

<b>Panel Reference</b>	<b>PPSSNH-393</b>
<b>DA Number</b>	<b>DA-2022/394</b>
<b>LGA</b>	<b>Willoughby City Council</b>
<b>Proposed Development</b>	<b>Demolition of existing site structures and the construction of a multilevel centre-based childcare facility, to accommodate 145 children between the age 0 and 6 years, including a basement comprising of 28 car parking spaces.</b>
<b>Street Address</b>	<b>2 Tessa Street, Chatswood</b>
<b>Applicant/Owner</b>	<b>The Trustee for the Wu &amp; Kuo Family Trust</b>
<b>Date of DA lodgement</b>	<b>22 December 2022</b>
<b>Number of Submissions</b>	<b>83 submission (including one petition)</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Regional Development Criteria - Schedule 6 to the State Environmental Planning Policy (Planning Systems) 2021</b>	<b>Development over \$5 million for a child care centre pursuant to Clause 5 to Schedule 6 of SEPP(Planning Systems) 2021</b>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979 (EP&amp;A Act);</i></li> <li>• <i>Environmental Planning and Assessment Regulation 2021 (EP&amp;A Regulation);</i></li> <li>• <i>Willoughby Local Environmental Plan 2012 (Willoughby LEP);</i></li> <li>• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>• <i>State Environmental Planning Policy (Industry and Employment) 2021</i></li> <li>• <i>State Environmental Planning Policy (Planning Systems) 2021</i></li> <li>• <i>Education and Care Services National Regulations</i></li> <li>• <i>Willoughby Development Control Plan (WDCP)</i></li> <li>• <i>Child Care Planning Guideline 2021</i></li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Survey</li> <li>• Architectural Plans</li> <li>• Statement of Environmental Effects and clause 4.6 for FSR</li> <li>• Acoustic Report</li> <li>• Arborist Report</li> <li>• Construction and Demolition Waste Management</li> <li>• Emergency Management Plan</li> <li>• Heritage Impact Statement</li> <li>• Plan of Management</li> <li>• Traffic Report</li> <li>• Waste Management Plan</li> </ul>
<b>Report prepared by</b>	<b>Akshay Bishnoi – Senior Development Assessment Officer</b>
<b>Report date</b>	<b>08 September 2023</b>

**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**

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**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*

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**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? **Yes**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

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**Conditions**

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer 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* **No**

**SNPP NO:** PPSSNH-393  
**COUNCIL** WILLOUGHBY CITY COUNCIL  
**ADDRESS:** 2 TESSA STREET, CHATSWOOD NSW 2067.  
**DA NO:** DA-2022/394  
**PROPOSAL:** DEMOLITION OF EXISTING SITE STRUCTURES AND THE CONSTRUCTION OF A MULTILEVEL CENTRE-BASED CHILDCARE FACILITY, TO ACCOMMODATE 145 CHILDREN BETWEEN THE AGE 0 AND 6 YEARS, INCLUDING A BASEMENT COMPRISING OF 28 CAR PARKING SPACES - SNPP.  
**RECOMMENDATION:** REFUSAL  
**ATTACHMENTS:**  

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. ASSESSMENT UNDER SEPPS
4. ASSESSMENT UNDER *WLEP 2012* & *WDCPs*
5. OFFICER'S CLAUSE 4.6 ASSESSMENT - FSR
6. SUBMISSIONS TABLE
7. SECTION 4.15 (79C) ASSESSMENT
8. REASONS FOR REFUSAL
9. NOTIFICATION MAP

**APPENDIX**  

1. APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR

**RESPONSIBLE OFFICER:** RITU SHANKAR - TEAM LEADER  
**AUTHOR:** AKSHAY BISHNOI – SENIOR DEVELOPMENT ASSESSMENT OFFICER  
**REPORT DATE:** 08 SEPTEMBER 2023  
**MEETING DATE** 20 SEPTEMBER 2023

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## **1. PURPOSE OF REPORT**

The purpose of this report is to seek determination by Sydney North Planning Panel (SNPP) of Development Application DA-2022/394 for demolition of existing site structures and the construction of a multilevel centre-based childcare facility, to accommodate 145 children between the age 0 and 6 years, including a basement comprising of 28 car parking spaces.

The application is required to be referred to the SNPP for determination because it is a development over \$5 million for a child care centre as outlined in Schedule 6 of the SEPP Planning Systems 2021.

## **2. OFFICER'S RECOMMENDATION**

**THAT the Sydney North Planning Panel:**

**2.1 Refuse development Application DA-2022/394 for demolition of existing site structures and the construction of a multilevel centre-based childcare facility, to accommodate 145 children between the age 0 and 6 years, including a basement comprising of 28 car parking spaces at 2 Tessa Street Chatswood, for reasons contained in Attachment 8.**

### **3. BACKGROUND**

#### ***WLEP (Amendment No 34) and WDCP 2023***

1. In 2020, Council prepared a planning proposal (PP-2021-6242) which proposed amendments to the *WLEP* and *WDCP*, being the Draft *WLEP* (**Draft *WLEP***) and Draft *WDCP* (**Planning Proposal**).
2. At its meeting on 14 December 2020, Council resolved to forward the Planning Proposal to the (now) Department of Planning and Environment (**DPE**) for Gateway determination.
3. On 24 December 2021, the Planning Proposal received Gateway determination, with the delegate of the Minister for Planning determining that the Planning Proposal should proceed subject to conditions.
4. At its meeting on 15 June 2021, Council endorsed the Draft *WDCP* for exhibition along with the Draft *WLEP*.
5. The Draft *WLEP* and Draft *WDCP* were placed on public exhibition from 14 March 2022 to 8 June 2022.
6. The Draft *WLEP* and Draft *WDCP* reflect the recommendations in numerous existing strategies either adopted by the Council or by the State government which are referred to in the *Willoughby City Local Strategic Planning Statement*.
7. On 12 December 2022, Council resolved to approve the amendments to the exhibited Draft *WLEP* and forward the combined document to DPE for finalisation.
8. On 23 February 2023, Council submitted the Planning Proposal to DPE for finalisation of an amendment to the *WLEP* in accordance with the Draft *WLEP*.
9. On 30 June 2023, *WLEP* (Amendment No 34) was made. The Development Application is caught by the saving provisions in Clause 1.8(A) which apply to development applications made but not finally determined before the commencement of *WLEP* (Amendment No 34).



10. On 31 July 2023, *WDCP 2023* came into effect, however, there is no savings provisions which would apply to the subject application. Therefore, *WDCP 2023* applies to this application.

## **BACKGROUND – SUBJECT DEVELOPMENT APPLICATION**

11. The Development Application was lodged with Council on 22 December 2022.
12. The proposed development has a capital investment value of \$9,167,822. Clause 2.19(1) and clause 5 to Schedule 6 to the *State Environmental Planning Policy (Planning Systems) 2021* provides that, accordingly, the development is regionally significant development. Section 4.5(b) of the EP&A Act provides that, consequentially, the consent authority is the Sydney North Planning Panel.
13. On 12 January 2023, Council referred the Development Application internally and externally to AusGrid.
14. On 13 January 2023, Council sent an additional information letter to the Applicant, requesting elevations of the existing building.
15. On 3 February 2023, the Applicant provided amended architectural plans.
16. The Development Application was notified to adjoining and nearby property owners in accordance with the *Willoughby Community Participation Plan* for a period of 21 days from 23 January 2023 to 14 February 2023.
17. During this period, 83 public submissions (including one petition) were received.
18. On 9 March 2023, Council referred the Development Application externally to TfNSW, who responded initially on 27 March 2023 and noted no objection to the Development Application.
19. On 17 April 2023, Council sent another additional information letter to the Applicant. No response to this letter was received.
20. On 20 April 2023, the Development Application was reviewed by Willoughby City Council Traffic Committee. The Traffic Committee:
  - a. Requested an additional assessment be carried out by TfNSW;
  - b. Disagreed with the proposed ban on right-turns from the driveway;

- c. Did not support the use of an existing no stopping zone at the corner of View Street and Tessa Street for deliveries; and
  - d. Noted that the Applicant's assessment of traffic volumes may be understated, given it was informed by analysis undertaken immediately following a COVID-19 lockdown in October 2021.
- 21.** On 20 April 2023, following recommendation of the Traffic Committee, another referral was sent to TfNSW. By its response dated 11 May 2023, TfNSW noted that it would review and respond to the Development Application upon the provision of further information by the Applicant in response to the Respondent's letter of 17 April 2023.
- 22.** On 18 May 2023, Council sent an email to the Applicant following up on the additional information request letter, dated 17 April 2023.
- 23.** On 18 May 2023, the Applicant responded to the Council's follow up email and requested a meeting to discuss the issues raised in the additional information request letter. A meeting was held on 24 May 2023.
- 24.** On 28 June 2023, Sydney North Planning Panel held a kick-off briefing. The Applicant did not attend the meeting.
- 25.** On 28 July 2023, the Applicant commenced Class 1 proceedings in the Land and Environment Court of NSW against the deemed refusal of the Development Application.
- 26.** On 10 August 2023, Council notified the Sydney North Planning Panel of these proceedings.
- 27.** On 30 August 2023, Statement of Facts and Contentions was filed with Land and Environment Court.
- 28.** The matter is listed for a Conciliation Conference on 14 March 2024.

#### **4. DESCRIPTION OF PROPOSAL**

The Development Application seeks consent to carry out the following works:

- a. Demolition of all existing structures on the Property;
- b. Excavation to create a basement level and other earthworks;

- c. Removal of three trees and existing boundary planting;
- d. Construction of a three-storey centre-based child care facility, comprising:
  - i. Basement level, containing 28 off-street car spaces, two bicycle spaces, two motorcycle parking spaces, a pump and plant room, fire egress, stairs, lift, lobby, store and service area;
  - ii. Level 1 (aligned approximately with the Property's Tessa Street frontage), generally allocated to children between ages 0 and 3, including indoor and outdoor play areas, wet areas, food storage, sleep/rest areas, multipurpose room, staff room, store, safe haven, powder room, stair and lift access;
  - iii. Level 2 (aligned approximately with the Property's View Street frontage, with access secured via a suspended walkway), generally allocated to children between ages 2 and 5, including indoor and outdoor play areas, manager's office, kitchen, reception, entry foyer, wet areas, food storage, multipurpose room, staff room, store, safe haven, powder room, stair and lift access;
  - iv. Level 3, generally allocated to children between ages 3 and 5, including indoor and outdoor play areas, wet areas, food storage, powder room, store, cleaning store, stair and lift access; and
- e. Use of the facility from Monday to Friday, between the hours of 7.00am and 6.00pm.

The controls and development statistics that apply to the subject land, as well as referrals, are provided in **Attachment 2**.

An assessment against *SEPPs* **Attachment 3**.

An assessment against *LEP/DCP* assessment is provided in **Attachment 4**.

**Attachment 5** contains Council's assessment of the applicant's request to vary the FSR development standard.

A public submissions table and the assessing officer's response is contained in **Attachment 6**.

A S4.15 assessment of the proposal is provided in **Attachment 7**.

The reasons for refusal are provided in **Attachment 8**.

A notification map is provided in **Attachment 9**.

## 5. CONCLUSION

The Development Application DA-2022/394 has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is unacceptable for the reasons provided in **Attachment 8** and should be refused.

## ATTACHMENT 1: SITE DESCRIPTION AND SURROUNDS

### The Site

1. The site is legally described as Lot 1 in Deposited Plan 8219, being 2 Tessa Street Chatswood.
2. The site is a corner lot, with a primary frontage of 30.02m to Tessa Street and secondary frontage of 48.49m to View Street and has an area of 1657m<sup>2</sup>.
3. The site is steep, falling approximately 7.5m from the eastern boundary to the western boundary.
4. The site is located on the south-western side of the T-intersection of View Street and Tessa Street, approximately 110m north of Fuller Road, which is identified as a classified road.
5. The site presently contains an extant three-storey brick building, which was constructed in early 1970s. The building has been used as an aged care facility, which ceased operations on 1 June 2021.
6. There are 8 trees identified as being contained within the Property, generally around the perimeter of the existing building envelope.
7. The site is burdened by a 2.7m wide right-of-way along the southern site boundary.
8. Figure 1 is an aerial image of the Property. Figure 2 and Figure 3 are street views of the Property, taken from Tessa and View Streets, respectively.



Figure 1: Aerial image of the Property (Source: Nearmaps)

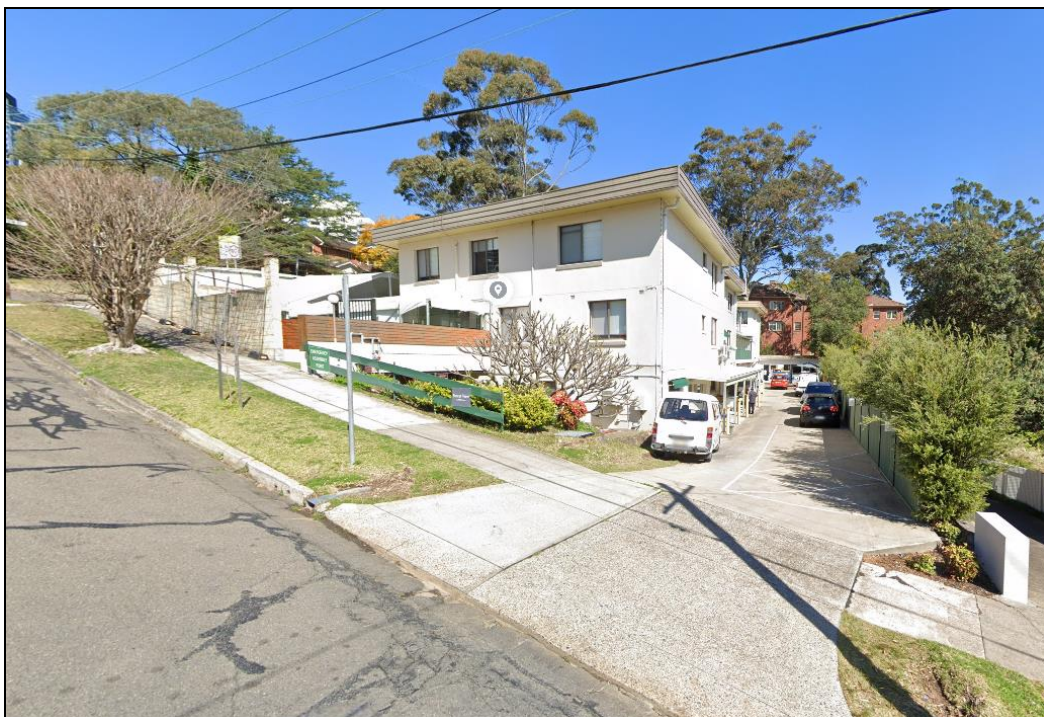


Figure 2: Street view of Tessa Street frontage (Source: Google Maps Streetview)





Figure 3: Street view of View Street frontage (Source: Google Maps Streetview)

### The Locality

9. The Property is located on land zoned R2 Low Density Residential (**R2 Zone**) under the *Willoughby Local Environment Plan 2012* (**Willoughby LEP**).
10. The land immediately opposite the Property on View Street is zoned R3 Medium Density Residential pursuant to the *Willoughby LEP*.
11. To the east, across View Street, is the Chatswood CBD, as shown in Figure 4.

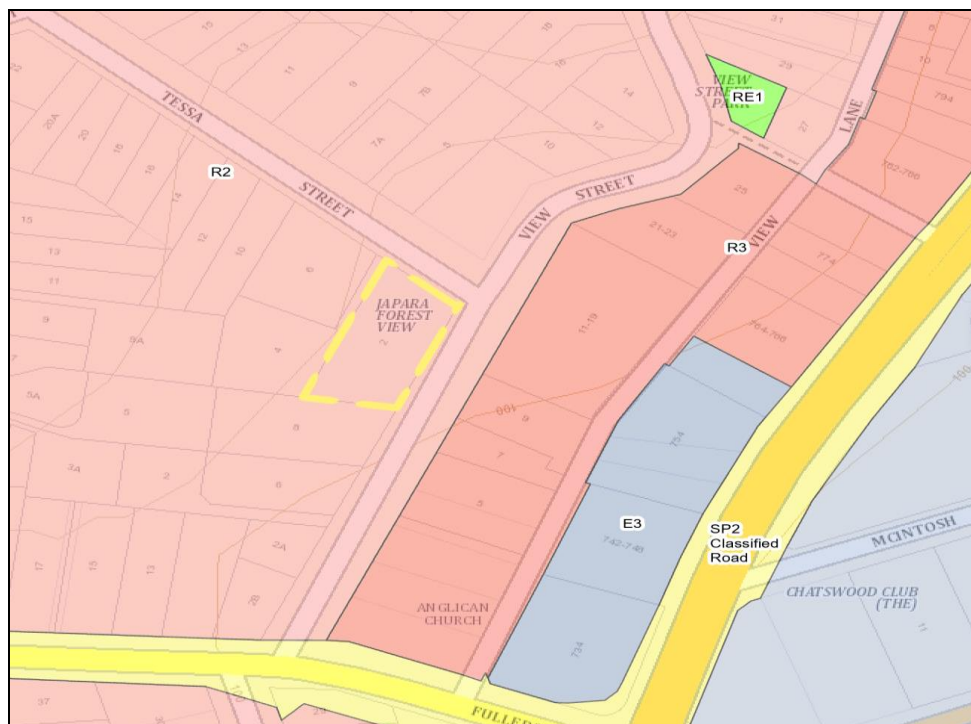


Figure 4: Zoning of land in the locality (Source: ePlanning Spatial Viewer)

12. The Property is located within the Blue Gum Heritage Conservation Area (**Blue Gum HCA**), identified as C2 in Part 2 to Schedule 5 of the *Willoughby LEP*. The Blue Gum HCA is depicted in Figure 5.

