

The CEO  
Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)  
Attention: Maxwell Duncan

8th June 2022

Dear Sir,

**RE: REV2022/0004 16 Bangaroo Street North Balgowlah**

We represent a group of residents in Worrobyl and Bangaroo Streets North Balgowlah. Thankyou for the opportunity to respond to this matter.

On behalf of our clients, we provide a submission objecting to the Application for Review of Determination of the proposed Centre Based Childcare centre at 16 Bangaroo Street North Balgowlah.

We note the determination of the Northern Beaches Local Planning Panel, which refused the initial application for the 20 place childcare centre in November 2021. Upon review of the reasons for refusal, and notwithstanding the now proposed reduced capacity of the centre, we believe that the concerns raised by the Panel have not been resolved in the current Review application.

Additionally, we hold significant concerns regarding advice now provided by Council's Traffic Engineers relating to pedestrian safety and the suitability of parking manoeuvres , compared to that provided within the initial application. We are alarmed that the parking circumstances on site have not changed, and yet the safety concerns held previously by Council officers appear to have evaporated without sound justification.

There remain significant amenity issues arising from the proposal for adjoining and nearby residents that indicate the continued unsuitability of the site for the proposed use, even at a reduced intensity.

Finally, we note that the proposed centre is unable to comply with the requirements of the State Environmental Planning Policy (Transport and Infrastructure) 2021, and the accompanying Childcare Planning Guideline.

These matters are discussed in further detail below.

**Panel Determination**

We provide the following comments against the Panel's reasons for refusal:

Reason 1

*The proposal is inconsistent with Clause 23 of the SEPP Educational Establishments and Child Care Facilities.*

Applicable provisions of the Child Care Planning Guideline

A number of inconsistencies with the Child Care Planning Guideline (CCPG) were identified within the previous application. These concerns and non-compliances remain with the current application and further concerns are identified. The equivalent Clause 3.23 of SEPP (Transport and Infrastructure) 2021 requires that these matters be considered by the Consent Authority. Given that the circumstances under which they were originally found unacceptable are not materially changed, we maintain that this application must also be refused on this basis.

|  | <b>CCPG Requirement</b>  | <b>Council Assessment of previous DA refused</b>  | <b>Current Review of determination</b>  |
|--|--|---|---|
| C1 To ensure that appropriate zone considerations are assessed when selecting a site | <p>For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> <li>the acoustic and privacy impacts of the proposed development on the residential properties</li> <li>traffic and parking impacts of the proposal on residential amenity.</li> <li>there are suitable drop off and pick up areas, and off and on street parking</li> </ul> | <p><b>Inconsistent</b></p> <p>Reasons for refusal included that the proposal provides for insufficient off street parking, in particular with drop-off/pick- up locations and an unacceptable parking arrangement</p> | <p><b>Inconsistent</b></p> <p>Parking arrangement requiring a reversing manoeuvre of all vehicles over the public footpath remains unacceptable.</p> <p>Additionally, it is argued that the acoustic impacts of the development are inadequate as they give rise to the need for high acoustic walling which has a further visual impact, and that unrealistic requirements on childcare centre management are required to meet acoustic goals.</p> |

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|  | CCPG Requirement  | Council Assessment of previous DA refused  | Current Review of determination  |
|--|---|--|--|
|  |   |  | <p>It has not been demonstrated that the reduced capacity has satisfactorily reduced the safety issue for the remaining attendees of the centre. Vehicles are still required to reverse to exit the centre bringing about a conflict between vehicles and pedestrians.</p> <p>Parking spaces are found to be deficient in relation to the relevant Australian Standards.</p> |
| <b>C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site</b> | <p>Requirements include:</p> <ul style="list-style-type: none"> <li>pedestrian paths that enable two prams to pass each other</li> <li>vehicles can enter and leave the site in a forward direction.</li> </ul> | <p><b>Inconsistent</b></p> <p>Reasons for refusal included that:</p> <p>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><b>Inconsistent</b></p> <p>No change to pedestrian paths has been made.</p> <p>Vehicles remain unable to meet the requirement of the guideline to exit in a forward direction.</p> <p>The application has again not demonstrated that the path of travel can accommodate two prams passing each other.</p>  |

