

## COUNCIL ASSESSMENT REPORT

Panel Reference	2018SNH053
DA Number	DA.296/18
LGA	North Sydney
Proposed Development	Integrated Development - Subdivision into 2 lots; demolition of existing buildings; construction of child care centre for 100 children; construction of new dwelling; landscaping and tree removal.
Street Address	12A Shirley Road, Wollstonecraft
Applicant/Owner	Mike and Shan Pty Ltd and Invas Investments Pty Ltd
Date of DA lodgement	13 September 2018
Number of Submissions	318 letters and petition with 140 signatures
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital Investment Value (CIV) exceeds \$5 Million - Community Facility
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• Rural Fires Act 1997</li> <li>• State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>• State Environmental Planning Policy No.55 Remediation of Land (SEPP 55)</li> <li>• Sydney Regional Environmental Plan (SREP) (Sydney Harbour Catchment) 2005</li> <li>• North Sydney Local Environmental Plan 2013</li> <li>• North Sydney Development Control Plan 2013</li> </ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>• Plans</li> <li>• Correspondence from Rural Fire Service</li> </ul>
Report prepared by	Geoff Mossemeneer, Executive Planner
Report date	25 February 2019

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **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, refusal recommended**

## EXECUTIVE SUMMARY

This development application seeks approval for Integrated Development comprising: Subdivision into 2 lots; demolition of existing buildings; construction of child care centre for 100 children; construction of new dwelling; landscaping and tree removal.

Council's notification of the proposal attracted 318 letters and a petition with 140 signatures submissions raising particular concerns about:

- Bulk and scale.
- location of the proposal inappropriate to the area
- impact on surrounding dwellings.
- zoning of the site.
- Inappropriate for a commercial venture of such scale to be proposed at that location.
- Concerns over site location and increase to traffic and parking impact, inadequate parking provision on site or lack of functional pick up and drop off zone on site.
- Distance of the site from Wollstonecraft station appears to be unfeasible to service proposal. There are no other public transport options for the locality.
- Concern over impacts to surrounding bushland. Inappropriate fire escape
- Excessive amount of excavation proposed.
- Concern raised to the centre utilising the Berry Island Park for their own uses.
- Concern of level of noise from the centre (number of children, location etc)
- Proposal will impact upon the peaceful enjoyment of the suburb by the local residents
- Concern over impact to the adjoining heritage item at 8 Shirley Road.

Following a detailed review of the development application and consideration of the numerous submissions received in response to notification of the application as well as the adverse recommendations from internal specialist referral officers and the comments of Council's Design Excellence Panel, there are a number of issues identified with the application that are unacceptable. These issues include fire safety, bulk and scale, loss of trees and natural features, excavation, excessive site cover, heritage and traffic impacts.

Due to the significance of the issues identified, the current proposal cannot be supported. The level of amendments required in order to address the issues raised would be so substantial that the proposal would be a new development application. Furthermore, the subject proposal is so fundamentally unsupportable that Council would not accept amendments to the subject proposal. The site may not be appropriate for any size child care centre. The scale of the proposed development is considered to be an unrealistic expectation for the site. The topography and location of the site are critical constraints that have not been respected.

The proposal is integrated development. The NSW Rural Fire Service has not granted approval to the proposal then pursuant to Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, the Panel has no alternative but to refuse the application

The assessment has considered the above concerns as well as the performance of the application against the planning requirements.

The development application is recommended for **refusal** due to lack of integrated approval from RFS; the bulk and scale of the buildings; the amount of excavation; the site cover and inconsistency with the objectives of the E4 Environmental Living Zone. The proposed does not satisfy Clause 5.10 of NSLEP 2013 and the proposal does not comply with Part B Section 13.4 or the Landscape Controls in Part B Section 1 of NSDCP 2013. The proposal does not satisfy a number of the matters for consideration in Part 3 of the Child Care Planning Guideline under SEPP Education and Child Care; and will result in adverse parking and traffic impacts in the surrounding area.

## DESCRIPTION OF PROPOSAL

This application seeks approval for the following works:

- Subdivision of the site from one lot, into two lots: Lot 23 – Childcare Lot (1258.5m<sup>2</sup>) and Lot 24 – Residential Lot (450.2m<sup>2</sup>)
- Demolition of the existing built form on the subject site and site preparatory works including excavation, site remediation and tree removal.
- Construction of a new childcare centre for 100 children on the northern portion of the site.
- Construction of a new residential dwelling home on the southern portion of the site, including a separate driveway and car parking.
- Vehicular access to the childcare centre from Shirley Road and provision of 23 car parking spaces in the undercroft of the child care centre.
- Landscape embellishments (including tree removal)



Source: Tekton

## STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – E4 Environmental Living, North western corner of the site is E2 Environmental Conservation
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes
- Conservation Area – No
- Height limit – 8.5 metres
- Minimum Lot size for new allotments – 450 m<sup>2</sup>