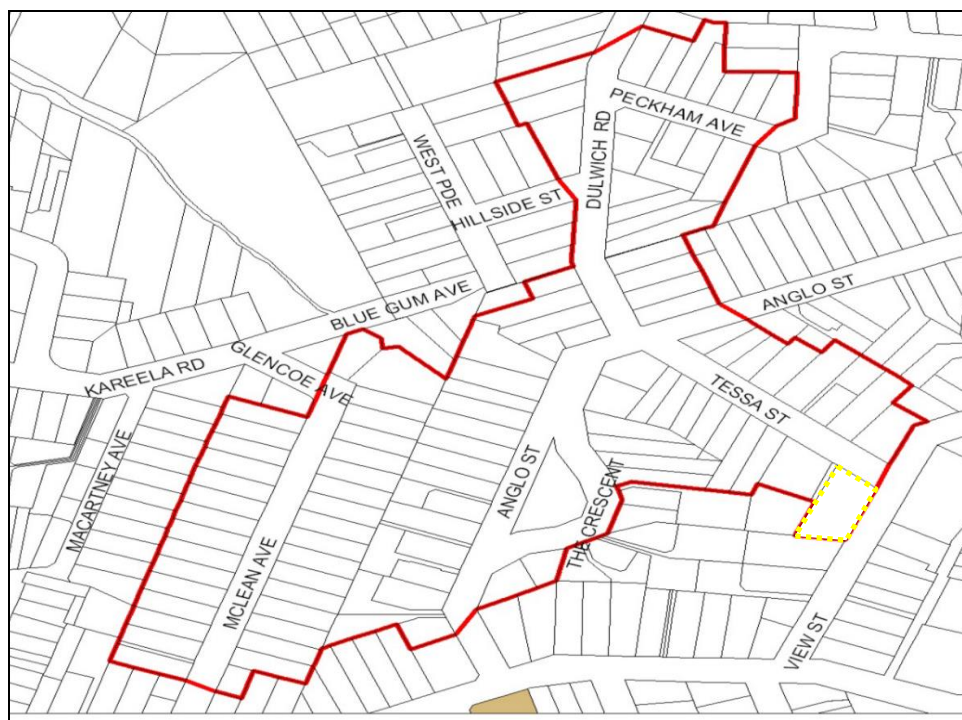


Figure 5: Blue Gum HCA (Source: *Willoughby DCP*)



- 13.** Section 3.3.3 to Part H of the *Willoughby Development Control Plan (Willoughby DCP)* describes the Blue Gum HCA as follows:

*The area is dominated by Interwar housing, predominantly 1920s and 1930s bungalows. The streets close to the Pacific Highway (such as Tessa Street) include several fine Federation houses. Both Federation and Interwar cottages harmonise in their form, single storey scale, palette of materials (red/brown face brick, terracotta roof tiles) and garden settings. The undulating topography, irregular street layout, wide grass verges, mature street trees, and well – vegetated reserves with remnant blue gum high forest (an identified threatened species) complement the well-established private gardens to create a verdant bushland feel.*

**ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS**

<b>WLEP 2012 Zoning:</b>	R2 – Low Density Residential Zone
Site Area	1657m <sup>2</sup>
Permissibility	Centre based child care facilities are permitted with consent in the R2 zone under the <i>WLEP 2012</i> .
Additional Permitted Use	NO
Conservation area	C2 – Blue Gum Heritage Conservation Area
Aboriginal Heritage	NO
Heritage Item	NO
Vicinity of Heritage Item	NO
Natural Heritage Register	NO
Bushfire Prone Area	NO
Flood related planning control	NO
Foreshore Building Line	NO
Adjacent to classified road	NO
Road/lane widening	NO
BASIX SEPP	NO
Infrastructure SEPP - Rail	NO
Infrastructure SEPP - Road	NO
Coastal Management SEPP	NO
Development near Lane Cove Tunnel	NO
Contaminated Land	NO
Adjacent / above Metro	NO
Land Issues - Exponare	NO
Other relevant <i>SEPPs</i>	<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Industry and Employment) 2021</i>
Applicable <i>DCPs</i> policies and resolutions	<i>WDCP 2023</i>
Relevant <i>DCP</i> at the time of lodgement	<i>WDCP 2006</i>

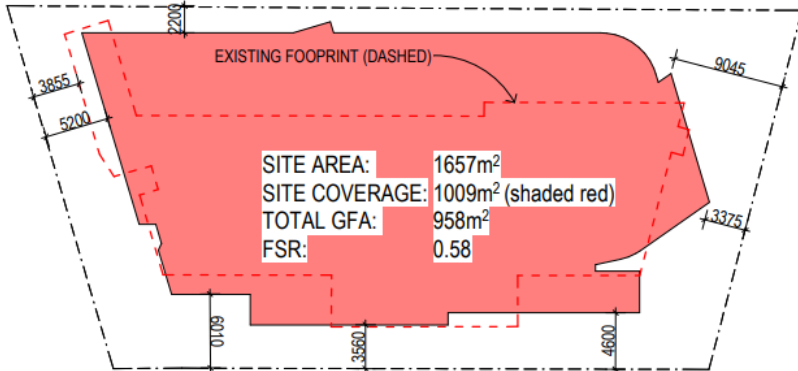
## Developer's Contribution Plans

The development application seeks development consent for the construction of a centre-based child care facility valued at \$9,167,822 and Section 7.12 of the *Environmental Planning and Assessment Act 1979* applies. In accordance with the *Willoughby Local Infrastructure Contribution Plan 2019*, the proposal requires the payment of a contribution of **\$91,678.22**, should the application is determined by way of approval.

## Referrals

### Internal referrals

<p>Development Engineer/Infrastructure Services</p>	<p>We have assessed this development application in regards to elements relevant to development engineering. Additional information is required to be submitted to council for further assessment.</p> <p><b>A. <u>Stormwater Management Plans - On Site Detention</u></b></p> <p>The proposed stormwater management system includes a 5kL RWT, an OSD and discharge to the kerb and gutter. While the design methodology of the OSD appears to be acceptable, by reducing peak flow to 20L/s to allow discharge to the kerb and gutter, changes to the design of the OSD tank is required to meet Part C.5 of the <i>Willoughby DCP</i> and with Technical Standard No. 1 "On Site Detention".</p> <p>Regarding the on-site detention (OSD) system, the plans shall comply with the following:</p> <ul style="list-style-type: none"> <li>(a) The OSD tank(s) must be located in a common area and be readily accessible for maintenance purposes, with an access pit located directly over the outlet. Access grates shall be in accordance with Council's policy. Attention is also drawn to the provisions of AS 2865 -"Safe Working in Confined Spaces".</li> <li>(b) The overflow chamber is not acceptable as per Technical Standard No.1. Overflow are to be conveyed on ground surface to the kerb and gutter. Details of an overflow spillway from the OSD storage with an overland flow path to Tessa Street together with calculations demonstrating that the overflow elements can cope with the 1% AEP storm event in accordance with Council's policy.</li> <li>(c) Demonstrate that the development drains through the detention tank(s) through pipe flows and surface flow path routes up to the 1% AEP storm events in accordance with the minor/major design principles. Surface overflow path is not permitted to spill to adjacent properties.</li> <li>(d) DRAINS model is to be submitted to Council to confirm kerb discharge is less than 20L/s in a 1% AEP storm event.</li> </ul> <p>Council's Standard Design Certificates and QA Checklists issued by a qualified and experienced civil engineer certifying that the design of the OSD and water quality system are in accordance with Council policies and specifications AS3500.3 – <i>Plumbing and Drainage Code</i>, BCA and the above requirements shall be submitted.</p>
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	<p><b>B. <u>Splay Corner of 2.5m by 2m</u></b></p> <p>The proposed driveway to the basement run along the boundary line adjoining 6 Tessa Street. A clear sight triangle of 2m wide x 2.5m beyond the boundary both sides of the driveway exit is required to ensure adequate sight distances for pedestrians and traffic. A plan showing compliance are to be submitted to Council for assessment.</p> <p><b>C. <u>Parking Arrangement</u></b></p> <p>In compliance with Part C.4, as a commercial development as Childcare centre, a loading bay suitable for delivery vehicles must be provided and council requires that the design vehicle is a Medium Rigid Vehicle (MRV) in accordance with AS2890.2. Onsite turning areas must be provided to ensure service and delivery vehicles can enter and leaves the site in forward directions. A swept path analysis is required to demonstrate a MRV is able to perform a forward in and forward out movement.</p> <p>Drop off / visitor parking is to comply with the requirements for Class 3 Short Term Parking in accordance with AS2890.2.</p>
Landscape Officer	<p>The Arborist's report prepared by Tree Wise Men and Landscape plans prepared by Milton Architects are noted.</p> <p>The Arborist's Report indicates retention of two significant local native trees, <i>Eucalyptus saligna</i>. The trees are listed in Council's Natural Heritage Register.</p> <p>The trees are located close to the existing building and the proposed building.</p> <p>The Report concludes that the trees can be retained with specific construction techniques and Arboricultural supervision.</p> <p>Review of the plans indicates that the trees are likely to be adversely affected by the works, with disturbance of root areas beyond the existing buildings due to the excavation require for basement and the building structure itself.</p> <p>The overlay provided in the Architectural drawings indicates additional areas of building footprint that will impact on the trees removing additional roots in an already compromised root zone.</p>  <p>Over-excavation for construction purposes is likely. Whilst no geotechnical report was noted in the documents viewed, the anticipated shale substrate is unlikely to be able to be excavated without batters. If</p>

	<p>alternate shoring is proposed, over-excavation for construction of the walls would further impact the trees.</p> <p>Additionally, the location of these large trees (up to 30m ht) over a childcare centre is of some concern, particularly if the trees are under stress from the construction impacts. The proposed use adjacent these trees does not appear to be in the public interest, nor does proposed works that is likely to lead to decline of the trees.</p> <p>The Landscape Plans are suited to the use as a Childcare Centre, however provided little by way of contribution to the local amenity and streetscape. Additional setbacks from boundaries would enable a more integrated landscape presentation and provide greater protection for the significant trees on the site.</p> <p>At this stage, the proposal is unable to be supported with regard to landscape issues.</p>
Building	No objections, conditions issued.
Heritage Architect/Planner	<p><i>Demolition</i> – as the existing building on the property is not considered to be contributory or neutral to the Heritage Conservation Area, demolition is seen to be acceptable, with the primary requirement of the <i>Willoughby DCP</i> to “ensure that any replacement development enhances the significance of the Heritage Conservation Area”.</p> <p><i>Proposed development</i> – It is acknowledged that the subject property is surrounded by a mixture of development and is located in the corner of the Blue Gum Heritage Conservation Area closest to commercial areas in Willoughby LGA. However, any development on this corner allotment should seek to set the tone for the heritage character of this locality, as it should be seen as the gateway to the Blue Gum Heritage Conservation Area and is indeed located <u>within</u> the boundaries of the HCA. A childcare centre located within a Heritage Conservation Area would therefore be expected to be compatible with the <i>DCP</i> controls outlined above.</p> <p>Given the above, the following concerns are raised by the proposal:</p> <ul style="list-style-type: none"> <li>Revised plans, dated 1 February 2023, indicate that the proposed building will have a greater height than the existing building and the setbacks will be closer to the boundaries, creating a larger overall envelope on the site.</li> <li>The scale and bulk of the proposal is inconsistent with the general character of the Blue Gum HCA and the proposed height, number of storeys, floorplate and setbacks will result in a visually intrusive development and negatively impact on the HCA.</li> <li>It is unclear how the height of the proposal relates to the height of the adjacent properties in the Heritage Conservation Area as they are not included in the drawings. The impact on the scale and resulting amenity impacts to No 4 Tessa Street, which has a ridge height of 96.70RR in the survey plan, has not been adequately assessed in the proposal. There is no detailed streetscape analysis in the plans and elevations or the HIS, which assesses the transition between the height, scale and bulk of the proposed childcare centre with the Heritage Conservation Area.</li> <li>The proposed development is therefore inappropriate in its context being within a Heritage Conservation Area, with an uncharacteristic built form and massing which detracts from the significance of the</li> </ul>

	<p>HCA.</p> <ul style="list-style-type: none"> <li>Materials and details – the materials and details prescribed for the Blue Gum Heritage Conservation Area are unglazed terracotta Marseille tiles, red/brown unpainted bricks and traditionally proportioned windows and doors. It is unclear how the proposed development with metal cladding, white and timber-look timber battening/louvres, stone cladding and grey finish palisade fence responds to the adjoining Conservation Area. Careful attention to the fabric and details will be required to ensure the property retains its positive contribution to the HCA.</li> </ul> <p><b>Recommendations</b></p> <p>It is recommended the large scale and massing of the proposed development is reduced so as to have a smaller and more sympathetic envelope which complements the adjacent Heritage Conservation Area. A more detailed streetscape analysis should be undertaken in both the drawings and further assessed in the HIS to demonstrate how the development makes a positive contribution to the Heritage Conservation, rather than further detracting from it. In particular, more consideration should be given to how the proposal relates to No. 4 Tessa Street, and the other buildings along the street in the Heritage Conservation Area.</p>
Waste	<p>There are a number of items that need to be clarified, particularly:</p> <ol style="list-style-type: none"> <li>1) Number of waste and recycling bins for twice weekly collection;</li> <li>2) The construction of the external bin room and associated facilities such as roof, ventilation and washing facilities (also check there are no steps from generation to collection).</li> <li>3) The location of internal bin areas within the facility (cupboards etc) and the destination of source-separated nappies and paper towels.</li> <li>4) How and when the waste will be safely collected and with minimal noise, including how the bins will be moved to and from the bin room to the truck and by whom as well as where the truck is going to safely park given the Tessa Street and View Street corner.</li> <li>5) Waste management policy including frequency of education.</li> <li>6) The submitted Waste Management Plan indicates that <i>Collection truck (mini rear loader 6.4m) to park near the bin storage area on View Street and collect the bin contents. Bin collection will be scheduled outside the facility operating hours to avoid disruption to occupant movements.</i></li> </ol> <p>Whereas the Traffic and Transport Assessment notes that collection will take place from Tessa Street and will rely on staff wheeling bins in and out. Clarification is required with regard to Waste Collection.</p>
Environmental Officer	<p>Contamination is not considered an issue due to the fact that the previous uses were an aged care facility and residential. No conditions are therefore necessary other than a HAZMAT assessment prior to demolition.</p> <p>The assessment of electromagnetic and radio fields is not necessary due to the fact that the Hillsong childcare centre development across View Street did an assessment and EMF and radio fields were found to be well within acceptable criteria.</p>

	<p>Noise from the proposed development has been raised by several objectors in their submissions. An acoustic report prepared by Clarity Acoustics (Ref. R01 21150 and dated 29 September 2022) has been submitted to support the application. This report was compared with that completed for the nearby Hillsong childcare centre and found to be satisfactory in its methodology and findings. Acoustic barriers are proposed around the perimeter of the outdoor play areas and treatment is proposed on the roof soffit. Noise from vehicle movements when parents are dropping off and picking up kids is predicted to be acceptable and below sleep disturbance criteria. Plant equipment for air-conditioning has not been selected at this point and so an additional acoustic report has been required in the conditions prior to a Construction Certificate being issued that assesses cumulative noise from mechanical plant, vehicle movements and children playing.</p> <p>In addition, conditions have been recommended for certification of compliance, a Noise Management Plan for the operation of the centre and a Noise Complaints Register to be maintained.</p>
Traffic/Transport Officer	<p><b>TfNSW review</b></p> <ul style="list-style-type: none"> <li>- seek TfNSW's review and comments as the site accesses are to/from Fullers Rd and Pacific Hwy (state roads), where the intersection has tidal flow traffic management arrangements during peak periods. The intersection is operating at capacity (LoS F) during peak periods.</li> </ul> <p><b>Internal parking</b></p> <ul style="list-style-type: none"> <li>- the staff parking (tandem parking) is not practical as it is 'a first in and last out' arrangement - how would it work for accessibility as carers are working in shifts?</li> <li>- Although the limited staff parking spaces meet <i>WCC DCP*</i> parking provision/rates, staff members may drive to the site, as the adjacent streets have on-street unrestricted parking. This will potentially impact the local residents' amenity and their visitors' parking needs</li> </ul> <p>* <i>WDGP 2006</i></p> <p><b>Right Turn Ban at the driveway</b></p> <ul style="list-style-type: none"> <li>- the DA proposed to ban right turn from the driveway. The Right-hand turn movement ban only work in theory but not in practice, the illegal right-turn movements are likely to continue without Police present/enforcement. The right-hand ban is to address increase traffic generations (on View St; and Fullers Rd intersection). There isn't any road safety reason to ban this movement other than theoretical traffic distribution/management and network performance assessment. Allowing the Right-turn ban will move the traffic generations/impacts to other local streets &amp; intersections (as an alternate route) to access Fullers Rd and Pacific Hwy. It is not fair to residents who live on these alternate routes, which the proposed DA</li> <li>- if the right-hand turn movements were allow for the DA, the intersection of View St/Fullers Rd performance level (Level of Service) will be impacted, and traffic generation/traffic congestion will increase along View St and the efficiency/safety performance will decrease</li> </ul> <p><b>External Loading Zone/deliveries</b></p> <ul style="list-style-type: none"> <li>- Traffic team do not support delivery (drop off &amp; pick up) from kerbside. All deliveries need to be contained within the car park in the basement, including waste collections.</li> </ul>

	<p><b>Tessa Street - narrow road</b></p> <ul style="list-style-type: none"><li>- Tessa Street is a bi-directional one lane street with parking permitted on both sides, any increase of traffic during peak periods will potentially traffic congestion and safety issues with motorists finding gaps to let passing opportunity during peak hours</li></ul> <p><b>Local road network traffic volumes analysis</b></p> <ul style="list-style-type: none"><li>- comparison and analysis of the traffic volumes 2019 and 2021 at Fullers Rd/Pacific Hwy is not accurate due to the COVID 19 lock down period; immediately post lock down period (11 Oct 2021) where traffic movements were significantly reduced</li><li>- traffic volumes and level of analysis need to include all other adjacent children centres traffic - the analysis need to demonstrate the cumulative impacts including the local residents traffic</li></ul>
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External referrals

Transport for NSW	TfNSW has reviewed the submitted documentation and requested additional information in line with the issues raised by Council Traffic and Transport Section.
AusGrid	No objection, subject to conditions.



