

**SYDNEY NORTH PLANNING PANEL  
COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	2017SCH027
<b>DA Number</b>	DA2017/0097
<b>LGA</b>	Northern Beaches Council
<b>Proposed Development</b>	Demolition works and construction of a childcare centre
<b>Street Address</b>	Lot 3 DP 653642, 376 Pittwater Road NORTH MANLY NSW 2100 Lot 2 DP 653813, 374 Pittwater Road NORTH MANLY NSW 2100 Lot 1 DP 740129, 368 Pittwater Road NORTH MANLY NSW 2100
<b>Applicant/Owner</b>	Applicant: Kids Club Pty Ltd Owner: Mark Stewart Smash Repairs Pty Ltd & Edward William Thomas Weeks (Estate of the Late)
<b>Date of DA lodgement</b>	22 March 2017
<b>Number of Submissions</b>	21
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Private infrastructure and community facilities over \$5 million Total Cost of the Development is \$5,221,406.00
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 71 – Coastal Protection</li> <li>• State Environmental Planning Policy – Infrastructure 2007</li> <li>• Warringah Local Environmental Plan 2011</li> <li>• Warringah Development Control Plan 2011</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1: Conditions of Consent</li> <li>• Attachment 2: Pre-Lodgement Meeting Notes</li> <li>• Attachment 3 – NSW Roads and Maritime Service Referral Responses</li> <li>• Attachment 4: - Clause 4.6 written request to vary Clause 4.3 Height of Buildings Development Standard</li> </ul>
<b>Report by</b>	David Kerr– General Manager Planning, Place & Community
<b>Report date</b>	8 August 2017

**Summary of s79C matters**

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard has been received, has it been attached to the assessment report? **Yes**

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Conditions**

Have draft conditions been provided to the applicant for comment? **No**  
*Note: in order to reduce delays in determinations, the Panel prefers that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2017/0097
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<b>Responsible Officer:</b>	Luke Perry
<b>Land to be developed (Address):</b>	Lot 3 DP 653642, 376 Pittwater Road NORTH MANLY NSW 2100 Lot 2 DP 653813, 374 Pittwater Road NORTH MANLY NSW 2100 Lot 1 DP 740129, 368 Pittwater Road NORTH MANLY NSW 2100
<b>Proposed Development:</b>	Demolition Works and Construction of a childcare centre
<b>Zoning:</b>	LEP - Land zoned IN2 Light Industrial LEP - Land zoned IN2 Light Industrial LEP - Land zoned IN2 Light Industrial LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Sydney Planning Panel – North
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Mark Stewart Smash Repairs Pty Ltd Edward William Thomas Weeks (Estate of the Late)
<b>Applicant:</b>	Kids Club Pty Ltd

<b>Application lodged:</b>	22/03/2017
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Infrastructure
<b>Notified:</b>	31/03/2017 to 20/04/2017
<b>Advertised:</b>	01/04/2017
<b>Submissions:</b>	21
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 5,221,406.00
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### 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

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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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - Appendix 1 Car Parking Requirements

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 3 DP 653642 , 376 Pittwater Road NORTH MANLY NSW 2100</p> <p>Lot 2 DP 653813 , 374 Pittwater Road NORTH MANLY NSW 2100</p> <p>Lot 1 DP 740129 , 368 Pittwater Road NORTH MANLY NSW 2100</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of three (3) allotment located on the eastern side of Pittwater Road, North Manly.</p> <p>The site is irregular in shape with a frontage of 43.82m along Pittwater Road, 31.42m along Queenscliff Road and a depth of up to 41.95m. The site has a surveyed area of 1997m<sup>2</sup>.</p> <p>The site is located within the IN2 Light Industrial zone and accommodates two industrial buildings. Schedule 1 Additional Permitted Uses under WLEP 2011 lists development on the subject site for the purposes of of industrial retail outlets, service stations, hardware and building supplies, vehicle body repair workshops, vehicle repair stations and wholesale supplies as permitted with consent.</p> <p>Surrounding development consists of of a mix of industrial/commercial and residential uses. Along the northern side of Pittwater Road to the immediate northwest and southeast of the subject site are a range of industrial and commercial uses. Adjoining the site to the north east is medium density housing in the form of two residential flat buildings. To the south of the site is predominantly detached style low density housing in the form of single dwellings.</p> <p>Further south of the site are Hinkler and Keirle Park recreational areas.</p> <p>The site is generally flat without any topographical constraint with</p>

the exception of a large natural rock outcrop located at the rear northern portion of the subject site which extends across the site in a northwest-southeast orientation.

Map:



## SITE HISTORY

### RELEVANT APPLICATIONS

#### PLM2017/0102

A pre lodgement meeting was held on 1 October 2015 to discuss the proposal the subject of this application. The notes from the meeting are attached to this report (Appendix 1).

#### REV2017/0006

The subject application was rejected by Council on 20 February 2017 following a preliminary assessment that revealed a Preliminary Geotechnical Report had not been submitted with the application. The applicant lodged this review of rejection application on 3 March 2017. The application was determined on 16 March 2017 and the subject application proceeded to full assessment.

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following:

- Demolition of two existing industrial buildings;
- Construction of a new three storey Childcare Centre catering for a maximum 132 children and 25 staff;
- Hours of operation from 7am to 6.30pm Monday to Friday;
- Landscaping works; and
- Driveway access/egress from Queenscliff Road and car parking for 33 cars.

### APPLICATION HISTORY

The application was lodged on 22 March 2017. Following a preliminary assessment of the application Council's Natural Environment Unit and Traffic Engineer raised concerns with the application.

The applicant was advised of these concerns by letter dated 15 May 2017 and afforded 14 days to satisfactorily address the issues raised or withdraw the application.

