p> <p>The proposal provide for 13.1m² of internal storage space.</p> <p>The location of bicycle parking has not been indicated on submitted plans. The matter is addressed in further detail under Clause 4.1.6 MDCP of this report.</p>

<p>aside for the use or storage of cots</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should</p>	<p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>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.</p>	<p>An internal laundry is accommodated on the first floor.</p>
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<p>indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
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4.2 Laundry and hygiene facilities

<p>Regulation 106 Education and Care Services National Regulation</p> <p>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.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p><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></p> <p>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.</p> <p>On site laundry On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • 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. <p>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 comply with any relevant Australian Standards.</p>	<p>Consistent</p> <p>The on-site laundry located on the first 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.</p>
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4.3 Toilet and hygiene facilities

<p>Regulation 109 Education and Care Services National Regulation</p> <p>A service must ensure</p>	<p><i>The proposed development includes adequate, developmentally and ageappropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></p>	<p>Consistent</p> <p>The proposed childcare centre appears to contain adequate toilet, washing and drying facilities inclusive of</p>
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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.	<p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> • 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 	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.
Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.		

4.4 Ventilation and natural light

<p>Regulation 110 Education and Care Services National Regulation</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>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 affected by the capacity of the facility.</p>	<p><i>The proposed development includes indoor spaces to be used by children that:</i></p> <ul style="list-style-type: none"> • <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> <p>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.</p> <p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p>Natural light</p>	<p>Consistent</p> <p>The proposed childcare centre appears to be well ventilated through an open-style ground floor outdoor play area and air conditioning.</p> <p>Adequate solar and daylight access is considered to be achieved through the provision of openings, windows on all elevations, glass block glazing and the skylights.</p>
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	<p>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:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate • ceiling heights. <p>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.</p>	
4.5 Administrative space		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>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.</p>	<p><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></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>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 adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>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.</p>	<p>Consistent</p> <p>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.</p> <p>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.</p>

4.6 Nappy change facilities

<p>Regulation 112 Education and Care Services National Regulations</p> <p>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.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><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></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> • 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. 	<p>Consistent</p> <p>The proposed childcare centre indicates WC/Nappy rooms on both the ground floor and first floor. At least one change table has been indicated has been indicated on the ground floor level which is to accommodate for 0-2 year old children. Hand cleansing facilities for adults in the immediate vicinity of the nappy change area is provided.</p> <p>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.</p>
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4.7 Premises designed to facilitate supervision

<p>Regulation 115 Education and Care Services National Regulations</p> <p>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 at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding</p>	<p><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></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> • 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 • 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 	<p>Consistent</p> <p>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. Solid walls have been indicated for children's toilet cubicles.</p> <p>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</p>
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the ability to facilitate supervision that are contained in the National Construction Code.	closed off and used only under supervision for controlled activities	childcare centre becoming operational.
4.8 Emergency and evacuation procedures		
<p>Regulations 97 and 168 Education and Care Services National Regulations</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> • 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. 	<p>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.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> • 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. <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • 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. 	<p>Inconsistent</p> <p>The Development Application was not submitted with an emergency and evaluation plan.</p>
4.9 Outdoor space requirements		
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the</p>	<p><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></p> <p>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.</p>	<p>Consistent</p> <p>The proposed childcare centre requires at least 399m² of outdoor open space.</p> <p>The proposed childcare centre provides for 401.58m² of unencumbered outdoor</p>

<p>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.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>Applicants should also note that regulation 274 (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</p>	<p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p> <p>Verandahs as outdoor space Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> • 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 <p>Simulated outdoor environments Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p> <p>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.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>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:</p> <ul style="list-style-type: none"> • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to 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 	<p>space.</p>
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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.	outdoor environment <ul style="list-style-type: none"> • 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. 	
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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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • 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 behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	Consistent The proposed landscape arrangement has been reviewed by Council's Landscape Officer as acceptable, subject to conditions. Consideration has been given that the specific species selection and their appropriateness within a childcare centre environment can be accounted for during the regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational. The outdoor space areas appear to have designed to comply with the relevant requirements of this criteria.
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4.11 Shade