## **COUNCIL ASSESSMENT REPORT**

### **ATTACHMENT 3: ASSESSMENT UNDER SEPPs**

#### **State Environment Planning Policy (Resilience and Hazards) 2021**

Chapter 5 of *Resilience and Hazards SEPP* aims to 'provide a State-wide planning approach to the remediation of contaminated land'. Clause 4.6 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to the granting of development consent.

The applicant states that *"the site has been used for residential purposes for an extended period of time with no known prior land uses. In this regard, the potential for contamination is considered to be extremely unlikely."*

*The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites. The consent authority can be satisfied that the subject site is suitable for the proposed development."*

Notwithstanding the historic use of the site, given the proposal is for a sensitive use and in accordance with Part 4.13 of the Childcare Planning Guideline a Soil Assessment should be undertaken as part of the development application process, where children will have direct access to soil. The outdoor play area proposed on Level 1, particularly in the north-west corner, will provide for children having direct access to soil.

The application does not accompany a soil assessment/ preliminary investigation to ensure that the site is suitable or can be made suitable for the proposed sensitive use.

The application is therefore recommended for refusal because it does not provide sufficient information to enable an assessment of whether the Proposed Development satisfies the requirements of SEPP (Resilience and Hazards) 2021.

#### **State Environment Planning Policy (Industry and Employment) 2021**

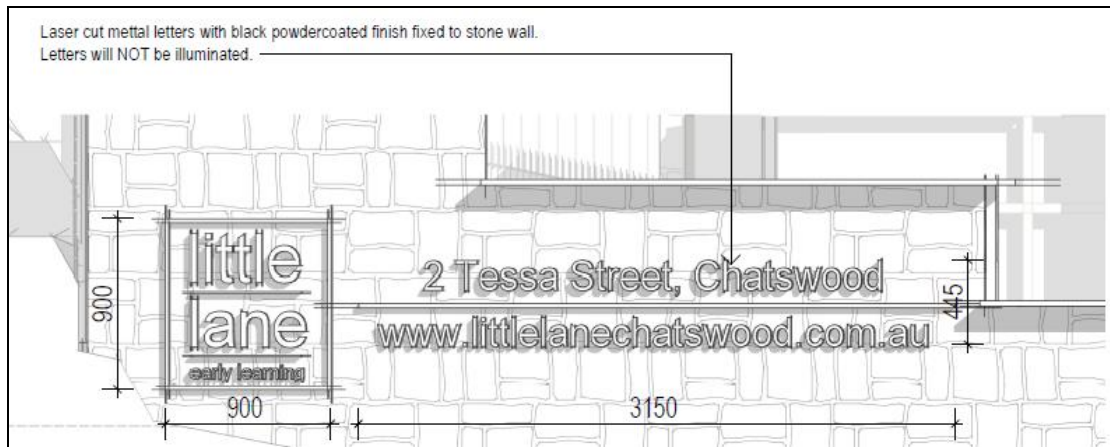
### **Chapter 3 – Advertising and signage**

Clause 3.1 identifies the aims and objectives of Chapter 3 – Advertising and signage, which are:

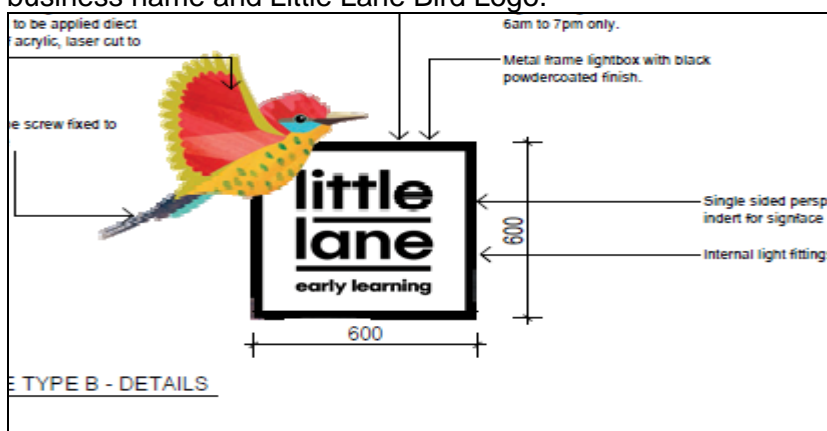
- (a) *to ensure that signage (including advertising)—*
  - (i) *is compatible with the desired amenity and visual character of an area, and*
  - (ii) *provides effective communication in suitable locations, and*
  - (iii) *is of high quality design and finish, and*
- (b) *to regulate signage (but not content) under Part 4 of the Act, and*
- (c) *to provide time-limited consents for the display of certain advertisements, and*
- (d) *to regulate the display of advertisements in transport corridors, and*
- (e) *to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

Clause 3.6 requires signage to satisfy the assessment criteria in Schedule 5 (See table below). The following signage have been assessed against the Chapter 3 of the *SEPP (industry and Employment) 2021*.

- Business Identification sign on boundary wall fronting Tessa Street, indicating business name, street address and web address.



- 1 x (600x600mm) business identification sign on Tess Street elevation, indicating the business name and Little Lane Bird Logo.
- 1 x (600x600mm) business identification sign on View Street elevation, indicating the business name and Little Lane Bird Logo.



Criterion	Comment
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signs are viewed to be compatible with the streetscape. The proposed signs do not dominate the visual characters of the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	N/A
<b>2 Special areas</b>	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signs do not detract from the amenity or visual quality of the Blue Gum Heritage Conservation Area.
<b>3 Views and vistas</b>	
Does the proposal obscure or compromise important views?	No
Does the proposal dominate the skyline and reduce the quality of vistas?	No
<b>4 Streetscape, setting or landscape</b>	

<b>Criterion</b>	<b>Comment</b>
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signs are considered to be appropriate to the streetscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signs are considered to be of an appropriate scale and form and unlikely to dominate the existing streetscape character.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed building identification signs are considered to be appropriate for the locality in terms of its scale, location and material.
Does the proposal screen unsightliness?	The proposed signs are identified as business identification signs and are not proposed to screen unsightliness
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No - all signs are flush mounted to facades.
<b>5 Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes – the proposed signs are considered to be appropriately located and do not dominate the streetscape.
Does the proposal respect important features of the site or building, or both?	Yes – the proposed signs are compatible with the characteristic of the site.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes – the proposed signs are considered to be appropriate for the proposed use that they identify
<b>6 Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/A
<b>7 Illumination</b>	
Illumination?	Yes – the signs the proposed to be only internally illuminated.
Would illumination result in unacceptable glare?	No
Would illumination affect safety for pedestrians, vehicles or aircraft?	No
Would illumination detract from the amenity of any residence or other form of accommodation?	No
Can the intensity of the illumination be adjusted, if necessary?	N/A
Is the illumination subject to a curfew?	Internal illumination of the signs are to occur only during operational hours
<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	No, road safety issues are foreseen as a result of the proposed signs.
Would the proposal reduce the safety for pedestrians or bicyclists?	No
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No

The proposed **signs** are considered to be acceptable with regard to *SEPP (Industry and Employment) 2021*, should the application be considered worthy of approval.

## State Environmental Planning Policy (Transport and Infrastructure) 2021

### Chapter 3:

A centre-based child care facility is proposed and therefore Chapter 3 of the *State Environmental Planning Policy (Industry and Employment) 2021 (Transport and Infrastructure SEPP 2021)* is addressed in the table below.

<b>Transport and Infrastructure SEPP 2021 – Chapter 3 Educational Establishment and Child Care Facilities</b>	
<b>Part 3.3 – Early education and care facilities – specific development controls</b>	
<b>3.22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development</b>	The proposed development provides a minimum of 3.25m <sup>2</sup> of unencumbered indoor space per child has been provided in accordance with Clause 107 of the Education and Care Services National Regulations. A minimum of 7m <sup>2</sup> of unencumbered outdoor space per child has been provided in accordance with Clause 108 of the Education and Care Services National Regulations. As such, the concurrence of the Regulatory Authority is not required.
<b>3.23 Centre-based child care facility—matters for consideration by consent authorities</b>	<i>Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.</i>  The applicable provisions of the Child Care Planning Guideline have been considered below.
<b>3.25 Centre-based child care facility – floor space ratio</b>	WLEP and WDCP prescribe a maximum of 0.4:1
<b>3.26 Centre-based child care facility – non discretionary development standards</b>  (a) <b>location</b> —the development may be located at any distance from an existing or proposed early education and care facility, (b) <b>indoor or outdoor space</b> (i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the <a href="#">Education and Care Services National Regulations</a> applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or (ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the <a href="#">Children (Education and Care Services) Supplementary Provisions Regulation 2012</a> applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause, (c) <b>site area and site dimensions</b> —the development may be located on a site of any size and have any length of street frontage or any allotment depth, (d) <b>colour of building materials or shade</b>	The non-discretionary development standards under this section are noted. The guidelines and the SEPP have been applied in this assessment, as required.

<b>structures</b> —the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.		
<b>3.26 Centre-based child care facility – Development Control Plans</b>  (1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility— (a) operational or management plans or arrangements (including hours of operation), (b) demonstrated need or demand for child care services, (c) proximity of facility to other early education and care facilities, (d) any matter relating to development for the purpose of a centre-based child care facility contained in— (i) the design principles set out in Part 2 of the <i>Child Care Planning Guideline</i> , or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates). (2) This section applies regardless of when the development control plan was made.		
With regard to the application of development control plan, the matters listed under this clause have been noted.		
<b>Child Care Planning Guideline 2021</b>		
3.1 Site selection and location	C1 Appropriate zone	Centre based Child care is listed as a permissible use in R2 zone under the <i>WLEP</i> .
	C2 Suitable site	The site is not considered to be suitable for the proposed development, as a consequences of the matters raised throughout the report and reasons provided in Attachment 8.
	C3 Appropriate location	The site is in proximity to the Chatswood CBD and shops, places of public worship are within walking distance of the site.
	C4 Environmental health or safety hazards	The site is not identified as being surrounded or in proximity to land uses that pose a health or safety issues to children, staff or visitors attending the proposed centre.
3.2 Local character, streetscape and the public domain interface	C5 Local character and streetscape	The proposed setting, bulk and scale are not considered to be in harmony with the local character (refer to Attached 4 for details). The applicant therefore has failed to ensure that the proposed development is compatible with the local character and
	C6 Distinction between public and private realm	
	C7 Legibility of buildings/entries	
	C8 Frontage to public parks, open space or bushland	

		surrounding streetscape.
	C9 Front fences to be designed in accordance with local heritage provisions.	The boundary wall has a height exceeding 1.2m and has not been designed to respect the slope of the property. The proposed height of the boundary wall on the corner of Tessa Street and View Street is not consistent with the provisions of Blue Gum Heritage Conservation Area which requires to retain the pattern of low masonry fences.
	C10 Acoustic fencing	The proposal includes acoustic fencing to address any potential acoustic issues.
3.3 Building orientation, envelope, building design and accessibility	C11 Amenity impacts on neighbours	<p>The outdoor play areas are not located away from the adjoining residential developments, however, the applicant has proposed acoustic fencing to outdoor play areas to minimise any potential acoustic issues.</p> <p>Council's Environmental Health section has reviewed the acoustic report, and proposed noise attenuation and recommended appropriate conditions of consent requiring certification of compliance, a Noise Management Plan for the operation of the centre and a Noise Complaints Register to be maintained.</p> <p>In addition to the acoustic matter above, the development is considered not to have any significant impact on views of the adjoining properties. However, with regard to privacy and overshadowing, insufficient information has been provided to adequately assess any potential impacts on the adjoining properties.</p> <p>The submitted elevations and sections do not accurately reflect the existing ground levels and with lack of details on the acoustic fencing to the play areas, the application does not enable a proper assessment of any privacy impacts on the adjoining properties.</p> <p>The submitted shadow diagrams do not show the extent of any existing overshadowing of the adjoining properties for comparison purpose. There was no site analysis plan submitted with the application depicting the winter's sun path/axis. The application does not provide elevation shadow diagrams to adequately assess the extent of overshadowing impacts.</p>

	C12 Compatible with adjoining developments	<p>The proposed development is not considered to be consistent with the adjoining developments in terms of its height, number of storeys, bulk and scale, and setbacks.</p> <p>The site is a corner lot located in heritage conservation area, which has more significance in defining the character of the area. The proposed development is not considered to be consistent with the adjoining developments in terms of its height, number of storeys, bulk and scale, and setbacks.</p> <p>The proposal is therefore not considered to be in harmony with the streetscape and the significance of the heritage conservation area.</p>
	C13 Classified road setbacks	<p>The site does not have frontage to a classified road, however, the proposed minimum front setback of less than 4m is not consistent with the adjoining properties and would dominate the streetscape character. Additionally, the proposed front setback does not meet the <i>WDCP</i> requirement for residential zone.</p>
	C14 Setbacks in a residential zone	
	C15 Safe environment	<p>The proposed centre will provide a pedestrian access from View Street and vehicular access from Tessa Street. However, the applicant has failed to demonstrate that consideration has been given in designing the proposed facility to be accessible by all potential users as set out under this part. No access report demonstrating compliance with the National Construction Code and the Disability (Access to Premises – Buildings) Standards 2010 has been provided.</p>
	C16 Accessible design	
3.4 Landscaping	C17 Streetscape and amenity	<p>The proposed planting to the perimeter of the site is considered to be inadequate to provide for integration into the streetscape and landscape character of the Heritage Conservation Area and to provide for buffers to adjoining properties. Council's Landscape officer reviewed the proposed planting schedule and advised that <i>the submitted landscape plans indicate planting around significant portions of the Eastern, Western and Southern boundaries of the site comprising only grasses and groundcovers. No mid-range or canopy species are included in these areas which does not provide for integration into the streetscape and landscape character nor provide adequate buffers</i></p>

		<i>to adjoining properties in consideration of the proposed use as a Childcare Centre for 145 children. Additionally, the proposal will result in unacceptable impacts on two significant indigenous trees – Tree 2 Eucalyptus saligna (Sydney Blue Gum) 30m height and Tree 6 Eucalyptus saligna (Sydney Blue Gum) 27m height.</i>
	C18 Incorporate car parking into the landscape design of the site	Not applicable, the proposal does not include at grade parking.
3.5 Visual and acoustic privacy	C19 Open balconies in mixed use developments	The proposed centre will not be located in a mixed use development
	C20 Direct overlooking of indoor rooms and outdoor play spaces	Insufficient information has been provided to enable a proper assessment of any privacy impacts to and from the development.
	C21 Direct overlooking of adjoining properties	The submitted elevations and sections do not accurately reflect the existing ground levels and with lack of details on the acoustic fencing to the play areas, the application does not enable a proper assessment of any privacy impacts to and from the development.
	C22 New development in residential area to provide acoustic measures	The proposal includes acoustic fencing to the outdoor play areas adjoining residential developments.
	C23 Acoustic report by a suitably qualified professional	The application accompanies an acoustic report prepared by Clarity Acoustics (Ref. R01 21150 and dated 29 September 2022) has been submitted to support the application. Council's Environmental Health section has reviewed the acoustic report and found it to be satisfactory. It is also noted by Council's Environmental Health officer that while plant equipment were not considered in the report, the requirement for additional acoustic report can be conditioned.
3.6 Noise and air pollution	C24 Design solutions to minimise noise	The site is not identified as being located in proximity of a noise source. The submitted acoustic report has considered any potential acoustic impacts from and to the development and made the recommendations accordingly.
	C25 Noise levels for sleeping areas and other non-play areas	
	C26 Major roads and industrial development	
	C27 Air quality assessment	The site is not located in proximity to a known external source of air pollution.
3.7 Hours of operation	C28 Residential area should be confined to 7.00am to 7.00pm weekdays.	The proposed hours of operation are 7:00am to 6:00pm weekdays.
	C29 Mixed use or commercial areas	The site is located in R2 Zone.
3.8 Traffic, parking and pedestrian circulation	C30 Off street parking to be provided in accordance with DCP	The proposed parking arrangement has been assessed in accordance with Willoughby DCP. Refer to Attachment 4.



