

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0038
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 8 SP 34147, 8 / 252 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Review of Determination of Application DA2021/0418 for use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100
Zoning:	Warringah LEP2011 - Land zoned B7 Business Park
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marianne Holdings Pty Ltd
Applicant:	I Love It Enterprises Pty Ltd

Application Lodged:	01/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/10/2021 to 01/11/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 27,500.00
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EXECUTIVE SUMMARY

The application is for the review of determination of DA2021/0418 for the Use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100, as well as associated signage, and as such has been referred to the Development Determination Panel (DDP) for determination.

DA2021/0418 was refused by Council under delegation on the 3 June 2021.

The development application proposed a change of use of an area of the tenancy from a *"warehouse and distribution centre"* for the sale of beauty products to a *"health services facility"*.

The application sought to provide for the provision of skincare services on the subject site, together with the carrying out of some minor internal alterations to the premises with associated signage.

The application was refused as Council disagreed with the applicants categorisation that skin care services use is a *"health services facility"* and the correct characterisation should be a *"business premises"* which is a prohibited use within the B7 Business Park zone. The application was refused for seven (7) reasons outlined in the assessment report and Notice of Determination.

The applicant has provided supporting legal advice prepared by Mills Oakley Lawyers dated 3 June 2021 in an attempt to address concerns raised by Council. However, upon review, the characterisation of the proposed skin care services as a *"health services facility"* is not concurred with and so the review application is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application is for the Review of Determination of DA2021/0418 for the Use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under Development Consent No. DA2021/0100, as well as associated signage.

The proposal involves a change of use of an area of the tenancy from a *'warehouse and distribution centre'* for the sale of beauty products to a *'health services facility'*.

The application involves the provision of skincare services on the subject site, together with the carrying out of some minor internal alterations to the premises with associated signage.

Internal Works

The internal works include the demolition of existing walls to create doorways, and the construction of three (3) internal walls to create a new waiting room, two (2) consulting rooms and a storeroom.

Skin Services '*Health Services Facility*'

The tenancy will provide skin services relating to the maintenance and improvement of the skin. The services include treating conditions such as Acne, Rosacea, skin pigmentation, sun damage, premature skin aging and dry or dehydrated skin conditions.

The services will be carried out onsite within the proposed two (2) consulting rooms.

Hours of Operation

The operating hours for the *'health service facility'* are as follows:

- Monday : Friday: 7:00am - 7:00pm
- Saturday : 8:00am - 4:00pm
- Sunday : Closed

Staff Numbers

The proposal involves eight (8) staff onsite at any one time.

Car Parking

The tenancy has access to eight (8) car parking spaces. It is proposed that the new use as a *'health service facility'* will utilise the existing three (3) parking spaces that are not allocated to the *'warehouse and distribution centre'*.

Business Signage

The application includes additional Business Identification Signage.

The proposed wall signage has dimensions of 0.75m x 2.67m and is to be affixed to the front elevation of the tenancy.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - Zone B7 Business Park

Warringah Development Control Plan - A.5 Objectives

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 8 SP 34147 , 8 / 252 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Allambie Road.

The site is regular in shape with an offset frontage of 15.24m along Allambie Road, a width of 122.865m and a depth of 44.195m. The site has a surveyed area of 5,428m². The subject tenancy is Lot 8 within strata plan which has an area of 431.6m². The lot has the provision of eight (8) car parking spaces.

The site is located within the B7 Business Park zone and accommodates a two storey industrial warehouse building and car parking. The site is currently occupied by a warehousing distribution centre and ancillary offices for a beauty product business.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Development Application DA2021/0418 for the Use of the premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100, as well as associated signage was refused by Council on the 3 June 2021.
- Development Application DA2021/0100 for the use of premises as a Warehouse and Distribution Centre and Office Premises including Business identification signage was approved by Council on the 8 April 2021.
- Development Application DA2020/1314 for the use of the premises as a combined Warehouse and Distribution Centre and Health Services Facility including business identification signage was withdrawn from Council due to Council's position that skincare service use is more suitably defined as a 'business premises' not a 'health service facility' and parking/traffic concerns.
- Development Application 91/347 for the occupation of Unit 8 for the purpose of warehousing of greeting cards and board games, including associated office and showroom was approved on the 11 November 1991.
- Development Application 87/302 for the construction of a warehouse/office complex containing

nine units with associated car parking and landscaping was approved on the 1 September 1087.