The applicant provided a response on 5 June 2017 which included an updated traffic report and amended plans. It is important to note that the applicant did not provide the SIDRA modelling requested by Council's Traffic Engineer.

The additional information was reviewed by Council's Natural Environment Unit and Traffic Engineer. The additional information satisfied the concerns previously raised by Council's Natural Environment Unit. The information submitted did not satisfy the issues raised by Council's Traffic Engineer nor did it provide the requested information (SIDRA modelling). At this time Council's Traffic Engineer discussed the application and their previous referral response (dated 18 April 2017) with the RMS who agreed to review the additional information and subsequently revised their previous referral response (which raised no objections) by letter dated 4 July 2017 indicating they no longer supported the proposal.

The applicant was again advised of the concerns raised by the RMS and Council's Traffic Engineer by correspondence dated 11 July 2017 and afforded 14 days to consider and respond to the comments raised by Council's Traffic Engineer and the RMS. The applicant submitted additional information and the requested SIDRA modelling on 27 July 2017.

As detailed within the following report the information submitted by the applicant is insufficient and Council's Traffic Engineer and the RMS do not support the proposed development.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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>



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Section 79C 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;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>
<p>Section 79C (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>	<p><u>Environmental Impact</u></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 (WDCP 2011) section in this report.</p> <p>Generally, the proposed development will not result in any reasonable impacts on the natural and built environment. The subject site is not constrained by any natural features and is not subject to any threatened species, critical habitat, bushfire, heritage or acid sulfate soils. The design of the building has taken into consideration the large natural rock outcrop located along the rear boundary of the site and does not impact upon the rock or propose any cut or excavation.</p> <p>The site is identified as being flood affected and the proposed development (child care centre) considered as 'highly vulnerable development' under Council's Flood matrix. The applicant has adequately addressed this issue and the application could be supported on flooding grounds subject to the imposition of appropriate conditions of consent.</p> <p>The proposed development does not result in any unreasonable amenity impacts in terms of privacy, overshadowing or loss of views on adjoining or surrounding properties.</p> <p>However, as detailed throughout this report insufficient information has been</p>

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Section 79C 'Matters for Consideration'	Comments
	<p>submitted with the application to demonstrate consistency with the objectives of Clause C2 - Traffic, Access and Safety. In particular, the application has failed to demonstrate that the proposed development will not have an unreasonable or adverse impact on the local road network.</p> <p>This has been included as a reason for refusal.</p> <p><u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><u>Economic Impact</u> 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 79C (1) (c) – the suitability of the site for the development	For reasons outline throughout this Report, Council cannot be satisfied due to insufficient information, that the site is suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	<p>This assessment has found the proposal to be contrary to the relevant objectives of Clause C2 Traffic, Access and Safety as insufficient information has been submitted with the Development Application to demonstrate consistency with the objectives of the Clause. In particular, that the proposed development will not have an unreasonable or adverse impact on the local road network and road users.</p> <p>Further, the application was advertised in the local paper and notified to surrounding and nearby properties. A total of 21 submissions were received opposing to the development application and all of the 21 submissions raised traffic impacts and concerns as a reason to oppose the development application.</p> <p>In this regard, the development, as proposed, cannot be considered to be in the public interest and this has been included as a reason for refusal.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 21 submission/s from:

<b>Name:</b>	<b>Address:</b>
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Name:	Address:
Nicolle Tessier	24 Golf Parade MANLY NSW 2095
Jim Stackpool	18 Golf Parade MANLY NSW 2095
James Noakes	22 Golf Parade MANLY NSW 2095
Mr Phillip Malcolm Curry	406 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Carolyn Jean Turnbull	401 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Shaun Michael Mahoney	306 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Dianne Lesley Heffernan	Po Box 313 SEAFORTH NSW 2092
Mrs Jacqueline Rota	42 Collaroy Street COLLAROY NSW 2097
Mrs Amanda Jane Punnett	509 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Trevor Anthony David Punnett	509 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Kathleen Doris Armstrong	310 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Sarah Marmara	302 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Richard Zmijewski	355 Pittwater Road NORTH MANLY NSW 2100
Chadwick Warriner Barlow	320 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Nicola Joy Hensler	303 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Michael John Stackpool	7 Oyama Avenue MANLY NSW 2095
Jayne Elizabeth Palmer	16 / 47 Pacific Parade DEE WHY NSW 2099
Mr Gregory Dean Heesom	139 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Anne Elizabeth Kelly	137 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Michael Andrew Lowe	211 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Thorsten Freitag	311 / 168 Queenscliff Road QUEENSCLIFF NSW 2096

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

- **Traffic and Parking Impacts**
- **Building Height non compliance**
- **Hours of Operation and Excessive enrolments numbers**
- **Noise**
- **Suitability of the site**
- **Incorrect information**
- **Flood Prone Land**

The matters raised within the submissions are addressed as follows:

## **Traffic and Parking Impacts**

Concern is raised regarding the impact on the local road network (Queenscliff Road, Pittwater Road and nearby roads) as a result of the proposed development. Particular concern is raised regarding the following:

- The existing congestion experienced on these roads during peak times and that the proposed development will further add to this congestion;
- The existing queuing experienced on Queenscliff Road due to its cul-de-sac configuration and that the proposed development will further exacerbate this problem;



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- Safety concerns for cars turning into and out of Queenscliff Road; and
- Insufficient parking.

## Comment:

### Traffic

As detailed throughout this report, insufficient information has been submitted with the application to demonstrate the development would not have an adverse or unreasonable impact on the local road network.

The matters raised within these submissions have determining weight and have been included as a reason for refusal.

### Parking

As detailed elsewhere within this report (refer to Appendix 1 - Car Parking Requirements under the WDCP 2011 section of this report), the development provides adequate car parking for the intended use in accordance with the requirements of WDCP 2011.