	C31 Commercial or industrial zones	Not applicable.
	C32 Traffic and Parking Study	A Traffic Impact Assessment, prepared by The Transport Planning Partnership, dated 15 August 2022 was submitted with the application. Council's Traffic and Transport section reviewed the traffic assessment and advised that the data used for comparison and analysis of traffic volume is not accurate. Additionally, the submitted report did not consider the existing and approved child care centres in the area to adequately demonstrate the cumulative impact on the road network. The submitted report is therefore, failed to demonstrate that the amenity of the surrounding area will not be affected and there will be no impacts on the safe operation of the surrounding road network.
	C33 Alternate vehicular access	The site does not front a classified road and a road which carry freight traffic or transport dangerous goods or hazardous materials.
	C34 Cul-de-sac or narrow lanes	The site is not located in a cul-de-sac.
	C35 Safe pedestrian environment	The proposed basement car parking does not provide defined/separate pedestrian paths for safe pedestrian movements within the car park, which results in potential safety issues for parents and children during drop off and pick up. The applicant has therefore failed to demonstrate that a safe pedestrian environment can be achieved as a result of the development.
	C36 Mixed use developments	Not applicable
4.A Internal physical environment	C37 Car parking design and fencing to separate the play areas	The proposal includes a basement car park with the play areas to be located on upper levels away from car parking spaces.
	4.1 Indoor Space requirements: <ul style="list-style-type: none"> <li>• minimum of 3.25m<sup>2</sup> of unencumbered indoor space</li> <li>• plus, a minimum of 0.2m<sup>3</sup> per child of internal storage space</li> </ul>	As mentioned above under S3.22 of SEPP (T&I), the proposal achieves the minimum indoor space requirement. However, the applicant has failed to demonstrate compliance with the internal storage space requirement as per part 4.1 of the guideline which requires a minimum of 0.2m <sup>3</sup> per child of internal storage space. The proposal therefore does not adequately address the indoor space requirement set out under this part of the guideline.
	4.2 Laundry and hygiend facilities	On-site laundry is provided on Level -1 of the centre.
	4.3 Toilet and hygiend facilities	This requirement is not satisfied, as no detailed elevation/ section plans were submitted of the children's toilet area to carry out a proper assessment of these areas.

	4.4 Ventilation and natural light	The proposal is considered to be acceptable in terms of cross ventilation and access to natural light.
	4.5 Administrative space	The proposal provides adequate areas for the purpose of conducting administrative functions.
	4.6 Nappy change facilities	This requirement is not satisfied, as nappy change facilities were not clearly identified on the floor plans to carry out a proper assessment of these areas.
	4.7 Premises designed to facilitate supervision	The floor plans are considered to have been designed to facilitate adequate supervision of children across the centre.
	4.8 Emergency and evacuation procedures	An Emergency Management Plan prepared by Milton Architects was accompanied with the application. The submitted plan is adequate as it has not been prepared by an accredited practitioner (fire safety) or a registered certifier. Additionally, the plan does not specify the travel to exits nor the procedures to ensure children safely evacuated to the nominated evacuation point. The submitted plan indicates that children between the ages of 0 to 2 years will be evacuated by using evacuation cot, despite the majority of these children being located on Level 1 which does not have a direct access to the street.
4.B External physical environment	4.9 Outdoor space requirements: <ul style="list-style-type: none"> <li>• minimum of 7m<sup>2</sup> of unencumbered outdoor space</li> <li>• plus, a minimum of 0.3m<sup>3</sup> per child of outdoor storage space</li> </ul>	As mentioned above under S3.23 of SEPP (T&I), the proposal achieves the minimum outdoor space requirement. However, approximately 21m <sup>2</sup> of outdoor play areas on Level 1 and 59m <sup>2</sup> of outdoor play areas on Level 2 does not meet the requirements of a covered space and should therefore be excluded from outdoor space.  Additionally, the applicant has failed to demonstrate compliance with the outdoor storage space requirement as per part 4.9 of the guideline which requires a minimum of 0.3m <sup>3</sup> per child of internal storage space. The proposal therefore does not adequately address the outdoor space requirement set out under this part of the guideline.
	4.10 Natural environment	The requirement of this part of the guideline can be satisfied should an approval be granted.
	4.11 Shade	The proposed development includes adequate shaded areas to protect children from ultraviolet radiation from the sun.
	4.12 Fencing or barrier that encloses outdoor spaces.	The requirement for fencing around the play areas can be conditioned to ensure compliance should an approval

		is granted.
	4.13 Soil assessment	<p>This part of the Childcare Planning Guideline requires a Soil Assessment to be undertaken as part of the development application process, particularly where children will have direct access to soil. The outdoor play area proposed on Level 1, particularly in the north-west corner, will provide for children having direct access to soil.</p> <p>The application does not accompany a soil assessment/ preliminary investigation to ensure that the site is suitable or can be made suitable for the proposed sensitive use.</p>
4.D National quality framework assessment checklist	104. Fencing or barrier that encloses outdoor spaces	As assessed above under part 4A and 4B of the Guideline.
	106. Laundry and hygiene facilities	As assessed above under part 4A and 4B of the Guideline.
	107. Unencumbered indoor space	As assessed above under part 4A and 4B of the Guideline.
	108. Unencumbered outdoor space	As assessed above under part 4A and 4B of the Guideline.
	109. Toilet and hygiene facilities	As assessed above under part 4A and 4B of the Guideline.
	110. Ventilation and natural light	As assessed above under part 4A and 4B of the Guideline.
	111. Administrative space	As assessed above under part 4A and 4B of the Guideline.
	112. Nappy change facilities	As assessed above under part 4A and 4B of the Guideline.
	113. Outdoor space – natural environment	As assessed above under part 4A and 4B of the Guideline.
	114. Outdoor space – shade	As assessed above under part 4A and 4B of the Guideline.
	115. Premises designed to facilitate supervision	As assessed above under part 4A and 4B of the Guideline.

## ATTACHMENT 4 – ASSESSMENT UNDER *LEP* AND *WDCPs*

### Willoughby Local Environment Plan 2012 (WLEP 2012)

Assessment of the proposal against relevant parts of the *WLEP 2012* is provided below.

<b>WLEP 2012 controls</b>	<b>Proposal</b>	<b>Comments on compliance</b>
<i>WLEP 2012</i> zoning	Centre-based child care	Centre-based child care facilities are permitted with consent in the R2 – Low Density Residential zone under the <i>WLEP 2012</i> .
CI 4.3 Height of Buildings  8m maximum building height permitted.	The submitted SOEE and architectural plans indicate a maximum building height of 8m. However, exact is unknown	<p>The submitted architectural plans do not enable a full and proper assessment of the proposal, particularly in determining the proposed maximum height of the building.</p> <p>The longitudinal and cross sections do not clearly identify the existing ground levels and are inconsistent with the survey plan. The submitted <i>Section-Sheet 2 A05.02</i> indicates a natural ground line, which is not consistent with the existing ground levels shown on the survey plan. The architectural plans do not correctly reflect the existing site conditions including any depressions or excavated areas accommodating the existing basement.</p> <p>Additionally, grid/ references of sections marked on the floor plans are unclear.</p> <p>The application is supported by insufficient and inconsistent information to enable an assessment against clause 4.3 and the application therefore must be refused.</p>
CI 4.4 Floor Space Ratio -  0.4:1 FSR is permitted for the subject site.	Proposed by the applicant = 058:1  As calculated by the assessing officer = 0.63:1	Does not comply, please refer to the assessment under clause 4.6 in Attachment 5.
CI 5.10 Heritage Conservation	Blue Gum Heritage Conservation Area: C2	<p>No heritage item on the site, however, the site is identified as being located within the Blue Gum Heritage Conservation Area (<b>Blue Gum HCA</b>), identified as C2 in Part 2 to Schedule 5 of the <i>Willoughby LEP</i>.</p> <p>A statement of heritage impact prepared by Nathalie Scipioni Architects accompanied the application.</p> <p>Council's Heritage Officer has reviewed the proposal and submitted documents and advised that the <i>proposal is inconsistent with the general character of the Blue Gum HCA and the proposed height, number of storeys, floorplate and setbacks will result in a visually intrusive development and negatively impact on the HCA.</i></p> <p>In view of the comments above, the proposal is considered to be inappropriate in its context being within a Heritage Conservation Area, It proposes a development that would have an adverse impact on a heritage conservation area by introducing a building that is not in harmony with the character of the historic streetscape and the significance of the heritage conservation area.</p>

<b>WLEP 2012 controls</b>	<b>Proposal</b>	<b>Comments on compliance</b>
		The Proposed Development is contrary to clauses 5.10(1)(a) and (b) of the <i>Willoughby LEP</i> , in that it does not conserve the environmental heritage of Willoughby.
CI 5.21 Flood Planning	The subject sites is not flood prone.	N/A
CI 6.2 Earthworks	Earthworks shall not impose detrimental impacts to the site and surrounding land	<p>Clause 6.2(3) provides that, in deciding whether to grant development consent for development involving earthworks, the consent authority must consider particular matters including:</p> <ul style="list-style-type: none"> <li>• The likely disruption of, or any detrimental effect on, drainage patters and soil stability in the locality;</li> <li>• The effect of the development on the existing and likely amenity of adjoining properties; and</li> <li>• Appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> </ul> <p>The proposed development involves excavation to create the basement level, to a depth ranging from 1.57m to 6m. The application is not accompanied by a geotechnical investigation to adequately consider the mandatory matters set out in clause 6.2 of the <i>Willoughby LEP</i>.</p> <p>The proposal therefore fails to achieve consistency with Clause 6.2 of the <i>WLEP</i>.</p>
CI 6.5 Signage	Signage shall not interfere with visual amenity and safety	The proposed signage are associated with a permitted use and are considered to be acceptable in terms of visual amenity and safety of surrounding areas. The proposed signage have been assessed, in detail under the SEPP (Industry & Employment) 2021 in Attachment 3.

**Willoughby Development Control Plan (WDCP 2006 and WDCP2023)**

Assessment of the proposal against relevant parts of both the repealed *WDCP 2006* and new *WDCP 2023* are provided below.

At the time of lodgement of the application *WDCP 2006* was applicable and *WDCP 2023* was a draft. On 31 July 2023, *WDCP 2023* came into effect, however, there is no savings provisions which would apply to the subject application. Therefore, *WDCP 2023* applies to this application.

<b>WILLOUGHBY DEVELOPMENT CONTROL PLAN 2006</b>		
<b>WDCP controls</b>	<b>Proposal</b>	<b>Comments</b>
Part C – General Development Guidelines		
<b>C.4 Transport requirements</b>		
C.4.2 Car Parking Requirements Long day care centres (within Railway Precincts and MPTCs) 1 space / 2 employees	<p>A total of 28 car parking spaces are provided.</p> <p>13 spaces for Staff 15 for drop off and pick up including one accessible space</p> <p>2 motor bike spaces and 2 bicycle spaces</p>	<p>As per <i>WDCP 2006</i>, the site is located in Chatswood Railway Precinct. The proposal complies with the requirement of <i>WDCP</i> in terms of total number of car parking spaces required for the development.</p> <p>Notwithstanding, the proposal fails to demonstrate that the sight triangles on either side of the driveway, as required by Figure 3.3 of AS/NZS 2890.1 can be achieved. Additionally, Insufficient have been provided with regard to the dimensions of the parking spaces to ensure compliance with the requirements for Class 3 short term parking in accordance with AS/NZS 2890.1.</p> <p>In addition to the above Council's Traffic and Transport section raised issues with regard to the proposed tandem spaces stating that <i>The staff parking arrangement (tandem parking) is not conducive to practicality, given its "first in, last out" structure. This approach might pose challenges for accessibility, especially considering that caregivers work in shifts with varying schedules.</i></p> <p>In view of the above, the proposal does not adequately satisfy the requirement of Part C4 of the <i>WDCP 2006</i>.</p> <p>Note* As per <i>WDCP 2023</i>, the site is located outside of the Chatswood Railway Precinct and more onerous car parking rates apply to the development.</p>
C.5 Water Management -	<p>All major developments are required to provide OSD that is designed to capture and detain stormwater runoff for all storm events up to and including the 1% AEP storm event. The OSD system must be in accordance with Council's Technical Standard No.1 - Stormwater Management and AS/NZS3500.3.</p>	<p>Council's Engineering section has reviewed the proposed stormwater management and advised that the proposal is not satisfactory for the following reasons:</p> <p><i>Stormwater discharged from the site is proposed to be drained to the kerb and gutter, with a maximum outflow of 20L/s during the 1%AEP storm event. The information provided does not provide sufficient detail to confirm compliance with the Willoughby DCP. Only selected extracts from the DRAINS model were provided, which did not include sufficient information to confirm compliance. A copy of the electronic DRAINS model is required, along with a detailed summary including catchment</i></p>

		<p>details of each node and the parameters used in the OSD node.</p> <p>The OSD design has not demonstrated that the required freeboard between the overflow water level for the tank and the adjacent floor level has been achieved. The tank design includes an internal overflow weir to a pipe to achieve the freeboard, which does not comply with the Technical Standard 1 nor the requirements of AS/NZS 3500.3 for the overflow to be in a visible location. The overflow must be through either the roof or side of the tank to an overland flow path over the ground.</p>
<p>C.6 Access, Mobility and Adaptability-</p> <p>3% of total car parking spaces. That is: 10 to 33 spaces – 1 accessible space;</p>	<p>1 Accessible space is proposed.</p>	<p>Complies.</p> <p>Note: The proposal does not comply under WDCP 2023.</p>
<p>C.8 Waste Management-</p> <p>A Waste Management Plan must be prepared for all development.</p>	<p>A Waste Management has been provided with the application for kerb side collection.</p>	<p>Do not comply.</p> <p>The submitted Waste Management Plan does not satisfactorily explain the waste management and collection practices for the development.</p> <p>Council's Waste consultant has reviewed the proposal and found it inadequate for the following reasons:</p> <ul style="list-style-type: none"> <li>• The plan does not specify number of waste and recycling bins for twice weekly collection;</li> <li>• The construction of the external bin room and associated facilities such as roof, ventilation and washing facilities (also check there are no steps from generation to collection). The applicant does not specify the width and sliding details of the collection sliding door "sliding gate" on the bin room.</li> <li>• The location of internal bin areas within the facility (cupboards etc) and the destination of source-separated nappies and paper towels.</li> <li>• How and when the waste will be safely collected and with minimal noise, including how the bins will be moved to and from the bin room to the truck and by whom as well as where the truck is going to safely park given the Tessa Street and View Street corner.</li> </ul>

		<ul style="list-style-type: none"> <li>The submitted Waste Management Plan indicates that Collection truck (mini rear loader 6.4m) to park near the bin storage area on View Street and collect the bin contents. Bin collection will be scheduled outside the facility operating hours to avoid disruption to occupant movements.</li> </ul> <p>Whereas the Traffic and Transport Assessment notes that collection will take place from Tessa Street and will rely on staff wheeling bins in and out. Clarification is required with regard to Waste Collection.</p> <p>Note: Council's Transport and Traffic section has also reviewed the proposed waste collection arrangement and do support delivery (drop off &amp; pick up) from kerbside. All deliveries need to be contained within the car park in the basement, including <b>waste collections</b></p>
<p>C.9 Preservation of Trees or Vegetation-</p> <p>An arborist report is required to justify the clearing, pruning or removal of trees.</p>	<p>An Arborists Report has been provided with the application</p>	<p>Council's Landscape officer has review the arborists report and is not supportive of the proposal. Comments from the officer are:</p> <p><i>The proposal will result in unacceptable impacts on two significant indigenous trees – Tree 2 Eucalyptus saligna (Sydney Blue Gum) 30m height and Tree 6 Eucalyptus saligna (Sydney Blue Gum) 27m height as:</i></p> <p><i>The Arborist's report prepared by Tree Wise Men and Landscape plans prepared by Milton Architects are noted. The Report indicates retention of two significant local native trees, Eucalyptus saligna. The trees are listed in Council's Natural Heritage Register. These trees are located close to the existing building and the proposed building. The Report concludes that these trees can be retained with specific construction techniques and Arboricultural supervision.</i></p> <p><i>A review of the plans indicates that the trees are likely to be adversely affected by the works, with disturbance of root areas beyond the existing buildings due to the excavation require for basement and the building structure itself.</i></p> <p><i>The overlay provided in the Architectural drawings indicates additional areas of building footprint that will impact on the trees removing additional roots in an already compromised root zone.</i></p> <p><i>Over-excavation for construction purposes is</i></p>



