

AGENDA

of the

Local Planning Panel

held in

Council Chambers,

Wingecarribee Shire Council Civic Centre,

68 Elizabeth Street, Moss Vale

on

Wednesday 27 November 2024

The meeting will commence at **2:00 pm**

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Our Mission, Our Vision, Our Values

OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

OUR VISION

Leadership: *'An innovative and effective organisation with strong leadership'*

People: *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

Places: *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

Environment: *'A community that values and protects the natural environment enhancing its health and diversity'*

Economy: *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

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1 OPENING OF THE MEETING

The Chairperson opened the meeting and welcomed members of the public and the press.

2 ACKNOWLEDGEMENT OF COUNTRY

The Chairperson acknowledged country:

“Wingecarribee Shire Council acknowledge the Gundungurra and Tharawal people as the traditional custodians of this land we now call the Wingecarribee Shire. I pay my respect to Elders both past, present and emerging. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.”

3 APOLOGIES

Nil at time of print.

4 DECLARATIONS OF INTEREST

The provisions of Chapter 14 of the Local Government Act 1993 regulate the way in which nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the meeting.

Council’s Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

5 PLANNING PROPOSALS

- 5.1 Planning Proposal to amend Schedule 2 of WLEP 2010 to enable events on bush fire prone land as exempt development – Post Exhibition Finalisation}

Report Author: Coordinator Strategic Policy
Authoriser: Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to seek endorsement to finalise a Planning Proposal to remove the requirement for a Development Application for certain events on public land that is bushfire prone.

Applicant / Proponent	Wingecarribee Shire Council
Owner	N/A
Consultants	N/A
Notification	2 September to 11 October 2024
Number Advised	Shire-wide
Number of Submissions	4
Current Zoning	N/A
Proposed LEP Amendment/s	To amend Schedule 2 of the Wingecarribee Local Environmental Plan 2010 to remove the exclusion of bush fire prone land from the provisions of exempt development for events on public land.
Political Donations	N/A
Recommendation	The Planning Proposal to amend Schedule 2 of Wingecarribee Local Environmental Plan 2010 to remove the exclusion of bush fire prone land from the provisions of exempt development for events on public land be finalised under s.3.36 of the <i>Environmental Planning & Assessment Act 1979</i> .

OFFICER'S RECOMMENDATION

THAT the Planning Proposal to amend Schedule 2 of Wingecarribee Local Environmental Plan 2010 to remove the exclusion of bush fire prone land from the provisions of exempt development for events on public land be finalised under s.3.36 of the *Environmental Planning & Assessment Act 1979*.

REPORT

BACKGROUND

Schedule 2 of the Wingecarribee Local Environmental Plan (WLEP) 2010 contains exempt development provisions additional to those specified within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Exempt development does not require a Development Approval. One of these additional provisions relates to public events and states:

Public events

Use of public land (including a public reserve or public road) for public events, including stalls, meetings, exhibitions, entertainment or similar community, cultural or commercial purposes—

- (a) proposed event must be consistent with any applicable plan of management under the [Local Government Act 1993](#) for the land,*
- (b) development must be carried out in accordance with a licence or hire agreement granted by the Council,*
- (c) must not be located on bush fire prone land.***

The current exclusion of 'bush fire prone land' (BFPL) from the exempt development provisions of Schedule 2 of WLEP 2010 results in the need for the community to prepare a Development Application in order to hold an event on Council owned land which is identified as being bush fire prone. This creates community frustration and expense and the diversion of staff resources to undertake the development assessment process. Council recognises that frustration and agrees that Council owned land should be more easily available for the community to book for events that benefit both the community and the economy while ensuring that appropriate safety measures are in place in case of adverse bush fire conditions. The proposed amendment reflects Council's ongoing commitment to supporting community engagement and local business to build resilience and inclusion.

A Planning Proposal to amend the Wingecarribee Local Environmental Plan (WLEP) 2010 to remove this restriction was considered by Council at its Ordinary Meeting of 15 March 2023. In response to the Planning Proposal, Council resolved that:

- 1. The Planning Proposal to amend Schedule 2 (Exempt development) of Wingecarribee Local Environmental Plan 2010 to amend the exclusion of bush fire prone land from the provisions of exempt development for events on public land be supported.***
- 2. The Planning Proposal be submitted for a Gateway determination under s.3.34 of the Environmental Planning & Assessment Act 1979 and processed in accordance with the Gateway requirements.***
- 3. Documentation to support the Planning Proposal, as endorsed by the NSW Rural Fire Service, be exhibited concurrently with the Planning Proposal.***
- 4. Council work with NSW Rural Fire Service to address the advice of the Local Planning Panel, prior to the Planning Proposal being publicly exhibited.***

5. The Planning Proposal to amend Schedule 2 (Exempt development) of Wingecarribee Local Environmental Plan 2010 to amend the exclusion of bush fire prone land from the provisions of exempt development for events on public land be provided to all village associations and 355 committees.

In response to Item 4 of the resolution, Council finalised and adopted in November 2023, a Closure of Public Facilities Operational Management Standard (OMS). The OMS includes the requirement for the preparation of a bushfire risk assessment and evacuation plan as part of Council's hiring agreement if the site is mapped as bush fire prone land.

In discussion of the Proposal with the NSW Rural Fire Service subsequent to the adoption of the OMS, RFS advised that it would no longer require further referral prior to Council submitting the Planning Proposal for a Gateway Determination. However, NSW RFS also advised that it would be unlikely to support an LEP amendment that exempts any public events on BFPL that include overnight accommodation, including camping which would require a s100B approval under the *Rural Fires Act*. This feedback from RFS framed the draft wording of the proposed amendment, as follows:

Public events

Use of public land (including a public reserve or public road) for public events, including stalls, meetings, exhibitions, entertainment or similar community, cultural or commercial purposes—

- (a) proposed event must be consistent with any applicable plan of management under the [Local Government Act 1993](#) for the land,*
- (b) development must be carried out in accordance with a licence or hire agreement granted by the Council, accompanied by a bush fire risk assessment and evacuation plan if located on bush fire prone land,*
- (c) must not involve overnight accommodation.*

REPORT

The Planning Proposal and supporting documentation were submitted to the NSW Department of Planning, Housing & Infrastructure for a Gateway Determination to proceed with agency consultation and public exhibition. A Gateway Determination was issued on 22 July 2024. The Planning Proposal was referred to both the NSW Rural Fire Service and WaterNSW, neither of which objected. RFS specifically noted that ***"The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire"***.

CONSULTATION

External Referrals

Referrals	Advice/Response/Conditions
NSW Rural Fire Service	No objection
WaterNSW	No objection

Internal Referrals

Referrals	Advice/Response/Conditions
Environment & Sustainability	Supported the Planning Proposal through preparation of the Closure of Public Facilities OMS
Community Development & Communications	Supported the Planning Proposal as it facilitate community engagement and business development

Public Exhibition

The Planning Proposal and supporting documentation were placed on public exhibition from 2 September to 11 November 2024 in order to ensure that the community, including village associations and 355 committees, had the opportunity to provide feedback.

Five (5) submissions were received through the Participate Wingecarribee website where the Proposal was viewed 194 times. No submissions were received through the NSW Planning Portal. Four (4) responses were fully supportive, with comments including:

- 1) *The Penrose Community Association has been advocating for a long time to get the LEP amended so that community groups do not have to apply for a DA to run community events and we are pleased to see this planning proposal finally reach this stage. The PCA fully support the planning proposal to amend the Wingecarribee Local Environmental Plan 2010 to enable community events on public bush fire prone land without the need for a Development Application. We do, of course, support the need to still maintain all other current risk assessment procedures.*
- 2) *This amendment will resolve the administrative and cost burden on the affected villages while ensuring appropriate safeguards are still in place to ensure public safety if a bushfire is likely. The current arrangement has discouraged village associations from organising outdoor events. This amendment will facilitate events and have a positive effect on the social life of the village communities (Southern Villages Group).*
- 3) *The requirement for a Development Application to be prepared prior to any event in Bushfire Prone Areas has limited community events in those areas due to the prohibitive cost and time involved in preparing the applications. Council's proposal to reframe these events as exempt development is a sensible enabling response which still ensures that the potential for bushfire is monitored by Council and the RFS. (Private submission, Exeter)*
- 4) *The proposed amendment to the WLEP is welcomed to enable smaller Shire villages to propose public activities, such as community gatherings, without*

development consent. Shire village associations have a stake in ensuring activities are fire safe, & welcome this long-sought after change. (Private submission, Exeter)

One comment stated:

I believe overnight accommodation/camping should be allowed on land considered 'bush fire prone'. The current plan is too restrictive. We can not eliminate all risk from our lives, and people should be allowed decide their own risk comfort level. I would support allowing overnight accommodation/camping. (Private submission, Bowral).

This comment is noted, but the requirement for no overnight accommodation was from the RFS and non-compliance would risk the Planning Proposal not being supported at all.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed amendment would enable events on bush fire prone public land subject to certain conditions to ensure that appropriate bush fire management procedures are in place to protect bush fire prone land and potential vegetation loss.