Regulation 114 Education and Care	<i>The proposed development includes adequate shaded areas to protect</i>	Consistent
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<p>Services National Regulations</p> <p>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.</p>	<p><i>children from overexposure to ultraviolet radiation from the sun.</i></p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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 and solar access is enhanced by:</p> <ul style="list-style-type: none"> • 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. <p>Built shade structures Built structures providing effective shade</p>	<p>The proposed childcare centre provides for at least 30% of the outdoor open space as uncovered areas with solar access available during the day.</p> <p>The proposed childcare centre has less than 60% of the outdoor space covered.</p> <p>Council's Landscape Officer has recommended conditions for at least two (2) native trees to be planted within the rear yard (setback area). Consideration has been provided that these trees will provide sufficient shade overtime as they are to be capable of attaining a minimum height of 8m at maturity. The submitted Landscape Plan also indicates that proposed trees are to have a minimum 45L pot size and is therefore expected to relatively established at the time of planting.</p>
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	<p>include:</p> <ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>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.</p>	
4.12 Fencing		
<p>Regulation 104 Education and Care Services National Regulations</p> <p>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.</p> <p>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. 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</p>	<p><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></p> <p>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:</p> <ul style="list-style-type: none"> • 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. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and</p>	<p>Consistent</p> <p>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.</p>

	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		
<p>Regulation 25 Education and Care Services National Regulations</p> <p>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.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • 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 likely to be contaminated in a way that poses an unacceptable risk to the health of children 	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	<p>Consistent</p> <p>The <i>Statement of Environmental Effects</i> submitted with the Development Application states the following: "The subject site has been historically used for residential purpose and there is no evidence of potentially contaminating activities occurring on site". Council's Environmental Health Officer has also reviewed the Development Application in this regard placing a condition for an Environmental Management Plan (EMP) to be prepared prior to the issue of any Construction Certificate.</p>

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 a childcare 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 Augrid stating that "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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	8.35m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (352m ²)	FSR: 0.44:1 (341m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 781.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	Northern side: 6.8m (based on gradient 1:20)	8.3m	22% (1.5m)	No
	Southern side: 6.9m (based on gradient 1:15)	8.0m	33% (1.1m)	No
4.1.2.2 Number of Storeys	2	3 Storeys (inclusive of basement car park)	1 Storey	No
4.1.2.3 Roof Height	Height: 2.5m	Less than 2.5m	-	Yes
	Parapet Height: 0.6m	0.8m	33% (200mm)	No
	Pitch: maximum 35 degrees	Less than 25 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line: 7.4m	5.3m - Parapet 5.9m - Stairwell	20.1% (1.5m)	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northern side: 2.76m (based on wall height)	Lower Ground: 1.2m	57% (1.56m)	No
		Ground Floor: 1.2m	50.4% (1.39m)	No
		First Floor: 1.37-2m		No
	Southern side: 2.6m (based on wall height)	Lower Ground: 0.9m Ground Floor: 0.9m First Floor: 1m	65.4% (1.7m) 65.4% (1.7m) 61.5% (1.6m)	No No No
	Windows: 3m	North: 1.2m	60% (1.8m)	No
		South: 1m	67% (2m)	No
4.1.4.4 Rear Setbacks	Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity. In	Lower Ground: 8m Ground Floor: 8.5m	66% (15.4m) 64% (14.6m)	No No

	this instance, the prevailing setback is taken to be: 23.4m	First Floor: 8.5m	64% (14.6m)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (430m ²)	45% (352.1m ²)	18.2% (77.9m ²)	No
	Open space above ground 40% of total open space (172m ²)	40% (172m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (123.2m ²)	>35% (219.8m ²)	-	Yes
	3 native trees	2 trees	1 tree	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m	-	Yes
Schedule 3 Parking and Access (Child Care Centres)	1 parking space for each employee and provision of onsite drop off and pick up points	16 Total spaces (Including: 10 - staff parking spaces 6 drop off and pick up spaces)	1 space - staff parking (11 staff members)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	No	No
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	No	No
4.1 Residential Development Controls	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.6 Child Care Centres	No	No
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The proposed childcare centre is considered to be contrary to the relevant streetscape objectives that aim at minimising the negative visual impact development and those which seek for any such development to complement the streetscape. The proposal is not seen to maintain the low density residential character of this area of Lewis Street. Further, the Development Application has not appropriately addressed potential pedestrian safety impacts along Lewis Street arising from the additional vehicular and pedestrian traffic generated by the childcare centre.