		<p>likely. Whilst no geotechnical report was noted in the documents viewed, the anticipated shale substrate is unlikely to be able to be excavated without batters. If alternate shoring is proposed, over-excavation for construction of the walls would further impact the trees. Additionally, the location of these large trees (up to 30m ht) over a childcare centre is of some concern, particularly if the trees are under stress from the construction impacts. The proposed use adjacent these trees does not appear to be in the public interest, nor does proposed works that is likely to lead to decline of the trees.</p> <p>The Landscape Plans are suited to the use as a Childcare Centre, however provided little by way of contribution to the local amenity and streetscape. Additional setbacks from boundaries would enable a more integrated landscape presentation and provide greater protection for the significant trees on the site. At this stage, the proposal is unable to be supported with regard to landscape issues.</p>
Part G – Specific Development Types		
G.5 Advertisements and Advertising Structures		
G.5 Advertisements and Advertising Signage	<p>The application proposes business identification signage on the northern front fence. The proposed signage sits flush to the fence and does not extend above architectural features.</p>	<p>The proposed signage are:</p> <ul style="list-style-type: none"> <li>• Business Identification sign on boundary wall fronting Tessa Street, indicating business name, street address and web address.</li> <li>• 1 x (600x600mm) business identification sign on Tess Street elevation, indicating the business name and Little Lane Bird Logo.</li> <li>• 1 x (600x600mm) business identification sign on View Street elevation, indicating the business name and Little Lane Bird Logo.</li> </ul> <p>The proposed <b>signs</b> are considered to be acceptable with regards to the provision of WDCP 2006.</p>
G.8 Child Care Services		
G.8 Centre-based Child Care	Site Suitability	<p>These requirements have been assessed under Child Care Planning Guideline in Attachment – 3.</p>
	Electromagnetic Fields	
	Noise	
	Location	
	Indoor Areas	
	Outdoor Areas	
G.8 Planting and Landscaping	Landscape plan has been provided.	<p>Council's Landscape officer has reviewed the submitted landscape plan and advised that <i>The Landscape Plans are suited to the</i></p>

		<p><i>use as a Childcare Centre, however provided little by way of contribution to the local amenity and streetscape. Additional setbacks from boundaries would enable a more integrated landscape presentation and provide greater protection for the significant trees on the site.</i></p> <p>The proposal therefore does not satisfy the requirement of this part of <i>WDCP 2006</i>.</p>
<p>G.8 Emergency Evacuation –</p> <p>An Emergency Evacuation Plan must be submitted with Development Applications for all child care centres.</p>	<p>Emergency Management Plan prepared by Milton Architects was submitted with the application</p>	<p>As discussed above in this report, the submitted plan is inadequate as it has not been prepared by an accredited practitioner (fire safety) or a registered certifier. Additionally, the plan does not specify the travel to exits nor the procedures to ensure children safely evacuated to the nominated evacuation point. The submitted plan indicates that children between the ages of 0 to 2 years will be evacuated by using evacuation cot, despite the majority of these children being located on Level 1 which does not have a direct access to the street.</p>
<p>G.8 Hours of Operation-</p> <p>Hours of operation shall not extend outside the core period of 7.00am to 7.00pm unless written justification is provided and approved</p>	<p>The proposed hours of operation are 7:00am to 6:00pm Monday – Friday (inclusive).</p>	<p>Comply</p>
<b>Part H – Heritage Items and Conservation Areas</b>		
<b>Description</b>	<b>Requirement</b>	<b>Comments</b>
H.2.4 Demolition	The proposal involves demolition of the existing building.	<p>Acceptable.</p> <p>Council's Heritage officer provided the following commentary on proposed demolition:</p> <p><i>Demolition – as the existing building on the property is not considered to be contributory or neutral to the Heritage Conservation Area, demolition is seen to be acceptable, with the primary requirement of the Willoughby DCP to “ensure that any replacement development enhances the significance of the Heritage Conservation Area”.</i></p> <p>In view of the above, proposed demolition is considered to be acceptable, however, the replacement development fails to enhance the significance of the Blue Gum HCA. Therefore, the proposed development is not supported.</p>
H.2.3 Development of Corner Allotments within Heritage Conservation Areas -	<i>New development or additions must be located to minimise any impact on existing prominent trees.</i>	<p>The subject site is located in the corner of the Blue Gum Heritage Conservation Area. Council's Heritage officer comments on this requirement states:</p> <p><i>Any development on this corner allotment should seek to set the tone for the heritage character of this locality, as it should be seen</i></p>

			<p><i>as the gateway to the Blue Gum Heritage Conservation Area and is indeed located within the boundaries of the HCA. A childcare centre located within a Heritage Conservation Area would therefore be expected to be compatible with the DCP controls outlined above.</i></p> <p>Given the proposal does not meet any of the controls listed in Part H of the <i>WDCP</i>, the proposed development is not considered to be appropriate for the Blue Gum HCA.</p>
<b>H.3.3 Blue Gum Heritage Conservation Area: C2</b>			
Scale	Generally	<ul style="list-style-type: none"> <li>• Medium domestic scale</li> <li>• Detached residences</li> </ul>	The proposal is not consistent with the medium domestic scale of the area and adjoining residential developments in the HCA.
	Storeys	Generally 1 (2 <sup>nd</sup> storey within roof forms and basement where topography dictates	Does not comply. The proposal is a 3 storey building with basement car park.
	FSR	04:1 This figures represent an upper limit to FSR.	Does not comply.
Setting	Setbacks	Variable front and side setbacks consistent within group of houses	The proposed front setback of less than 4m is not considered to be consistent with the area and adjoining residential developments.
	Landscaping	Well established informal gardens with fairly dense shrubbery and mature trees, including some remnant Blue Gum High Forest	The proposal is not acceptable with regard to this part, as it would result in unacceptable impacts on two significant Blue Gum trees located on the site.
	Carparking	Side Driveways to rear/side parking	The driveway location is generally retained.
	Front Fencing	Low unpainted face brick or timber picket	Does not comply. The proposed front fence (boundary wall) to Tessa Street has a height ranging from 1.6 to 2.9m, which is not considered to be consistent with the Heritage Conservation Area.
Massing	Roof	Generally dominant hipped and gabled roof forms	Does not comply. The proposal includes a flat roof design.
	Facade	Stepped massing with protruding verandahs/entry porches and bays	Does not comply.
	Building envelope	Roof Pitch 25-35 degrees <ul style="list-style-type: none"> <li>• Eaves height 3.6m from floor level</li> <li>• Ridge height 6-6.5m from floor level</li> <li>• Building height 8m from natural ground level to vertical</li> </ul>	The proposal does not give regard to any of the building envelope controls for the Blue Gum Heritage Conservation Area. The proposal is therefore not supported.

		distance between ground level (existing) and to the highest point of the building in accordance with Clause 4.3 (Height of Building) of <i>WLEP 2012</i>	
Material/ Details	Roof	Unglazed terracotta Marseilles pattern tile.	The proposed material/details were reviewed by Council's Heritage officer, who advised that <i>Materials and details – the materials and details prescribed for the Blue Gum Heritage Conservation Area are unglazed terracotta Marseille tiles, red/brown unpainted bricks and traditionally proportioned windows and doors. It is unclear how the proposed development with metal cladding, white and timber-look timber battening/louvres, stone cladding and grey finish palisade fence responds to the adjoining Conservation Area.</i>  Overall the proposal is not considered to be consistent with the management policies for the Blue Gum HCA, controls for future development and objectives of Part H of the <i>WDCP 2006</i> . The proposal is therefore not supported.
	Walls	Generally red or brown smooth face brick: all unpainted face brick to be retained.	
	Windows and Doors	Timber casement sash windows often in groups of 3 in bays to front façade. Single or double leaf panelled & glazed entry doors.	
	Joinery and decoration	Heavy masonry verandah columns with stone or render capping, stone base coursing, simple gable ends.	

As mentioned previously in this report, on 31 July 2023, *WDCP 2023* came into effect. Given, there is no savings provisions which would apply to the subject application, the new *WDCP 2023* applies to this application. Accordingly an assessment against *WDCP 2023* has been undertaken. The assessment below only covers the matters which are either more onerous in the new *WDCP* or have been recently introduced.

<b>WILLOUGHBY DEVELOPMENT CONTROL PLAN 2023</b>		
<b>WDCP controls</b>	<b>Proposal</b>	<b>Comments</b>
<b>Part D – Commercial Development</b>		
<b>4.7 Loading/unloading facilities</b>		
4.7.2 control (c)-  All new commercial developments, and developments that involve significant demolition, alterations or additions with a floor area in excess of 1,000m <sup>2</sup> must make adequate provision for off-street loading and unloading facilities in line with Part F of this plan.	The proposal includes on-street Loading/unloading, including waste collection.	Fails to Comply

<b>4.8 Waste and recycling</b>		
4.8.2 control (c)-  bin storages areas must: <ul style="list-style-type: none"> <li>• be suitably screened from public areas and adjoining properties</li> <li>• located in areas to reduce the impacts of visual amenity, noise, and odour</li> </ul>	Bin storage is proposed adjacent to the corner of View Street and Tessa Street.	Fails to comply, The application does not adequately address the potential amenity issues associated with the proposed waste storage area.
<b>Part F – Traffic and Transport management</b>		
<b>3.1 Parking provisions outside of the railway precincts of Chatswood, St Leonards and Artarmon</b>		
Table 1 Child Care centers outside of Chatswood CBD - 1 space/20m <sup>2</sup>  Note: <u>The Chatswood railway precinct has been updated to reflect the Chatswood CBD area as part of the new WDCP.</u>	<u>Control</u> 1049.58m <sup>2</sup> /20 spaces are = 52.4 spaces.  Rounded down to 52.  <u>Proposed</u> 28 car parking spaces	Fails to comply. There is a shortfall of 24 car parking spaces.
<b>5.2 Off-street loading/unloading facilities</b>		
All new major commercial, retail and industrial developments, and developments that involve substantial redevelopment with a floor area in excess of 500m <sup>2</sup> for commercial/retail developments and 1,000m <sup>2</sup> for industrial developments, must make adequate provision for offstreet loading and unloading facilities.	The proposal includes on-street Loading/unloading, including waste collection.	Fails to comply.
<b>5.4 Accessible car parking for people with disability</b>		
In accordance with attachment 4 and Table 5:  In parking areas with 5 or more spaces, whichever is the greater: a. 1 space b. 3% of the total car parking spaces	<u>Control:</u> Two (2) accessible car parking spaces are required.  <u>Proposed:</u> One accessible car parking spaces is proposed.	Fails to comply.
<b>5.5 Stack car parking</b>		
Stack or tandem car parking is where one or more vehicles need to be moved to allow another vehicle to enter or exit a car space. This type of car parking is only permitted if the affected vehicles are allocated to the same owner or tenant of residential, commercial, retail or	The proposal includes stack car parking for staff members. A total of 14 stack car spaces are proposed.	Fails to comply. More than 25% spaces are proposed in tandem parking arrangement.

industrial premises. It is also only permitted if there are no safety issues and not more than 25% of vehicles are in a stacked parking arrangement.		
<b>5.10 Additional controls for a centre-based child care facility</b>		
Control (e)-  Pedestrian access must be separated from the access and manoeuvring of vehicles in the driveway and car parking areas	The proposal does not provide a designated pedestrian access in the basement car park.	Fails to comply.
These controls apply to pre-school and long day care centres in residential areas outside Chatswood CBD:  <i>. a drive-through drop-off and pick-up area is required at the rate of 1 car space per 10 children within the driveway</i>	At least 15 spaces are required for drop-off and pick-up	Fails to comply. The application indicates that a total of 15 spaces in basement car park will be used for drop-off and pick-up area. Notwithstanding, there is a shortfall of 24 car parking spaces for the whole development. Therefore, the proposed car parking arrangement is not considered to be adequate.

## ATTACHMENT 5: OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR

### Description of non compliance

The applicant indicates the proposed FSR being 0.58:1 with GFA being 958m<sup>2</sup>.

The applicant has incorrectly calculated the gross floor area of the proposed development. Which mostly occurs due to areas named as safe haven, stairs, and lobby areas not included in the gross floor area calculation as per the definition of Gross Floor Area in the *WLEP* and the approach adopted by the Court in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181.

Additionally, the applicant has failed to provide section plans to ensure that storage area marked as B.7 in the basement qualifies for a basement storage as per the definition of basement and can be excluded from the GFA calculation.

The proposed gross floor area, as calculated is 1049.58m<sup>2</sup>. Approximately 91.50m<sup>2</sup> of GFA has not been included in the calculation. Properly calculated, the application has a FSR of at least 0.63:1, being a breach of approximately 58% to the development standard.

Development Standard	FSR Standard	Proposed FSR (calculated)	%Variation
CI 4.4 Floor space ratio	0.4:1 662.8m <sup>2</sup>	0.63:1 1049.58m <sup>2</sup>	58% 386.78m <sup>2</sup> over the standard

### Definition of Gross Floor Area

The *LEP* provides the following definition:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for **common** vertical circulation, such as lifts and stairs, and
- (e) any basement—
  - i. storage, and
  - ii. vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

### Objectives of Clause 4.6

4.6 (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.

CI 4.6 Criteria	Response
<b>4.6(2)</b> 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.	The development standard is not expressly excluded from the operation of this clause.
<b>4.6 (3)</b> 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) Has the applicant's submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and	The applicant's written request has not adequately demonstrated that the objectives of the Floor Space Ratio development standard are achieved, notwithstanding the numerical non-compliance. The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).
b) Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?	The applicant's written request failed to demonstrate that the objectives of the development standard as well as R2 Low Density Residential are achieved, particularly in terms of character of the surrounding residential development. The bulk and scale of the proposed development do not offer a transition between the adjoining residential developments, particularly along Tessa Street within the Blue Gum Heritage Conservation Area. Therefore, the proposal fails to achieve the desired character of the Blue Gum HCA.  Therefore, the applicant's written request has not demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority cannot be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).
<b>4.6(4)</b> 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 adequately addressed the matters required to be demonstrated in subclause (3),	Clause 4.6(4) requires the written request to demonstrate that, to the satisfaction of Council, that compliance with the development standard is unreasonable or unnecessary in the



CI 4.6 Criteria	Response
	<p>circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>The applicant's written request failed to demonstrate that the objectives of the development standard as well as R2 Low Density Residential are achieved, particularly in terms of character of the surrounding residential development. The bulk and scale of the proposed development do not offer a transition between the adjoining residential developments, particularly within the Blue Gum Heritage Conservation Area. Therefore, the proposal fails to achieve the desired character of the Blue Gum HCA.</p> <p>Therefore, Council is not satisfied that the applicant's written request has adequately addressed these matters.</p> <p>Clause 4.6(4) therefore prevents the grant of development consent, and the development application must be refused.</p>
ii) <i>Is the proposed development in the public interest because it is consistent with:</i>	
<ul style="list-style-type: none"> <li>objectives of the particular development standard</li> </ul>	No, see assessment below
<ul style="list-style-type: none"> <li>objectives for the development within the zone in which the development is proposed to be carried</li> </ul>	No, see assessment below

**Consistency with the objectives of the Floor Space Ratio development standard:**

Consistency of the proposed development with the floor space ratio standard's objectives is discussed below:

Floor Space Ratio Development Standard Objectives	Response
<p>a) <i>to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,</i></p>	<p>The proposal includes substantial excavation to accommodate the basement level, to a depth ranging from 1.57m to 6m. No geotechnical investigation report has provided to adequately assess any detrimental impact on environmental functions and processes, neighbouring uses, features of the surrounding land.</p> <p>Additionally, the proposed demolition works, excavation for the basement, and construction of new walls will require over-excavation beyond existing disturbed land potentially resulting in unacceptable impacts on two significant indigenous trees – Tree 2 <i>Eucalyptus saligna</i> (Sydney Blue Gum) 30m height and Tree 6 <i>Eucalyptus saligna</i> (Sydney Blue Gum) 27m height.</p> <p>Therefore, it is considered that the proposed development is not within the environmental capacity</p>

Floor Space Ratio Development Standard Objectives	Response
	of the site.
b) <i>to limit traffic generation as a result of that development,</i>	<p>The proposed development will likely result in additional traffic generation, however, insufficient information has been provided to adequately assess any impacts on the local road network and surrounding properties.</p> <p>A Traffic impact Assessment, prepared by The Transport Planning Partnership, dated 15 August 2022 was submitted with the application. Council's Traffic and Transport section reviewed the traffic assessment and advised that the data used for comparison and analysis of traffic volume is not accurate. Additionally, the submitted report did not consider the existing and approved child care centres in the area to adequately demonstrate the cumulative impact on the road network.</p> <p>The proposal therefore fails to satisfy this objective of the development standard.</p>
c) <i>to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>	<p>The development will not have a significant impact on existing views of the adjoining properties. However, with regard to privacy and overshadowing, insufficient information has been provided to adequately assess any potential impacts on the adjoining properties.</p> <p>The submitted elevations and sections do not accurately reflect the existing ground levels and with lack of details on the acoustic fencing to the play areas, the application does not enable a proper assessment of any privacy impacts on the adjoining properties.</p> <p>The submitted shadow diagrams do not show the extent of any existing overshadowing of the adjoining properties for comparison purpose. There was no site analysis plan submitted with the application depicting the winter's sun path/axis. Additionally, the application does not provide elevation shadow diagrams to adequately assess any overshadowing impacts.</p>
d) <i>to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</i>	<p>As discussed above, the bulk and scale of the proposed development do not offer a transition between the adjoining residential developments, particularly within the Blue Gum Heritage Conservation Area.</p> <p>The proposed development therefore is considered to be inconsistent with the intended bulk and scale of development within the R2 Zone.</p>
e) <i>to permit higher density development at transport nodal points,</i>	NA.
f) <i>to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-</i>	NA.