- **Social**

The proposed amendment would be replaced by a more easily assessable booking and hiring process thereby facilitating more community events and social interaction without compromising public safety.

- **Broader Economic Implications**

The proposed amendment would facilitate community events with which local businesses could engage and benefit.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Planning Proposal has been processed in accordance with relevant legislation and Departmental guidelines.

RELATIONSHIP TO CORPORATE PLANS

There are no related Council Plans

COUNCIL BUDGET IMPLICATIONS

There are no related budget implications

RELATED COUNCIL POLICY

There are no related Council Policies

CONCLUSION

Currently, certain community events cannot be considered as exempt development when they are located on 'bush fire prone' public land. The purpose of the Planning Proposal is to enable such events as exempt development in accordance with Council's adopted Closure of Public Facilities Operational Management Standard. This approach would continue to manage public safety and protect environmentally sensitive land, while also providing an easier, facilitative pathway for community events approvals on public land.

ATTACHMENTS

1. P P-2024-1360- Events on public land-v 5 for Finalisation [5.1.1 - 21 pages]

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WEDNESDAY 27 NOVEMBER 2024**

5.2 Planning Proposal to amend clause 4.2F (Subdivision of Land for Dual Occupancies) in R2 and R3 zones-Post exhibition

Report Author: Coordinator Strategic Policy
Authoriser: Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to seek advice for a Planning Proposal to amend Clause 4.2F - Subdivision of land for dual occupancies in Zone R2 or R3 of Wingecarribee Local Environmental Plan (WLEP) 2010, to reinstate the limitations on subdivision of dual occupancy development within the Berrima Heritage Conservation Area which originally applied under Wingecarribee Local Environmental Plan (WLEP) 2010 when it was made on 16 June 2010.

Applicant / Proponent	Wingecarribee Shire Council
Owner	N/A
Consultants	N/A
Notification	2 September to 11 October 2024
Number Advised	Shire wide
Number of Submissions	2
Current Zoning	Various
Proposed Amendment/s	<p>LEP</p> <p>4.2F Subdivision of land for dual occupancies in Zone R2 or R3</p> <p>(1) <i>The objectives of this clause are as follows—</i></p> <p>(a) <i>to ensure development for the purposes of dual occupancies is compatible with the character of existing development in the surrounding area,</i></p> <p>(b) <i>to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone R3 Medium Density Residential,</i></p> <p>(c) <i>to protect the heritage significance of the historic village of Berrima.</i></p> <p>(2) <i>This clause applies to land in the following zones—</i></p> <p>(a) <i>Zone R2 Low Density Residential,</i></p> <p>(b) <i>Zone R3 Medium Density Residential.</i></p> <p>(3) <i>Land on which a dual occupancy is, or will be, erected may be subdivided if the consent authority is satisfied—</i></p> <p>(a) <i>for land that is a corner lot—the lot has an area of at least 1,000m², or</i></p> <p>(b) <i>otherwise—the area of each lot resulting from the subdivision will be—</i></p> <p>(i) <i>at least 50% of the minimum lot size shown for the land on the Lot Size Map, and</i></p> <p>(ii) <i>at least 600m².</i></p>

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	<p>(4) Development consent must not be granted to the subdivision of land under subclause (3) unless the consent authority is satisfied— (a) there will be no more than 1 dwelling on each resulting lot, and (b) each resulting lot will be serviced by a water reticulation system and sewage reticulation system.</p> <p>(5) Subdivision permitted under this clause must not occur before an occupation certificate is issued for each dwelling forming part of the dual occupancy.</p> <p>(6) Subclause (3) (a) does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.</p>
Political Donations	Nil
Recommendation	That the attached Planning Proposal to amend Clause 4.2F - Subdivision of land for dual occupancies in Zone R2 or R3 of Wingecarribee Local Environmental Plan 2010 be finalised under 3.36 of the <i>Environmental Planning & Assessment Act 1979</i> .

OFFICER’S RECOMMENDATION

THAT the Planning Proposal to amend Clause 4.2F (Subdivision of land for dual occupancies in zone R2 or R3) of Wingecarribee Local Environmental Plan 2010 to reinstate previous exemption for the Berrima Heritage Conservation Area BE SUPPORTED and the Planning Proposal be finalised in accordance with s.3.36 of the *Environmental Planning & Assessment Act 1979*.

REPORT

PLANNING PROPOSAL

Background

The objective of the Planning Proposal is to reinstate protection of the Berrima Heritage Conservation Area from dual occupancy subdivision, other than through minimum lot size provisions, which was originally provided under Clause 7.2(3) of the *Wingecarribee Local Environmental Plan 2010* when this plan was made in 2010. To achieve this desired outcome, the only change to WLEP 2010 is to amend subclause (6) of clause 4.2F as follows:

4.2F Subdivision of land for dual occupancies in Zone R2 or R3

(1) *The objectives of this clause are as follows—*

- (a) to ensure development for the purposes of dual occupancies is compatible with the character of existing development in the surrounding area,*
- (b) to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone R3 Medium Density Residential,*
- (c) to protect the heritage significance of the historic village of Berrima.*

(2) *This clause applies to land in the following zones—*

- (a) Zone R2 Low Density Residential,*
- (b) Zone R3 Medium Density Residential.*

(3) *Land on which a dual occupancy is, or will be, erected may be subdivided if the consent authority is satisfied—*

- (a) for land that is a corner lot—the lot has an area of at least 1,000m², or*
- (b) otherwise—the area of each lot resulting from the subdivision will be—*
 - (i) at least 50% of the minimum lot size shown for the land on the Lot Size Map, and*
 - (ii) at least 600m².*

(4) *Development consent must not be granted to the subdivision of land under subclause (3) unless the consent authority is satisfied—*

- (a) there will be no more than 1 dwelling on each resulting lot, and*
- (b) each resulting lot will be serviced by a water reticulation system and sewage reticulation system.*

(5) *Subdivision permitted under this clause must not occur before an occupation certificate is issued for each dwelling forming part of the dual occupancy.*

(6) *Subclause (3) ~~(a)~~ does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.*

This amendment would result in the Berrima Conservation Area (BCA) being excluded from all of subclause (3), thereby reinstating both the exclusion of corner lots within Berrima from dual occupancy subdivision (as was the case under the now repealed clause 7.2) as well as all land within Berrima, by virtue of the fact that, prior to the introduction of clause 4.2F on 26 June 2020, no other provision enabled dual occupancy subdivision anywhere in the Shire other than through the minimum lot size provisions.

On 2 February 2022, the Wingecarribee Local Planning Panel (WLPP) considered a report to amend Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an inconsistency, created by the introduction on 26 June 2020 of *Clause 4.2F*, between that clause and *Clause 7.2- Requirements for subdividing dual occupancies in Zones R2 and B1* and *Clause 4.2F-Minimum subdivision lot sizes for dual occupancies in certain zones*.

Clause 7.2 was contained within WLEP from its initial gazettal on 16 June 2010. The intent of the clause was to enable the subdivision of dual occupancy development in certain circumstances where subdivision was not otherwise permissible under the minimum lot size provisions. However, the provisions of the clause excluded land within the mapped Berrima Heritage Conservation Area, due to the locality's high heritage value.

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In response to amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* which enabled the erection and subdivision of dual occupancies as complying development, Council introduced Clauses 4.2E and 4.2F into WLEP2010 through Amendment 53 made on 26 June 2020 to ensure that such dual occupancy developments were consistent with the established lot sizes and character of our towns and villages.

On 21 October 2022, Amendment 66 to WLEP2010 resulted in the following amendment to clause 7.2:

- 2) *This clause applies to land in the following zones—*
 - (a) *Zone R2 Low Density Residential,*
 - (b) *Zone R3 Medium Density Residential.*
- 3) *Subdivision of land to which this clause applies for the purposes of dual occupancies is permitted with development consent if the land—*
 - (a) *is on a corner lot of at least 1,000m², and*
 - (b) *has access to a reticulated town water supply and sewerage system.*
- 4) *This clause does not apply to land in the Berrima Conservation Area as shown on the Heritage Map.*

However, this amendment created an inconsistency with clauses 4.2E and 4.2F introduced through Amendment 53 which the NSW Department of Planning & Environment (now DPHI) sought to address directly with Parliamentary Counsel Office (PCO) resulting in Amendment 67 being made on 12 May 2023 to further amend clauses 4.2E and 4.2F. This also resulted in the repeal of clause 7.2 altogether.

The subject Planning Proposal seeks to reinstate the full protection from dual occupancy subdivision afforded Berrima village in the initial WLEP 2010, both through the exclusion of the village from clause 7.2 and with no other mechanism available other than through minimum lot size provisions.

STRATEGIC ASSESSMENT

Strategic Merit

The intent of the Planning Proposal is to reinstate the protection of the Berrima Heritage Conservation Area from dual occupancy subdivision which was contained under clause 7.2 of the WLEP 2010 when it was originally made in 2010.