S7.11 Contribution

Environmental Planning & Assessment Act 1979

SEPP 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

Rural Fires Act 1997

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

## POLICY CONTROLS

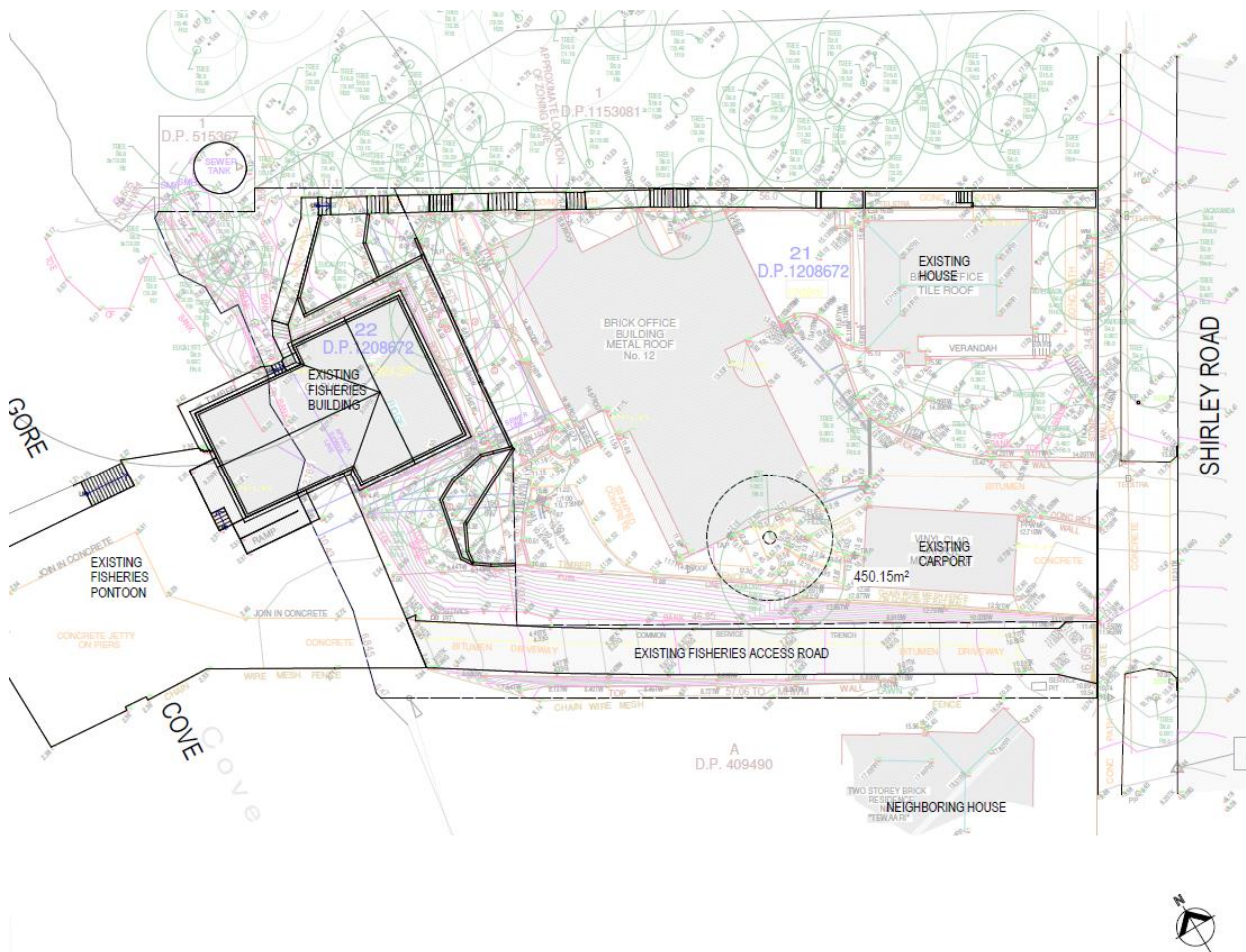
North Sydney DCP 2013

- Section 1 – Residential Development (for the proposed dwellings)
- Section 3 – Non-residential Development in Residential Zones (prevailing built form controls for the childcare centre)
- Section 5 – Child Care Centres
- Section 10 – Car Parking and Transport
- Section 11 – Traffic Guidelines for Development
- Section 13 – Heritage and Conservation (Heritage Impact Statement to address)
- Section 14 – Contamination and Hazardous Building Materials
- Section 15 – Bushland
- Section 18 – Stormwater Management

## DESCRIPTION OF LOCALITY

The subject site is located at 12A Shirley Road, Wollstonecraft, and is legally described as Lot 21 in Deposited Plan 1208672. The site is located on the western side of Shirley Road, between Milray Avenue and Berry Island Reserve. The site has a total site area of approximately 1712m<sup>2</sup>. The primary frontage of the site is along Shirley Road, which measures approximately 33 metres.

The site is characterised by a slope running south down Shirley Road, and a slope east-west across the site. The highest RL of the site from Shirley Road is RL17.14, whereas to the rear of the site the ground level is RL4.28.



Source: Tekton

The site is also located within bushfire prone land.



Existing on site are previously owned NSW Government offices (NSW fisheries) that are no longer in use. The subject site was previously part of a Torrens title subdivision application as well as a Planning Proposal for rezoning of the upper, subject lot from IN4 Working Waterfront to E4 Environmental Living. Approval of the subdivision was granted under DA 94/13 on 25 July 2014 and the corresponding gazettal of the rezoning occurring under NSLEP 2013 Amendment 3 on 23 May 2014

The property is not a heritage item nor is it within a conservation area, however, the adjacent dwelling at 8 Shirley Road is a heritage item and the Wollstonecraft Conservation Area is located just north of the subject site, separated by a strip of reserve. Development surrounding the subject site is generally low-density residential containing detached dwellings on large lots. The site is surrounded by Environmental Conservation areas with Berry Island Reserve to the south, Gore Cove Reserve to the north, and Badangi Reserve to the east.

Across the Gore Cove to the west is the Shell Gore Bay Terminal currently used for fuel storage.



Source: SEE

## RELEVANT HISTORY

2017SNH036 - DA 112/17 was lodged on 4th April 2017, seeking consent a subdivision into two (2) lots, demolition, excavation, and construction of a child care centre for 154 children and a new detached dwelling, landscaping and tree removal.

During the assessment of DA 112/17, Council requested additional information to assist the assessment process, and the development application was forwarded to the North Sydney Design Excellence Panel for review on 9th May 2017.

Following Council's assessment of DA 112/17 and feedback from the Design Excellence Panel, Council issued a letter on 31 July 2017 advising the application was unsupported. As such, DA 112/17 was formally withdrawn by the applicant on 14 August 2017.

## Current Application

Following a detailed review of the development application and consideration of: the numerous submissions received in response to notification of the application; the adverse recommendations from internal specialist referral officers and the comments of Council's Design Excellence Panel, there are a number of issues identified with the application.

Due to the significance of the issues identified, the current proposal cannot be supported. The level of amendments required in order to address the issues raised would be so substantial that the proposal would be a new development application. Furthermore, the subject proposal is fundamentally unsupportable in the circumstances that Council would not accept amendments to the subject proposal.

The applicant was advised by letter dated 14 December 2018 of all of the above concerns and invited to withdraw the application otherwise a refusal recommendation would be tabled to the Sydney North Planning Panel. The applicant has not withdrawn the application and has requested the application be determined.

## CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$5 million for private community infrastructure such as a child care centre, the consent authority for the development application is the Sydney North Planning Panel. The CIV is \$5.1 million.

## REFERRALS

### Building

The proposal would have to comply with the National Construction Code of Australia. A condition can be imposed to ensure compliance should consent be granted.

### Health

Council's Environmental Health Team Leader has provided the following comments:

*.... looked at the Remediation Action Plan pertaining to the site and note that provided the provisions of the Plan are followed and the remediation works are validated, that the site will be suitable for the intended use. I have attached some recommended conditions for your consideration.*

*I have read the Marshall Day acoustic report pertaining to this development and note the following:*

*The report advises that noise criteria will be met provided the recommendations contained within the report are adopted. Along with the recommendations for sound barriers and the like, it is also recommended that a Plan of Management be adopted to ensure staff & parents are mindful of neighbouring residents and that crying/screaming children are attended away from the outdoor area. Amplified music is not to be permitted in the outdoor areas.*

*Mechanical plant has not been selected as yet but the standard C condition requiring all mechanical plant in use at the premises to be no more than 5db above back ground should be adopted along with the I condition of ongoing noise compliance.*

*I don't know if the proposal is to prepare food on site or have it delivered daily. I have included a clause for mechanical ventilation to be certified but this might not be relevant if a commercial kitchen exhaust is not proposed.*

*Council's standard conditions allow for waste collections and deliveries from 6am. It is likely that several waste collections per week would be required for a premise of this capacity.*

*I have added a clause re: the possibility of requiring a trade waste license from Sydney Water. This is under the assumption that the waste water from the two premises proposed for the site have pump out facilities to transfer waste water to sewer. This is to be confirmed by the applicant.*

## **Heritage**

Council's Conservation Planner has provided the following comments:

*The property is not listed as a heritage item, nor is it located within a Conservation Area*

*It is located immediately to the north of a heritage item, listed within NSLEP 2013, being 'Te Waari', 8 Shirley Road, significant for being 'a good example of a large residence in the Federation Arts and Crafts style with interesting details and in a prominent and important location. The house is located on a spectacular site, adjacent to Berry Island, overlooking the bay front and back. Significant garden setting and interiors.'*

*It is located immediately to the south of a heritage item, listed within NSLEP 2013, being the Wollstonecraft Foreshore Reserves (Badangi Reserve and Gore Cove Reserve), which is listed as a landscape/bushland heritage item within NSLEP 2013, significant for being an 'important foreshore reserve which, despite some expected weed and exotic plant intrusions, remains relatively intact and original. It contains one of the best, naturally occurring stands of Forest Red Gum on a foreshore reserve in Sydney. Some unidentified building remains add interest'. This is also currently under assessment for State Heritage Listing having been nominated by the Australian Institute of Landscape Architects.*

*The site is also located in the near vicinity of Berry Island Reserve, also listed as a landscape/bushland heritage item with NSLEP 2013, significant for being 'an unusual topographical feature on Sydney Harbour. It's natural vegetation, protected from weed invasion by relatively isolation and freedom from run off from urban areas, is amongst the most delightful and important harbourside bushland'. This site is also currently under assessment for State Heritage Listing having been nominated by the Australian Institute of Landscape Architects.*

*The site is opposite Holloway Reserve located at Vista St Greenwich which is not currently heritage listed but forms part of the State Heritage Assessment for the Foreshore Harbour Bushland. This bushland is contiguous with the Gore Cove Bushland and therefore cannot be considered in isolation even though it is located in the Lane Cove Municipality. Significant harbour and bushland views across Gore Cove are taken from bushland tracks in Holloway Reserve to Berrys Island and Gore Cove Reserve and vice versa.*