Application History

The applicant provided legal advice from Mills Oakley Lawyers to support the argument that the proposed use is a permissible use as a '*health services facility*'. The legal advice was reviewed by Council's Legal Counsel and this planning assessment has taken into consideration that advice.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 3 June 2021 and the notice of determination was issued on 3 June 2021. The review was lodged on 1 October 2021 and is to be considered by Council's Development Determination Panel on 13 April 2022, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal/additional information are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

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 18/10/2021 to 01/11/2021 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 3 submission/s from:

Name:	Address:
Howard Jones	Address Unknown
Jack Albert Kapterian	27 Darley Street FORESTVILLE NSW 2087
Mr Gregory Peter Bury	62 Clontarf Street SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Change of use from warehouse to retail**
- **Customer car parking**
- **Signage**
- **Loading and unloading**

The above issues are addressed as follows:

- **Change of use from warehouse to retail**

The submissions raised concerns that proposed change of use to include the skincare services will result in congestion within the complex as demand for parking and regularity of customers increases.

Comment:

Council classifies the proposed skincare services to be a "business premises" and is therefore not permissible within the B7 Business Park zone under the WLEP 2011. The proposal is considered to result in direct conflict with the objectives of the zone and will not result in orderly development of land.

See Part 1 Land Use Table for further discussion on this issue.

- **Customer car parking**

The submissions raised concerns that the proposed use will result in increased demand for customer car parking. Concern was also raised that customers may resort to using car parking spots that are not allocated to the premises.

Comment:

The applicant has provided a breakdown of the proposed and existing uses on site against the requirements under Appendix 1 Car Parking Requirements of the Warringah Development Control Plan 2011. The proposal is considered to be consistent with the requirements. See C3 Parking Facilities for further discussion.

In addition, the application was reviewed by Council's Traffic Engineer who provided comments in support of the application, subject to recommended conditions of consent. The recommended conditions require the number of customers on site at any one time to be limited to four (4) and the customer and staff parking to be clearly signposted. Car parking for customers shall be three

spaces immediately in front of the unit and maintained and available for the duration of the approved use.

- **Signage**

The submissions raised concerns that the proposed signage is not consistent with the character of the existing signage within the business park.

Comment:

The proposed signage has been assessed against the relevant environmental planning instruments. See SEPP 64 - Advertising and Signage and D23 Signage within the assessment report for further discussion.

- **Loading and unloading**

The submissions raised concerns that there is already congestion when loading and unloading and the intensification of the use will make it difficult to manoeuvre. It is mentioned the driveway is one way and there is often congestion when more than one truck and a number of employees arrive at the same time.

Comment:

There is no loading and unloading associated with the proposed skincare services use. The existing warehouse/distribution approved use shall operate in accordance with the conditions of consent in relation to loading and unloading.

The application was reviewed by Council's Traffic Engineer who provided comments stating the parking provision is in line with the required numbers under the DCP for this type of facility and the generation is within the identified capacity of the road network adjoining the premises.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below. <i><u>Note:</u> 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.</i>
Environmental Health (Industrial)	General Comments Changes in the review do not impact the prior comments and conditions of