|  | CCPG Requirement   | Council Assessment of previous DA refused  | Current Review of determination   |
|--|--|--|---|
| <p><b>Regulations 97 and 168 Education and Care Services National Regulations</b></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"> <li>• instructions for what must be done in the event of an emergency</li> <li>• an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit</li> <li>• a risk assessment to identify potential emergencies that are relevant to the service.</li> </ul> | <p>Requirements include:</p> <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> <li>• the mobility of children and how this is to be accommodated during an evacuation</li> <li>• 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</li> <li>• 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.</li> </ul> | <p><b>Inconsistent</b></p> <p>The Development Application was not supported by an emergency and evacuation plan.</p> | <p><b>Inconsistent</b></p> <p>The Review of Determination Application is not supported by an emergency and evacuation plan.</p> <p>A separate plan is required, with a map showing the location of meeting points and evacuation areas. Such a document should form a part of the application documentation that would otherwise be approved, and part of any plan of management under which any such use should operate.</p> <p>The evacuation route from the rear to the street frontage is highly problematic noting the path of travel width does not meet the required unobstructed 1.0m.</p> <p>Failure to provide such a plan is considered unacceptable noting that the SEPP Guidelines are <b>specific in requiring such a plan to be provided at the DA stage. This should not be deferred until the Construction Certificate stage noting the public safety issue and the requirements for this regulation to be resolved at the DA stage.</b></p> |

Reason 2

*The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan in that it fails to respond to the characteristics of the site and the neighbourhood, is not able to be a good neighbour, and does not provide a high level of access to and within the development in a safe manner.*

Objectives of the Warringah Development Control Plan 2011

We agree with the Panels previous decision regarding the inconsistency of the proposed childcare centre with the objectives of the Warringah DCP 2011, and note that the reduction in capacity at the centre has not overcome the issues previously raised. This is demonstrated as follows in response to the objectives:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*

The proposal remains inconsistent with this objective for a number of reasons. As the site is located in a low density neighbourhood, the proposal must respond by proposing a design/use that is compatible with both the low scale residential nature of design, and the acoustic quality of the neighbourhood.

The need for significant noise attenuation at the boundaries in the form of high walls demonstrates the inability of the proposal to meet the acoustic needs of the neighbourhood without compromising the reasonable residential amenity expectations of adjoining neighbours.

Barriers on the boundary that require a height of more than 1.8m are not considered to be consistent with predominant side boundary fencing of low density residential areas. As shown in Figure 1 below, fences with heights of 2.4 - 3.0m on the boundary as proposed will result in significant adverse visual amenity impacts for neighbours. Creating high boundary walls is not an acceptable response to the visual characteristics of the site or qualities of the surrounding neighbourhood and demonstrates the unsuitability of a site with low background noise levels to a childcare centre.

The materials proposed for the walls have not been nominated and given the acoustic properties needed, it is likely their solidity and height will exacerbate their adverse visual impact.

In addition, walls up to 3m high will cast additional shadow on neighbouring residential properties. This impact has not been identified and diagrams demonstrating the extent of that impact should be submitted to allow the impacts to be properly assessed.

Figure 2.1 Noise barrier

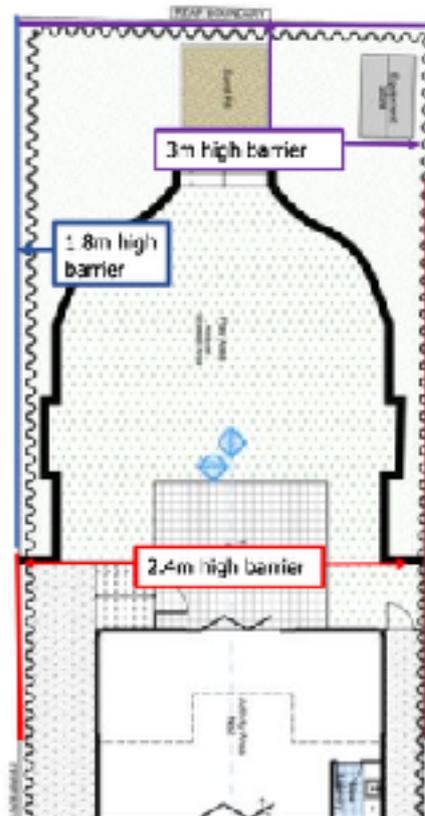


Figure 1: Required acoustic barriers as outlined in Acoustic Report by Wilkinson Murray