### **Heritage Assessment**

*The proposed development at 12 Shirley Road, Wollstonecraft has been assessed in relation to Part 5 Clause 5.10 (Heritage Conservation) of the North Sydney LEP 2013 and Section 13 (Heritage and Conservation) of the North Sydney DCP 2013.*

**a) Impact to 8 Shirley Rd** -*The proposal constitutes a significant increase in the scale of the development on the property, in terms of density, height, bulk and scale. The proposed childcare centre has an articulated massing but has a very wide frontage compared to the heritage-listed dwelling. The accumulative impact*

*of the character of the proposed childcare centre and proposed dwelling is inconsistent with the traditional residential character of the heritage item due to the extensive use of hardscape with the driveways, garbage store, pump room, entry structures, retaining walls and high front fencing. The excessively large development will therefore detract from the setting of the heritage listed dwelling at 8 Shirley Rd as well as impact on the public appreciation of the house in its wider context. The frontage of the childcare centre should be stepped down the hill. Its massing at the rear should be reduced.*

**b) Impact to Wollstonecraft Foreshore Reserves** - *The proposed development will also have a detrimental impact on the heritage listed Wollstonecraft Foreshore Reserves, due to the minimal setbacks from the Reserve, lack of proposed new soft landscape, particularly on the northern and western boundaries. Two parts of the bushland Reserve are currently separated by Shirley Road, but are visually linked by the tree canopy and unobstructed views to and from each part, with similar links to Berry's Island Reserve immediately to the south. The proposed development would fundamentally alter the suburban bushland setting of the Reserves, and impact on its significance due to the urban character of the development, the lack of proposed canopy, lack of bushland buffer. An amended proposal should seek to have a landscape setting:*

- That is visually dominant that assists in linking the bushland sites in terms of bio-diversity and visual aesthetics.*
- The centre should be setback 10m from the northern boundary to provide a bushland buffer and*
- Should provide a 10 m soft landscape setback on the western boundary to provide a soft landscape setting so that when viewed from the opposite shore, the vegetation appears linked from Berrys Island through to Gore Cove Reserve. This is significant as these two reserves are seen from the lookout at the southern end of Vista St Greenwich at Holloway Reserve. This bushland at Holloway Reserve also forms part of the proposed State Heritage Nomination with Gore Cove Reserve, Badangi Reserve and Berrys Island Reserve and must be considered.*
- The massing at the rear should be reduced to assist in reducing the visual impact of the development in the context of the heritage-listed reserves.*

## **CONCLUSION**

*The proposal is therefore UNSUPPORTABLE with regard to heritage. Clause 5.10 of NSLEP 2013 is not satisfied and the proposal does not comply with Part B Section 13.4 of NSDCP 2013.*

- The proposal has detrimental impacts to the setting and character of the heritage listed dwelling and 8 Shirley Rd.*
- The proposal has detrimental impacts to the setting and character of the heritage-listed Wollstonecraft Foreshores Reserves including Bagangi Reserve, Gore Cove Reserve and Berrys Island Reserve. It should also be noted that these reserves are currently under assessment for State Heritage Listing.*
- The proposal has detrimental impacts to bushland views of Berrys Island and Gore Cove Reserve taken from the nearby Holloway Reserve which is currently being assessed for State Heritage Listing and is contiguous with Gore Cove Reserve. This reserve offers views to the western portions of the subject site in the context of the bushland.*

Comment: The above comments are supported, the proposal is visually dominant and does not have a landscape setting. The rear setbacks are unsatisfactory.



## Traffic

Council's Traffic Engineers have reviewed the subject proposal's potential traffic generation and have concluded that the site is inappropriate for a childcare centre, particularly of the proposed size due to restricted road widths along Shirley Road and potential impacts on parking. Any proposed development should be designed based on the prevailing road conditions.

Although the parking provisions for the proposed child care centre might be accommodated on site, the proposal will potentially result in the removal of up to 14 parking spaces during peak periods in the narrow section of Shirley Road, north of Cable Street. The removal of on-street parking essentially as a result of one private development means that a public resource is being taken away from the community as a whole and given to one private and commercial interest. The parking layout involves two dead end parking areas that do not allow for a continual one-way flow to avoid conflict with parents/carers entering and leaving the carparks. The use of on street parking may well be favoured to avoid this conflict.

The volume of traffic on Shirley Road between Telopea Street and Tyron Avenue will increase by up to 62% during peak periods as a result of the proposed development. While the projected traffic volumes maybe within the environmental capacity for a local road, it is a significant increase as a result of a single development and would be widely felt by residents.

There is a section of Shirley Road approximately 130 metres long where the road narrows to a single lane. Opposing vehicles must give way to each other either by waiting on approach to the narrow section or pulling over into a vacant area in front of a driveway. With the current traffic volumes on Shirley Road, the probability of two vehicles arriving at the same time (in either direction), including any vehicles already travelling along the narrow section is relatively low. Notwithstanding this, Council does occasionally receive concerns from residents when this does occur and suggestions to remove parking to provide two travel lanes. With the predicted increase in traffic generated by the proposed childcare centre, the probability of more than two vehicles arriving at the same time (in either direction), is 35%. In other words, around a third of the time, vehicles travelling through this section are likely to encounter an opposing vehicle. This is likely to exacerbate the perceived issues. The applicant has suggested time restricted No Parking on one side of the road and/or warning signs to mitigate these issues. Removal of parking at this location is not desirable as this will increase demands on parking elsewhere in Shirley Road which is already in high demand due to its close proximity to the Wollstonecraft Train Station (200 metres) to the disadvantage of local residents.

There would be a significant increase in traffic on Shirley Road south of Tyron Avenue, however it is noted that traffic volumes are currently very low due to the limited number of residential properties that have direct access from this road. Notwithstanding the dramatic increase in traffic as a result of this development would be felt by residents. The road is only 8 metres wide at this point, which is only wide enough for a single travel lane and parking on both sides of the road. The applicant has suggested time restricted No Parking on one side of the road to facilitate two-way flows during drop-off and pick-up periods.

Council's Traffic Engineers would not support the removal of parking should a request be referred to the Local Traffic Committee.

The scale of the centre is excessive and the number of children proposed would generate an unacceptable and significant increase in traffic. The site is located at the end of the road with virtually one way in and one way out once the vehicles cross over the railway at Wollstonecraft station. The numbers would have to be significantly less to be acceptable with regard to traffic. The other issues that need to be resolved would result in a substantial reduction in the scale of the building. It may well be that the site and zoning is unsuitable for any scale of child care centre.

## Community Development

Council's Manager of Community Development has reviewed the proposal and has requested further information and clarification on the following:

- Information about the centres soft fall to be provided or more detail required on ramp heights and gradient within the children's playground and if soft fall is required.
- Further clarifications on the play frames within the outdoor environment such as height of the play frames and are the frames fixed equipment. Depending upon the height, these may or may not require soft fall underneath.
- Appropriate sleeping facilities are to be provided for all children. It appears limited sleeping facilities have been provided for children under the age of 2 years.
- Information has not been provided regarding the storage of children's beds and if this storage will impact on the unencumbered play space allowed for children aged 0 to 2 years.
- Clarification on the emergency evacuation routes and methods for evacuating all children from the centre.

Information has not been provided regarding a safe haven for children, to assist with the safe evacuation of younger children, especially those children with a disability or limited mobility. It is recommended that the 'safe haven' area is clearly noted on the plans so that the plans can be assessed in conjunction with the provided Emergency Evacuation Plan.

An emergency evacuation plan (Emergency Response Procedures) has been provided however the plan does not detail how the children staff and visitors are to be evacuated from the building.