It is noted that a number of submissions raise illegal parking in Queenscliff Road as an issue and concern. This a matter for Council's Regulatory Compliance Team to investigate who have the responsibility of enforcing on street parking restrictions.

In this regard, the issue of illegal parking has been forwarded to Councils' Regulatory Compliance Team for investigation and is not a matter for consideration in the assessment of this application.

The matter of insufficient car parking does not warrant refusal of the application.

## **Building Height non compliance**

Concern is raised regarding the non compliance with Clause 4.3 Height of Buildings Development Standard under WLEP 2011.

## Comment:

The matter of non compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the Warringah Local Environmental Plan section).

In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the WLEP and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

This matter does not warrant refusal of the application.

## **Hours of Operation and Excessive enrollment numbers**

Concern is raised regarding the hours of operation of the childcare centre and that the enrollment numbers are excessive.

## Comment:

## Hours of operation

The proposal seeks consent for hours of operation of 7am to 6.30pm Monday to Friday. The proposed hours of operation are considered appropriate for the proposed use and consistent with that of surrounding light industrial/commercial uses. The hours of operation could be dealt with by the imposition of appropriate conditions of consent should the application be approved.

This matter does not warrant refusal of the application.

## Excessive enrollment numbers

The application has been assessed against the underlying objectives and requirements of the relevant planning legislation and satisfies (with the exception of traffic matters) these requirements.

When considering whether or not the proposed enrollment numbers are excessive the key considerations are those that may cause unreasonable amenity impacts such as noise and car parking.

The application is supported by an Acoustic Report which has been reviewed by Council's Environmental Health Team (Noise), who concur with the mitigation measures proposed within the Acoustic Report. There are however some minor issues (requirement for a Noise Management Plan to be created and implemented) that have been raised that could be dealt with by the imposition of appropriate conditions of consent should the application be approved.

The assessment of this application has found the proposal provides adequate provisions for on site car parking to service the childcare centre.

Therefore, this matter does not warrant refusal of the application.

## **Noise**

Concern is raised regarding the potential noise impacts on adjoining residential properties as a result of the operation of the childcare centre.

## Comment:

The application is supported by an Acoustic Report which has been reviewed by Council's Environmental Health Team (Noise), who concur with the mitigation measures proposed within the Acoustic Report.

The Acoustic Report includes acoustic treatments proposed to be provided on the outdoor play areas on the first and second floors of the development to ensure no unreasonable noise impacts are experienced from adjoining or nearby residential properties. Compliance with the recommendations of this report could be imposed as a condition of consent should the application be approved.

As detailed under the 'Referrals - Environmental Health (Noise)' section of this report, notwithstanding the satisfactory mitigation measures proposed, there are some minor issues (requirement for a Noise Management Plan to be created and implemented) that have been raised by Council's Environmental Health team that could be dealt with by the imposition of appropriate conditions of consent should the application be approved.

## **Suitability of the site**

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The following particular concern has been raised:

*'A child care centre in IN2 Light Industrial zoning replaces other businesses that would otherwise service greater community and alters the continuity of our 'service strip'.*

Comment:

The proposal involves the construction of a child care centre which is a permissible use within the IN2 Light Industrial zone. The assessment of this application has found the development to be consistent with the objectives of the IN2 Light Industrial zone. In particular the development is consistent with the objective; *'To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.'*

Notwithstanding the above and as detailed throughout this report, the subject site cannot be considered as suitable for the proposed development as insufficient information has been submitted with the application to demonstrate that the development will not have an adverse impact on the local road network.

Therefore, the matter of the suitability for the site has been included as a reason for refusal.

## **Incorrect information**

The matter of information has been raised as a concern as the supporting documentation submitted with the application refers to 'Avalon Beach' and 'SLEP 2012' and 'PLEP 2014'.

Comment:

The supporting documentation submitted with the application does refer to 'Avalon Beach' and 'SLEP 2012' and 'PLEP 2014'. However Council has not relied upon areas of the supporting documentation that contain these errors or mis-descriptions and has undertaken its assessment of the application in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

These matters do not warrant refusal of the application.

## **Flood Prone Land**

Concern is raised that the site is flood prone.

Comment:

The development has been designed to comply with the relevant flood planning levels as set out under WLEP 2011 and WDCP 2011.

Council's Natural Environment Unit (Flood) have reviewed the proposal and raise no objections on flooding grounds. Appropriate conditions of consent should be imposed should the application be approved.

This matter does not warrant refusal of the application.

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been reviewed by Council's Building Assessment Team who have provided the following comments:</p> <p><i>'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.</i></p> <p><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></p> <p><b>Assessment Officers Comment:</b></p> <p>Appropriate conditions of consent could be imposed should the application be approved.</p>
Development Engineers	<p>The application has been reviewed by Council's Development Engineer who has provided the following comments:</p> <p><i>'No objections to the proposed child care facility subject to conditions.'</i></p> <p><b>Assessment Officers Comment:</b></p> <p>Appropriate conditions of consent could be imposed should the application be approved.</p>
Environmental Investigations (Contaminated Lands)	<p>The application has been reviewed by Council's Environmental Health Team (Contamination) who have provided the following comments:</p> <p><i>'No objections raised subject to conditions.'</i></p> <p><b>Assessment Officers Comment:</b></p> <p>Appropriate conditions of consent could be imposed should the application be approved.</p>
Environmental Investigations (Industrial)	<p>The application has been reviewed by Council's Environmental Health Team (Noise) who have provided the following comments:</p> <p><i>'It appears that noise levels generated from the property complies with the appropriate guidelines as an intrusive noise measurement.</i></p> <p><i>However, Environmental Investigations recommend that a 'Noise Management Plan' is created to ensure offensive noise as defined under the Protection of the Environment Operations Act 1997, a separate piece of legislation, is not created. We have experienced numerous complaints on similar types of child care which become very difficult to deal with once approved.</i></p> <p><i>The proposal adjoins residential units.</i></p> <p><i>A noise management plan has not yet submitted which deals with</i></p>