Floor Space Ratio Development Standard Objectives	Response
<i>regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,</i>	
g) <i>to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,</i>	NA.
h) <i>to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,</i>	NA.
i) <i>to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,</i>	NA.
j) <i>to encourage the consolidation of certain land for redevelopment,</i>	NA.
k) <i>to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.</i>	NA.

**Consistency with the objectives of the R2 Zone:**

Consistency of the proposed development with the Zone's objectives is discussed below:

Zone Objective	Response
<i>To provide for the housing needs of the community within a low density residential environment.</i>	Not applicable, the proposal provides for a use other than residential.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal will provide for a use that is other than residential and is permissible in the zone.
<i>To accommodate development that is compatible with the scale and character of the surrounding residential development.</i>	As discussed above, the bulk and scale of the proposed development is excessive and do not offer a transition between the adjoining residential developments, particularly within the Blue Gum Heritage Conservation Area. Therefore, the proposal fails to achieve the desired character of the Blue Gum HCA.
<i>To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.</i>	The development will not have a significant impact on existing views of the adjoining properties. However, with regard to privacy and overshadowing, insufficient information has been provided to adequately assess any potential impacts on the adjoining properties.  Additionally, the proposal will result in unacceptable impacts on two significant indigenous trees – Tree

Zone Objective	Response
	2 Eucalyptus saligna (Sydney Blue Gum) 30m height and Tree 6 Eucalyptus saligna (Sydney Blue Gum) 27m height therefore failing to retain landscape quality of the Glue Gum Conservation Area.
<i>To retain the heritage values of particular localities and places.</i>	<p>The scale of the development substantially exceeds the permitted gross floor area that applies to the Glue Gum HCA. The design of the development provides for a greater building volume, while appears as a single storey development from View Street. It dominates the streetscape along Tessa Street as it does not offer a transition between the adjoining residential developments. Therefore not considered to be consistent with the character of the Blue Gum Heritage Conservation Area.</p> <p>The proposal fails to retain heritage values of the Blue Gum HCA.</p>
<i>To encourage self-sufficiency with respect to energy and food supply.</i>	The proposed non-compliance to the development standard would not have any detrimental impact upon energy and food supply to the property.

**Clause 4.6 4) b) The Concurrence of the Secretary has been obtained**

Based on the above considerations, the proposed development is not able to be granted consent, and the concurrence of the Secretary is not required to refuse the application.

## ATTACHMENT 6 - SUBMISSIONS TABLE:

The Development Application was notified to adjoining and nearby property owners in accordance with the *Willoughby Community Participation Plan* for a period of 21 days from 23 January 2023 to 14 February 2023. During this period, 83 public submissions (including one petition) were received. The issues raised are summarised below:

	Respondent Address	Suburb
1	No Address Given	N/A
2	44 Peckham Ave	CHATSWOOD
3	19 James St	CHATSWOOD
4	No Address Given	N/A
5	No Address Given	N/A
6	1 MacArtney Ave	CHATSWOOD
7	18 Anglo St	CHATSWOOD
8	32 Anglo St	CHATSWOOD
9	2/1 Tessa St	CHATSWOOD
10	2 View St	CHATSWOOD
11	17 The Crescent	CHATSWOOD
12	2 Sylvia St	CHATSWOOD
13	20 Tessa St	CHATSWOOD
14	19 The Crescent	CHATSWOOD
15	11 Dulwich Rd	CHATSWOOD
16	7 Wood St	CHATSWOOD
17	13 Tessa St	CHATSWOOD
18	3 West Pde	CHATSWOOD
19	11 Tessa St	CHATSWOOD
20	16 View St	CHATSWOOD
21	13 Tessa St	CHATSWOOD
22	17 Tessa St	CHATSWOOD
23	29 James St	CHATSWOOD
24	6 West Pde	CHATSWOOD
25	15 Tessa St	CHATSWOOD
26	15 Tessa St	CHATSWOOD
27	21 Malvern Ave	CHATSWOOD
28	7 Kooba Ave	CHATSWOOD
29	26 Anglo St	CHATSWOOD
30	PO Box 1501	CHATSWOOD
31	26 Anglo St	CHATSWOOD
32	2B View St	CHATSWOOD
33	42 Anglo St	CHATSWOOD
34	21 Colwell Cres	CHATSWOOD
35	5 The Crescent	CHATSWOOD
36	12 Tessa St	CHATSWOOD

<b>Respondent Address</b>		<b>Suburb</b>
37	7B Tessa St	CHATSWOOD
38	22 West Pde	CHATSWOOD
39	5 Hillside St	CHATSWOOD
40	1 Anglo St	CHATSWOOD
41	5 Tessa St	CHATSWOOD
42	2/8 View St	CHATSWOOD
43	1 The Crescent	CHATSWOOD
44	17 Bushlands Ave	GORDON
45	29 Fullers Rd	CHATSWOOD NSW 2067
46	1A West Pde	CHATSWOOD NSW 2067
47	6A Tessa St	CHATSWOOD NSW 2067
48	18 Anglo St	CHATSWOOD NSW 2067
49	9 Tessa St	CHATSWOOD
50	9 Tessa St	CHATSWOOD
51	6 Tessa St	CHATSWOOD
52	PO Box 428	NORTHBRIDGE
53	39 Charles St	ERSKINEVILLE
54	16 West Pde	CHATSWOOD
55	6/11-19 View St	CHATSWOOD
56	10 Tessa St	CHATSWOOD
57	1 Dulwich Rd	CHATSWOOD
58	19 The Crescent	CHATSWOOD
59	10/11-19 View St	CHATSWOOD
60	20 Anglo St	CHATSWOOD
61	8 Dulwich Rd,	CHATSWOOD
62	7A Tessa St	CHATSWOOD
63	11 View Lane	CHATSWOOD
64	4/8 View St	CHATSWOOD
65	24 Anglo St	CHATSWOOD
66	12 Millwood Ave	CHATSWOOD WEST
67	64 Arthur St	FORESTVILLE
68	4 Tessa St	CHATSWOOD
69	6 Tessa St	CHATSWOOD
70	3A Clarke St	CHATSWOOD
71	3A The Crescent	CHATSWOOD
72	1 Kooba Ave	CHATSWOOD
73	5/21-23 View St	CHATSWOOD
74	5/8 View St	CHATSWOOD
75	17 Range St	CHATSWOOD
76	7/8 View St	CHATSWOOD
77	1/9 View St	CHATSWOOD
78	1 Dulwich Rd	CHATSWOOD

Respondent Address		Suburb
79	19A Dulwich Rd	ROSEVILLE
80	7/8 View St	CHATSWOOD
81	20A Tessa St	CHATSWOOD
82	20A Tessa St (2 <sup>nd</sup> submission)	CHATSWOOD
83	Petition	

Issues raised	Response
Non-compliances with development standards and development controls, including FSR, setbacks and fence heights	The bulk and scale of the development is discussed throughout this report and is reflected in the reasons for refusal.
Acoustic impacts associated with the proposed use.  Inadequate noise attenuation.  Insufficient information has been with regard to location and type of mechanical plant required for the development.	As discussed under Childcare Planning Guideline in Attachment-3, the application accompany an acoustic report prepared by Clarity Acoustics (Ref. R01 21150 and dated 29 September 2022) has been submitted to support the application. Council's Environmental Health section has reviewed the acoustic report and found it to be satisfactory. It is also noted by Council's Environmental Health officer that while plant equipment were not considered in the report, the requirement for an additional acoustic report can be conditioned should the application is determined by way of approval.
Substantial impact on traffic	Concerns are raised that the proposal will result in substantial impact on local traffic. The issue of any potential traffic impact has been discussed in the report and also reflected in the reasons for refusal. It has not been adequately addressed any potential traffic impacts associated with the proposed development.
Traffic congestion on the nearby road network and impact on street Parking	The application accompanies insufficient information with regard to traffic generation and any potential impacts on the nearby road network. Such concerns are reflected in the reasons for refusal.
Bulk and scale of the development is inconsistent with the requirements of the Blue Gum Heritage Conservation Area C2	The bulk and scale of the development is discussed throughout this report and is reflected in the reasons for refusal.
Existing Traffic Generation issues from the nearby existing Kookaburra Kindergarten (66 places) and recently approved 55 places childcare facility at 1-5 View Street.	Council's Traffic and Transport section and Willoughby Traffic Committee has reviewed the submitted Traffic Impact Assessment and are of the view that the analysis of traffic volumes and their corresponding levels should encompass not only the specific location but also take into account traffic from all adjacent childcare centres and land use changes. The traffic report has not considered the existing childcare centres in the areas both existing and recently approved. Therefore, the report is considered to be inadequate. This is also reflected in the reasons for refusal.
Unenforceable left-hand turn out of driveway into Tessa Street	Both Council's Traffic and Transport section and Willoughby Traffic Committee are not supportive the unenforceable left-hand turn out of driveway into Tessa Street and advised that the proposed ban on right-hand turns from the driveway is impractical, difficult to enforce and will encourage

Issues raised	Response
	the use of other local streets and intersections in a manner that has not been adequately assessed, will likely impact the amenity of residential uses in the locality and as a result is not supportable. This is also reflected in the reasons for refusal.
Floor Space Ratio (FSR) of 0.58:1 exceeds the 0.4:1 development standard by 45% causing an overdevelopment of the site	The proposed exceedance to the development standard for FSR is not supported for the reasons discussed throughout the report and listed in Attachment – 8.
Increased risk of major and minor accidents on Fullers Road	It has not been demonstrated how increased risk of major and minor accidents on Fullers Road would be mitigated.
<p>Accident Statistics in the Traffic Report are understated.</p> <p>Inaccurate information has been provided in the Traffic Report.</p> <p>Underestimation of traffic flows generated by proposal.</p> <p>Traffic Impact Assessment Report is misleading.</p> <p>Additional Traffic congestion caused by 'unmodelled' events held at the centre such as; Christmas concerts, parent teacher nights, grandparents' day etc.</p>	<p>Council's Traffic and Transport section has raised concerns about veracity of the submitted traffic report.</p>
The severe congestion on local streets, including Tessa and View Streets will cause potential risks associated with pedestrian safety	The application has failed to adequately demonstrate any potential impact on the local road network by way of congestion and risks associated with pedestrian safety.
Odour and amenity issues with the proposed waste storage, management and collection.	It has not been demonstrated how odour and amenity issues associated with waste management would be mitigated. This is also reflected in the reasons for refusal.
Over – development of the site	Such concerns are reflected in the reasons for refusal.
Inadequate on-site parking provision and impact on street parking	Such concerns are reflected in the reasons for refusal.
Insufficient setbacks from the western boundary	There are no specific controls for side setbacks for a childcare care, however, given the site is located in R2 Low density residential, the proposal has been assessed against the setback controls applying to a residential development. Notwithstanding, bulk and scale of the development is not supported and also reflected in the reasons for refusal.
Inadequate waste management	Such concerns are reflected in the reasons for refusal.
Insufficient landscaping and impact on significant trees	Council's Landscape consultant is not supportive of the proposal as it would result in unacceptable impact on two significant trees on the site. This is also reflected in the reasons for refusal.
The site is not suitable for the proposed use	Such concerns are reflected in the reasons for refusal.
Out of character	Such concerns are reflected in the reasons for refusal.



<b>Issues raised</b>	<b>Response</b>
Inconsistent with Council's controls for Child Care Facilities	Any inconsistencies with <i>WDCP</i> as well as Child care planning guidelines have been discussed throughout the report and reflected in the reasons for refusal.
Inadequate emergency evacuation procedures	The submitted Emergency Management Plan is not considered to be adequate for the matters set out under Reason 8(g) in Attachment – 8.
Errors, Omissions and Inadequacies in the Application Material	Such concerns are reflected in the reasons for refusal.
Over-concentration and oversupply of Childcare Facilities in the area	Such concerns are noted and considered while assessing the traffic impacts, however, matters related to supply/need and proximity of facility to other early education and care facilities do not apply pursuant to Section 3.27(1)(b)&(c) of the SEPP (Transport & Infrastructure).
The proposed development is not appropriate for a low density residential area	A child care centre is a permissible use in the R2 Zone, however, given the proposed bulk and scale of the development is not considered to be appropriate for the locality.
Impact on significant mature Blue Gum trees	Such concerns are reflected in the reasons for refusal.
Potential safety issues with play areas being located under the trees to be retained	Council's Landscape officer has reviewed the submitted documentation and are not supportive of proposal.
No green play area for the children	The proposal generally meets the requirement for Outdoor play areas required for a childcare centre, however, concerns have been raised with regard to certain areas to be excluded from the calculation of the total outdoor play areas.
Traffic and parking impacts during construction	Such concerns can be addressed through conditions of consent, requesting Construction Traffic Management Plan prior to the issue of a construction certificate.
The Construction & Demolition Waste Plan does not address asbestos management and disposal, which given the age of the nursing home, might be encountered in some form	Such concerns can be addressed through conditions of consent, should the application is determined by way of approval.
Increased flood risk to the residents in the valley	The matters relating to stormwater management has not been adequately addressed by the applicant. This is also reflected in the reasons for refusal.
The proposed development would impact upon the public rights of way.  Maintenance and remediation of the Rights of way easement	In view of the assessing officer, no such works are proposed which would permanently impede the public right of way.
Air Pollution from Cooking fumes	Such environmental health requirement can be conditioned, should the application is determined by way of approval.
Amenity impacts (Loss of privacy, overshadowing, light and acoustic) on the development at 8 View Street and 4 Tessa Street	Any potential amenity impacts on the neighbouring properties have been considered and assessed in this report under the relevant provisions of the EPIs, development control plan/s and guideline, in Attachments 3 and 5.
Substantial error in architectural plans, particularly in relation to reflecting existing	Such concerns are reflected in the reasons for refusal.

<b>Issues raised</b>	<b>Response</b>
ground levels on elevations and sections	
Difficulty of parking and interaction of children and moving cars in the tight off-street parking.	Council's Traffic and Transport section have considered such concerns and made the recommendations accordingly.
Wheeled egress of babies during an evacuation and the inconsistency between the Emergency Management Plan and the physical design	Concerns have been raised with regard to the inadequacy of the submitted Emergency Management Plan and reflected in the reasons for refusal.
The proposal does not adequately address the relevant provisions of the SEPP (Transport and Infrastructure) 2021	This has been reflected in the reasons for refusal
Need traffic lights to be installed at Anglo St to make the increased volume of traffic turning in and out of this area safe	This is a matter for Council's Traffic and Transport section and Willoughby Traffic Committee to consider.
The proposed signage is not appropriate to the street and locality	The proposed signage has been assessed under the relevant environmental planning instrument in Attachment – 3.
Contrary to zone objectives	Such concerns are reflected in the reasons for refusal.
Inadequate storage area	Such concerns are reflected in the reasons for refusal.

## ATTACHMENT 7 - SECTION 4.15 (79C) ASSESSMENT

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act 1979*.

