

19 February 2022

Northern Beaches Council
725 Pittwater Road,
DEE WHY, 2099

**RE: SECTION 8.2 REVIEW OF DETERMINATION
STATEMENT OF ENVIRONMENTAL EFFECTS: ALTERATIONS AND ADDITIONS
TO A DWELLING HOUSE & CHANGE OF USE TO A CENTRE BASED CHILD CARE
CENTRE
16 BANGAROO STREET, NORTH BALGOWLAH**

1.0 INTRODUCTION

On 17 November 2022 the development application (DA2021/0680) was refused by Local Planning Panel. This request for review is made pursuant to Section 8.2(1)(a) of the Act and is a further refinement of the child care centre most notably with the reduction in child numbers to ensure compliance with the off-street parking requirements.

The application was refused for the following reasons:

- 1. The proposal is inconsistent with Clause 23 of the SEPP Educational Establishments and Child Care Facilities.*
- 2. The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan 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.*
- 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.*

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.

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

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.

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

The reasons for refusal predominately related to the quantum of parking and safety concerns. The number of children has been reduced to 12 in that regard to ensure a compliant level of off-street parking is achieved.

Accordingly, we request that Council review its determination on the basis of the amended proposal and justification detailed in the submission and grant approval to the amended development as proposed.

2.0 SECTION 8.2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 8.2 of the Act, as it relates to the current application, provides that the applicant may request Council's review of its determination of a development application within 6 months of the date of determination, other than for complying development, designated development, integrated development or an application made by the Crown.

This application requests Council review a determination made on 17 November 2021. The State Government enacted changes to the appeal and review legislation in response to the Covid-19 pandemic which doubled the review of determination period from 6 months to 12 months. As such, this application has the ability to be assessed within 12 months of the refusal date. The development is not complying development, designated development, integrated development or made by the Crown.

There are no regulations associated with the review of determination other than the regulation relating to the prescribed fee.

Section 8.2 (4)(c) of the Act requires a consent authority to be satisfied the amended

submission is substantially the same development as referred to in the original application. The amendments have been made to address specific concerns raised by the Council in its reasons for refusal.

As such, Council can be satisfied that the amended submission is substantially the same as the development referred to in the original application. As such there is no statutory impediment to the making and determination of this application.

3.0 CLAIM FOR REVIEW

Having regard for the stated reasons for refusal of the application we respond as follows:

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

Response: The safety concerns are alleviated with the provision of compliant levels of off-street parking with the proposed reduction in child numbers to 12. Council's traffic engineers have indicated that the reduction in child numbers resulting in compliant levels of off-street parking would be in a position to support the application. This is discussed further in this statement.

The previous application did not provide an emergency and evacuation plan however it is considered that the child care centre will be able to effectively evacuate children in the event of an emergency. A 12 child centre with 3 staff on site would be able to guide the children to the assigned assembly point which is proposed to be a large median strip on the corner of Worrobyl and Bangaroo Street. The ground floor is the only area utilised by the children with the first floor reserved for staff. In this regard, there is no need to provide additional escape routes from the first floor.

Given the small scale nature of the centre it is anticipated that appropriate evacuation and emergency can be achieved. It is anticipated that a condition could be included on the consent to provide details of the plan prior to issuing a construction certificate. It is also a requirement for the Department of Child Services prior to a licence being issued to the operator of the centre.

- 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.*

Response: The development maintains the existing character of the dwelling within the streetscape with appropriate acoustic and visual privacy measures proposed. In that regard, the development is considered a ‘good neighbour’. Access to and from the site has been resolved by virtue of the reduction in child numbers to 12 to meet the off-street car parking rates.

The reduction in numbers to meet the car parking rates was supported by Council’s traffic engineers prior to the Local Planning Panel (LPP) meeting as evidenced in the memo (record number 2021/799932) sent to the LPP from the assessing officer. The memo was in response to our willingness to reduce the number of children to 12. The memo states that:

“The proposed reduction has been discussed with Council’s Traffic Engineer, who has confirmed that suggested reduction would achieve compliance with the parking requirements of WLEP 2011 and will assist in alleviating traffic and pedestrian safety concerns.”

Had we been afforded due process with the development application and given the opportunity to amend the application Council’s traffic engineers stated in the memo:

“However, at this point in time, the development application has not been amended and no additional information has been uploaded to the NSW Planning Portal.

Subject to the formal amendment of the application, it is likely that the application is in a position to be supported, subject to conditions of consent (which are yet to be prepared).”

The proposal is in a position to be supported with the safety concerns relating to traffic and parking alleviated by a compliant level of off-street parking being achieved.

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.*

Response: Again, we have addressed the concerns by reducing the number of children to have a compliant level of off-street parking. Council’s own traffic engineer do not raise

any concerns regarding pedestrian safety provided the number of children is reduced, as evidenced in the memo referenced above.

The characterisation of this suburban street roundabout as a ‘major roundabout’ is excessive considering it is not a ‘major’ road. Council’s traffic engineers in the several referrals provided with both the withdrawn and refused DA’s said that:

“the traffic generation from the developed site is however acceptable and considered unlikely to significantly impact on conditions in the surrounding road network.”

With the reduction in the intensity of the use the impacts on the existing traffic networks and number of trips during peak periods will be further improved. Council’s own traffic engineers raise no safety concerns with the revised child numbers.

4. 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.

Response: The parking rate is 1 space per 4 children. The child care centre proposes 12 children which would require 3 spaces. 3 off-street spaces are proposed for the centre. An updated traffic report is provided.

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

Response: The safety concerns relate to the traffic and parking concerns which are resolved with the reduction in child numbers. A 12 child centre is very small with regard to the intensity of the use. The traffic demand and drop off and pick up times can be managed by the staff. Again, Council’s traffic engineers raise no safety concerns with the revised numbers.

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.

Response: Again, safety concerns have been addressed with the reduction in numbers to the child care centre.

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

Response: The revised number of children and compliant level of off-street parking ensure the development is in the public interest. The reduction in numbers alleviates the safety concerns with reduced vehicle trips and easier management of the centre. The centre will provide the local community with child care opportunities within a small classroom setting. The proposal is permissible with consent in the zone and is considered to meet the planning requirements and regulations associated with the proposed use as they reasonably apply.

3.0 CONCLUSION

This submission demonstrates that the amended scheme appropriately address the reasons for refusal of the original application. Having given due consideration to the relevant matters pursuant to section 4.15(1) of the Act it has been demonstrated that the proposed development, as amended, succeeds on merit and is appropriate for the granting of consent.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely
William Fleming
Planner

Boston Blyth Fleming Pty Limited