Based on the above, the proposed development is inconsistent with the streetscape and townscape objectives of this clause and is recommended for refusal on this basis.

3.1.1 Streetscape (Residential areas)

The proposal does not satisfy several controls within this clause. Particularly, the proposed childcare centre does not adequately demonstrate the following:

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;
vi) visually improve existing streetscapes through innovative design solutions; and
vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

As detailed throughout this report, the proposed childcare centre is seen to result in a poor urban design and built form outcome that is unsuitable within the R2 Low Density Residential Zone. Council's Urban Design Officer has provided comments in this regard, detailing that the eastern façade appears institutional, with strong vertical elements such as the lift and stair cores. The non-compliances to the front setback control and wall height controls also results in the built form of the childcare centre not achieving compatibility with adjacent developments. This is particularly evident when viewed from the Lewis Street frontage.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The proposed childcare centre is contrary to the objectives of this clause that seek to protect the amenity of the occupants of neighbouring properties. In particular, the proposal breaches a number of built form controls which exacerbate impacts such as those relating to privacy and solar access to adjoining properties. Further, the proposed development does not maximise the provision of open space, but rather seeks to breach this particular requirement resulting in reduced areas for landscaping and areas for outdoor recreation. The extensive use of white and light cream external finishes also raise concern in terms of reflectivity and glare impacts to neighbouring properties, while also increasing the visual prominence of the proposed childcare centre.

Based on the above, the proposed development is inconsistent with the amenity objectives and controls of this clause and is recommended for refusal on this basis.

3.4.1 Sunlight Access and Overshadowing

The proposal in its current form results in additional shadowing impacts towards Balgowlah Heights Public School classroom buildings along the northern side of the western campus. Whilst the proposal is not considered to result in a technical non-compliance with the requirements of this clause, it has been noted that the development results in a reduced level of solar access due to non-compliances with the prescribed wall height and setback along the southern side of the childcare centre. Consideration has been given that the proposed development is capable of reducing the extent of shadowing impacts to these classrooms through a redesign involving a compliant wall height and setbacks to the southern side and rear.

3.4.2 Privacy and Security

The requirements of this clause are that consideration is given to the protection of acoustic privacy in the design and management of development. In this regard, concerns are raised with regards to operable windows along the northern elevation, in particular for the cot room and 0-2 years room. Additional acoustic concerns are raised with regards to location of the proposed exit walkway along the northern side boundary, in particular its proximity to the dwelling house at No. 13 Lewis Street and the

gathering of parents/guardians and children within this area. Whilst the submitted *Environmental Noise Assessment* indicates the use of glazing with acoustic seals, concerns remain if these windows were required to remain open for the purposes of ventilation.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

3.6 Accessibility

As discussed under C17 of the *Child Care Planning Guideline*, concerns have been raised as to acceptability of the childcare centre being designed to be accessible for all potential users. While compliance against accessibility standards is generally required following the determination of DA at the construction certificate stage, Clause 3.6 Accessibility of the MDCP recognises the importance of considering access issues from the beginning of the development process, whilst also aiming to provide equitable, dignified and non-discriminatory access for all people, regardless of abilities. The MDCP also speaks to a belief that all members of the community have a right to full access and participation in all aspects of community life.

The *Disability (Access to Premises – buildings) Standard 2010* requires that exits be provided from a building to allow occupants to evacuate safely while also being appropriate for the function or use of the building. Of particular concern, is the appropriateness of the proposed exit walkway along the northern side boundary includes two flights of stairs – one of 6 steps and the other with 10 steps as well as the reliance on fire stairs. Access in this regard would appear to be limited and difficult to negotiate for parents/guardians, young children and people with a disability.