The most relevant matters for consideration are assessed under the following headings:

### Matters for Consideration Under S.4.15 (79C) EP&A Act 1979

Considered and Satisfactory ✓ No Satisfactory X and Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>State Environmental Planning Policies (SEPP)</li> </ul>	X
	<ul style="list-style-type: none"> <li>Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Local Environmental Plans (LEP)</li> </ul>	X
	<b>Comment:</b> The proposal fails to satisfy the aims and objectives of the relevant EPIs.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>Draft State Environmental Planning Policies (SEPP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Local Environmental Plans (LEP)</li> </ul>	X
	<b>Comment:</b> The proposal has been considered under <i>WLEP 2012</i> and Draft (now made, Amendment 34) <i>WLEP 2012</i> . The proposal does not satisfy the relevant provision of these instruments. There are relevant changes which specifically relates to proposed development and the site. The changes are: <ul style="list-style-type: none"> <li>Objective - <i>To retain the heritage values of particular localities and places</i> of R2 zone has been amended to read as - <i>To retain the heritage values of particular localities and places and to ensure heritage items and conservation areas are not damaged, demolished or otherwise adversely impacted by new development.</i></li> <li>In addition to above, the amendment 34 also introduced an 'urban heat' control into the instrument, being the present clause 6.3.</li> </ul> <p>The application has failed to consider the above changes.</p>	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>Development control plans (DCPs)</li> </ul>	X
	<b>Comment:</b> The proposal satisfies the aims and objectives of both <i>WDCP 2006</i> and <i>WDCP 2023</i> . As detailed in this report.	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>Clause 61 <i>EP&amp;A Regulation 2021</i> - Demolition</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 62 <i>EP&amp;A Regulation 2021</i> - Fire Safety Considerations</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 64 <i>EP&amp;A Regulation 2021</i> - Fire Upgrade of Existing Buildings</li> </ul>	N/A
	<b>Comment:</b> The proposal satisfies the aims and objectives of the regulations.	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>Context &amp; setting</li> </ul>	X
	<ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>	X
	<ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>	X
	<ul style="list-style-type: none"> <li>Public domain</li> </ul>	X
	<ul style="list-style-type: none"> <li>Utilities</li> </ul>	X
	<ul style="list-style-type: none"> <li>Heritage</li> </ul>	X

**Matters for Consideration Under S.4.15 (79C) EP&A Act 1979**

**Considered and Satisfactory ✓ No Satisfactory X and Not Relevant N/A**

	• Privacy	X
	• Views	X
	• Solar Access	X
	• Water and draining	X
	• Soils	X
	• Air & microclimate	X
	• Flora & fauna	X
	• Waste	X
	• Energy	X
	• Noise & vibration	X
	• Natural hazards: Overland flowpath	X
	• Safety, security crime prevention	X
	• Social impact in the locality	X
	• Economic impact in the locality	X
	• Site design and internal design	X
	• Construction	X
	• Cumulative impacts	X
	<b>Comment:</b> The proposal does not have acceptable impacts on the surrounding built environment.	
(c)	The suitability of the site for the development	
	• Does the proposal fit in the locality?	X
	• Are the site attributes conducive to this development?	X
	<b>Comment:</b> The proposal is not suitable for the site for the reasons discussed in this report.	
(d)	Any submissions made in accordance with this Act or the regulations	
	• Public submissions	✓
	• Submissions from public authorities	✓
	<b>Comment:</b> Submissions have been considered in the assessment of the proposal.	
(e)	The public interest	
	• Federal, State and Local Government interests and Community interests	X
	<b>Comment:</b> The proposal is not considered to be sufficiently in the public interest.	

## ATTACHMENT 8: REASONS FOR REFUSAL

### 1. Overdevelopment of the Property

The excessive scale, excavation, height and floor space of the Proposed Development will result in an unreasonable overdevelopment of the Property. In particular:

- (a) The objectives of the R2 Low Density Residential zone include:
  - i. To accommodate development that is compatible with the scale and character of the surrounding residential development; and
  - ii. To retain the heritage values of particular localities and places.
- (b) The Development Application is inconsistent with the zone objectives because:
  - i. It is of a scale and character inconsistent with the character of surrounding residential development, given its exceedance of the *Willoughby LEP's* floor space ratio development standard and in light of the matters stated in Reason 7 below. The scale and character of the proposed built form does not sensitively respond to the locality to ensure contextual fit and minimise adverse impacts.
  - ii. It is of an excessive height and is not supported by information necessary to accurately determine the proposed maximum height, as stated in Reason 5.
  - iii. As a consequence of its excessive height, floor space ratio and topographical location, the Proposed Development result in an inappropriate built form for a building of this nature on this Property.
  - iv. It is contrary to the requirements of Part H of the *Willoughby DCP* and Blue Gum HCA for the matters set out in Reason 9.
- (c) As a result of these matters, the Proposed Development would result in a development that is excessive, constituting an overdevelopment of the Property.

### 2. Site contamination

The Development Application does not provide sufficient information to enable an assessment against the Resilience and Hazards SEPP and the Child Care Planning Guideline. In particular:

- (a) Chapter 4 and clause 4.6 of the Resilience and Hazards SEPP (when read with the Contaminated Land Planning Guidelines) provides that a consent authority must not consent to the carrying out of any development on land unless:
  - i. it has considered whether the land is contaminated;
  - ii. if the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose of the development proposed to be carried out;
  - iii. if remediation is required, that it is satisfied that the land will be remediated before the land is used for the purpose of the development proposed to be carried out; and
  - iv. it has considered a preliminary site investigation report before determining an application for consent to carry out development involving a change of use on:
    - 1. land that falls within the ambit of Table 1 to the Contaminated Land Planning Guidelines; or
    - 2. land in relation to which there is no knowledge (or incomplete knowledge) as to the applicability of Table 1 if the proposed development is for child care purposes.
- (b) Section 4.13 to the Child Care Planning Guidelines (which clause 3.23 of the Transport and Infrastructure SEPP provides must be taken into account before determining an application for development of a centre-based child care facility) provides that an assessment of soil should be carried out when it is proposed that children will have access to soil at a child care facility.
- (c) The Development Application is not supported by a preliminary site investigation to enable an adequate assessment against Chapter 4 of the Resilience and Hazards SEPP.

- (d) The outdoor play area proposed on Level 1 will enable direct access to soil for children. The Development Application is not accompanied by an assessment of soil to assess the potential for risk to children.

### **3. Pedestrian safety**

The Development Application does not satisfy the requirements of the Child Care Planning Guidelines with regard to parking and pedestrian circulation, contrary to clause 3.23 of the Transport and Infrastructure SEPP. In particular:

- (a) Part 3.8 Consideration 35 of the Child Care Planning Guideline provides a list of design solutions which should be incorporated into a development to provide a safe pedestrian environment.
- (b) The Proposed Development does not provide a safe pedestrian environment, resulting in potential safety issues for parents and children during drop-off and pick-up. Specifically:
  - i. Defined, separate pedestrian paths are not provided within the car park; and
  - ii. Pedestrian paths which enable two prams to pass each other are not identified.

### **4. Earthworks**

The Development Application fails to assess proposed earthworks against the mandatory criteria set out in clause 6.2 of the *Willoughby LEP*. In particular:

- (a) Clause 6.2(3) provides that, in deciding whether to grant development consent for development involving earthworks, the consent authority must consider particular matters including:
  - (i) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality;
  - (ii) The effect of the development on the existing and likely amenity of adjoining properties; and

- (iii) Appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (b) The Proposed Development involves excavation to (among other matters) create the basement level, to a depth ranging from 1.57m to 6m. The Development Application is not accompanied by a geotechnical investigation to adequately consider the mandatory matters set out in clause 6.2 of the *Willoughby LEP*.

## **5. Building height**

The Development Application fails to provide sufficient information to determine whether the Proposed Development complies with the maximum building height prescribed by and objectives of clause 4.3 of the *Willoughby LEP*. In particular:

- (a) Clause 4.3(2) and the Height of Buildings Map published pursuant to the *Willoughby LEP* prescribe that a building on the Property must not exceed 8m.
- (b) The Development Application is supported by insufficient and inconsistent information to enable an assessment against clause 4.3, because:
  - (i) The longitudinal and cross section drawings provided with the Development Application do not clearly identify the existing ground levels and are inconsistent with the survey plan.
  - (ii) The architectural plans do not correctly reflect the existing site conditions including any depressions or excavated areas accommodating the existing basement.
  - (iii) The architectural plans are generally unclear, but particularly the grid/reference of the sections.

## **6. Tree preservation and urban heat**

The Development Application fails to retain and protect significant trees, contrary to the Respondent's proposed urban heat control and the *Willoughby DCP*'s heritage conservation controls. In particular:

- (a) Clause 6.3 of the *Willoughby LEP* provides that, to ensure that new development incorporates effective design so as to reduce and remove urban heating from the environment, the consent authority must consider the matters listed in subclause (2).



- (b) While clause 6.3 of the *Willoughby LEP* was not in force at the time the Development Application was made, it had been the subject of public consultation and thus arises for consideration in respect of the Development Application pursuant to section 4.15(1)(a)(ii) of the EP&A Act.
- (c) Section 2 to Part H of the *Willoughby DCP* provides that, generally in heritage conservation areas, development must:
  - i. retain the established landscape character of the locality, including height of canopy; and
  - ii. retain the existing density of boundary landscape plantings.
- (d) The Proposed Development is antipathetic to the matters set out in clause 6.3(2)(d) and (e) of the *Willoughby LEP* and Control (d) in Section 2.1.1 of Part H of the *Willoughby DCP*, as it will cause unacceptable impacts on T2 and T6 — significant, indigenous Sydney Blue Gums — as:
  - i. Excavation for the basement level and the provision of new retaining walls or piling will impact the structural root zones of each tree beyond existing incursion extents, adversely affecting the root zones and structural integrity of the trees.
  - ii. Insufficient additional root expansion area is proposed to be provided adjacent to T6 to compensate areas compromised by existing and proposed works.
- (e) The Proposed Development proposes inadequate planting on the boundaries of the Property, compromising the integration of the development into the streetscape, contrary to the established landscape character of the Blue Gum HCA. No mid-range or canopy species are included in the eastern, western and southern boundaries of the Property

## **7. Excessive floor space ratio and inadequate clause 4.6 request**

The Proposed Development exceeds the applicable floor space ratio development standard in the *Willoughby LEP* and is not supported by a satisfactory written variation request. The Development Application documents undercalculate the extent of the exceedance. In particular:

- (a) The Development Application incorrectly calculates the gross floor area of the building.

- (b) The Dictionary to the *Willoughby LEP* provides that "any area for common vertical circulation, such as lifts and stairs" are to be excluded from calculations of gross floor area.
- (c) The Development Application proposes the exclusion of lift areas on all floors and stair areas, lobby areas and safe haven areas, contrary to the approach adopted by the Court in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181.
- (d) Properly calculated, the Development Application has a floor space ratio of at least 0.63:1, being a breach of approximately 58%.
- (e) Section 3.3.7 to Part H of the *Willoughby DCP* provides that the upper limit to floor space ratio for development within the Blue Gum HCA is 0.4:1. This section of the *DCP* notes explicitly that this upper limit takes into account both the existing pattern of development in the HCA into account, as well as an additional allowance for floor area.
- (f) The Proposed Development proposes a floor space ratio substantially in exceedance of that contemplated for development in the Blue Gum HCA. This non-compliance is contrary to the clearly expressed intent of section 3.3.7, and establishes that the design fails to relate to the established and desired character of the Blue Gum HCA.
- (g) Clause 4.4(2) of the *Willoughby LEP* and the Floor Space Ratio Map published pursuant to the *Willoughby LEP* prescribe a maximum floor space ratio for a building on the Property as being 0.4:1.
- (h) Clause 4.4(1) of the *Willoughby LEP* provides the following relevant objectives for clause 4.4:
  - i. to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity and zone objectives of the land;
  - ii. to limit traffic generation as a result of the development; and
  - iii. to manage the bulk and scale of the development to suit the land use purpose and objectives of the zone.

- (i) Clause 4.6 of the *Willoughby LEP* permits a consent authority to grant consent to development which proposes an exceedance of the building height standard if satisfied that:
  - i. Compliance with the standard is unreasonably or unnecessary in the circumstances of the case;
  - ii. There are sufficient environmental planning grounds to justify contravening the standard; and
  - iii. The proposed development is in the public interest.
- (j) The SNPP, exercising the functions of the consent authority, would not be satisfied that:
  - i. The written clause 4.6 variation request provided with the Development Application has adequately addressed the following matters required to be addressed:
    - 1. That compliance with the floor space ratio standard is unreasonable or unnecessary in the circumstances of the case; and
    - 2. That there are sufficient environmental planning grounds to justify a departure from the floor space ratio standard.
  - ii. The Development Application is in the public interest because it is consistent with the objectives of the floor space ratio standard or the R2 Low Density Residential zone.
- (k) The proposed building will, in the manner stated at particulars (a) to (d) above, exceed the floor space ratio standard by approximately 58%.
- (l) The exceedance of the floor space ratio control is inconsistent with the objectives of the standard because:
  - i. It evinces a design and building mass which is incompatible with the scale and character of the surrounding residential development.
  - ii. The building and Proposed Development generally do not retain the values of the Blue Gum HCA, as a consequence of both the matters stated at particulars (e) and (f) above.

## **8. Inconsistencies with the Child Care Planning Guideline**

The Development Application does not adequately address the requirements of the Child Care Planning Guideline, contrary to clause 3.23 of the Transport and Infrastructure SEPP. In particular:

- (a) The Development Application, for the matters listed under Reasons 1, 7 and 9, is not responsive to the local character and existing surrounding streetscape. This is contrary to Section 3.2 Consideration 5.
- (b) The Development Application does not provide appropriate detail to enable a proper assessment of any overshadowing and privacy impacts on the adjoining properties, contrary to Section 3.3 Consideration 11.
- (c) The Development Application does not provide appropriate detail to demonstrate that consideration has been given to accessibility by all potential users, contrary to Section 3.3 Consideration 16.
- (d) The Development Application does not provide appropriate detail to enable an assessment of whether minimum internal and external storage space requirements per child has been met, contrary to Section 4.1.
- (e) The Development Application does not provide appropriate detail to enable an assessment against Section 4.3. No detailed elevation or section plans of the toilet facilities have been provided to enable a proper assessment of these areas.
- (f) The submitted architectural plans do not clearly identify the nappy change facilities, contrary to Section 4.6.
- (g) The Development Application does not demonstrate that the Proposed Development will provide for adequate emergency and evacuation procedures, contrary to Section 4.8. The Emergency Management Plan (**EMP**) and design of the Proposed Development are inadequate for the following reasons:
  - i. The EMP is not prepared by an accredited practitioner (fire safety) or a registered certifier.
  - ii. The EMP does not specify the travel to exits nor the procedures to ensure children safely evacuated to the nominated evacuation point. The submitted plan indicates that children between the ages of 0 to 2 years will be evacuated by using evacuation cot, despite the majority of these children being located on Level 1 which does not have a direct access to the street.
  - iii. The location of the proposed congregation area is unsatisfactory and a safety risk.

- (h) The proposed outdoor space has not been calculated in accordance with Section 4.9. Non-exhaustively, this is because:
  - i. An area of approximately 21sqm on Level 1 does not meet the requirements of a covered space and should therefore be excluded from outdoor space.
  - ii. An area of approximately 59sqm on Level 2 does not meet the requirements of a covered space and should therefore be excluded from outdoor space.

## **9. Blue Gum HCA**

The Development Application would have an adverse impact on the character and significance of the Blue Gum HCA and is contrary to the aims, objectives and controls contained in clause 5.10 of the *Willoughby LEP* and Part H of the *Willoughby DCP*.

### Particulars

- (a) The Proposed Development is contrary to clauses 5.10(1)(a) and (b) of the *Willoughby LEP*, in that it does not conserve the environmental heritage of Willoughby. It proposes a development that would have an adverse impact on a heritage conservation area by introducing a building that is not in harmony with the character of the historic streetscape and the significance of the heritage conservation area.
- (b) The Proposed Development has inadequate regard to the Aims and Objectives of Section 1 to Part H of the *Willoughby DCP*, in that it is not in keeping with the character of the Blue Gum HCA, does not maintain the special streetscape and landscape character of the Blue Gum HCA, and is not compatible with its heritage significance.
- (c) The Proposed Development does not have adequate regard to the general conservation controls set out in Section 2 to Part H of the *Willoughby DCP*, including:
  - i. Section 2.3 — Development of corner allotments within heritage conservation areas; and
- (d) The Development Application does not have regard to the management policies and controls relating to Blue Gum HCA provided in Section 3.3.6 to Part H of the *Willoughby DCP*.

- (e) The Proposed Development does not comply with the controls listed under Section 3.3.7 to Part H of the *Willoughby DCP*.

## 10. Traffic and parking

The vehicle access arrangements for the Proposed Development do not comply with the requirements of Part F of the *Willoughby DCP* or AS/NZS 2890.1 and AS 2890.2 with regard to car parking spaces, number of stacked parking spaces, access and parking for service vehicles and sight distance to traffic and pedestrians leaving the Property.

### Particulars

- (a) In accordance with Table 1 to Part F of the *Willoughby DCP*, a centre-based child care facility located outside of the Chatswood CBD must adopt a car parking rate of 1space/20m<sup>2</sup>.
- (b) The Proposed Development results in a shortfall of 24 car parking spaces contrary to the *Willoughby DCP*.
- (c) The architectural plans fail to demonstrate that the sight triangles required by Figure 3.3 of AS/NZS 2890.1 have been provided. The triangles cannot rely on structures on adjacent properties being clear of the zone or less than 1.2m high for compliance.
- (d) Swept paths provided show vehicles crossing. The paths need to demonstrate that a B99 and a B85 can pass at all locations along the entry ramp. Both the swept path and the maneuvering and circulation clearance need to be shown on the diagrams.
- (e) Swept path diagrams are required for service vehicles, extending from the entry to the site to the loading bay, demonstrating that the vehicle can enter and leave in a forward direction and can pass a B99 vehicle.
- (f) In accordance with Section 5.4 to Part F of the *Willoughby DCP*, two accessible car parking spaces are required. The Development Application only provides one.
- (g) Off-street loading/unloading including waste collection and deliveries of goods must occur within the Property, in accordance with Section 5.2 to Part F of the *Willoughby DCP*. The plans have not demonstrated that this can occur. A dedicated loading bay is required, of suitable size for waste and delivery vehicles.