As summarised above, this protection remained until Council introduced two new clauses into WLEP 2010, clauses 4.2E and 2.4F in 2020. Council considers this further amendment to be essential and urgent due to the high heritage value of Berrima. The original Hoddle subdivision plan for Berrima remains largely intact and conservation area contains many Items of Heritage, several of which are of State significance. The Community Strategic Plan recognises the significance of heritage properties and landscapes across the Shire and in Berrima especially.

The Planning Proposal will not dilute the general provisions of clauses 4.2E and 4.2F which support opportunities for dual occupancy development and subdivision as provided for within those clauses. The only change to these provisions is the exclusion of the Berrima Heritage Conservation Area from undersized dual occupancy subdivision, thereby reinstating the original protection.

Further supporting strategic merit is provided by the NSW Land and Environment Court (NSWLEC) decision 1239 (handed down 9 May 2024) which dismissed an appeal against Council's refusal to approve development application No 23/0891 seeking consent for tree removal, demolition of an existing retaining wall and construction of a single storey dwelling house containing 3 bedrooms and an attached carport, resulting in a detached dual occupancy on the site, on the land at 11 Oxley Street, Berrima.

The judgement noted the provisions of clauses 4.2E and 4.2F of WLEP 2010 and that both clauses "*operate the dual occupancy development on a lot of this size, and permit the subdivisions of the same into lots of a size as such those two lots proposed*".

However, the judgement references several clauses within the DCP and in the context of those clauses, concludes that, in this case, the proposed subdivision would "*set an unfortunate precedent*". The judgement references the following extracts from the Berrima DCP.

"A8.1.1 Existing Subdivision Pattern

The Village of Berrima is laid out as a Georgian village based on a grid pattern of streets with a central focal and open market place of mixed commercial and residential character. Allotments are regular and rectangular in shape leading out into the surrounding rural area. The minimum lot size for R2 Low Density residential land in Berrima is 2,000m² although there is a small pocket of R2 zoned land already subdivided and developed on Mortimer and Lennox Roads (east of Oxley Street) which has a 700m² minimum lot size. The minimum lot size for R5 Large Lot Residential land is 4,000m²."

"A9.1.2 Existing Subdivision Pattern

Berrima remains an iconic Village, within easy reach of Sydney. Berrima is not a ghost town. Its population is growing and it is subject to continuous development pressure from Sydney. The approach taken by this plan is to encourage the highest quality conservation and new infill work so as to best preserve and enhance the heritage character of Berrima..... the visual character of Berrima cannot afford to have development or planning mistakes. This plan therefore deliberately sets out to avoid a "death by a thousand cuts" for Berrima, of small mistakes in development that would have a disastrous cumulative effect over time."

In dismissing the appeal, the Court would appear to be relying more on the DCP controls than on LEP permissibility, and in Council's view, it is preferable to ensure that both the LEP and the DCP align and seek to enable the same outcomes. The judgement in this case suggests that the LEP is out of alignment with the DCP, with the latter providing the more compelling justification. Council considers that this judgment provides a strong strategic merit argument for the proposed amendment.

Site Specific Considerations

The Planning Proposal is not site specific except to the extent that it applies to the already mapped Berrima Heritage Conservation Area. As stated above, the intent of the Planning Proposal is to reinstate that protection of the Berrima Heritage Conservation Area from dual occupancy subdivision which was contained within the original Wingecarribee Local Environmental Plan 2010.

Gateway Determination

Following advice from the Wingecarribee Local Planning Panel on 24 May 2024 and a subsequent resolution of Council on 21 June 2024 that:

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The attached Planning Proposal to amend Clause 4.2F – subdivision of land for dual occupancies in Zone R2 or R3 of Wingecarribee Local Environmental Plan 20120 BE SUPPORTED; and

The Planning Proposal be submitted for a Gateway Determination in accordance with s3.34 of the Environmental Planning and Assessment Act 1979

The Planning Proposal received a Gateway Determination to proceed from the (now) NSW Department of Planning, Housing and Infrastructure (DPHI) on 22 July 2024.

CONSULTATION

External Referrals

Referrals	Advice/Response/Conditions
WaterNSW	WaterNSW agrees with Council that the Proposal would reduce the potential for impacts on water quality. WaterNSW therefore supports the Proposal.
NSW RFS	The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

Internal Referrals

Referrals	Advice/Response/Conditions
Development Assessment & Regulation Branch	Agreed that the LEP had become confusing due to the amendments made in regard to this provision and that the original intent of clause 7.2 had been lost.
Heritage Advisor	Agreed that the current provisions offered no protection to the original Hoddle subdivision plan.

Public Exhibition

The Planning Proposal was placed on public exhibition for 30 days between 2 September and 11 October 2024. Council received two submissions in response to the public exhibition.

One submission objected to the Proposal. The submitter considers that *“it is important for all towns and villages in the Wingecarribee Shire to do their share”* to accommodate future population growth.

Council Response - The purpose of the amendment is to reinstate provisions which were in place when WLEP 2010 was originally made. The loss of these provisions has occurred through Parliamentary Counsel drafting errors and is not the result of a change of Council policy or any resolution of Council to remove the previous provisions.

The second submission supported the Proposal, stating *“I would like to have the Berrima Conservation area maintained to reflect our heritage and not have dual occupancy in that area”*.

Council Response - The submission is noted.

SUSTAINABILITY ASSESSMENT

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- **Environment**

The reinstatement of the provision which prevents subdivision of dual occupancy developments within the Berrima Heritage Conservation Area would enhance preservation of the existing urban landscape and surrounding rural landscape.

- **Social**

The reinstatement of the provision which prevents subdivision of dual occupancy developments within the Berrima Heritage Conservation Area would also assist in preservation of its existing heritage character and value.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Planning Proposal has been processed in accordance with relevant legislation and Departmental guidelines.

RELATIONSHIP TO CORPORATE PLANS

No Corporate Plans are impacted by this Proposal.

RELATED COUNCIL POLICY

No Council Policies are impacted by this Proposal.

CONCLUSION

The intent of the Planning Proposal is to reinstate the protection of the Berrima Heritage Conservation Area from dual occupancy subdivision which was contained within *Wingecarribee Local Environmental Plan 2010* when it was originally made in 2010. Council considers this amendment to be essential to maintaining the high heritage value of Berrima.

ATTACHMENTS

1. P P-2024-1411-clause 4.2 F- PP v 4 for Finalisation [5.2.1 - 20 pages]

6 DEVELOPMENT APPLICATIONS

6.1 24/0215 - Demolition of existing structures and construction of centre-based child care facility (80 place / children) - 2 Walker Street, Bowral

Report Author: Senior Development Assessment Planner
Authoriser: Manager Development Assessment and Regulation

PURPOSE

The purpose of this report is to present Development Application No. 24/0215 for the Panel's consideration and recommends determination by APPROVAL.

Applicant	Childcare Property Developments Pty Ltd
Landowner	Childcare Property Developments Pty Ltd
Zoning	MU1 Mixed Use
Date Lodged	28 August 2023
Proposed Development	Demolition of existing structures and construction of centre-based child care facility (80 place / children)
Estimated Cost of Development	\$5,000,000
Applicant's Consultants	Sutherland & Associates Planning Turner Vision Dynamics Pty Ltd Rodney Stevens Acoustics Moore Trees Geotechnical Consultants Australia Elephants Foot Consulting Pty Ltd XCERT
Notification Period	23 October 2023 to 23 November 2023 (31 days)
Number of Submissions	Two (2) in objection (none in support)
Political Donations	None declared
Reason for Referral to Panel	Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.
Assessment Officer	Andre Vernez

OFFICER'S RECOMMENDATION

1. **THAT the Local Planning Panel approve Development Application No. 24/0215 for Demolition of existing structures and construction of centre-based child care facility (80 place / children), at 2 Walker Street, Bowral (Lot 2 DP 625407), subject to the conditions detailed in Attachment 1 of this report.**
2. **THAT Council advise those who made written submissions of the Panel's decision.**

EXECUTIVE SUMMARY

1. Executive summary

Development application (DA) No 24/0215 seeks development consent for the demolition of existing structures and construction of centre-based child care facility at 2 Walker Street, Bowral.

The new facility is proposed to have capacity for a maximum of 80 children, with approximately 270sqm of indoor space and 570sqm of outdoor space, associated landscaping works and a total of 23 onsite car parking spaces. The facility has a proposed maximum building height of 12.015m resulting in a 20.15% exception to the 10m development standard.

The DA has been referred to several officers within Council, including the Environmental Health Officer, Development Engineers and Accredited Certifier, as well as a traffic engineering consultant. The DA has also been referred externally to Water NSW.

The owners of adjoining and affected neighbouring properties were notified of the proposed development in accordance with Council's Community Engagement Strategy. The notification period was from 23 October 2023 to 23 November 2023. Two (2) submissions (in objection) were received from the notification / advertising process.