In addition, the Development Application was not submitted with an Emergency and Evacuation Plan as required under Sections 97 and 168 of the *Education and Care Services National Regulations* which would have considered the following:

- *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.*

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

3.10 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, School Infrastructure NSW and the Balgowlah Heights Public School Parents & Community, have raised concern that the Development Application had not addressed the pedestrian safety outcomes, in particular the risk to pedestrians who utilise the Lewis Street footpath. It should also be noted that there is no pedestrian footpath along eastern side of Lewis Street (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 Balgowlah Heights Public School. 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 to the safety objectives and is recommended for refusal on this basis.

4.1 Residential Development Controls

Childcare centres must comply with the same standards for built form controls as other development permissible in the R2 Low Density Residential zone. The design and layout must also respond to the character of the existing neighbourhood and streetscape. As such the proposal has been considered against the relevant residential development controls under Clause 4.1 of the MDCP.

The proposed childcare centre is inconsistent with the objectives of this clause that require such developments to be compatible with the character of the locality as well as those that seek to ensure that building form does not degrade the amenity of surrounding residences. As highlighted throughout this report, the proposed development breaches a number of built form controls including those in relation to wall heights, front and side setbacks and open space. Further, Council's Urban Design Officer has not supported the proposal, raising a number of concerns in relation to the impacts of these breaches as well as the aesthetic appearance of the proposed child centre when viewed from the Lewis Street frontage and No. 13 Lewis Street, Balgowlah Heights.

Based on the above, the proposed development is inconsistent with the objectives of this clause and is recommended for refusal on this basis.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The proposed childcare centre is non-compliant with the wall height requirements as prescribed under Clause 4.1.2.1. The wall height is calculated based on the slope of the land under the proposed wall. On this basis, the northern side wall is to a maximum of 6.8m (based on gradient 1:20), with the southern side wall to be a maximum of 6.9m (based on gradient 1:15). The proposal seeks a wall height along the northern elevation up to 8.3m and with the southern elevation wall height proposed up to 8.0m. The breach is to the front portion of the child care centre and can be largely attributed to the lift shaft/lift overrun and kitchen areas located on the First Floor Level. The proposed development also breaches the two (2) storey maximum, being three (3) storeys inclusive of the Lower Ground basement car park and the roof parapet maximum of 0.6m, with a parapet of 0.8m indicated.

These non-compliances associated with proposed development are inconsistent with the relevant height objectives that include providing for building heights and roof forms which are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The breaches also contribute towards a proposal with an unacceptable visual dominance, bulk and scale when viewed from the Lewis Street frontage and neighbouring properties, whilst also contributing towards amenity impacts such as reduced solar access to the classrooms of Balgowlah Heights Public School.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

4.1.4 Setbacks (front, side and rear) and Building Separation

Front Setback

Required Front Setback:
7.4m (Prevailing Building Line)

Proposed Front Setback:

5.3m - Parapet
5.9m - Stairwell

The non-compliance of the proposed childcare centre with the front setback requirement leads to a number of streetscape and local amenity impacts. The breach to the prevailing building line results in an incompatibility when compared against neighbouring properties within the immediate vicinity of the Site. As discussed earlier in this report, the breach to the prevailing building line results in a poor urban design and built form outcome when viewed from Lewis Street. Council's Urban Design Officer detailed that the eastern (front) façade appears institutional, with strong vertical elements such as the lift and stair cores. The breach to the wall height requirements towards this portion of the building further contributes towards the overall visual prominence of the proposed childcare centre.

The front setbacks of properties within the visual catchment of the site have been indicated below:

9B Lewis Street, Balgowlah Heights

8.6m – Single storey classroom at Balgowlah Heights Public School.

13 Lewis Street, Balgowlah Heights

5.8m – Lower Level garage with open balcony above.

15 Lewis Street, Balgowlah Heights

7.8m – Entry balcony to Dwelling House.

Eastern side of Lewis Street (adjacent the Site):

26 Lewis Street, Balgowlah Heights

28 Lewis Street, Balgowlah Heights

Both properties are measured at 7.6m from the front boundary to the Dwelling House. Note: Carports are located within the front setback area of both these properties.