Given the nature of the use of the site, the minimum size service vehicle required is an MRV.

- (h) The Development Application does not comply with the requirements of Section 5.5 to Part F of the *Willoughby DCP*. 14 spaces are subject to stacked parking arrangements, exceeding the maximum 25% permitted under the *Willoughby DCP*.
- (i) Staff parking arrangements are impractical, compromise accessibility and unacceptable.
- (j) As a consequence of the insufficient on-site car parking spaces and other non-compliances with Part F of the *Willoughby DCP*, the adjacent streets will be adversely impacted by the Proposed Development, with consequential amenity impacts for residents of the locality.
- (k) Insufficient information has been provided with regard to the dimensions of the parking spaces to ensure compliance with the requirements for Class 3 short term parking in accordance with AS/NZS 2890.1.

## **11. Traffic generation and movements**

The Development Application does not provide adequate information to properly assess any potential impacts on the local road network in terms of traffic volume. In particular:

- (a) The traffic report accompanying the application is inadequate. It does not appropriately address the potential traffic impacts associated with the Proposed Development.
- (b) The comparison and assessment of traffic volumes provided with the Development Application is inaccurate. It relies on traffic data obtained in proximity to COVID-19 lockdown periods and, as such, is not likely to accurately represent actual traffic conditions.
- (c) The analysis of traffic volumes and their corresponding levels should encompass not only the specific location but also take into account traffic from all adjacent childcare centres and land use changes. This comprehensive analysis should aim to show the cumulative effects, which would encompass the traffic generation in the precinct.

- (d) Non-exhaustively and despite the paucity of accurate traffic data, the Proposed Development is likely to have adverse traffic impacts because:
  - i. Tessa Street is a single-lane road accommodating traffic and parking in both directions. The increase in vehicle movements along Tessa Street will compromise passing opportunities and the safe movement of vehicles and pedestrians during busy periods.
  - ii. The proposed ban on right-hand turns from the driveway is impractical, difficult to enforce and will encourage the use of other local streets and intersections in a manner that has not been adequately assessed, will likely impact the amenity of residential uses in the locality and as a result is not supportable.

## **12. Stormwater management**

The Proposed Development does not demonstrate compliance with the requirements of Part I of the *Willoughby DCP* and Section 6.2 of Technical Standard 1 with regard to stormwater management. In particular:

- (a) Stormwater discharged from the site is proposed to be drained to the kerb and gutter, with a maximum outflow of 20L/s during the 1%AEP storm event. The information provided does not provide sufficient detail to confirm compliance with the *Willoughby DCP*. Only selected extracts from the DRAINS model were provided, which did not include sufficient information to confirm compliance. A copy of the electronic DRAINS model is required, along with a detailed summary including catchment details of each node and the parameters used in the OSD node.
- (b) The OSD design has not demonstrated that the required freeboard between the overflow water level for the tank and the adjacent floor level has been achieved. The tank design includes an internal overflow weir to a pipe to achieve the freeboard, which does not comply with the 6.2.iv of Technical Standard 1 nor the requirements of AS/NZS 3500.3 for the overflow to be in a visible location. The overflow must be through either the roof or side of the tank to an overland flow path over the ground.

## **13. Waste management**



The Development Application does not adequately manage and dispose of waste, contrary to the *Willoughby DCP*. In particular:

- (a) The Operational Waste Management Plan does not adequately demonstrate that management practices to dispose of waste are safe, convenient, practical and compliant with the *Willoughby DCP*, particularly Section 4.8 to Part D.
- (b) The Operational Waste Management Plan does not adequately demonstrate that the number of commercial bins provided are sufficient for the scale of the development and consistent with the *Willoughby DCP*.
- (c) The Development Application is not accompanied by sufficient detail to enable an assessment of whether proposed waste management measures are safe and environmentally acceptable, including with regard to (non-exhaustively):
  - i. Architectural and design details for waste management, including areas and dimensions for bin storage rooms (with gradient details), the locations of internal bin areas for all materials proposed and the location of internal bin areas within the facility for proposed source-separated nappies and paper towels;
  - ii. Collection safety and traffic management, including as concerns the movement of bins to and from the bin storage room and in respect of collection time and duration;
  - iii. Odour management and ventilation, noting the high level of putrescible waste generated by child care facilities;
  - iv. Bin washing facilities;
  - v. Flooring and drainage; and
  - vi. Vermin control.

#### **14. Site suitability**

The Property is not suitable for the Proposed Development, contrary to section 4.15(1)(c) of the EP&A Act.

##### Particulars

- (a) The Property is not suitable for the Proposed Development, as a consequence of the matters stated above in Reasons 2, 3, 4, 5, 6, 7, 9 and 11.

## **15. Public interest**

The Development Application should be refused as it is not in the public interest having regard to the contentions raised by Council and the matters raised by submissions, contrary to section 4.15(1)(e) of the EP&A Act.

### Particulars

- (a) The Development Application was notified in the circumstances set out in Part A above. Council contends that the Development Application should be refused, having regard to the matters raised in the submissions received by Council, insofar as those matters coincide with the contentions raised by Council and/or the Court finds them determinative of the Development Application
- (b) The Development Application is contrary to the public interest having regard to the numerous categories of insufficient information provided, which preclude the making of a proper assessment of the impacts of the Proposed Development.

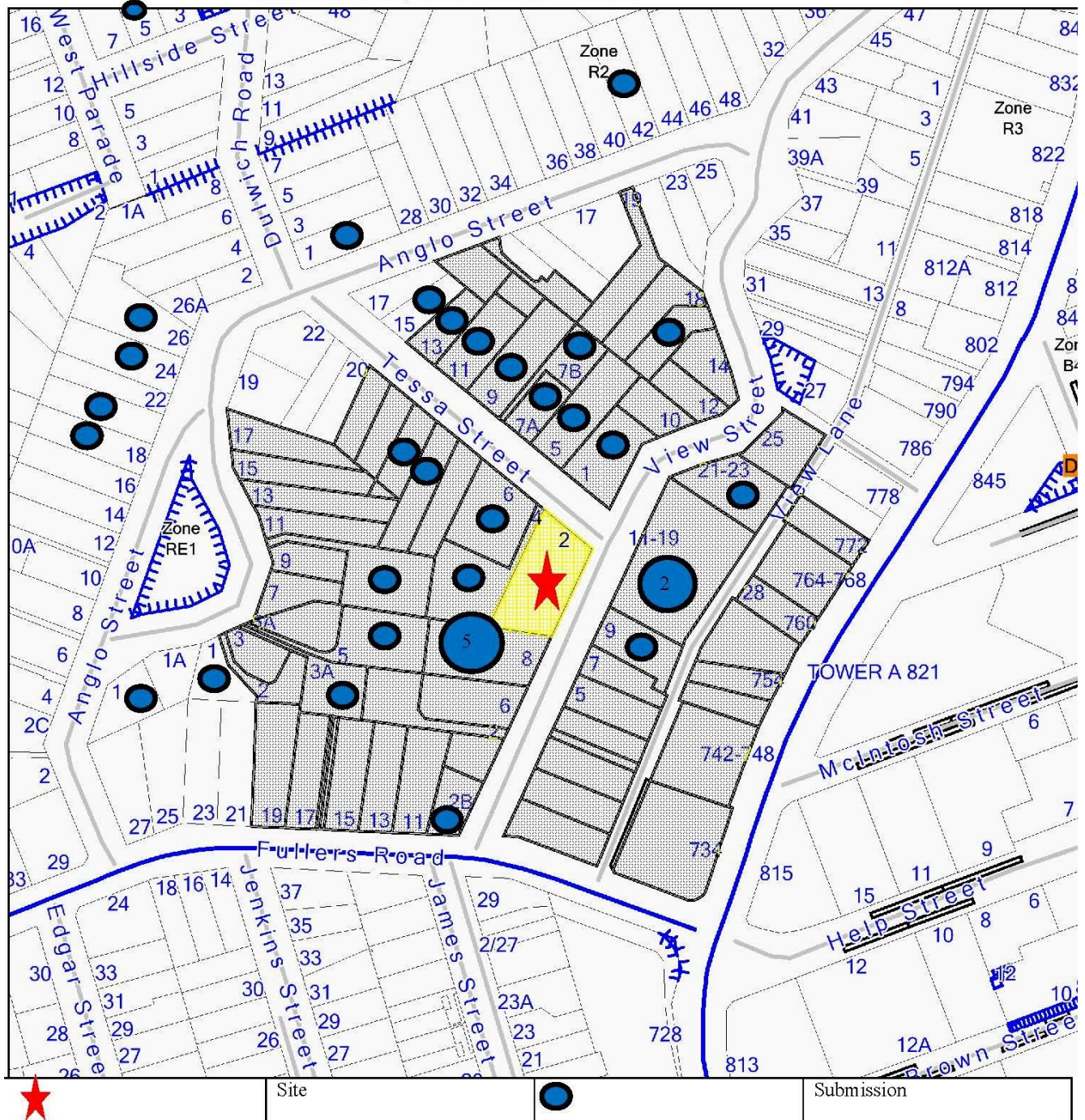
ATTACHMENT 9: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2022/394

At: 2 Tessa Street, CHATSWOOD NSW 2067





## APPENDIX 1: APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR

*Boston Blyth Fleming Pty Limited – Town Planners*

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### 1 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

### 2 Willoughby Local Environmental Plan 2012

#### 2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Willoughby Local Environmental Plan 2012 (**WLEP 2012**) the floor space ratio of any development on the subject land is not to exceed 0.4:1.

The stated objective of the standard are as follows:

- a) *to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
- b) *to limit traffic generation as a result of that development,*
- c) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- d) *to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*
- e) *to permit higher density development at transport nodal points,*
- f) *to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*
- g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- h) *to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*
- i) *to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*
- j) *to encourage the consolidation of certain land for redevelopment,*
- k) *to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

The proposed development has a FSR of 0.58:1, inconsistent with the maximum floor space ratio prescribed. The proposed development represents a variation of 325m<sup>2</sup> or 49%.

#### 2.2 Clause 4.6 – Exceptions to development standards

Clause 4.6(1) of WLEP 2012 provides:

(1) *The objectives of this clause are:*

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP 2012 provides:

*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.*

This clause applies to the clause 4.4 of WLEP 2012 Floor Space Ratio Development Standard.

Clause 4.6(3) of WLEP 2012 provides:

*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.*

The proposed development does not comply with the provision at 4.4 of WLEP 2012 which specifies a maximum floor space ratio. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP 2012 provides:

*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*
  - (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, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]).

The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of WLEP 2012 from the operation of clause 4.6.

### 3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

*The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

*A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of WLEP 2012 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 of WLEP 2012 and the objectives for development in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of WLEP 2012?



## 4.0 Request for variation

### 4.1 Is clause 4.4 of WLEP 2012 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (d) *the cubic content or floor space of a building,*

Clause 4.4 of WLEP 2012 prescribes a provision that seeks to control the floor space of a building. Accordingly, clause 4.4 of WLEP 2012 is a development standard.

### 4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

#### **Consistency with objectives of the standard**

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- a) *to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*

Comment: The proposed childcare centre has been designed in a manner that is consistent with that anticipated by WDCCP, with appropriate measures to minimise the impact of the development on the natural environment and surrounding properties. The proposed development does not result in any adverse impacts that would suggest that the development is not in accordance with the capacity of the land. Further, as discussed in further detail in this statement, the proposed development is consistent with the objectives of the R2 zone.

- b) *to limit traffic generation as a result of that development,*

Comment: The application is supported by a Traffic Impact Assessment Report by The Transport Planning Partnership confirming that the proposed development does not result in any adverse impacts upon the locality with regard to traffic generation. The site is located within walking distance of the Chatswood CBD, and within the Chatswood Railway Precinct, such that it is likely that a number of children will arrive via public transport.

- c) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

Comment: The proposed development will not result in any unreasonable impacts upon the amenity of adjoining properties. The proposed built form is reduced compared to that which currently exists on the site, with impacts associated with the on-site movement of cars minimised by virtue of the proposed basement arrangement. A high level of screening and mitigation



measures are also proposed to ensure appropriate visual and acoustic privacy for adjoining and nearby properties.

- d) *to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*

Comment: The bulk and scale of the proposed development is appropriate, noting that it is a reduction compared to that which currently exists. Further, the scale and intensity of the development is appropriate for the proposed use of the site as a childcare centre.

The proposed development has a single storey presentation to View Street and a two storey presentation to Tessa Street, is highly articulated, and is complemented by a cohesive landscape strategy. The bulk and scape of the proposed development suits the proposed childcare use and the objectives of the R2 zone.

- e) *to permit higher density development at transport nodal points,*

Comment: The proposed development is located within the Chatswood Railway Precinct and is within convenient walking distance of Chatswood CBD. The proposed childcare centre is designed to serve families working in Chatswood or travelling from Chatswood Railway to get to work.

- f) *to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*

Comment: Not applicable.

- g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

Comment: Not applicable.

- h) *to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*

Comment: Not applicable.

- i) *to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*

Comment: The proposed development is located along the boundary between R2 and R3 zoned land. The built form has been designed to respond to the scale of n surrounding development, with a distinct reduction in scale compared to that of the existing building on site.

- j) *to encourage the consolidation of certain land for redevelopment,*

Comment: The site meets the requirements of WDCP with respect to lot dimensions and does not result in the isolation of any adjoining sites. As such, there is no need to consolidate with adjoining sites.

- k) *to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

Comment: Not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the floor space ratio standard. Given the development's consistency with the objectives of the floor space ratio standard, strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

**Consistency with zone objectives**

The proposed development is considered with regard to the relevant objectives of the R2 Medium Density Zone, as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment: Not applicable.

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

Comment: The proposed childcare centre is one type of "other land use" that is permissible within the R2 zone, that provides a service that meets the needs of local families.

- *To accommodate development that is compatible with the scale and character of the surrounding residential development.*

Comment: The proposed development has been sensitively designed with specific regard to the individual circumstances of the site. The proposed development significantly enhances the streetscape, replacing the existing former seniors housing building at the site. The proposal responds to the fall of the land and steps down the slope of the site, with a single storey appearance to View Street and a two storey presentation to Tessa Street and downslope properties.

- *To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.*

Comment: The proposed development has carefully considered the siting and design of adjoining residences to ensure that impacts associated with the form and use of the proposed development are appropriately minimised. The proposal will not result in any adverse impacts upon the amenity of adjoining properties, with a significant enhancement of amenity with regard to the treatment of setbacks, visual impact and landscaping.

- *To retain the heritage values of particular localities and places.*

Comment: The proposed development will not result in any adverse impacts upon the significance of the Blue Gum Heritage Conservation Area, as outlined in the accompanying Heritage Impact Statement.

- *To encourage self sufficiency with respect to energy and food supply.*

Comment: The proposed development comprises an appropriate degree of sustainable building practices, with opportunities for water re-use and solar power.

The non-compliant component of the development, as it relates floor space ratio, demonstrates consistency with objectives of the zone and the floor space ratio development standard objectives. Adopting the first option in *Wehbe* strict compliance with the floor space ratio standard has been demonstrated to be unreasonable and unnecessary.

#### 4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

*As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

##### **Sufficient environmental planning grounds**

In my opinion, there are sufficient environmental planning grounds to justify the building height variation as outlined below.

##### **Ground 1 - Contextually responsive building design**

Despite non-compliance with the 0.4:1 floor space ratio, the proposed development has a reduced floor space ratio compared to the existing building on the site, which has a GFA of 1107m<sup>2</sup> and a total FSR of 0.67:1. Not only does the proposed development result in a reduced FSR, but the development also provides a significant improvement to the public domain, by virtue of the demolition of the existing building and its replacement with a high-quality architecturally designed building.

The proposed childcare centre has been skillfully designed to ensure that the bulk and scale of the resultant development is minimized by virtue of a high degree of articulation, deep recesses, varied materiality and quality landscaping. The building has a single storey presentation to View Street and a stepped two storey presentation to Tessa Street, with a bulk and scale that is compatible with nearby development.

Council's acceptance of the proposed FSR variation will ensure the orderly and economic development of the site, in so far as it acknowledges that the proposal will result in a positive contribution to the streetscape, with a building of a lesser scale than the existing development on the site, consistent with Objective 1.3(c) of the EP&A Act.

The building is of exceptional design quality with the variation facilitating a development that provides a much-needed service to the local community in an appropriate location, consistent with Objective 1.3(g) of the EP&A Act.

#### 4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*

*It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

#### 4.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Concurrence of the Secretary can therefore be assumed in this case.

## 5 Conclusion

Pursuant to clause 4.6(4)(a) of WLEP 2012, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**