***As the evacuation may involve the evacuation of up to 40 children, who are non-mobile or have limited mobility, further clarification is sought regarding how this number of children are to be evacuated from the building in a safe and efficient manner.***

Due to the nature of the services, the Bush Fire Performance Solution Report also suggests a specific Bushfire Emergency/Evacuation Management Plan is to be developed.

This plan has not been provided in the application.

It is noted that the Rural Fire Service has not endorsed or approved the Bush Fire Performance Solution Report.

## Landscaping

Council's Landscape Officer has commented:

*The proposal is considered to UNSUPPORTABLE in its current form. No objection is raised to the removal of Tree Nos 15, 16 and 23 as these are either dead or are weed species and should be removed irrespective of the development in accordance with the arborist's assessment.*

***The proposal does not comply with the Landscape Controls in Part B Section 1 of NSDCP 2013. The following controls are of note:***

***1.5.8 P2 Retain trees wherever practical:***

*The retention of the Port Jackson Fig, Tree 11 within the courtyard of the proposed dwelling is supported, however, it will result in issues relating to fruit bats and the dropping of foliage and figs. It would be preferable to retain this tree within a larger garden setting in a soft landscape. The proposed courtyard garden is considered inappropriate to the retention of the tree in a residential context.*

1.5.8 P9 Trees should provide at least 50% canopy cover over landscaped areas at maturity:

The proposal does not achieve this.

1.5.9 O2 To soften the built form:

The proposed front setback does not respond to the low density residential landscape character of the street. The proposal is non-compliant.

1.5.9 P3 Allow private gardens to merge with those adjoining and support the landscape character of the area:

The proposed front private garden of the proposed dwelling will not visually merge with the vegetation in Badangi Reserve or the heritage landscape at 8 Shirley Rd as it is primarily a hardscape. The landscape proposal will therefore not support the adjacent landscape character and is non-compliant.

1.5.9 P4 Plant trees and shrubs that will have over or through fences:

There are no trees proposed in the front setback of the proposed dwelling. The front setback of the proposed childcare centre similarly only relies on shrubs and groundcovers.

1.5.9 P6 Design front gardens that will soften and compliment the view of buildings from the street and surrounding properties:

See comments as per 1.5.9 O2. The proposal is non-compliant.

**The following controls have not been satisfied in Section B5 Childcare Centres of NSDCP 2013:**

5.3 Siting – Objective O1 – To provide access to naturally landscaped outdoor play areas:

The outdoor play areas do not provide full access to natural areas. The planting on the Ground level will be largely undercover on slab, so it is not understood how these plantings will actually survive. Similarly, Level 2 outdoor play areas are all on artificial surfaces. The plantings are presumably in planters. There are no species schedules, plant numbers or pot sizes provided. The plan is only conceptual.

5.3 O2 (g) Outdoor areas are oriented to the north to maximise solar access and natural light and views:

The outdoors areas are non-compliant as they generally face west.

**The following controls in Part B Section 15 Bushland have not been satisfied:**

Section 15 Bushland – 15.2.1 P1 Development located within Area A as shown on the Bushland Buffer Map that adjoins or is adjacent to land zoned E2- Environmental Conservation must be setback a minimum of 10m from all bushland boundaries:

The proposal does not comply as the proposal does not provide the 10m setback. In addition, the proposed plant species, numbers and locations have not been specified.

**The following controls in Part B Section 16 Tree & Vegetation Management are not complied with:**

16.1.1 O2 maintain the visual, social and environmental amenity of the area through the preservation of trees and other vegetation:

The proposal does not comply as Trees 5, 8, 10, 12, 13, 14, 17, 18, 19, 20 and 21 are proposed for removal due to construction impacts. The proposal does not retain trees that have been identified by the arborist as worthy of retention. The existing trees have therefore not informed the building footprint. An amended proposal should seek to retain trees identified by the arborist as being greater than 10 m in height and/or worthy of retention. Specifically, Tree Nos 5-Cheese Tree, 8 -Swamp She Oak, 20 -Willow Bottlebrush, 22-Lemon-scented Tea Tree, 24- Native Frangipani, 29 -Photinia Street

Tree and 30- Photinia Street Tree. The latter two trees are Council's assets and should be retained. In addition, canopy pruning of trees with the bushland area may have to occur to allow the development to proceed. This is not supported and is one of the reasons for a bushland buffer zone.

The proposal will have more of the hardened landscape character of a high density residential development as it is characterised by paving, driveways, garbage storage, a hydrant and entry structures rather than adopting the character of the residential streetscape. An amended proposal should have a soft landscape frontage.

16.1.1 O7 Minimise the risk of injury to people or damage to property from trees and vegetation:

The species *Glochidion ferdinandi* (Cheese Tree) is believed to have poisonous fruit and may be an inappropriate species for a childcare centre. Adequate separation should be provided around the retained Cheese Trees on site and on the adjacent properties to ensure that there is an acceptable risk or evidence is to be presented that the Cheese trees does not present a risk to the children.

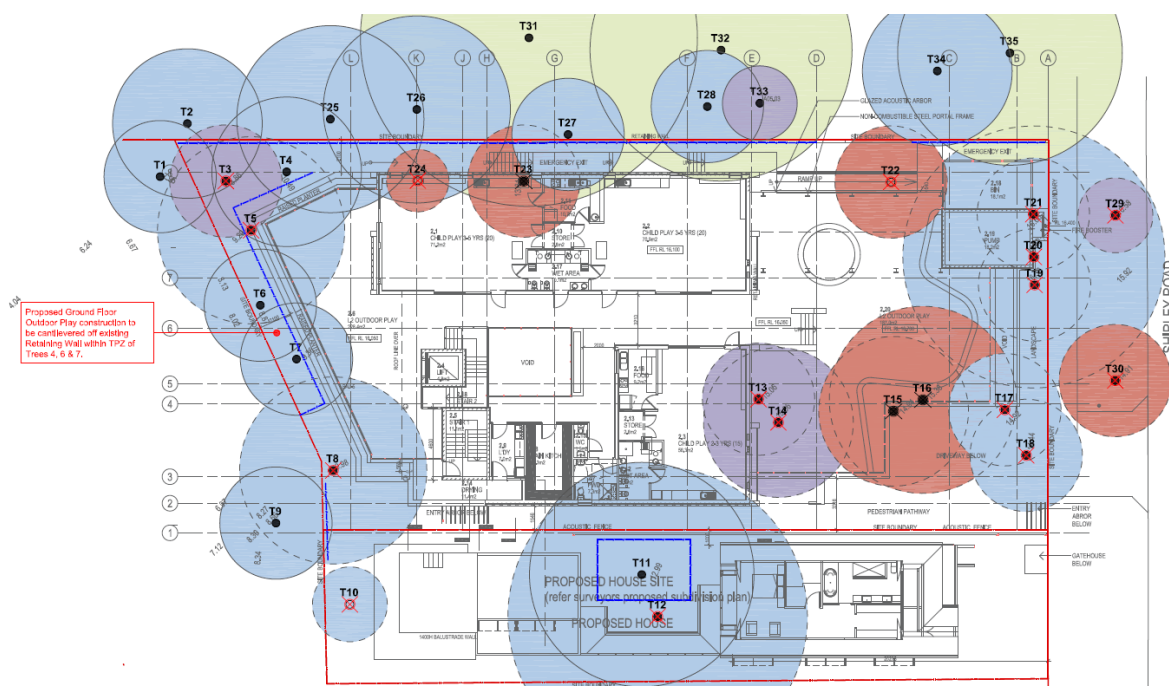
16.2.1 To maintain the visual, social and environmental amenity of the area:  
See comments as per 16.1.1O2.