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Internal Referral Body	Comments
	<p><i>"offensive noise" rather than general noise.</i></p> <p><i>The noise management plan shall include both indoor and outdoor areas and provide detail on how noise generated from the operation of the childcare centre will not create offensive noise as opposed to general noise to all sensitive receivers. It shall include an option that should Council receive valid complaints about "children screaming", additional; either movable or permanent acoustic barriers will be installed in consultation with the operators Acoustic Engineer to alleviate the nuisance.</i></p> <p><i>This management plan should be submitted before approval and be incorporated in conditions.'</i></p> <p><b>Assessment Officers Comment:</b></p> <p>The comments made by Council's Environmental Health Team are noted. These issues could be dealt with by the imposition of conditions should the application be approved and they do not form a reason for refusal.</p>
Health and Protection (Food Premises, Skin Pen.)	<p>The application has been reviewed by Council's Environmental Health and Protection (Food Premises) team who have provided the following comments:</p> <p><i>'No objections subject to conditions.'</i></p> <p><b>Assessment Officers Comment:</b></p> <p>Appropriate conditions of consent could be imposed should the application be approved.</p>
Landscape Officer	<p>The application has been reviewed by Council's Landscape Officer who has provided the following comments:</p> <p><i>'No objections to approval subject to conditions as recommended.'</i></p>
Natural Environment (Coastal)	<p>The application has been reviewed by Council's Natural Environment Unit (Coastal) who have provided the following comments:</p> <p><i>'The proposal has been considered against part 5.5, Development within the coastal zone, of Warringah Local Environment Plan 2011 and can be approved without conditions.'</i></p>
Natural Environment (Flood)	<p>The application has been reviewed by Council's Natural Environment Unit (Flood) who provided the following comments:</p> <p><b>Flood Comments (1st response - 13/04/17):</b></p> <p><i>'This proposal is for a childcare centre in the high flood risk planning precinct. Childcare centres are categorised as Vulnerable Development.'</i></p>



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Internal Referral Body	Comments
	<p>PMF = 5.7m AHD FPL = 3.7m AHD</p> <p><i>All habitable floor areas for childcare related functions must be set at or above the PMF level of 5.7m AHD. Habitable floor areas for non-childcare related functions must be set at or above the FPL of 3.7m AHD.</i></p> <p><i>The staff room and lounge area as shown on the plans for the ground floor are habitable rooms with a floor level of only 2.75m AHD. This is 0.95m below the FPL, and does not comply with Part E11 of the DCP.</i></p> <p><i>The other areas proposed at ground level are not considered to be habitable. According to Part E11 of the DCP, in the High Flood Risk Planning Precinct, floor levels in Vulnerable Development, New Residential Development and New Commercial &amp; Industrial Development all have Control A8, which states that "A Flood Risk Assessment is required to assess the risk to life and flood hazard at the site and determine if floor levels for the proposed development can be safely set at a minimum of the PMF level or FPL whichever is greater".</i></p> <p><i>This means that not only do floor levels need to be at or above the PMF (or higher if the FPL is higher than the PMF), but that the Flood Risk Assessment Report needs to assess and demonstrate that this level is safe. In this case, the Flood Risk Assessment Report will also need to demonstrate that it is safe for the lounge area and staff room to have a floor level as low as the FPL.'</i></p> <p><b>Assessment Officers Comments:</b></p> <p>The applicant was advised of the concerns detailed above by letter dated 15 May 2017. This correspondence invited the applicant to address the concerns raised, submit the additional information or withdraw the application.</p> <p>The applicant submitted additional information on 5 June 2017.</p> <p><b>Flood Comments (1st response - 13/04/17):</b></p> <p><i>'The additional information and amended plans have been reviewed. The development proposal generally complies with Clause 6.3 of the LEP and Part E11 of the DCP. No objections are raised subject to conditions.'</i></p>

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Internal Referral Body	Comments
	<p><b>Assessment Officers Comments:</b></p> <p>The applicant has satisfactorily addressed the concerns raised previously with regards to flooding. Should the application be approved appropriate conditions of consent could be imposed.</p>
Strategic Planning - Urban Design	<p>The application has been reviewed by Council's Urban Designer who has provided the following comments:</p> <p><i>'The proposal sits well within the surrounding context and functions well as a childcare centre. The height breach is minor and will not impact negatively on the neighbouring developments. The proposal is acceptable in that respect.'</i></p>
Traffic Engineer	<p>The application has been reviewed by Council's Traffic Engineer who has provided the following comments:</p> <p><b>Traffic Engineer's Comments (1st response - 28/04/17):</b></p> <p><i>'Council advised the applicant during the pre-lodgement stage that the carpark layout cannot have any stacked parking arrangements. Whilst the revised layout still proposes two (2) stacked spaces, this is still considered unacceptable and a further revision of carpark layout is required. Further to this the disabled parking space is shown on the plan without the 'shared space with bollard' as required under Australian Standards AS2890.6:2009.</i></p> <p><i>In terms of traffic generation and impacts to the local road network it appears that the attached traffic report does not provide details (SIDRA outputs and details) of any intersections assessed by the traffic consultant. According to the report the proposed development will generate a total of 135 and 160 vehicle trips in the AM peak hour and PM peak hour respectively. Due to the driveway access of the development being only 30m from Pittwater Road, the queue length is quite small and exiting vehicles in Queenscliff Road could exceed well past this driveway with the additional traffic generated from the development.</i></p> <p><i>It is also noted that the development will also result in 40 and 50 vehicles during the peak AM and PM hours turning right from Pittwater Road into Queenscliff Road. Whilst the RMS has not provided comments regarding this matter, the development will result in an increased occurrence where westbound traffic along a state road is reduced to a single lane during the peak hours.</i></p> <p><i>As Council is mindful of vehicular access and amenity of nearby residents in Queenscliff Road, the suggested part- time Right Turn restriction or an extension to the median along Pittwater Road is not supported.</i></p> <p><i>In its current form missing critical information such as the SIDRA</i></p>