The proposal has been assessed using the heads of consideration listed in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered satisfactory for approval subject to conditions as listed in **Attachment 1**.

This DA is referred to the Local Planning Panel in accordance with the Minister's Direction as the development contravenes a development standard imposed by an environmental planning instrument by more than 10%.

2. Site Description and Locality.

- The subject site is legally described as Lot 2 DP 625407 and known as 2 Walker Street, Bowral.
- The subject site is an irregularly shaped lot with a total area of 1,026sqm.
- The subject site contains a single storey brick dwelling which has previously been used for commercial purposes, and a fibro garage in the north-eastern rear corner. There is a significant fall from the rear of the site to the street, of approximately 4 metres, and some retaining walls around the rear of the dwelling on the site. The vegetation on the site consists of small to medium sized shrubs and hedges with predominantly exotic species. Most trees are relatively small in height other than two poplars at the rear of the site.
- The subject site is zoned MU1 Mixed Use.
- The subject site has frontage to Walker Street. One (1) vehicular crossing is provided to the site which provides access to a large gravel area along the northern side of the site which has previously been used for car parking.
- The subject site is serviced by reticulated sewer and water.

- The adjoining land on both sides of Walker Street is zoned MU1 Mixed Use and is occupied by a variety of uses. The northern adjacent site at No. 2A Walker Street contains a single storey Strata Titled office development which is predominantly occupied by medical related uses. The building is setback approximately 1-6 metres from the boundary with the subject site. The southern adjacent site at No. 4 Walker Street contains an original dwelling which is now used for the purpose of offices. The two (2) adjoining properties at the rear being No. 441 and No. 443A Moss Vale Road both contain buildings used as offices with at-grade car parking areas at the rear, immediately adjacent to the subject site. On the opposite side of Walker Street are a variety of buildings used for business and residential purposes.



Figure 1: Aerial Image

3. Background

<i>Date(s)</i>	<i>Action(s)</i>
28/08/2023	Development Application (DA) lodged with Council.
19/10/2023 23/10/2023	& Council referred the DA to: <ul style="list-style-type: none"> ▪ Accredited Certifier ▪ Development Engineer ▪ Water & Sewer Engineer ▪ Environmental Health Officer ▪ Traffic Engineer ▪ Water NSW <u>Note:</u> Refer to Section 9 of this report for final referral comments.
23/10/2023 23/11/2023	– The DA was advertised in accordance with Council’s Community Engagement Strategy for a period of 31 days. This included notifying the owners of adjoining and affected neighbouring properties, an advertisement

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	on Council's website and a sign on the development site in a prominent location.
23/11/2023	Water NSW provided concurrence.
04/12/2023	<p>Additional information requested including Council's Water & Sewer Engineer requirements:</p> <ul style="list-style-type: none"> ▪ The applicant has submitted a plan showing build over and encasement of the existing Council sewer main, including a sewer extension to service the adjacent properties. Please provide self cleansing calculations for the option of sewer relocation around the proposed building. Please provide confirmation/commentary on whether a sewer relocation around the proposed building footprint is feasible. It is Council's preference for sewer to be relocated around the building, if possible. If it is not possible due to self cleansing issues, then Council will consider if a build over is allowed.
07/12/2023	Additional information provided by applicant.
12/12/2023	<p>Further additional information requested including Council's Environmental Health Officer requirements:</p> <ul style="list-style-type: none"> ▪ The following issues have been raised with the report Preliminary Site Investigation Proposed Development at: 2 Walker Street Bowral NSW 2576 by Geotechnical Consultants Australia (Repot No. E2351-1, Rev. 0, Dated 29/3/2023) ('PSI'): <p>Chapter 5.1 contains the following statement: 'No historical imagery could be obtained prior to 2014.' This statement is incorrect because aerial imagery dating back to 1930s can be accessed free of charge via the NSW Spatial Services' Historical Imagery Viewer.</p> <p>The PSI doesn't appear to include a Sampling and Analysis Plan and Sampling Methodology. These are required to be included with reference to Table 2.1 in the NSW EPA Consultants reporting on contaminated Land: Contaminated land guidelines.</p> <p>Chapter 11 Data Gaps identifies the following as one of the data gaps: 'Condition of groundwater beneath the site considering the proposed basement level excavations'. However, there is no discussion in that chapter or elsewhere in the PSI as to whether that particular data gap is critical and needs to be filled.</p> <p>It doesn't appear that another data gap mentioned in Chapter 11 which is 'Condition of the soils beneath concrete slab and onsite structure' have been properly addressed either. This matter gets mentioned again in Chapter 13 Recommendations: If any CoPCs are detected in the post demolition sampling, then validation of the underlying natural soils may also be required. It is, however, unclear how Chemicals of Potential Concern (CoPCs) are going to be 'detected' given that the PSI does not contain any recommendation and/or plan for postdemolition soil sampling within the building and slab footprints. Accordingly, if testing of the footprints is required the PSI should clearly explain that the data gap in question is required to be addressed by carrying out a supplementary investigation following</p>

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	<p>the demolition of relevant structures. A supplementary Sampling and Analysis Plan must also be formulated if that is the case. Accordingly, the Applicant is required to have the PSI updated accordingly and resubmitted to Council.</p>
12/02/2024	<p>Additional information provided by applicant.</p>
20/02/2024	<p>Further additional information requested including Council's Development Engineer and Traffic Engineer requirements:</p> <ul style="list-style-type: none"> ▪ The car parking space requirement is 1 space per 4 children and additional spaces for permanent staff, as per the DCP of Bowral. The requirement will be 20+ spaces needed for permanent staff. The applicant has provided 22 parking spaces. Moreover, the applicant has proposed to utilise car parking spaces located at Station Street Carpark. However, it is unclear how many staff will be employed on a shift to determine the extra on-street car parking spaces required for the staff. The applicant to provide information on the maximum number of staff working during a shift. Additionally, the applicant to submit updated parking demand and supply considering onsite and off-site parking spaces. ▪ Kerbside garbage collection is not considered suitable as per the scale of this proposed development. The waste in the operational stage is to be stored and collected on site using a private contractor Applicant to updated plan showing the location of waste storage area and swept path analysis of vehicle collecting waste from the site to ensure the collocation of waste can be done onsite.
07/04/2024	<p>Additional information provided by applicant.</p>
18/06/2024	<p>Further additional information requested including Council's Development Engineer and Traffic Engineer requirements:</p> <ul style="list-style-type: none"> ▪ The applicant has responded to the RFI related to parking demand and supply, stating that the provided 22 car parking spaces are sufficient for 80 children and 18 staff. However, considering 18 staff at the operational stage and 20 spaces for 80 children, the parking demand is 38 car parking spaces in accordance with the Bowral DCP. Please note that a reduction in children for the proposed childcare may be considered to satisfy the Council's Standard ▪ The applicant will need to provide the number of staff expected at one time at the peak pick up/drop off time to compensate for the parking shortfall and a schedule of the times that staff will be at the childcare Centre.
06/08/2024	<p>Further additional information requested including Council's Development Engineer and Accredited Certifier requirements:</p> <ul style="list-style-type: none"> ▪ Council's Development Engineer has indicated the proposal cannot be supported for the following reasons from an engineering perspective: <p style="padding-left: 40px;">The proposal includes 22 on-site car parking spaces for 80 children and 7 staff (2 full-time and 5 casual). While the total number of parking spaces meets the recommendation of TfNSW's Guide to</p>

	<p>Traffic Generating Developments and Bowral Township DCP, there are only 15 spaces designated for parents parking, leaving a shortfall of 5 parent parking spaces, as per Bowral Township DCP. This results in a shortfall of 5 parent parking spaces according to the Bowral Township DCP.</p> <p>Additionally, the proposed mixed tandem parking arrangement for staff and parents is not acceptable. Tandem arrangement may be suitable for staff only.</p> <ul style="list-style-type: none"> ▪ Council's Accredited Certifier has requested further documentation comprising of a BCA Compliance Report for the design and a Fire Services Report.
29/08/2024	Additional information provided by applicant.
12/09/2024	Council referred the DA to a traffic engineering consultant to complete an independent review of the submitted Traffic Impact Assessment and architectural plans.
10/10/2024	<p>Further additional information requested:</p> <ul style="list-style-type: none"> ▪ An independent review of the submitted Traffic Impact Assessment and architectural plans has been completed with the following matters raised for consideration: <ul style="list-style-type: none"> a) <u>Staff Parking Arrangement</u> <p>100% of the staff parking is provided in a tandem arrangement with visitor spaces. The submitted traffic report does not provide any information about the management procedures required to ensure that this arrangement would work. Without any detailed and justifiable management procedures, staff may regularly be blocked from accessing car parking spaces. Given there is no alternative staff parking on site, staff would elect to park on the street which would have an unmitigated impact on the on-street parking environment. This, in practice, may lead to a non-compliant parking provision onsite.</p> b) <u>Forecast Traffic Generation and Road Network Inputs</u> <p>The source of the traffic generation rates used in the submitted traffic report are unclear, as the TfNSW trip generation report for childcare centres is yet to be adopted into the RTA guide at the time of this report. The most recent data which has been formally adopted (as of September 2024) into a Transport Guide is the <i>RTA Guide for Traffic Generating Developments (2002)</i>. The <i>RTA Guide 2002</i> outlines a rate of 0.8 trips/child in the AM peak period, and 0.7 trips/child in the PM peak period. A review of the <i>TfNSW Trip Generation Surveys Analysis Report</i> prepared by TEF Consulting in September 2015 shows that the average traffic generation rates are 0.88 trips per child in the AM peak hour and 0.80 trips per child for a long day care centre in the PM peak hour. Both sets of rates are higher than the rates</p>

adopted in the submitted report. A comparison between these three sets of rates is provided in Table 1.