16.5.1 O1-To ensure that the current level of canopy cover in North Sydney is maintained and enhanced:

The proposal results in the removal of 16 trees. Whilst fourteen trees are retained adjacent to the subject site including Tree 1 (Fisheries Dept), 2 (bushland), 9 (Fisheries Dept), 25 (bushland), 26 (bushland), 27 (bushland), 28 (bushland), 29 (street tree), 30 (street tree), 31 (bushland), 32 (bushland), 33 (bushland), 34 (bushland) and 35 (bushland), insufficient trees are to be retained on the subject site. Only four trees are retained on the subject site are retained, being: Trees 4, 6, 7 and 11. In addition, canopy pruning of trees within the bushland may be required for the development to proceed. An amended proposal should enhance the existing canopy cover on the sites.

16.5.1 O3:

To ensure species diversity or enhances the current urban character of North Sydney-The proposed development does not enhance the bushland biodiversity as there is limited landscaping in natural ground and the design has limited species numbers. An amended proposal should provide species diversity that is appropriate to the nearby bushland and enhance the character of Shirley Rd.



Source: Tree Wise Men

Comment: The above comments are fully supported. Trees 5, 8, 10, 12, 13, 14, 17, 18, 19, 20 and 21 are proposed for removal due to construction impacts. The proposal does not retain trees that have been identified by the arborist as worthy of retention. The existing trees have therefore not informed the building footprint. Any proposal should seek to retain trees identified by the arborist as being greater than 10 m in height and/or worthy of retention. Specifically, Tree Nos 5-Cheese Tree, 8 -Swamp She Oak, 20 -Willow Bottlebrush, 22- Lemon-scented Tea Tree, 24- Native Frangipani, 29 -Photinia Street Tree and 30- Photinia Street Tree. The latter two trees are Council's assets and should be retained. In addition, canopy pruning of trees with the bushland area may have to occur to allow the development to proceed. This is not supported and is one of the reasons for a bushland buffer zone.

The proposal will have more of the hardened landscape character of a high density residential development as it is characterised by paving, driveways, garbage storage, a hydrant and entry structures rather than adopting the character of the residential streetscape. Any proposal should have a soft landscape frontage.

## **Design Excellence Panel**

The Design Excellence Panel considered the proposal at its meeting of 13 November 2018. The comments and conclusion of the DEP are reproduced:

### ***Panel's Comments***

*Three of the current Panel were not present at the meeting when the previous unsuccessful proposal was reviewed, but noted that the number of child care spaces and the subdivision layout had changed. The Panel was informed of the minutes from the previous application. The Panel's comments are based on the current proposal on its merits and not as any comparison to the previous application.*

*The Panel noted the zoning as a low scale residential environmental zone.*

*The Panel felt that any non-residential development should be of a similar scale to residential development within the zone. Natural landforms and existing vegetation need to be protected as much as possible in any development. No analysis has been carried out of the existing rock outcrops on the site.*

*The Panel's primary concern is the intensity of use proposed for the site area and the resultant excessive size of development on both lots.*

*The Panel noted that the proponent claimed a site cover of 50% for the dwelling. The Panel doubted whether the figures were accurate and recommended that the applicant provide a plan showing the calculated areas for site cover, landscaped area and excavation. No figures were provided for the child care centre but given the size of the parking level, the site cover is obviously significantly greater than 50%. The Panel felt that 50% site cover is being generous as a guideline considering that for sites over 1000m<sup>2</sup> in a low density residential zone any development would have a site cover limit of 30%.*

*The Panel raised concern about the traffic impacts from a child care centre for 100 children.*

*The current design required parents to park in 2 separate parking areas with resultant conflicts on cars coming and going and trying to park. There needs to be a one-way basement circulation flow to prevent a traffic jam and subsequent stacking of waiting cars on both the ramp and Shirley Road.*

*The Panel was concerned about the removal of so many trees on site with little attempt to retain trees or replace them with suitable canopy trees. There was a lack of landscaping across the frontage and rear of the site. The design borrows from the*



surrounding area without providing adequate landscaping on the subject site. The retention of Port Jackson Fig in the courtyard of the proposed dwelling was questioned having regard to the known behaviour of Fig tree roots, and the removal of the large mature eucalyptus would be unfortunate.

The Panel was advised that Section 3.4.6 of the DCP sets out the site excavation controls. No more than 70% of the site should be excavated. Where practical, a minimum of 50% of the un-excavated area should be located at the rear of the site. A minimum of 30% of the un-excavated area should be located within the front setback and a minimum 1.5m wide strip of soft landscaped area should be located along at least one side boundary. The unexcavated areas should allow for deep planting. This matter, along with site cover and other guidelines were raised previously by the former Panel and still have not been addressed with the current proposal.

The Panel did not comment in detail on the proposed dwelling other than the site cover and impact on the Fig tree (or Fig tree on the dwelling). The Panel considered that the setback of the dwelling from the western Gore Cove boundary was inadequate, and would result in the building being unacceptably prominent when viewed from the harbour waterfront. It was also inconsistent with the setback of the heritage dwelling to the south and should be setback to reduce its dominance.

The Panel raised concern with the depth of play areas that were located below the basement carpark and covered on the lowest level, and the amount of light that would be achieved as a result. The four enclosed 'play areas' and associated facilities would inevitably have to rely entirely on artificial lighting and air-conditioning, which would be both unattractive and environmentally irresponsible. The effectiveness of the 'void' in providing natural light and ventilation even to the undercover 'outdoor' play spaces was also highly questionable, and it appeared inevitable that these areas would at least have to be provided with artificial lighting. The applicant should refer to North Sydney DCP section 5 and other applicable NSW legislation pertaining to child care centres, in particular requirements that outdoor spaces are exposed to the sky, provided with sunlight, daylight and fresh air. It is completely unacceptable on a site such as this that the proposal is not fully compliant with these requirements.

The Panel felt that the depth of excavation was excessive. The area of excavation did not allow deep soil perimeter planting that would assist in screening the bulk of the building at the rear or the side. The Panel did not comment on the layout of the child care centre other than the lower level.

The Panel noted the streetscape presentation features a pump house, garbage storage, high screening wall to the carpark and carpark ramp, and the pedestrian entry to the facility not clearly identified. Utilities should be discreetly integrated within the building footprint, deep soil planting landscape featured and pedestrian entry clearly identifiable. The foyer, associated staff and administration areas should be relocated such that they are easily located on arrival and provide passive surveillance of the street. The current location of the foyer and the access to it via a long passageway is unacceptable in this regard.

The bulk of the buildings is excessive when viewed from the public domain including the Reserve and the water. There should be a considerably greater set-backs from both boundaries to screen the bulk of the building from the attractive public Reserve and waterfront by way of additional native trees and undercover planting. The area of the child care centre roof needs to be reduced and broken into smaller components. Rear setbacks of both buildings are inadequate.

Traffic and access to the site is a factor that will constrain the size of the centre. The Panel notes that the road is narrow and parking is limited on the road and the limited parking nearby is needed for visitors to the Reserve. The scale of the centre will be determined by the number of cars that the restricted road network can accommodate

*and the need for all associated vehicles to be able to park on site and all drop off and pick-ups occur within the site.*

*The proposal needs to be redesigned. The scale of the proposed development is an unrealistic expectation for the site. The topography and location of the site are critical constraints which must be respected. If a dwelling is to be included in the development, a smaller child care centre would result. The child care centre must also gain the approval of the Rural Fire Service which could be a problem with the slope of the site and the centre directly adjoining the reserve. A reduced scale of development would reduce the numbers of children and the issues with parking and traffic to potentially acceptable levels.*

### **Recommendation**

*The Panel does not support the proposal. A complete redesign is necessary with regard to the scale of development, site cover, landscaping and excavation.*

Comment: The above comments are fully supported. The site cover of the dwelling appears to be just over 50% and the child care centre is around 69% due to the parking level not being fully underground. The site cover expected on a low density residential zone for a site area greater than 1000m<sup>2</sup> is 30%. The scale of the buildings and level of excavation required (inclusive of the loss of trees and natural surface rock outcrops) will result in the loss of all significant natural features of the site and accordingly not preserve any ecological features or aesthetic values of the site as existing. This is contrary to the objectives of the E4 Environmental Living Zone.