Side Setback

Required Side Setback:

Northern side: 2.76m (based on wall height)
Southern side: 2.6m (based on wall height)

Proposed Side Setback:

Northern side -
Lower Ground: 1.2m
Ground Floor: 1.2m
First Floor: 1.37-2m

Southern side -
Lower Ground: 0.9m
Ground Floor: 0.9m
First Floor: 1m

The proposal is inconsistent with both the northern and southern side setback requirements applicable to this site. Council's Urban Design Officer has raised particular concerns with these breaches, commenting that the design of the northern elevation is generally of a flat building façade that provides for minimal articulation. This breach also raises acoustic privacy concerns while also being inconsistent with the provision for adequate space between buildings. Further, the non-compliance to the southern boundary setback was regarded as contributing towards an unacceptable visual bulk and scale to whilst also impacting solar access towards classrooms at Balgowlah Heights Public School. In this regard, the breach does not ensure and enhance the amenity these classrooms by providing an equitable access to light and sunshine.

Rear Setback

Required Rear Setback:
23.4m*

Despite requirement (a) stating that the *distance between any part of a building and the rear boundary must not be less than 8m*, the proposed development does not comply with the following requirement under this clause:

d) Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.

In this instance, the prevailing rear setback has taken into consideration the rear setbacks for No. 13 Lewis Street, Balgowlah Heights (22.3m) and No. 15 Lewis Street, Balgowlah Heights (24.5m).

Proposed Rear Setback:

Lower Ground: 8m
Ground Floor: 8.5m
First Floor: 8.5m

The proposed breach to the rear prevailing building line contributes towards a number of poor amenity and design outcomes. The visual dominance of a long and generally flat building façade with minimal articulation is particularly apparent along the northern elevation. Further, the breach towards the rear also leads to impacts such as overshadowing of classrooms at Balgowlah Heights Public School. The overall non-compliance is reflective of an overdevelopment of the site, which is also evident due to the open space breach.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

4.1.5 Open Space and Landscaping

Open Space Requirement:

55% of site area (430m²)

Proposed Open Space:

45% (352.1m²)

The proposed breach to the open space requirement leads to a number of impacts that can be largely attributed to the overall building footprint. The breach further effects compliance with provision seeking

to maintain and enhance the amenity of the streetscape and surrounding properties that have been detailed earlier in this report. The result of a breach to the open space requirement is that a lesser area is now available for soft landscaping that could have otherwise been used for plantings and to minimise stormwater run-off through water infiltration on site. The submitted landscape plan does not indicate the planting of two (2) native trees within the rear yard, however it is accepted that compliance with this particular requirement is capable of being achieved through conditions.

Based on the above, the proposed development is inconsistent with the objectives of this clause and is recommended for refusal on this basis.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Parking requirement:

1 parking space for each employee and provision of onsite drop off and pick up points.

Parking proposed:

16 total spaces - including: 10 - staff parking spaces* and 6 drop off and pick up spaces.

*11 staff members

The proposed development provides ten (10) spaces dedicated for staff usage and only 6 spaces, inclusive of one accessible parking space, for parents & visitors. Though the overall number of parking spaces provided for the childcare centre is considered acceptable, the parking area has an over reliance on the use of mechanical car stackers. While the use of a small percentage of car spaces in a stacked arrangement may be acceptable for all day staff parking, it is not considered acceptable for use for high turnover drop-off/pick-up parking which must be easily accessible. In addition, the number of drop-off/pick-up spaces does not meet demand at peak times and congested conditions within the carpark are expected to develop at peak times. As no details have been provided as to whether additional car spaces would be feasible on this site, it is expected that the number of children accommodated at the centre and associated staff levels should be re-evaluated.

Further, the proposal has not demonstrated that the design of all car parking bays for use by parents and guests will allow for full opening of all doors and follow the dimensions set out in Table 1.1 of AS 2890.1:2004 with drop off/pick up spaces being no less than 2.6m in width. Vehicular manoeuvring paths have not been provided to demonstrate that all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces.

Clause 4.1.6 MDCP also details that bicycle parking is to be provided at a rate of one rack for every three car parking spaces. The submitted plans have not indicated the location or provision for bicycles parking on-site.