TABLE 1: COMPARISON OF TRIP GENERATION RATES

Source	Generation Rate (AM Peak)	Generation Rate (PM Peak)	Number of Trips (AM Peak)	Number of Trips (PM Peak)
JMT Adopted Rates	0.64 trips/child	0.39 trips/child	51	31
2002 RTA Guide	0.8 trips/child	0.7 trips/child	64	56
2015 TEF	0.88 trips/child	0.80 trips/child	70	64

Based on the analysis above, the proposed facility would be expected to generate between 64 and 70 trips in the AM peak and between 56 and 64 trips in the PM peak. The traffic generation potential has likely been underestimated with the rate of 51 trips in the AM peak and 31 trips in the PM peak.

Further, the submitted traffic report has not undertaken any traffic modelling of the existing conditions, nor has it modelled the future scenario. This is a critical deficiency and has not assessed the development's potential traffic impacts. The statement that *'This level of traffic generation is relatively minor in the context of the surrounding road network, with traffic volumes on both Station Street and Bong Bong Street in excess of 800 vehicles per hour'* is insufficient and does not meet the industry standard for the assessment of a development of this scale.

According to the *Austrroads Guide to Traffic Management Part 12: Integrated Transport Assessments for Developments*, the level of traffic assessment required for moderate impact developments of 10-100 peak hour vehicle trips is a Traffic Impact Statement. A Traffic Impact Statement should include an *'analysis of the operation of the first intersection, as a minimum, on either side of the accesses'* and a *'professional opinion on the expected traffic impact based on a site observation during the expected critical peak hour and the analysis conducted.'*

c) Architectural Plans

i. C35 of the *Child Care Planning Guideline* lists items that should be provided in a child care facility car park to facilitate a safe pedestrian environment. A crucial item in this list is to provide *'separate pedestrian access from the car park to the facility'* and *'separate paths included within large car parking areas'*. The car park design does not satisfy pedestrian access requirements typical for a child care centre, as the design does not provide separate pedestrian access from the visitor spaces to the lift. The design requires children and carers to either cross the vehicular aisle and/or walk along the 5.8m width aisle which is shared by two-way traffic. The lack of safe pedestrian access is demonstrated by the applicant's swept path analysis, depicted in Figure 1 below.

As demonstrated, there exists no safe access for pedestrians within the parking aisle.

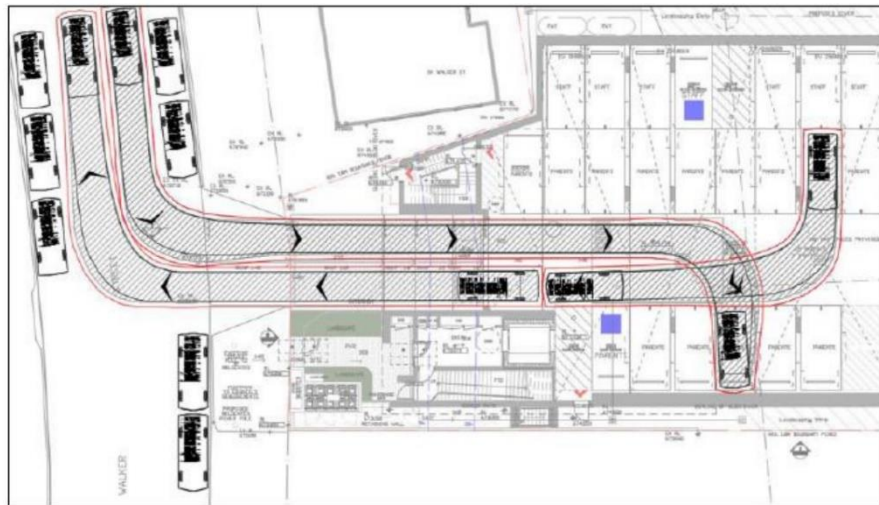


FIGURE 1: SWEPT PATH ANALYSIS

ii. A separate pedestrian path, or alternatively, an extension of the aisle width with the inclusion of a suitably positioned pedestrian crossing, is therefore needed to ensure a safe pedestrian environment. User Class 3 parking spaces are adequate dimensions for child care facility visitors, but a separated pedestrian path must be provided to accommodate a safe pedestrian environment. Alternatively, a wider car parking aisle (minimum 6.6m in accordance with Class 3A spaces) would also satisfy the requirement for safe pedestrian environment. This is the typical design for shopping centres whose wider aisles accommodate trolleys, prams and two-way vehicle traffic.

iii. The staff accessible space provided is not compliant with *Figure 2.3 of AS2890.6.2022: Disabled Parking*. A shared area of 2400mm x 2400mm is not provided at the rear of the accessible space. Additionally, a 1.0m width accessible path of travel is not maintained between the accessible parking space and the accessible entrance.

It is relevant to note that the Bowral Township Development Control Plan does not outline a minimum requirement for accessible spaces in child care centres. As a result, application of the *National Construction Code: Part D4 Access for people with a disability* has been adopted, with a child care centre being classified as a 9b building. This provides the rate of one (1) accessible space per 50 spaces. Hence, the provision of one (1) accessible space for the car park is adequate for the development, and the staff accessible space and shared zone may be converted to two (2) User Class 1/1A staff car parking spaces or used for other purposes.

iv. The small car space provided (2.6m x 5.0m) must be labelled as 'Small Car Only'. Although the minimum small space width requirement is 2.3m according to the standard, User Class is not considered. This space is not recommended for parent use. Most parents are more likely to drive larger vehicles and visitor spaces have a particularly high turnover. Further, the space is too close to the basement entry and is therefore unsafe for use by parents. The space would need to be used by staff if kept in its current

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	arrangement. The provision of one (1) small car space for staff is considered appropriate as it does not represent more than 10% of the car parking provision.
29/10/2024	Additional information provided by applicant.
30/10/2024	Council referred the additional information to the traffic engineering consultant for review and assessment. The consultant confirmed that the amended design is satisfactory, and the proposal can be supported subject to recommended conditions.
07/11/2024	Development Engineering conditions provided following advice that traffic engineering consultant was satisfied with the development as amended.

4. Proposed Development

The proposal seeks the demolition of the existing structures, removal of trees and construction of a part 2 and part 3 storey centre-based child care facility for a total of 80 children comprised 14 x 0-2 years and 66 x 3-6 years.

The proposal includes the following elements:

Ground Floor

The majority of the ground floor level comprises a carpark containing 23 car parking spaces (14 for parents and 9 for staff), which is located at RL 674.43, which requires up to approximately 2.8 metres of excavation at the rear of the site. The carpark is accessed via a driveway in approximately the same location as the existing driveway. The front of the ground floor provides an entry lobby arrangement on the southern side of the driveway with lift and stair providing access to the levels above. The front setback areas are landscaped and contain a bin holding area, fire booster and pedestrian path leading to the lobby.

An Operational Plan of Management has been submitted to address the operational use of the carpark and particularly the use of staff tandem car parking bays.

Level 1

Level 1 is the first occupied level of the child care facility and is configured with the internal areas along the southern side, and an outdoor play area along the northern side of the floorplate, with a surrounding 1.8 metre high fence along the perimeter of the building. The internal layout of Level 1 includes:

- Lift lobby and reception area
- Staff room
- Kitchen
- WC
- Directors Office
- Laundry
- Playroom A (toddlers) with toilet room attached
- Playroom B (babies) with nappy/toilet room and cot room attached

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- Outdoor play area - 282 square metres

Level 2

Level 2 is the second occupied level of the child care facility and is configured with the internal areas centrally and along the southern side, and two (2) outdoor play areas with one on the northern side, and the other on the western side facing the street, with a surrounding 1.8 metre high fence along the perimeter of the building. The internal layout of Level 2 includes:

- Lift lobby
- Staff WC
- Storage room
- Playroom C (toddlers)
- Playroom D (toddlers)
- Shared toilet room between playrooms
- Northern outdoor play area - 151 square metres
- Western outdoor play area - 138 square metres

Height of Building

The facility has a proposed maximum building height of 12.015m resulting in a 20.15% contravention to the 10m height of buildings development standard in WLEP 2010. A Clause 4.6 request for an exception to the development standard has been submitted with this application and is discussed later in this report, including the details relating to the earthworks proposed as part of the DA.