### **External Referrals**

#### *Roads and Maritime Services*

Roads and Maritime has reviewed the submitted application and note the proposal is located on Shirley Road which is a local road under the care and control of Council. Therefore, Roads and Maritime raises no objections to the development proposal

#### *Department of Industry / Property NSW*

*We advise we have concerns as outlined below in relation to the operation of our Fisheries office located at 12 Shirley Road:*

- 1. The safety of pedestrians near the entry and exit of our access road to our Fisheries site. Presently we have a fence that allows clear vision when vehicles exit our site. The development proposes to replace this fence with a 1.8m timber fence and landscaping, which will significantly restrict clear vision.*
- 2. Loss of street parking - Child Care parents and/or carers are likely to park on the street instead of utilising the proposed Child Care Centre underground parking/ drop off or pickup. We see a potential for our access driveway to be obstructed, plus the likelihood of vehicles double parked creating another set of dangerous circumstances.*
- 3. Loss of access to the site – the section of Shirley Road within the area of the proposed DA is a no through road and narrow in width. With an increased volume of vehicles' entering and exiting the proposed child care we have concerns about having access to our site, particularly during peak and drop off and pm collection times. Shirley Road is so narrow that it is not possible for two cars to travel in the opposite direction at the same time when there are cars parked on both sides of the street which is common. Fisheries require access to their site, via the driveway, 24 hours 7 days.*
- 4. Given the location and restrictions as described in point 3 above, Fisheries are concerned that traffic control during construction is*

*properly managed and personal safety is paramount.*

5. *The necropsies activities of shark carcasses will be both apparent (odour) and visible from the western outlook of the proposed child care centre.*

## Integrated Referrals

Natural Resources Access Regulator (formerly the Department of Industry - Water) has reviewed documents for the development application and considers that, for the purposes of the *Water Management Act 2000* (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary.

The integrated development was referred to the NSW Rural Fire Service pursuant to Section 100B *Rural Fires Act 1997*. Additional information was requested by the RFS and not resolved. In letter dated 18 February 2019 the RFS advised:

*I refer to your correspondence dated 21 September 2018 seeking general terms of approval in relation to the above matter.*

*The New South Wales Rural Fire Service (NSW RFS) cannot support the proposed development. Previously requested information was not received within the legislative timeframe allowed to assess the application against the aims and objectives of 'Planning for Bush Fire Protection 2006'.*

The NSW Rural Fire Brigade has not granted approval to the proposal then pursuant to Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, the Panel has no alternative but to refuse the application:

*(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, **the consent authority must refuse consent to the application.***

## SUBMISSIONS

The owners of adjoining properties and all precincts were notified of the proposed development on 28 September 2018 for 30 days. The notification resulted in 318 submissions and a petition containing 140 signatures have been received regarding the proposal. All but a few object to the proposal. Concerns raised in the objections include:

- Bulk and scale.
- location of the proposal inappropriate to the area
- impact on surrounding dwellings.
- zoning of the site.
- Inappropriate for a commercial venture of such scale to be proposed at that location.
- Concerns over site location and increase to traffic and parking impact, inadequate parking provision on site or lack of functional pick up and drop off zone on site.
- Distance of the site from Wollstonecraft station appears to be unfeasible to service proposal. There are no other public transport options for the locality.
- Concern over impacts to surrounding bushland. Inappropriate fire escape
- Excessive amount of excavation proposed.
- Concern raised to the centre utilising the Berry Island Park for their own uses.
- Concern of level of noise from the centre (number of children, location etc)
- Proposal will impact upon the peaceful enjoyment of the suburb by the local residents
- Concern over impact to the adjoining heritage item at 8 Shirley Road.

Comment: Copies of all of the submissions have been provided to the Panel. The submissions received have repeated the major issues/concerns as identified in this report and the submissions are generally supported.

## CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the compliance tables. More detailed comments with regard to the major issues are provided in this report.

### NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	Lot 23 – 1258.5m <sup>2</sup> Lot 24 – 450.2m <sup>2</sup>	450m <sup>2</sup>	YES
Clause 4.3 – Heights of Building	8.5m	8.5m	YES

### NORTH SYDNEY LEP 2013

#### Permissibility within the zone:

The development comprising *subdivision*, *childcare centre* and *dwelling house* are noted as all being permissible forms of development on the site.

#### Subdivision

The proposed subdivision complies with the minimum lot area requirement of 450m<sup>2</sup>.

#### Zone Objectives

The scale of the buildings and level of excavation required (inclusive of the loss of trees and natural surface rock outcrops) will result in the loss of all significant natural features of the site and accordingly not preserve any ecological features or aesthetic values of the site as existing. This is contrary to the objectives of the *E4 Environmental Living Zone* of NSLEP 2013 which are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The general scale, excavation and intensity of development proposed (inclusive of the associated dwelling) is not considered to be in accordance with the zone objectives. The child care centre of the proposed scale (or perhaps any scale) cannot be considered as a low impact development as one would expect a single dwelling to be.

#### Building Heights

The proposal is within the 8.5m height control although there is extensive excavation over the majority of the child care centre site up to 5m in depth. A substantial part of the lower level is below existing ground level.

## **Excavation of Land**

The objective of clause 6.10 (Earthworks) is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Before granting development consent for earthworks the consent authority must consider the likely disruption of, or any detrimental effect on:

- (i) drainage patterns and soil stability in the locality of the development, and
- (ii) natural features of, and vegetation on the site and adjoining land,

The extent of excavation is well over 70% of the site and the natural features and vegetation will be significantly and detrimentally affected. This amount of excavation is inconsistent with the E4 Environmental Living zoning.

## **Contaminated Land**

A Remediation Action Plan (RAP) has been prepared. The scope of the remediation is based on the Detailed Site Investigation and the results of a second round of groundwater monitoring results and details of the proposed development. The identified issues of concern comprise contamination within filling at the site including apparently localised areas of elevated lead, asbestos and an underground petroleum storage system.

The remediation strategy comprises excavation and off-site disposal of contaminated soil. The RAP includes an unexpected finds protocol and contingency measures to manage other issues which may arise during remediation and redevelopment works. The RAP also details the requirements for validation of the site as suitable for the proposed development and advice on off-site disposal of soil.

## **Heritage Conservation**

Clause 5.10 of NSLEP 2013 is not satisfied and the proposal does not comply with Part B Section 13.4 of NSDCP 2013.

The proposal has detrimental impacts to the setting and character of the heritage listed dwelling and 8 Shirley Rd.

The proposal has detrimental impacts to the setting and character of the heritage-listed Wollstonecraft Foreshores Reserves including Bagangi Reserve, Gore Cove Reserve and Berrys Island Reserve. It should also be noted that these reserves are currently under assessment for State Heritage Listing.

The proposal has detrimental impacts to bushland views of Berrys Island and Gore Cove Reserve taken from the nearby Holloway Reserve which is currently being assessed for State Heritage Listing and is contiguous with Gore Cove Reserve. This reserve offers views to the western portions of the subject site in the context of the bushland.

## **Rural Fires Act 1997**

The proposed development facilitates both subdivision of bush fire prone land for residential purposes and is development for a special fire protection purpose being a child care centre. In accordance with Section 100B of the *Rural Fires Act 1997* the proposed development is considered integrated development, and requires development consent from the New South Wales Rural Fire Services.

The integrated development was referred to the NSW Rural Fire Brigade pursuant to Section 100B *Rural Fires Act 1997*. Additional information was requested by the RFS and not resolved. In letter dated 18 February 2019 the RFS advised:



*I refer to your correspondence dated 21 September 2018 seeking general terms of approval in relation to the above matter.*

*The New South Wales Rural Fire Service (NSW RFS) cannot support the proposed development. Previously requested information was not received within the legislative timeframe allowed to assess the application against the aims and objectives of 'Planning for Bush Fire Protection 2006'.*

The NSW Rural Fire Brigade has not granted approval to the proposal then pursuant to Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, therefore the Panel has no alternative but to refuse the application.