Internal Referral Body	Comments
	Environmental Health. No objections.
Environmental Health (Food Premises, Skin Pen.)	General Comments Changes in the review do not impact the prior comments and conditions of Environmental Health. No objections.
Traffic Engineer	The proposal has been assessed against the requirements for the development type and the parking provision requirements and traffic generation impacts. The parking provision is in line with the required numbers under the DCP for this type of facility and the generation is within the identified capacity of the road network adjoining the premises. The concern with the parking layout of the site can be addressed by condition to identify the customer parking for the new use as the spaces immediately in front of the business unit with the lower turnover staff parking on the opposite side of the access driveway. The proposal is supported on traffic grounds

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment

criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The signage is considered to be incompatible with the existing character of the area as it directly relates to a prohibited land use.	NO
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage is inconsistent with that of B7 Business Park zoning area as the sign is related to a prohibited land use.	NO
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage does not detract from any form of visual quality including those specific areas listed within matters for consideration.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The signage does not compromise nor obscure views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is not of a scale to cause unreasonable impacts upon the existing views of the skyline.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage respects the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage is of a scale and proportion that does not create visual impacts to the streetscape. Therefore, the signage is appropriate for this context.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal contributes to the visual interest of the streetscape with a variety of colours and wording. However, the signage relates to a prohibited land use and is therefore not appropriate for the location.	NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The outcome for the signage is to increase the amount of signage on the subject site. The business signage relates to a prohibited land use and therefore does not reduce clutter or simplify advertising.	NO

Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage does not protrude above the building or structure.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The signage is considered to be incompatible with the surrounding industrial area character and the building of which it is attached to as it relates to a prohibited land use.	NO
Does the proposal respect important features of the site or building, or both?	The signage does not respect the zoning of the site as it is related to a prohibited land use.	NO
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage relates to a prohibited land use and therefore promotes a prohibited business which is considered inconsistent with the relationship to the site.	NO
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices have been designed as an integral part of the signage or structure.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	N/A	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The signage would not reduce the safety for any road, pedestrian or bicyclist.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal does not obscure sight lines from public areas.	YES

The proposed signage is considered to be of a suitable scale and design.

However, the business signage relates to a land use that is prohibited use within the B7 Business park zone. The proposal is therefore deemed to be inconsistent with the provisions of the SEPP and its underlying objectives.

Division 10 Health Services Facilities

57 Development permitted with consent

(1) *Development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone.*

(2) *Development for any of the following purposes may be carried out by or on behalf of the public authority with consent on State land that is in a land use zone identified by another environmental planning instrument as a "special use" zone for a health services facility:*

- (a) biotechnology research or development industries,*
- (b) business premises or retail facilities to cater for patients, staff or visitors,*
- (c) multi dwelling housing.*

(3) *Consent must not be granted for development of a kind referred to in subclause (2) unless the consent authority is satisfied that the Director-General has certified in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses.*

(4) *Nothing in this clause:*

(a) presents a consent authority from:

- (i) granting consent for development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or*
- (ii) refusing to grant consent for development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or*
- (b) otherwise limits the matters to which a consent authority may have regard in determining a development application for development of a kind referred to in subclause (2).*

Comment:

The subject site is located within the B7 Business Park zone and is a prescribed zone. Therefore, *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) is applicable to the subject site.

Council does not consider that the skincare service is appropriately defined as a *"health services facility"* and is more suitably and appropriately defined as a *"business premises"* as defined within the *Warringah Local Environmental Plan 2011*. The development is not characterised as a *"health services facility"* and therefore the Infrastructure SEPP is not applicable to the application.

The use of the site as a *"business premises"* is not permitted under the WLEP 2011 and also within the Infrastructure SEPP.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

The development proposes additional uses to the existing approved warehouse and distribution centre and office and does not involve any works to the building that require an assessment of the principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	N/A
6.4 Development on sloping land	N/A

Detailed Assessment

Zone B7 Business Park

The applicant has maintained the characterisation of the proposed development as being for a *"warehouse and distribution centre & office premises for the sale of beauty products online and health services facility"*. The applicant has provided legal advice prepared by Mills Oakley Lawyers dated 3 June 2021 arguing that the proposed skin care side of the business is development that should be relevantly characterised as a *"health services facility"* under the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the Warringah Local Environmental Plan 2011.