Hours of Operation

The proposed hours of operation are 7.00am to 6.00pm, Monday to Friday.

Sewer Works

There is presently a Council sewer which traverses the site, centrally, from north to south. Whilst Council's preference is not to build above a sewer line and to relocate the line outside of the footprint of the new building, that solution is not possible in this instance as sufficient fall would not be able to be achieved for a relocated sewer line around the perimeter of the site. Accordingly, it is proposed to concrete encase the existing sewer line. Recommended conditions have been included to ensure this occurs if development consent is granted.

Tree Removal and Protection

Trees 1-21 as shown on the submitted Tree Protection Plan are proposed to be removed given the required works. The incursions to the TPZ distances are too great to retain any of these trees.

Tree 1 is a small weed species being a Large leaf privet (*Ligustrum lucidum*). Trees 2, 3, 6, 10 and 11 are the only native species within the site and consist of Weeping bottle brush (*Callistemon viminalis*) and Willow-leaved hakea (*Hakea salicifolia*). Exotic species onsite consist of Hibiscus sp. Poplar (*Populus nigra 'italica'*), *Pittosporum eugeniodes variegatum* with some large specimens of Poplar (*Populus nigra 'italica'*) that are growing against the eastern boundary line. Along the northern boundary fence are heavy weed infestations of English ivy (*Hedera helix*) that are growing over most of the tree and shrub species in this location.

Trees 12-17 are all *Pittosporum eugeniodes variegatum*. and are in fair health and condition and have been planted as a group. Trees 18-21 are a small mixed collection of exotic specimens along the northern boundary adjoining the existing driveway and consist of Hibiscus sp. *Prunus cerasifera 'Nigra'*, *Camellia sp.* and *Cupressus sempervirens*.

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Two (2) trees on the neighbouring property to the east, numbered as Trees 22 and 23, are to be protected. These trees are quite large specimens. Tree 22 is a *Fraxinus sp.* and Tree 23 is a Poplar (*Populus nigra 'italica'*).

Acoustic Impact

An Acoustic Assessment has been prepared for the proposal. The report has considered noise intrusion to the child care facility from Walker Street and Moss Vale Road, noise emissions from the indoor and outdoor play areas; and noise emission from the mechanical plant to service the facility. The report has confirmed the following:

- Subject to the implementation of the recommended glazing measures and a 1.8 metre high acoustic barrier around the perimeter of the outdoor play area, the internal and external noise criteria for the child care centre will be met.
- Noise emissions from the indoor and outdoor play areas will not exceed the criteria for the nearest residential and commercial receivers.

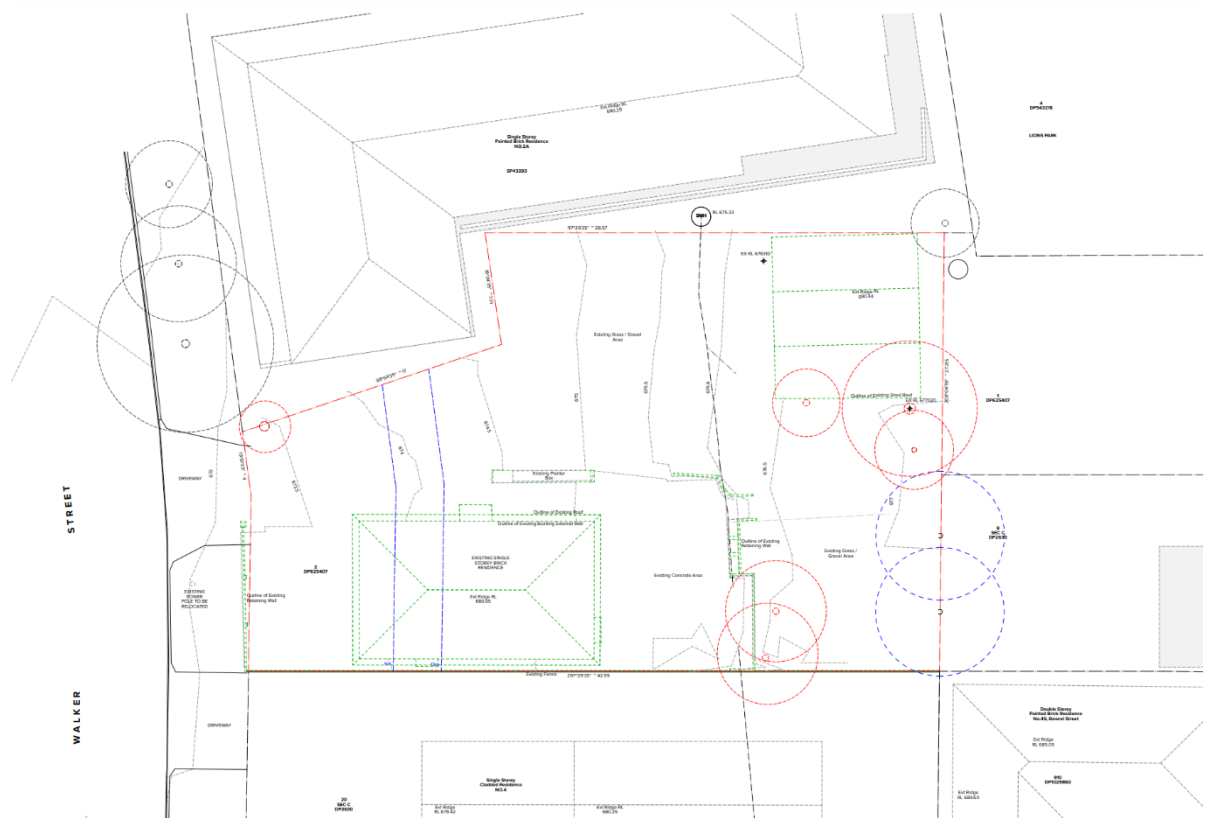


Figure 2: Demolition Plan



Figure 3: Tree Protection Plan



Figure 6: Photomontage of proposed development

5. Notification

The owners of adjoining and affected neighbouring properties were notified of the proposed development in accordance with Council’s Community Engagement Strategy. The notification period was from 23 October 2023 to 23 November 2023 (31 days). Two (2) submissions (in objection) were received from the notification / advertising process.

The following main issues were raised in the submissions:

Issue	Comment
<ul style="list-style-type: none"> ▪ Concerns with regard to an overdevelopment with the proposed development crossing the 10m height limit set out by the LEP and potential overshadowing. ▪ Additional concerns raised with regard to visual and acoustic privacy.. ▪ Concerns with the development being out of character with the rest of the streetscape. ▪ Concerns with regard to noise impacts. ▪ Major concerns raised with regard to parking provisions and additional traffic generation. 	<ul style="list-style-type: none"> ▪ The proposed development exceeds the 10m height limit. The submitted clause 4.6 written request details the relevant implications in this regard. ▪ Limited windows/opening proposed to the south and the north with adequate screening proposed for the outdoor play area to the north. ▪ While the streetscape of Walker Street consists primarily of single storey developments, the building form and architectural treatments are proposed to integrate with the anticipated scale of development within the Mixed Use zone. It is additionally noted that there are developments in the vicinity that are of a comparable scale (if not larger) to the proposed development such as 80 Station Street, Bowral, and 90 Funston Street Bowral.

	<ul style="list-style-type: none"> ▪ The applicant has proposed adequate provisions to mitigate potential adversities in terms of noise generation. The application is supported by Council's Environmental Health Officer with additional conditions of consent. ▪ These parking related concerns are also raised by the Council's Engineers. However, recommended conditions have been provided. An independent traffic and parking review of the submitted documentation has been completed with matters resolvable by conditions of consent.
<ul style="list-style-type: none"> ▪ Concerns with regard to the proposed parking and potential additional traffic generated as a result of the proposed development. 	<ul style="list-style-type: none"> ▪ These concerns are also raised by Council's Engineers. However, recommended conditions of consent have been provided. Council's independent traffic and parking review of the submitted documentation has been completed with matters resolvable by conditions of consent.

6. Relevant Environmental Planning Instruments

6.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

The aim of Chapter 4 of SEPP (Resilience and Hazards) 2021 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

Chapter 4 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

The submitted Preliminary Site Investigation (PSI) Report addressed the provisions of section 4.6 of this SEPP.

The application has been referred to the Council's Environmental Health Officer, who confirmed the PSI is satisfactory and that the site is suitable for the proposed use from a contaminated land perspective and that no further investigation into site contamination is required or warranted.

It is noted that Chapter 14 of the PSI contains a number of recommendations in relation to Hazardous Materials Survey (HMS), asbestos removal, waste classification of excavated materials and Unexpected Finds Protocol, which would form part of any conditions of consent granted.

Therefore, the Council is satisfied that the land is not a site of possible contamination and that no further assessment of contamination is required.