Internal Referral Body	Comments
	<p><i>analysis of Pittwater Road and Queenscliff Road intersection, the proposal is not supported on traffic grounds.'</i></p> <p><b>Assessment Officers Comments:</b></p> <p>The applicant was advised of the concerns raised/additional information detailed above by letter dated 15 May 2017. This correspondence invited the applicant to address the concerns raised, submit the additional information or withdraw the application.</p> <p>The applicant submitted additional information on 5 June 2017.</p> <p><b>Traffic Engineer's Comments (2nd response - Additional information - 29 June 2017):</b></p> <p><i>'The additional information provided by the applicant was reviewed. It should be noted that the additional information submitted does not include the SIDRA modelling as previously requested.</i></p> <p><i>The amended car park layout is satisfactory and acceptable.</i></p> <p><i>The concern raised on the proposed child care centre is regarding the significant adverse impact on the intersections of Queenscliff Rd/Pittwater Rd and Pittwater Rd/Oliver St resulted from the additional traffic generation .</i></p> <p><i>The driveway of the proposed child care centre is located on Queenscliff Rd which is a No Through road with the only access through Pittwater Rd. Queenscliff Rd has an unsignalised T-Intersection with Pittwater Rd and is located only 75m from the major intersection of Pittwater Rd/Oliver St.</i></p> <p><i>Right turns to and from a minor road crossing multi lanes on a major road generally raises a safety concern as vehicles should make a quick turn when finding a gap between a high volume of traffic within multi lanes. However at this location, the current traffic condition is considered acceptable as there are limited number of right turns to and from Queenscliff Rd (indicated in the traffic report as 10 in and 15 out during AM peak traffic hours).</i></p> <p><i>The proposed childcare centre will increase the number of right turns to and from Queenscliff Rd to 2.5 times more than the existing form. This is while currently the queue of vehicles turning right from Pittwater Rd to Oliver St at the traffic light extends past the intersection of Pittwater Rd/Queenscliff Rd during the traffic peak hours. It should be noted that Child care centre's AM peak hours is at the same as traffic peak hours.</i></p> <p><i>The proposed intensification in the right turns increases the safety concern as experienced in other similar locations. Also, any vehicle waiting on Pittwater Rd to find a gap to turn right onto Queenscliff Rd will significantly impact the operation of the signalised intersection of</i></p>

Internal Referral Body	Comments
	<p><i>Pittwater R/Oliver St. This is firstly due to the close proximity of the subject intersection to a major signalised intersection, secondly due to the narrowing down Pittwater Road to one lane where the number of lanes increases to three passing the waiting point. This means that the vehicles waiting to turn right onto Queenscliff Rd will reduce the northbound traffic in Pittwater Rd to one lane at a critical point and results in overtaking following by lane changing to more than one lane within just 75m from the traffic light.</i></p> <p><i>The other concern is that Queenscliff Rd has one trafficable lane on each direction. The mixed left turns and right turns out of Queenscliff Rd together with the conflict between the right turns in and out of the Rd, when there is a gap available, would cause delays for the right turns out of Queenscliff Rd resulting in queuing on the Road. As the driveway of the proposed development site is located only 30m from the intersection, the queuing would restrict the access to the child care centre with potential further impact on Queenscliff Road.</i></p> <p><i>The justification provided by the applicant through the additional information is based on observations and is considered to be optimistic, and also does address the safety concern and adverse impact on the operation of the intersection of Pittwater Rd/Oliver St.</i></p> <p><i>SIDRA7 has the ability of modelling the vehicle Platoon by using a lane based model to create the second by second platoon arrival departure pattern. While the traffic modelling including the two intersections as a network could assist with visualising the traffic condition taking into account the additional traffic generating by the proposal, we do not consider this location appropriate for the proposed child care centre due to the significant adverse traffic implication as mentioned in above and therefore do not support the proposal.'</i></p> <p><b>Assessment Officers Comments:</b></p> <p>The applicant was again advised of the concerns raised above by correspondence dated 11 July 2017 and afforded 14 days to consider and respond to the comments raised by Council's Traffic Engineer and the RMS. The applicant submitted additional information and the requested SIDRA modelling on 27 July 2017.</p> <p><b>Traffic Engineer's Comments (3rd response - Additional information (27 July 2017):</b></p> <p><i>'Council's Traffic Engineer has reviewed the submitted SIDRA modelling and associated Traffic Report and provides the following comments:</i></p> <p><i>The SIDRA model provided by the applicant as two separate intersection does not reflect the impact of the upstream traffic(at the signalised intersection of Pittwater Rd / Oliver St) on the sign-controlled intersection of Pittwater RD / Queenscliff Rd. As noted in the previous comments the two intersection are to be linked as a network in the</i></p>