The legal advice was reviewed by Council's Legal Counsel and the advices have been taken into consideration as part of the assessment of the application.

The subject site is zoned B7 Business Park (B7 zone) under the Warringah Local Environmental Plan 2011 (WLEP 2011).

The proposal can be characterised as a mixed-use development for dual, independent uses, one being a *"warehouse and distribution centre"* the second being for the *"office premises"* and the other being for a *"health services facility"* for skin care services.

The *"warehouse and distribution centre"*, *"office premises"* and *"health services facility"* are all permitted uses with consent in the B7 zone as they are not prohibited in Item 4 of the land use table for the B7 zone of the WLEP 2011.

Council also acknowledges that a *"health services facility"* is permitted with development consent in the B7 Business Park in a 'prescribed zone' under State Environmental Planning Policy Infrastructure (Division 10).

The development application describes the skincare services use to be provided within the tenancy as a *"health services facility"*. This characterisation is not concurred with, in that the provision of skin treatment services to the public is to be properly characterised as a *"business premises"*. A *"business premises"* is not a permitted use within the B7 zone of the WLEP 2011. The characterisation of the development continues to be fundamental to the approval of the Development Application.

Specifically, a *"health services facility"* is defined in the dictionary to the WLEP 2011 as follows:

"health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following-

- (a) a medical centre
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital."

Council agrees with the legal advice prepared by Mills Oakley that the word "includes" in the definition of "*health services facility*" means that the listed uses in the definition are not to be read as being exclusive or an exhaustive list.

However, from the definition above, it is clear the uses are intended to refer to primarily medical or allied medical services provided by persons who are generally recognised as having some specialist qualifications to provide such health care. The skin care services will not be principally provided by persons registered under an Act for the purpose of providing health care (as per the WLEP 2011 definition).

The definition of health service in the Health Services Act 1997 (NSW) is defined as follows:

health service means any of the following-

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (e1) the supply or fitting or any prosthesis or therapeutic device,
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

It remains the view under this assessment that the skin treatments proposed to be offered as part of the development application, including chemical skin peels, laser skin resurfacing, chemical and physical exfoliation, dermablading, hydradermabrasion, masques and serums and LED light therapy fail to fall within the definition of health services facility.

The Health Services Act 1997 (NSW) does not relate to or regulate salons which provide skin treatments such as those proposed in the development proposal. As a result, the services that are intended are considered to be cosmetic procedures or beauty therapies and are not medical procedures. Therefore, the change of use which entails the provision of skin treatment services to the public is properly characterised as a "business premises" under the WLEP 2011.

The services proposed to be provided at part of the premises, which the Mills Oakley advice refers to as being provided by "dermal clinicians or therapists" are merely an extension of services which are traditionally provided at a beauty parlour, such as facials and peels, and do not constitute health services. The dermal clinicians and therapists performing the services will refer clients to other services, such as medical practitioners should there be any issues identified that require medical assessment or treatment.

The skincare services being offered generally relate directly to the cosmetic appearance of the skin and do not directly relate to the maintenance or improvement of health, or the restoration of health, of persons or the prevention of disease in or injury to persons. "*Cosmetic*" is defined as "*relating to treatment intended to restore or improve a person's appearance*". The services proposed directly relate to treating mild to medium acne/breakouts, melasma/hyperpigmentation, mild scarring, skin rejuvenation, stretch marks, wrinkles, aging and pigmented lesions which directly relate to cosmetic treatments

offered by beauty therapists to improve a persons appearance. The characterisation of the skincare services being offered as a "health service" is not correct, particularly as any service directly relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons must be sought elsewhere by medical practitioners.

Business premises is defined in the dictionary to the WLEP 2011 as follows:

"business premises means a building or place at or on which-

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."

A "*business premises*" is a prohibited use in the B7 zone and is not permissible under the Infrastructure SEPP.