6.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 contains provisions replacing the former SEPP (Vegetation in Non-Rural Areas), and the aims are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. This Chapter includes Parts relating to Clearing Vegetation in Non-Rural Areas (Part 2.2); Council Permits for Clearing Vegetation in Non-Rural Areas (Part 2.3); and Approval of Native Vegetation Panel for Clearing Native Vegetation in Non-Rural Areas (Part 2.4).

The application was accompanied by an Arboricultural Impact Assessment, prepared by Moore Trees, dated 15 June 2023. Based on the current plans, 21 trees are proposed to be removed for the purpose of the development. These trees are not significant trees to the site. Two (2) trees on the neighbouring property to the east, are to be protected.

No objection is raised to the proposed tree removal and protection subject to compliance with the recommendations of this report including requirements relating to the establishment of tree protection zones and installation of fencing around those trees to be retained.

Chapter 6 Water catchments

The site is also within the Sydney Catchment and therefore this SEPP is applicable to the assessment of the application. The application is a Module 5 development for the purposes of the Neutral or Beneficial Effect (NorBE) on Water Quality Assessment Guideline and therefore required referral for Water NSW concurrence. Water NSW issued concurrence on 23 November 2023 subject to conditions.

Water NSW noted the Bowral Sewage Treatment Plant (STP) is at capacity. However, Water NSW did not provide additional conditions on wastewater in this advice for the following reasons:

- majority of the wastewater loading from the daycare will be generated during the daytime off-peak hours.
- wastewater loading is relatively small, equivalent to 1-2 residential dwelling based on Water NSW's calculation, and
- the STP is being upgraded.

6.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 3 Educational establishments and childcare facilities

Section 3.22 of the SEPP specifies the following:

'1) This section applies to development for the purpose of a centre-based child care facility if—

(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the [Education and Care Services National Regulations](#), or

(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.'

Comment:

Section 107 of the *Education and Care Services National Regulations* requires the provision of 3.25 square metres of unencumbered indoor space per child, equating to a minimum of 260sqm for the proposed child care facility for 80 children.

Approximately 270sqm of unencumbered indoor space is to be provided as indicated on the architectural drawings accompanying the application.

Section 108 of the *Education and Care Service National Regulations* states there is a requirement for the provision of 7sqm of unencumbered outdoor space per child equating to a minimum of 560sqm for the proposed 80 children.

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Approximately 570sqm of unencumbered outdoor play area is to be provided as indicated on the architectural drawings accompanying the application.

In this regard, the proposed development complies with the minimum requirements of the Regulations.

Section 3.23 of the SEPP specifies the following:

'Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the Childcare Planning Guideline, in relation to the proposed development.'

The following table is an assessment of the proposed childcare facility against the criteria of the 'Childcare Planning Guideline' as required by the SEPP.

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 To ensure that appropriate zone considerations are assessed when selecting a site	For proposed developments in commercial and industrial zones, consider: <ul style="list-style-type: none"> potential impacts on the health, safety and wellbeing of children, staff and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions the potential impact of the facility on the viability of existing commercial or industrial uses. 	Consistent The proposed child care facility has considered potential impacts on the health, safety and wellbeing of children, staff and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions. These have been reviewed by relevant Council officers and no objections have been raised subject to conditions of consent being granted to minimise potential impacts from the facility. There are no adverse impacts on the viability of the existing surrounding commercial developments envisaged.
C2 To ensure that the site selected for a proposed childcare facility is suitable for the use	When selecting a site, ensure that: <ul style="list-style-type: none"> the location and surrounding uses are compatible with the proposed development or use the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> size of street frontage, lot configuration, dimensions and overall size number of shared boundaries with residential properties 	Consistent The subject site is suitable for the proposed child care facility subject to conditions of any consent granted in relation to contamination, noise control measures, and traffic and parking. The facility would not be located in proximity to any known socially incompatible activities and uses.

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	<ul style="list-style-type: none"> the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use there are suitable drop off and pick up areas, and off and on street parking the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	
<p>C3 To ensure that sites for childcare facilities are appropriately located</p>	<p>A childcare facility should be located:</p> <ul style="list-style-type: none"> near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship near or within employment areas, town centres, business centres, shops with access to public transport including rail, buses, ferries in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>Consistent</p> <p>The proposed child care facility is appropriately located near compatible social uses, within the Bowral town centre, with access to public transport, and in an area with pedestrian connectivity.</p>
<p>C4 To ensure that sites for childcare facilities do not incur risks from environmental, health or safety hazard</p>	<p>A childcare facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> proximity to: <ul style="list-style-type: none"> heavy or hazardous industry, waste transfer depots or landfill sites LPG tanks or service stations water cooling and water warming systems odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	<p>Consistent</p> <p>The proposed siting of the child care facility would avoid risks to children, staff or visitors noting the land is not in proximity to any environmental, health or safety hazards.</p>
<p>3.2 Local character, streetscape and the public domain</p>		

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<p>C5 To ensure that the childcare facility is compatible with the local character and surrounding streetscape</p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>Consistent</p> <p>The proposed form of the child care facility is of a significantly larger scale in comparison to the majority of the surrounding development specifically along Walker Street. However, the building form and architectural treatments are proposed to integrate with the anticipated scale of development within the Mixed Use zone.</p> <p>Additionally, there are developments in the vicinity that are of a comparable scale (if not larger), such as 80 Station Street, Bowral, and 90 Funston Street, Bowral.</p> <p>Landscaping is proposed to the building and outdoor play areas that will complement the existing streetscape and surrounding locality. Compensatory planting would offset the trees required to be removed for the proposed development.</p>
<p>C6, C7, C8 To ensure clear delineation between the childcare facility and public spaces</p>	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing. 	<p>Consistent</p> <p>Fencing is provided to delineate spaces and ensure safety for children.</p> <p>Windows are provided on all elevations towards the public domain and the street.</p> <p>Landscaping and fencing have been integrated appropriately.</p>
	<p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the childcare facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p>Not applicable</p> <p>Only one (1) building and one (1) entry is proposed. The pedestrian entry to the facility is from both the carpark and Walker Street and provides legibility for visitors and children.</p>
	<p>Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open 	<p>Not applicable</p> <p>The site does not adjoin any public parks, open space or bushland.</p>

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	<p>space from adjoining public open space</p> <ul style="list-style-type: none"> minimal use of blank walls and high fences. 	
<p>C9, C10 To ensure that front fences are retaining walls respond to and complement the context and character of the area and do not dominate the public domain</p>	<p>Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p>Consistent</p> <p>Fencing is proposed for the front setback, with an open palisade design.</p>
	<p>High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p>	<p>Not applicable</p> <p>The site does not front a classified road.</p>
<p>3.3 Building orientation, envelope and design</p>		
<p>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</p>	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties placing play equipment away from common boundaries with residential properties locating outdoor play areas away from residential dwellings and other sensitive uses optimise solar access to internal and external play areas avoid overshadowing of adjoining residential properties minimise cut and fill ensure buildings along the street frontage define the street by facing it ensure that where a childcare facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>Consistent</p> <p>As identified in the submitted Noise Impact Assessment report, the nearest residential dwellings are located at least approximately 27m from the property boundary to the west (across the street) at 1 and 3 Walker Street. The other adjacent properties are commercial.</p> <p>Proposed outdoor play areas and equipment have been sited to minimise noise and privacy impacts to and from neighbours.</p> <p>Outdoor spaces are adequately optimised for solar access. Indoor spaces are capable of adequate solar access.</p> <p>The height of the building would not overshadow the residential properties.</p>
<p>C12 To ensure that the scale of the childcare facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> building height should be consistent with other buildings in the locality building height should respond to the scale and character of the street 	<p>Consistent</p> <p>The height of the proposed child care facility is significantly larger than that of other buildings in the locality, which are primarily single storey.</p>

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	<ul style="list-style-type: none"> setbacks should allow for adequate privacy for neighbours and children at the proposed childcare facility setbacks should provide adequate access for building maintenance setbacks to the street should be consistent with the existing character. 	<p>However, the proposed building height will not result in unreasonable impacts on the surrounding properties in terms of solar access (shadowing), loss of privacy or view loss.</p> <p>Adequate screening provisions are in place to ensure reduced impact in terms of visual and acoustic privacy.</p> <p>The subject site is in the Mixed Use zone with other lots in the vicinity zoned for the same purpose. The built form is proposed to merge with the anticipated future development in the area through the transitioning of the street character.</p> <p>Adequate setbacks have been provided for privacy and to allow access for building maintenance while remaining consistent with the existing setback character of the locality.</p>
C13, C14 To ensure that setbacks from the boundary of a childcare facility are consistent with the predominant development within the immediate context	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>Consistent</p> <p>The proposed child care facility is generally consistent with the setback patterns of the adjacent properties.</p>
	<p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>Not applicable</p> <p>The subject site is not in a residential zone.</p>
C15 To ensure that buildings are designed to create safe environments for all users	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> located to allow ease of access, particularly for pedestrians directly accessible from the street where possible directly visible from the street frontage easily monitored through natural or camera surveillance not accessed through an outdoor play area. in a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>Consistent</p> <p>The proposed development is provided with a single secure pedestrian access directly from basement parking and Walker Street that can be easily monitored and is not accessed through an outdoor play area.</p> <p>The application is accompanied by a satisfactory Access Assessment Report.</p>
C16 To ensure that childcare facilities are designed to be accessible by all potential users	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> providing accessibility to and within the building in accordance with all relevant legislation 	<p>Consistent</p> <p>No objection has been raised by Council's Accredited Certifier in relation to accessibility subject to conditions of any consent granted.</p>