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Internal Referral Body	Comments
	<p><i>SIDRA modelling.</i></p> <p><i>The development application cannot be assessed based on the information provided, therefore is not supported on traffic grounds.'</i></p> <p><b>Assessment Officers Comments:</b></p> <p>Council's Traffic Engineer cannot support the application in its current form due to insufficient information. As detailed above these issues and the request for additional information have been made to the applicant numerous times and to date the information submitted remains insufficient. Therefore the application is not supported on traffic grounds and this has been included as a reason for refusal.</p>
Waste Officer	The application has been reviewed by Council's Waste Officer who raises no objections to the development subject to conditions which could be imposed should the application be approved.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Dept of Transport (Roads and Maritime Services) (Dev. On Classified Roads)	<p>The application was referred to the RMS for concurrence in accordance with State Environmental Planning Policy (Infrastructure) 2007 and Section 138 of the Roads Act 1993.</p> <p>The RMS reviewed the proposal and provided its initial response by letter dated 18 April 2017. In this response the RMS granted its concurrence subject to a number of conditions to be included in any consent issued by the relevant consent authority.</p> <p>Upon receipt of this response and following its preliminary assessment of the application, Council's Traffic Engineer contacted the RMS to discuss its concerns with the application. Following this discussion the RMS agreed to revise their referral response issued on 18 April 2017.</p> <p>The following response was received from the RMS on 4 July 2017:</p> <p><i>'Further to Roads and Maritime's letter dated 18 April 2017, Roads and Maritime raises concerns regarding the right turn movements in and out of Queenscliff Road. Roads and Maritime requires the following information:</i></p> <p><i>"SIDRA network modelling for the intersections of Pittwater Road/Oliver Street and Pittwater Road/Queenscliff Road"</i></p> <p><i>The applicant is to provide SIDRA modelling out as well as "soft" copy of the model for review.'</i></p> <p>The applicant was advised of the concerns raised/additional</p>



External Referral Body	Comments
	<p>information requested by the RMS and Council's Traffic Engineer and provided the requested SIDRA modelling on 27 July 2017.</p> <p>The information was forwarded to the RMS for review and comment on 27 July 2017. The RMS reviewed the additional information and provided the following comments on 2 August 2017:</p> <p><i>'Thank you for your submission below, Roads and Maritime has reviewed the modelling files and does not support the development at this stage due to the following:</i></p> <ol style="list-style-type: none"> <li><i>1. There is no information provided about traffic survey such as date, time and surveyed volume. Also, it should provide more information about future demand forecast which generated from the new development and background growth</i></li> <li><i>2. The SIDRA modelling submitted is based on a Traffic Control Signal (TCS) layout that demonstrates a single 25m right turn lane into Oliver Street. The current TCS at Pittwater Road and Oliver Street has two right turn lanes turning into Oliver Street. As a result, the modelled single 25m left turn ba couldn't accommodate the right turn traffic, queue was spilling back and blocked the through traffic in the model. This will need to be amended and remodelled for Roads and Maritime to review.</i></li> <li><i>3. No filter right should be allowed in phase A due to dual right turn arrangement at site and hence it is a safety concern.</i></li> <li><i>4. Pedestrians crossing were allowed in A and C phase only. No pedestrian crossing allowed in phase B</i></li> <li><i>5. According to SCATS, the Intergreen time should be 7 seconds but it was set at 6 seconds in the models and cycle time should be at 90 seconds in AM Peak (8-9am) and PM (5-6pm) Peak.'</i></li> </ol> <p>The RMS referral responses have been attached to this report (Appendix 2).</p> <p>As detailed above insufficient information has been submitted by the applicant to demonstrate that the development will not have an adverse impact on the local road network and therefore the RMS does not support the application in its current form. This has been included as a reason for refusal.</p>

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.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 31 January 2017 and prepared by Geo-Environmental Engineering. In its conclusion, the investigation states:

*'Based on observations made during the field investigations, the sampling and analysis program conducted at the site, the proposed land-use and with respect to relevant statutory guidelines, GEE conclude that there exists some localised PAH contaminated fill material in the vicinity of BH09. In this regard, the site is not currently suitable for the proposed child care centre and further assessment and/or remediation is warranted.'*

*'Considering the contamination appears to be an isolated occurrence, further assessment could be completed in the form of a risk assessment to determine the actual health thresholds rather than the conservative first tier (or screening) levels provided herein. This may or may not conclude that the concentrations of PAHs and TRH are in fact suitable. Alternatively remediation may be completed, such as excavation of the contamination and off site disposal at a suitably licenced landfill facility. If the latter option is chosen then in accordance with SEPP55 (reference 1), a Remedial Action Plan (RAP) will be required to detail the remediation measures and the controls required to ensure that the site is made suitable for the proposed development.'*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations.

A Phase 2 Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation could be included as conditions of consent should the application be approved.

## SEPP 71 - Coastal Protection

### Requirements under SEPP 71 – Coastal Protection

The proposal has been identified as being located within a Sensitive Coastal Location as identified on the Coastal Zone map gazetted on the 18 November 2005. Accordingly, pursuant to Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979, the provisions of State Environmental Planning Policy No.71 – Coastal Protection are to be considered.

The proposed development is consistent with the aims of SEPP 71 and will not result in any unreasonable impacts on the nearby coastal environment.

### 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### Warringah Local Environment Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	9m	10.46m	16.22%	No

#### Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	N/A
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### **4.6 Exceptions to development standards**

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	9m
Proposed:	7.5m to 10.46m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	16.22%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

#### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

#### Comment:

Surrounding and nearby development is comprised of a mix of industrial buildings and medium density residential developments of varying heights and scales. Development to the east of the subject site, a residential flat building, sits on a rock platform above the development site. The finished floor level of

habitable areas of this development are higher than the roof level of the proposal allowing for a suitable transition from the subject site to the adjoining development to the east following the natural topography.

The overall scale and height of the building is consistent with the surrounding and nearby development located within the industrial zone and with the scale of nearby medium density development. The development will sit comfortably within its context and will not be visually dominant by way of height or scale.