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

We argue that the noise barriers required and the resulting adverse visual impact is not an example of a development being a good neighbour. The recommendations of the acoustic report also require that additional noise minimisation measures are in place through the management of the centre, specifically that:

*‘Parents and guardians do not raise voices at the front of the centre; and, Crying children should be taken inside the centre and be comforted.’*

That the acceptability of the acoustic impacts of a childcare centre rely on these criteria being achieved is evidence of the unsuitability of the site for this use. We think that it is unrealistic to expect a childcare centre to be able to sustain these restrictions and that ultimately it will not be able to do so, particularly noting that the 12 children are proposed to be managed with only 3 staff members. We remain concerned that the proposal is not able to be a ‘good neighbour’ as anticipated by the DCP.

In addition, we note that the detailed requirements of the Operational Plan of Management do not reflect the recommendations of the Acoustic assessment. The above requirement of the acoustic assessment that '*Crying children should be taken inside the centre and be comforted*' does not appear in the Operational Management Plan. Instead, the Management Plan provides that '*vi) If children are yelling or screaming, educators will redirect the child to quieter play.*'

The requirements are unrealistic, confusing in their communication, and ultimately not in line with the recommendations of the Noise assessment. In all of the above cases, the unacceptable noise impact occurs and cannot be prevented. If children's naturally loud at play voices are not acoustically acceptable given the background levels, then the suitability of the site for a childcare centre must be questioned.

- *To provide a high level of access to and within development.'*

Notwithstanding the reduction in child capacity at the proposed centre, we note that the arrangements for parking have not changed. Stacked parking is still proposed, and all vehicles exiting require a reversing manoeuvre across the public footpath, in close proximity to a bus stop, and to a busy intersection with traffic movements that already require control through a roundabout.

Consistent with the previous decision of the Council and the Panel, we do not agree that this constitutes a *high level of access to and within the development*. The acceptability of the proposed use in this regard is not a function of the number of children in attendance, or the number of traffic movements. The safety and level of access required by the DCP should be required to be as high for the 12 children now proposed as for the previous proposal of 20 children. The reversing manoeuvre of even one vehicle over the public footpath and in these circumstances is not considered acceptable or safe.

Designs of childcare centres on other single dwelling sites in the Northern Beaches have proposed parking/access with the ability to enter and exit in a forward direction. The ability to achieve this outcome from a safety perspective is crucial and we ask the Council and the Panel to maintain this high standard of safety and access as anticipated by the DCP.

Reason 3

*The proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011 in that the proposed access arrangements will give rise to an unsafe environment for pedestrians and vehicles and their occupants. In particular, of concern is the reversing of vehicles onto the footpath and the road carriageway when leaving the car park, the reliance on stacked car parking which exacerbates safety concerns, proximity of a bus stop, proximity of a major roundabout, and the volume of vehicles in the road network at peak periods.*

Clause C2 Traffic, Access and Safety of Warringah Development Control Plan 2011

The assessment report from the previous application notes the following:

*'... Given the location and configuration of the proposed off-street parking spaces, vehicles are unable to exit the site in a forward motion therefore creating safety concerns for pedestrians accessing the footpath along the western side of Bangaroo Street. The proposed day care centre is within close proximity to bus stops, a busy intersection to the south and there will be a movement of children on the footpath accessing the centre. It is therefore concluded that the proposed arrangement will likely exacerbate traffic hazards within the immediate vicinity.'*

Although the overall number of traffic movements associated with the childcare centre has reduced, the circumstances of access to site have not changed and remain unsafe. No evidence is provided that the on site parking spaces will not be used any less, noting that the previous application relied upon on street parking. A reliance upon on street parking is reduced with a limit of 12 children, however the on site parking will still be in demand and will be used to capacity, being the most convenient for use at pick up and drop off time. We do not see that the reduced number of children at the centre has removed the safety issue that existed previously and still arises due to the reversing manoeuvre required from the site.

The reversing manoeuvre is carried out with a swept path that requires vehicles to cross the centre line into oncoming traffic. This manoeuvre occurs in close proximity to a bus stop across the road and the nearby roundabout. Navigating all these hazards creates a complex environment where pedestrian safety competes for the drivers attention. This will occur in an environment of undersized parking spaces, children entering and exiting the site, and pedestrians on the footpath.