### **State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

*State Environmental Planning policy (Educational Establishments and Child Care Facilities) 2017* (Education and Child Care SEPP) was gazetted on 1 September 2017. The Education and Child Care SEPP standardises planning controls for educational establishments and child care centres across NSW. It incorporates planning provisions relating to child care centres, schools, universities and TAFEs.

Under SEPP Education and Child Care, a consent authority must take into consideration the Child Care Planning Guideline (the Guideline) when assessing a DA for a centre based child care facility. The Guideline provides a consistent, state wide planning and design framework for preparing and considering DAs for child care facilities. As determined under SEPP Education and Child Care, the Guideline will take precedence over a Development Control Plan where there are inconsistencies in relation to controls for child care facilities (with the exception of building height, rear and side setbacks and car parking rates).

Part 3 of the Guideline includes matters which must be considered by the consent authority when assessing a DA for a child care centre. An assessment of the proposal under Part 3 is provided below:

#### **3.1 Site selection and location**

Not all sites will be suitable for child care facilities. The most important question for each applicant is: Is the neighbourhood a good “fit” for the proposal? The location and physical context of a child care facility should be safe and healthy for children. There are several environmental hazards to be aware of when locating a new proposal, for example, bush fire and flood prone land, and contaminated land.

*Objective: To ensure that appropriate zone considerations are assessed when selecting a site.*

E4 Environmental Living is a zone for land with special environmental or scenic values where residential development can be accommodated. Development in this zone is to give priority to preservation of the particular environmental qualities of the land. The proposal does not achieve this.

The site is within a bushfire zone and the RFS had issues with the submitted fire report and did not grant consent.

Council's Manager of Community Development has reviewed the proposal and has requested further information and clarification regarding a safe haven for children, to assist with the safe evacuation of younger children, especially those children with a disability or limited mobility. The emergency evacuation plan (Emergency Response Procedures) does not detail how the children staff and visitors are to be evacuated from the building.

The land is also contaminated but could be remediated.

*Objective: To ensure that sites for child care facilities are appropriately located.*

The proposal is not located near compatible social uses such as schools and other educational establishments, community facilities, places of public worship or near or within employment areas, shops with access to public transport or in an area with pedestrian connectivity to the local community, businesses, shops, services and the like. The lack of easy accessibility is likely to add to vehicular movements.

*Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.*

The centre is proposed adjacent to a Fisheries facility that could create odour. The fire risk is a clear and unresolved danger.

### **3.2 Local character, streetscape and the public domain interface**

New development should appropriately consider surrounding identified heritage items and identified heritage conservation areas.

*Objective: To ensure that the child care facility is compatible with the local character and surrounding streetscape.*

The accumulative impact of the character of the proposed childcare centre and proposed dwelling is inconsistent with the traditional residential character of the heritage item due to the extensive use of hardscape with the driveways, garbage store, pump room, entry structures, retaining walls and high front fencing. The massing at the rear should be reduced to assist in reducing the visual impact of the development in the context of the heritage-listed reserves.

*Objective: To ensure clear delineation between the child care facility and public spaces.*

There is a fence and pathway between the building and the bushland. There is also a required 10m buffer zone to bushland that has not been provided.

### **3.3 Building orientation, envelope and design**

Orientation refers to the position of a building and its internal spaces in relation to its site, the street, the subdivision and neighbouring buildings, vistas and weather factors such as sun and wind.

The building envelope is determined by the permissible building height and site coverage.

*Objective: To respond to the streetscape and site, while optimising solar access and opportunities for shade.*

The buildings are not located to define the street by facing it. The major orientation of the site to any sunlight is to the west. Cut and fill has not been minimised.

*Objective: To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised.*

The site cover of the proposal is twice the maximum recommended for residential development. The proposal is within the 8.5m height control although there is extensive excavation over the majority of the child care centre site up to 5m in depth. A substantial part of the lower level is below existing ground level.

*Objective: To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context.*

On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house. The rear setback is insufficient when compared to other development in the locality.

*Objective: To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character.*

The built form of the development does not contribute to the character of the local area. It does not consider the identified heritage items or respond to its natural environment.

*Objective: To ensure that buildings are designed to create safe environments for all users.*

The pedestrian access is via long pathway from the street adjacent to the carpark rather than towards the front of the site.

### **3.4 Landscaping**

*Objective: To provide landscape design that contributes to the streetscape and amenity.*

Trees 5, 8, 10, 12, 13, 14, 17, 18, 19, 20 and 21 are proposed for removal due to construction impacts. The proposal does not retain trees that have been identified by the arborist as worthy of retention.

The proposal will have more of the hardened landscape character of a high density residential development as it is characterised by paving, driveways, garbage storage, a hydrant and entry structures rather than adopting the character of the residential streetscape. Any proposal should have a soft landscape frontage.

### **3.5 Visual and acoustic privacy**

*Objective: To protect the privacy and security of children attending the facility.*

Appears acceptable.

*Objective: To minimise impacts on privacy of adjoining properties.*

Appears acceptable.

*Objective: To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.*

Acoustic fence provided and acoustic report prepared.

### **3.6 Noise and air pollution**

*Objective: To ensure that outside noise levels on the facility are minimised to acceptable levels.*

Can probably be controlled by conditions.

### **3.7 Hours of operation**

The hours of operation are proposed between 7.00am to 6.00pm Monday to Friday. The traffic generated from the centre will occur during peak hours when the impact will be greatest.

*Objective: To minimise the impact of the child care facility on the amenity of neighbouring residential developments.*

The traffic associated with the large number of children will impact on neighbourhood amenity.

### **3.8 Traffic, parking and pedestrian circulation**

Council's Traffic Engineers have reviewed the subject proposal's potential traffic generation and have concluded that the site is inappropriate for a childcare centre, particularly of the proposed size due to restricted road widths along Shirley Road and potential impacts on parking.

Although the parking provisions for the proposed child care centre might be accommodated on site, the proposal will potentially result in the removal of on street parking spaces during peak periods in the narrow section of Shirley Road, north of Cable Street. The parking layout of the proposal involves two dead end parking areas that do not allow for a continual one-way flow to avoid conflict with parents/carers entering and leaving the carparks. There is a potential for on street parking use arising from this design shortcoming.

The scale of the centre is excessive and the number of children proposed would generate an unacceptable and significant increase in traffic. The site is located at the end of the road with virtually one way in and one way out once the vehicles cross over the railway at Wollstonecraft station. The numbers would have to be significantly less to be acceptable with regard to traffic. The other issues that need to be resolved would result in a substantial reduction in the scale of the building.

### **SEPP 55 and Contaminated Land Management Issues**

*State Environmental Planning Policy No.55 Remediation of Land* (SEPP 55) requires the consent authority to take into consideration contamination and remediation of land in determining development applications. The authority must be satisfied that land that is contaminated is suitable for the proposed use or will be suitable following remediation of the land.

A Remediation Action Plan (RAP) has been prepared. The identified issues of concern comprise contamination within filling at the site including apparently localised areas of elevated lead, asbestos and an underground petroleum storage system.

In accordance with the relevant statutory tests of SEPP 55, the RAP considers that the site can be made suitable for the proposed development, subject to appropriate remediation, management and validation in accordance with the RAP.

### **SREP (Sydney Harbour Catchment) 2005**

The subject site is within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005.

The site is not located within any of the zones applicable to Part 3 Foreshores and Waterways Area, nor does it have direct access to the foreshore as it is separated by the existing Fisheries Building.

The proposal also does not alter the foreshore and the site can be controlled in a manner (during construction and operation) to prevent cumulative environmental impact from sediments or contaminants entering the waterway.

The bulk of the buildings is excessive when viewed from the public domain including the Reserve and the water. There should be a considerably greater set-backs from both boundaries to screen the bulk of the building from the public Reserve and waterfront by way of additional native trees and undercover planting.