Therefore, the proposed building is compatible with the height and scale of surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The development is largely compliant with the numerical requirements of this Development Standard. The non-compliance is contained to the rear portion of the building footprint, which due to the topography of the area (natural rock outcrops and overhangs), will be largely unseen from the public domain and surrounding properties.

The non compliance relates to the lift overrun and the roof structure proposed over the outdoor learning area on the second floor of the development. The lift overrun is a minor and localised addition to the roof form and is centrally located within the building footprint. The roof structure over the outdoor learning area is open in nature which effectively reduces the visual bulk of this element of the building when viewed from adjoining properties.

The properties to the east are elevated in nature due to the aforementioned topography of the area and have a finished floor level on the ground floor that is higher than the roof level of the outdoor play area. Therefore the non compliance does not result in any disruption of views, loss of privacy or solar access to or from the these properties. Properties to the south of the development site area orientated to the south and west and the non compliance will have no impact upon the views, privacy or solar access provided to these properties.

The development has been designed to have minimal visual impact when viewed from the public domain and adjoining properties and satisfies this objective.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

The development will not have an adverse impact on the scenic quality of Warringah's coastal or bush environments. The development provides appropriate landscaping and landscape elements that include a mix of native and exotic species and will increase the provision of landscaping on site.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The development is considered to be consistent and compatible in its context and relationship with that of surrounding medium density developments and industrial buildings located along the Pittwater Road 'pocket' industrial area.



Further, The development provides areas of landscaping within the side, rear and front setback areas which will act to reduce the visual appearance of the building.

## **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the IN2 Light Industrial zone.

### The underlying objectives of the IN2 Light Industrial zone

- *To provide a wide range of light industrial, warehouse and related land uses.*

#### Comment:

The proposed development, while not a light industrial or warehouse land use, is a permitted land use within the IN2 Light Industrial zone. The proposed development will compliment the existing and surrounding light industrial uses in the area and does not restrict further light industrial, warehouse or related land use development in the area.

- *To encourage employment opportunities and to support the viability of centres.*

#### Comment:

The proposed childcare centre will provide additional employment opportunities in the area.

- *To minimise any adverse effect of industry on other land uses.*

#### Comment:

The proposed use is not a type of industry. The childcare centre has been designed to reduce any internal amenity impacts (acoustic) that may arise from surrounding industrial land uses.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

#### Comment:

The proposed childcare centre will provide a facility and service that will meet the day to day needs of workers in the area.

- *To support and protect industrial land for industrial uses.*

#### Comment:

The proposed childcare centre is a permitted land use within the zone and does not restrict further industrial development on industrial land in the area.

- *To maintain the industrial character of the land in landscaped settings.*

#### Comment:

The proposed development has been designed to incorporate areas of landscaping that represents and improvement on the overall provision of landscaping on site and establishes a suitable landscape setting. Landscape areas are proposed along all street frontages of the site and along the northwestern side boundary.

## **Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(1) The objectives of this clause are as follows:

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

### Comment:

The proposed variation is consistent with this control as it provides an appropriate degree in flexibility in applying the Height of Buildings Development Standard to the development.

The proposed variation will achieve a better outcome for and from the development by allowing an open and covered outdoor learning area for the use of children at the childcare centre in a building form that is compatible with surrounding and nearby development and that does not result in any unreasonable visual or amenity impacts.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

### Comment:

The applicants written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development as follows:

- *'The non-compliance is limited to a minor exceedance of the 9 metre building height as it cuts through the top of the roof, with the vast majority of the building sitting comfortably within the height standard and the established streetscape.*
- *The height, bulk and scale of the building is entirely consistent with the built form characteristics established by surrounding development, given the sites prominent corner location and employment nature of the proposed development.*
- *Despite the variation proposed to the building height control the proposed building does not*

- exceed the height of the rock outcrop to the north eastern boundary of the site;*
- The top of the roof, which exceeds the maximum height limit does not result in any adverse impacts on the amenity of the adjoining, adjacent or properties within the sites visual catchment in terms of solar access, visual bulk, privacy and views.*
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I am of the opinion that the impacts arising from the building height to neighbouring dwellings are acceptable and that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.*
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design. The development is considered to be of design merit, particularly when considered in its context.*
- Having regard to Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 1009 and clause 4.6 (3) (a) of SLEP 2012 I am of the opinion that compliance with the height of building standard at Clause 4.3 of PLEP 2014 is unreasonable and unnecessary in the circumstances of this application and the site given the relationship of the proposed height of the building to its neighboring sites; the absence of environmental impacts associated with the loss of view or sunlight access to neighboring dwellings.'*

It should be noted that the applicants submission refers to 'SLEP 2012' and 'PLEP 2014' when providing justification for the contravention of the development standard. For the purpose of this assessment, no consideration has been given to these reasons for justifying the development standard as these planning instruments do not apply to the development application.

Notwithstanding the above, the applicants written request has satisfactorily addressed the matters required under Clause 4.6 of WLEP 2011 and in doing so has provided an assessment of the proposal against the objectives of the IN2 Light Industrial zone and Clause 4.3 - Height of Buildings Development Standard under WLEP 2011. The applicants written request is therefore valid and can lawfully be relied upon to vary the Development Standard.

As detailed throughout this Clause, the assessment of the proposed variation against the provisions of this Clause concurs with the reasons provided by the applicant. The breach is minor in its extent and does not cause any unreasonable visual impact when viewed from adjoining properties or the public domain. The building is compatible with the height and form of surrounding and nearby development and will fit comfortably within its surroundings. The overall design of the building is of a high quality and will improve the quality of the Pittwater Road and Queenscliff Road streetscapes.

For these reasons the variation is supported in this instance.