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.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

4.4.6 Child Care Centres

The proposed childcare centre is inconsistent with the requirements of this clause, in particular those in relation to car parking and access (cl.4.4.6.2) and with regards to built form and building appearance (c.4.4.6.3).

Below are the relevant objectives with regards to car parking and access under this clause:

Objective 1) To provide adequate and safe on-site parking for staff vehicles, as well as suitable space for deliveries, service access and the setting down and picking up of children.

Objective 2) To reduce the incidence of on-street parking, which may be detrimental to road safety and amenity of residents.

Objective 3) To ensure pedestrian safety in vehicle entry and exit areas.

Traffic data provided with the Development Application was collected at a time when traffic and pedestrian volumes were impacted by Covid-19. Despite this, the data still reveals an AM peak volume of 217 vehicles per hour and shows pedestrian volumes using the west side of Lewis Street of 100 or more per hour in peak periods (many of whom are children). Council's Traffic Engineer has indicated that under such conditions the additional vehicular and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street. The road reserve adjacent to the site contains a footpath that is heavily utilised by both Balgowlah Heights Public School students and parents, in addition to members of the wider community. The submitted *Traffic and Parking Impact Assessment* and *Plan of Management* do not address the pedestrian safety outcomes of the proposal, nor does it propose any mitigation measures or strategies. The Development Application should be refused having regard to the potential risk to pedestrians, the potential conflict between the proposed driveway and the high level of foot traffic that traverses the frontage of the site.

Below are the relevant objectives with regards to the built form and appearance:

Objective 1) To ensure child care centre is compatible with the scale of existing building in the vicinity.

Objective 2) To ensure that the appearance of the development is of high visual quality, enhances and complements the streetscape of the area.

As previously discussed within this report, the proposed childcare centre has not demonstrated compliance against the applicable built form controls of the MDCP. The breach to these built form controls contributes towards a development of a scale that is considered to be incompatible with the existing residential character of Lewis Street.

Based on the above, the proposed development is inconsistent with this clause 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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$19,477 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,947,731.

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;
- Manly Local Environment Plan;
- Manly 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
- Consistent 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

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 DA2020/1758 for the Demolition works and construction of centre-based child care facilities on land at Lot B DP 369977,11 Lewis Street, BALGOWLAH HEIGHTS, for the reasons outlined as follows:

1. Character, Bulk and Scale

The proposed childcare centre results in an urban design and built form outcome that is unsuitable within the surrounding low density residential streetscape. In particular, the breach to the front building line, wall height, side and rear setback controls contribute to an unacceptable bulk and scale, inconsistent with the dominant character of the area.

- a. Clause 23 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)
- b. Clause 3.1 Streetscapes and Townscapes of the Manly Development Control Plan (MDCP)
- c. Clause 3.1.1 Streetscape (Residential areas) of the MDCP
- d. Clause 4.1 Residential Development Controls of the MDCP
- e. Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP
- f. Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP
- g. Clause 4.1.5 Open Space and Landscaping of the MDCP
- h. Clause 4.4.6 Child Care Centres of the MDCP

2. Amenity

The proposal is inconsistent with the requirements that seek to protect the amenity of occupants of neighbouring properties. In particular, the proposal breaches a number of built form controls which exacerbate privacy and solar impacts to adjoining properties. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the MDCP
- c. Clause 3.4.2 Privacy and Security of the MDCP

3. Accessibility

Access to and from the proposed childcare centre is limited and difficult to negotiate for parents/guardians, young children and people with a disability. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.6 Accessibility of the MDCP

4. Parking

The proposal fails to provide a sufficient number of drop-off/pick up spaces, bicycles spaces and is over reliant on mechanical car stackers. The proposal has not demonstrated that the design of all car parking bays are consistent with Australian Standards, or that vehicular manoeuvring paths allow for vehicles to enter and depart in a forward direction. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the MDCP
- c. Clause 4.4.6 Child Care Centres of the MDCP

5. Traffic

The proposed development will result in an increase to traffic generation that would have an unreasonable impact on the local road network and pedestrian safety. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.10 Safety and Security of the MDCP
- c. Clause 4.4.6 Child Care Centres of the MDCP

6. Public Interest

The proposed development is not in the public interest.