The area of the child care centre roof needs to be reduced and broken into smaller components. Rear setbacks of both buildings are inadequate.



Source: Tekton

## DEVELOPMENT CONTROL PLAN 2013

### *Relevant Planning Area (Wollstonecraft Peninsula Neighbourhood)*

#### DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i><b>complies</b></i>	<i><b>Comments</b></i>
<b>1.2 Social Amenity</b>		
<b>Population Mix</b>	Yes	One new dwelling
<b>Maintaining Residential Accommodation</b>	NA	No dwellings currently on site
<b>1.3 Environmental Criteria</b>		
<b>Topography</b>	No	Excessive excavation proposed. Natural landform and topography are not maintained.
<b>Bushland</b>	No	Not consistent with Section 15 – Bushland in NSDCP 2013
<b>Bush Fire Prone Land</b>	No	RFS has refused application
<b>Views</b>	No	Loss of views not an issue but view of proposal from reserve and waterway is unacceptable
<b>Solar Access</b>	No	Concern with the depth of play areas that were located below the basement carpark and covered on the lowest level, and the amount of light that would be achieved as a result. The four enclosed 'play areas' and associated facilities would inevitably have to rely entirely on artificial lighting and air-conditioning, which



		would be both unattractive and environmentally irresponsible. The effectiveness of the 'void' in providing natural light and ventilation even to the undercover 'outdoor' play spaces was also highly questionable, and it appeared inevitable that these areas would at least have to be provided with artificial lighting.
<b>Acoustic Privacy</b>	Yes	Can be conditioned but relies on acoustic fencing
<b>Visual Privacy</b>	Yes	Acceptable
<b>1.4 Quality built form</b>		
<b>Context</b>	No	The built form of the development does not contribute to the character of the local area It does not consider the identified heritage items or respond to its natural environment.
<b>Subdivision Pattern</b>	Yes	Not an issue
<b>Streetscape</b>	No	The accumulative impact of the character of the proposed childcare centre and proposed dwelling is inconsistent with the traditional residential character of the heritage item due to the extensive use of hardscape with the driveways, garbage store, pump room, entry structures, retaining walls and high front fencing. The massing at the rear should be reduced to assist in reducing the visual impact of the development in the context of the heritage-listed reserves.
<b>Siting</b>	No	The buildings are not located to define the street by facing it. The major opening of the site to any sunlight is to the west.
<b>Setback – Side</b>	No	The bulk of the buildings is excessive when viewed from the public domain including the Reserve and the water. There should be a considerably greater set-backs from both boundaries to screen the bulk of the building from the attractive public Reserve and waterfront by way of additional native trees and undercover planting.
<b>Setback - Rear</b>	No	The setback of the dwelling from the western Gore Cove boundary was inadequate, and would result in the building being unacceptably prominent when viewed from the harbour waterfront. It was also inconsistent with the setback of the heritage dwelling to the south and should be setback to reduce its dominance. Rear setbacks of both buildings are inadequate.
<b>Form Massing Scale</b>	No	See comments from Design Excellence Panel
<b>Roofs</b>	No	The area of the child care centre roof needs to be reduced and broken into smaller components.
<b>1.5 Quality Urban Environment</b>		
<b>Safety and Security</b>	No	The foyer, associated staff and administration areas should be relocated such that they are easily located on arrival and provide passive surveillance of the street. The current location of the foyer and the access to it via a long passageway is unacceptable in this regard.
<b>Vehicle Access and Parking</b>	No	The parking layout of the proposal involves two dead end parking areas that do not allow for a continual one-way flow to avoid conflict with parents/carers entering and leaving the carparks. The scale of the centre is excessive and the

		number of children proposed would generate an unacceptable and significant increase in traffic. The site is located at the end of the road with virtually one way in and one way out once the vehicles cross over the railway at Wollstonecraft station. The numbers would have to be significantly less to be acceptable with regard to traffic.
<b>Site Coverage</b>	No	The site cover of the dwelling appears to be just over 50% and the child care centre is around 69% due to the parking level not being fully underground. The site cover expected on a low density residential zone for a site area greater than 1000m <sup>2</sup> is 30%.
<b>Excavation</b>	No	In excess of 70% and up to 5m depth. The natural features and vegetation will be significantly and detrimentally affected.
<b>1.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	Basix submitted for dwelling

## SECTION 7.11 CONTRIBUTIONS

Contributions would be warranted for the dwelling and the centre should consent be granted.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

### ENVIRONMENTAL APPRAISAL

### CONSIDERED

- |   |     |
|---|-----|
| 1. Statutory Controls   | Yes |
| 2. Policy Controls  | Yes |
| 3. Design in relation to existing building and natural environment                                      | Yes |
| 4. Landscaping/Open Space Provision   | Yes |
| 5. Traffic generation and Carparking provision  | Yes |
| 6. Loading and Servicing facilities   | Yes |
| 7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. Site Management Issues   | Yes |
| 9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979      | Yes |

## SUBMITTERS CONCERNS

Copies of all of the submissions have been provided to the Panel. The submissions received have repeated the major issues/concerns discussed in detail within this report. The objections are generally supported.

## CONCLUSION

Following a detailed review of the development application and consideration of the numerous submissions received in response to notification of the application as well as the adverse recommendations from internal specialist referral officers and the comments of Council's Design Excellence Panel, there are a number of issues identified that are unacceptable with the proposal. These issues include fire safety, bulk and scale of the buildings, loss of trees and natural features, excavation, excessive site cover, heritage and traffic impacts.

Due to the significance of the issues identified, the current proposal cannot be supported. The level of amendments required in order to address the issues raised would be so substantial that the proposal would be a new development application. Furthermore, the subject proposal is considered so fundamentally unsupportable that Council would not accept amendments to the subject proposal. The site may not be appropriate for any size child care centre. The scale of the proposed development is considered to be an unrealistic expectation for the site. The topography and location of the site are critical constraints that have not been respected.

The proposal is integrated development. The NSW Rural Fire Service has not granted approval to the proposal and in accordance with Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, therefore the Panel has no alternative but to refuse the application.

It is difficult to envisage a proposal for any child care centre on this site due to the difficulties in addressing the fire safety issues.

The development application has been assessed against all applicable environmental planning instruments, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013 and found to be unsatisfactory.

The proposed development will result in adverse effects on the local built and natural environment and will result in adverse social impact.

The proposed development does not promote the orderly and economic use and development of land and its approval would not be in the public interest.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be unsatisfactory and therefore recommended for refusal.

## RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

**THAT** the Sydney North Planning Panel refuse development consent to Application 2018SNH053 - Development Application No.296/18 for Integrated Development consisting of subdivision into 2 lots; demolition of the existing buildings; construction of a child care centre for 100 children; construction of a new dwelling; landscaping and tree removal on land at 12a Shirley Road Wollstonecraft, for the following reasons:

1. Integrated approval from the Rural Fire Service has not been granted.
2. The bulk and scale of the buildings, the amount of excavation and the site cover are excessive and unacceptable.
3. The proposed development is inconsistent with the objectives of the E4 Environmental Living Zone under North Sydney Local Environmental Plan 2013 with regard to the loss of trees and natural features.

4. The proposed development does not satisfy the Heritage Provisions under Clause 5.10 of North Sydney Local Environmental Plan 2013 and the proposal does not comply with Part B Section 13.4 of North Sydney Development Control Plan 2013.
5. The proposed development does not comply with the Landscape Controls in Part B Section 1 of North Sydney Development Control Plan 2013.
6. The proposed development does not satisfy a number of the matters for consideration in Part 3 of the Child Care Planning Guideline under SEPP Education and Child Care.
7. The proposed development will result in adverse parking and traffic impacts in the surrounding area.
8. The proposed development will result in adverse effects on the local built and natural environment.
9. The proposed development does not promote the orderly and economic use and development of land.
10. The proposed development would not be in the public interest.

Geoff Mossemeneer  
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**North Sydney Council**