(4) Development consent must not be granted for development that contravenes a development standard unless:

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

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The applicants written request (prepared by Boston Blyth Fleming and dated February 2017) has adequately addressed the matters required to be demonstrated by subclause (3).

In doing so, the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standard.

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

## Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the IN2 Light Industrial zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

## Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks (North-west)	Nil	Ground Floor - 0.62m First and Second Floors - 0.9m	N/A	Yes
B7 Front Boundary Setbacks	4m to both street frontages	Pittwater Road - 4m to 4.2m	N/A	Yes
		Queenscliff Road - 3.53m to 4m	11.75% (0.47m)	No
B9 Rear Boundary Setbacks	N/A - Corner allotment	N/A	N/A	N/A

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	No	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Appendix 1 Car Parking Requirements	Yes	Yes

## Detailed Assessment

### **B7 Front Boundary Setbacks**

#### Description of non-compliance

The control requires development to be setback a minimum of 4m from the front boundary. The boundary of the site in the north western most corner returns from its alignment to the street frontage at a 45 degree angle and as a result the ground, first and second floors of the development have a nil setback to the front boundary in this location.



As the building extends to the south/south west it reaches full compliance with the minimum 4m setback requirement.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The ground floor car parking area does not include any enclosing walls and is therefore open in nature. The enclosing walls of the building are located on the floors above and the non compliance is contained to the north western corner of the development foot print, not readily view-able from the street due to the angled boundary and existing adjoining development. The development is largely compliant with this minimum setback required under this control and provides landscaped front boundary setback areas free of any structures.

In this regard, the development will maintain a sense of openness across the front boundaries of the site.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed setback to the ground floor car parking area is consistent with setback to car parking areas of surrounding development along Pittwater Road. The non compliance at the first and second floor levels is contained to a small portion of the building footprint in the north western corner of the site. This portion of the building is not readily view-able from the street or public domain and is obscured from view by the existing development to the north west.

The introduction of landscaping areas within the front boundary setback areas represents and improvement in the provision of landscaping on site and provides a suitable landscaping setting. In this regard, the development maintains the visual continuity and pattern of buildings and landscape elements.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The development includes substantial areas of landscaping within the front setback areas along the Queenscliff Road and Pittwater Road street frontages. These areas of landscaping represent an improvement on the overall visual presentation of the development site when viewed from the street and public spaces. Therefore the development will enhance the visual quality of the Pittwater Road and Queenscliff Road streetscapes and surrounding public spaces.

- *To achieve reasonable view sharing.*

Comment:

The development allows for a reasonable sharing of views.

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 section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **C2 Traffic, Access and Safety**

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise traffic hazards.*

#### Comment:

As detailed throughout this report, insufficient information has been submitted with the application to demonstrate that the proposed development will minimise traffic hazards.

The development does not satisfy this objective.

- *To minimise vehicles queuing on public roads.*

#### Comment:

As detailed throughout this report, insufficient information has been submitted with the application to demonstrate that the proposed development will minimise vehicles queuing on public roads.

The development does not satisfy this objective.

- *To minimise the number of vehicle crossings in a street.*

#### Comment:

The development reduces the amount of crossings in the street by two and therefore satisfies this objective.

- *To minimise traffic, pedestrian and cyclist conflict.*

#### Comment:

The development will not result in traffic, pedestrian and cyclist conflict.

- *To minimise interference with public transport facilities.*

#### Comment:

The development will not cause any interference with public transport facilities.

- To minimise the loss of "on street" kerbside parking.

Comment:

The development reduces the amount of crossings in the street by two and therefore does not result in any loss of 'on street' kerbside parking.

The development satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## Appendix 1 Car Parking Requirements

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Childcare centre	1 space per 4 children	132 children - 33 spaces	33 spaces	N/A
<b>Total</b>				

Clause C3 of WLEP 2011 requires that adequate off-street car parking is to be provided within the subject property boundaries in accordance with the use provisions of Appendix 1.

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 section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal could be supported, in this particular circumstance. Should the application be approved appropriate conditions of consent relating to the allocation of spaces could be imposed.

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

## 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

In particular, this assessment has found that the development, as proposed, raises fundamental traffic concerns with proposal and is inconsistent with Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.

The application is not supported by Council's Traffic Engineer or the New South Wales Roads and Maritime Services (RMS) on traffic grounds. In summary, insufficient information has been submitted with the application to demonstrate that the proposed development will not result in adverse impacts on the local road network and therefore cannot be supported in its current form. To this extent the subject site cannot be considered suitable for the proposed development.

The development application attracted a total of 21 submissions as a result of the public exhibition process. All of the 21 submissions received opposed the development and raised traffic as a fundamental concern. To this extent the proposal in its current form cannot be considered to be in the public interest.

As a direct result of the application and the consideration of the matters detailed within this report it is recommended that the Sydney North Planning Panel (SNPP), as the consent authority, refuse the application for the reasons detailed within the "Recommendation" section of this 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 Sydney North Planning Panel, as the consent authority REFUSE Development Consent to Development Application No DA2017/0097 for the Demolition Works and Construction of a childcare centre on land at Lot 3 DP 653642,376 Pittwater Road, NORTH MANLY, Lot 2 DP 653813,374 Pittwater Road, NORTH MANLY, Lot 1 DP 740129,368 Pittwater Road, NORTH MANLY, for the reasons outlined in Attachment 1.

**ATTACHMENT 1**

1. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979 the site cannot be considered to be suitable for the development as insufficient information has been submitted with the application to demonstrate the the development will not have an adverse impact on the local road network.
2. Pursuant to Section 79C(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)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause C2 - Traffic, Access Safety of the Warringah Development Control Plan 2011.
4. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest as the application has failed to demonstrate that the traffic impacts from development will not have an adverse impact on the local road network.