The unsafe environment for pedestrians remains and the application cannot meet the requirement of the DCP in this regard, which include to *minimise traffic hazards*, and to *minimise traffic, pedestrian and cyclist conflict*.

Reason 4

*The proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan in that it fails to provide compliant off-street parking arrangements for the child care centre.*

The stacked car parking provided to service the facility is not of sufficient space to meet requirements of Australian Standards. Upon review of the survey information provided, it is evident that the architectural plans do not accurately document the required dimensions and that the car parking area proposed is inadequate.

Reason 5

*The proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan.*

*9. Design entrances to buildings from public streets so that:*

*....*

*e) Potential conflict between pedestrians and vehicles is avoided.*

As discussed above the proposed development maintains a significant conflict between cars reversing during drop off and pick up times and pedestrians. The proposal has not provided a design that avoids this or sufficiently addresses the safety concerns. We argue that this reason for refusal is not overcome.

Reason 6

*Pursuant to Section 4.15 (1) (b) and (c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site due to neighbourhood amenity and public safety outcomes.*

As discussed above, the amenity impacts arising from acoustic issues and the subsequent visual impacts from high acoustic walls demonstrate the overall unsuitability of the site for the proposed development. The pedestrian safety issues raised in the previous application have not been resolved by the reduction in the number of children attending. To satisfactorily mitigate this issue, the application must demonstrate a design that allows vehicles to enter and exit in a forward direction, which has not been achieved.

Reason 7

*Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the DA2021/0680 Page 2 of 4 proposed development is not in the public interest.*

Noting the continued risk to public safety as identified in the original application and which is not changed under this Review, the application cannot be considered to be in the public interest and should be refused again on this basis.

## **Noise Impact**

The residents have commissioned a peer review by Noise and Sound Services (NSS) of acoustic information provided by the applicant. Substantial questions arise in relation to both the methodology and conclusions of the acoustic assessment undertaken on behalf of the applicant by Wilkinson Murray.

Importantly, the acoustic assessment and recommended mitigating measures have not properly considered the impacts upon neighbours within the elevated levels of the neighbouring residential flat building. There appear to be technical issues arising from the manner in which the noise measurements were taken. The peer review provides an opinion that the site is not suitable for the proposed use.

We agree with this conclusion noting the unacceptable boundary treatments recommended by Wilkinson Murray, but also noting the opinion of NSS which is that the noise mitigation fences proposed would not bring about compliant noise levels for some of the units in the adjoining flat building. We do not see how this unacceptable impact can be overcome and therefore agree that the site has not been able to demonstrate suitability for the proposed use.

## **Waste Collection**

As the site will no longer operate as a dwelling, domestic waste services must be replaced with a commercial waste service. The operation of such a service, size of vehicles, location of receptacles, and time of operation have not been addressed in this application. Given the already undersized nature of the site for adequate parking and manoeuvring, we raise serious concerns about this issue and note that this should not be a detail that is deferred from consideration given the public safety implications.

## **Traffic Peer Review**

Given the overwhelming concern of the community for public safety and particularly of children and pedestrians, the community have engaged a traffic expert to provide a peer review analysis of the impact assessment undertaken for the applicant by Transport and Traffic Planning Associates (TTPA) in April 2022.

The conclusions of the peer review, provided under separate cover, is undertaken by McLaren Traffic Engineering and raises significant issues in relation to the methodology and conclusions reached by TTPA. These include potentially incorrect traffic generation rates and inadequate analysis of impact on nearby intersections, lack of compliance with relevant Australian Standards, inability of the development to provide the required entry and exit in a forward direction, and the absence of accessible parking. The review also outlines concerns regarding the veracity of the data relied upon by the impact assessment carried out by TTPA.

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Overall, the peer review validates the resident concerns regarding the pedestrian and public safety issues, and we urge Council to review this information closely in its assessment of the proposal.

We are advised by the assessing officer Max Duncan that the determination of the application will occur at the Northern Beaches Local Planning Panel. We note the overwhelming objection to the proposal by the community by way of the volume of objection.

In summary, we ask that the application be referred to the NBLPP with a recommendation for refusal as it has not resolved the previous reasons of refusal.

Please feel free to contact us on 0418 622 598 or at [anna@blackwattleplanning.com.au](mailto:anna@blackwattleplanning.com.au).

Regards,



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