The prohibited "*business premises*" is in direct conflict with clause 1.2 Aims of Plans of the WLEP 2011 and the objectives of B7 Business Park of the WLEP 2011. The prohibited land use is not considered to be an orderly development of land and has the potential to undermine the strategic planning intent of the B7 zone.

The development is properly characterised as a "***business premises***" which is a prohibited use in the B7 zone and consequently the application should be refused for this reason.

Warringah Development Control Plan

Built Form Controls

The development proposes additional uses to the existing approved warehouse and distribution centre and office does not comprise of any works to the building that require an assessment of the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B4 Site Coverage	N/A	N/A
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	N/A	N/A
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	N/A	N/A
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	No	No
E1 Preservation of Trees or Bushland Vegetation	N/A	N/A
E2 Prescribed Vegetation	N/A	N/A
E4 Wildlife Corridors	N/A	N/A
E6 Retaining unique environmental features	N/A	N/A
E10 Landslip Risk	N/A	N/A

Detailed Assessment

A.5 Objectives

The classification of the skincare services as a "business premises" should be maintained and therefore is not a permissible use within the B7 zone.

The development does not satisfy the underlying objectives of cl.A.5 (Objectives) of WDCP. In particular, the development does not respond to the characteristics of the site and the qualities of the surrounding neighbourhood.

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Warehouse/distribution centre	1.3 spaces per 100m ² GFA (including up to 20% of floor area as office premises space component. Office premises	4	4	0

	component above 20% determined at the office premises rate)			
Office Premises	1 space per 40m ² GFA above 20%	0.1	0	0
Business Premises	1 space per 40m ² GFA excluding customer service/access areas, plus for customer service access areas 1 space per 16.4m ² GFA	3.7	4	0
Total		7.8	8	+0.2

The proposal has been calculated against the requirements of the Warringah DCP as shown above.

The applicant provided legal advice to breakdown the gross floor space components of the proposal in order to determine the required car parking on site. Council agrees with the method of calculation given the gross floor area calculations provided.

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

Comment:

Existing car parking spaces on site shall be retained and used.

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

Comment:

Existing car parking spaces on site shall be retained and used.

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

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes one (1) business identification sign that relates to the skin care services side of the operation.

The signage consists of the following:

Sign	Requirement	Width	Height	M ²	Complies
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	2.67m	0.75m	2	Yes

The proposed sign is located between two previously approved signs (DA2021/0100) with dimensions 2.62m in length and 0.75m in height. This creates an overall signage area of 6m² (8m in length and 0.75m in height).

The combined three (3) pieces of signage continue to satisfy the requirements of the signage control. However, the signage as part of this development application, relates to the "business premises" (skin care service operation) which is a prohibited land use in the B7 zone. Consequently, the land use and associated business signage for that land use cannot be supported.

An assessment of the application has also found the development to be inconsistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage* due to the signage relating to a prohibited land use.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not satisfactory in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The assessment of this application and this report acknowledge the additional information provided by the applicant for the review of determination. The assessment does not concur with the applicant's categorisation of the use as a 'Health Services Facility'. It is considered that the development is properly characterised as a "business premises" which is a prohibited use in the B7 zone and consequently the application should be refused for this reason.

The proposed development is not considered to satisfy the relevant controls for the site and the prohibited land use is not considered to be an orderly development of land and has the potential to undermine the strategic planning intent of the B7 zone. The report concludes with the recommendation that the Development Determination Panel maintain the previous refusal of the development application based on the reasons outlined within this assessment report.

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 Council, as the consent authority REFUSE Development Consent to Development Application No REV2021/0038 for the Review of Determination of Application DA2021/0418 for use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100 on land at Lot 8 SP 34147,8 / 252 Allambie Road, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 64 - Advertising and Signage.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the B7 Business Park zone under the Warringah Local Environmental Plan 2011, in that the proposed use is a prohibited use in the zone.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D23 Signs of the Warringah Development Control Plan.