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	<ul style="list-style-type: none"> linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: <i>The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</i></p>	
3.4 Landscaping		
C17, C18 To provide landscape design that contributes to the streetscape and amenity	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> reflecting and reinforcing the local context incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>Consistent</p> <p>Proposed landscaping is appropriate.</p>
	<p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings taking into account streetscape, local character and context when siting car parking areas within the front setback using low level landscaping to soften and screen parking areas. 	<p>Not applicable</p>
3.5 Visual and acoustic privacy		
C19, C20 To protect the privacy and security of children attending the facility	<p>Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p>	<p>Not applicable</p> <p>The proposal is not a mixed-use development.</p>

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	<p>Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design. 	<p>Consistent</p> <p>The elevated design of the proposal and the positioning of the respective spaces ensures no overlooking is possible from the public domain.</p> <p>Adequate screening is proposed for the development.</p>
C21 To minimise impacts on privacy of adjoining properties	<p>Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening. 	<p>Consistent</p> <p>Adequate provisions are in place to minimize overlooking of main internal areas and private open spaces.</p>
C22, C23 To minimise the impact of childcare facilities on the acoustic privacy of neighbouring residential developments	<p>A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	<p>Consistent</p> <p>The proposed development is not directly adjacent to residential accommodation. The nearest residential dwellings are located to the west (across the street) at 1 and 3 Walker Street.</p>
	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a childcare facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>Consistent</p> <p>The submitted Noise Impact Assessment report has been prepared by a suitably qualified acoustic professional and adequately addressed the relevant matters.</p> <p>Council's Environmental Health Officer has reviewed the report and raised no objections subject to conditions being imposed as part of any consent granted in relation to noise control measures, including acoustic fencing and design of outdoor mechanical plant and equipment.</p>
3.6 Noise and air pollution		
C24, C25 To ensure that outside noise levels on the facility are minimised to acceptable levels	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source 	<p>Consistent</p> <p>Adequate detail has been provided for the impact of external noise on the facility and any design solutions to address its impacts.</p>

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	<ul style="list-style-type: none"> • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources 	
	<p>An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a childcare facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise. 	<p>Not Applicable</p> <p>The child care facility is not proposed in any of the listed locations.</p>
<p>C26, C27 To ensure air quality is acceptable where childcare facilities are proposed close to external sources of air pollution such as major roads and industrial development</p>	<p>Locate childcare facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p>Not Applicable</p> <p>The site is not in proximity to external sources of air pollution.</p>
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed childcare facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution 	<p>Not applicable</p> <p>The site is not in proximity to a major road or industrial development.</p>

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	<ul style="list-style-type: none"> using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway incorporating ventilation design into the design of the facility. 	
3.7 Hours of operation		
C28, C29 To minimise the impact of the childcare facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed childcare facility may be extended if it adjoins or is adjacent to non- residential land uses.	<p>Consistent</p> <p>The facility's proposed hours are between 7am and 6pm weekdays.</p> <p>A condition is recommended to ensure this is enforced and detailed in the Operational Plan of Management.</p>
	Within mixed use areas or predominantly commercial areas, the hours of operation for each childcare facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	<p>Consistent</p> <p>The proposed hours of operation are similar to adjoining and co-located land uses in terms of compatibility.</p>
3.8 Traffic, parking and pedestrian circulation		
C30, C31, C32 To provide parking that satisfies the needs of users and demand generated by the centre	<p>Off street car parking should be provided at the rates for childcare facilities specified in a Development Control Plan that applies to the land.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> 1 space per 10 children 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> the proposal is an adaptive re-use of a heritage item the site is in a B8 Metropolitan Zone or other high density business or residential zone the site is in proximity to high frequency and well connected public transport 	<p>Consistent</p> <p>Off-street car parking is provided at a rate of 1 space per 4 children (20 spaces) plus for two (2) permanent staff.</p> <p>A total of 23 car parking spaces is proposed.</p> <p>However, concern has been raised in relation to staff parking.</p> <p>100% of the staff parking is provided in a tandem arrangement with visitor spaces. The submitted Plan of Management has addressed the management procedures required to ensure that this arrangement would work. Council's independent traffic and parking review of the submitted documentation has been completed with matters resolvable by conditions of consent.</p>

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	<ul style="list-style-type: none"> the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) there is sufficient on street parking available at appropriate times within proximity of the site. 	
	<p>In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.</p>	<p>Not applicable</p> <p>On-street parking has not been considered as part of this proposal.</p>
	<p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> the amenity of the surrounding area will not be affected there will be no impacts on the safe operation of the surrounding road network. 	<p>Consistent</p> <p>A Traffic Impact Assessment has been lodged with this DA. This has been found to be acceptable following detailed assessment by technical officers and an independent traffic engineering consultant.</p>
<p>C33, C34 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows</p>	<p>Alternate vehicular access should be provided where childcare facilities are on sites fronting:</p> <ul style="list-style-type: none"> a classified road roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> the prevailing traffic conditions pedestrian and vehicle safety including bicycle movements the likely impact of the development on traffic. 	<p>Not applicable</p> <p>The subject site does not front a classified road or a road which carries freight traffic or transports dangerous goods or hazardous materials.</p>
	<p>Childcare facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>Consistent</p> <p>Council's Development Engineer has determined that safe access can be provided to and from the site, and to and from the wider locality in times of emergency, subject to conditions of any consent granted.</p>
<p>C35, C36, C37 To provide a safe and connected environment for</p>	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> separate pedestrian access from the car park to the facility 	<p>Consistent</p> <p>Adequate details have been provided concerning pedestrian safety design solutions.</p>

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pedestrians both on and around the site	<ul style="list-style-type: none"> defined pedestrian crossings included within large car parking areas separate pedestrian and vehicle entries from the street for parents, children and visitors pedestrian paths that enable two prams to pass each other delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas vehicles can enter and leave the site in a forward direction. 	
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>Not applicable</p> <p>The proposal does not form part of a mixed-use development.</p>
	<p>Car parking design should:</p> <ul style="list-style-type: none"> include a child safe fence to separate car parking areas from the building entrance and play areas provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards include wheelchair and pram accessible parking. 	<p>Consistent</p> <p>The proposal includes fencing to separate the car park from the building entrance and play areas.</p> <p>Accessible parking is provided close to the primary entrance.</p>

The following table is an assessment of the proposed childcare centre against the *Education and Care Services National Regulations* as detailed within the 'Childcare Planning Guideline'.

Regulation	Guidelines	Comments
4.1 Indoor space requirements		

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<p>Regulation 107</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program, e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. <p>All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exception circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p>	<p>The proposed development includes at least 3.25 sqm of unencumbered indoor space for each child.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p>	<p>Consistent – concurrence not required.</p> <p>260m² minimum required for 80 children.</p> <p>Approximately 270m² provided.</p>
	<p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p>	<p>Noted</p> <p>No verandah is proposed.</p>
	<p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a childcare facility provide:</p> <ul style="list-style-type: none"> • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p> <p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	<p>Consistent</p> <p><u>Internal storage - Consistent</u> 16m³ minimum of internal storage space required for 80 children. 43.41m³ is proposed.</p> <p><u>External storage - Consistent</u> 24m³ minimum of external storage space required for 80 children. 58.88m³ is proposed.</p>

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<p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
<p>4.2 Laundry and hygiene facilities</p>		
<p>Regulation 106</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Childcare facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p>	<p>Consistent</p> <p>An on-site laundry has been provided in the building, with an approximate area of 10sqm.</p>
	<p>On site laundry</p> <p>On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children 	<p>Consistent</p> <p>An on-site laundry has been provided with appropriate facilities including laundry sinks and storage for soiled items as well as space for washers and dryers.</p>
	<p>External laundry service</p> <p>A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	<p>Not applicable</p> <p>An on-site laundry is provided.</p>
<p>4.3 Toilet and hygiene facilities</p>		
<p>Regulation 109</p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet,</p>	<p>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children</p>	<p>Consistent</p> <p>The proposed facility contains adequate and appropriate toilets for use by children with washing</p>

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<p>washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Childcare facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p><i>being educated and cared for by the service.</i></p> <p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries 	<p>and drying facilities, direct access from indoor and outdoor play areas, windows for supervision by staff, and external windows that are not visible from neighbouring properties.</p>
<p>4.4 Ventilation and natural light</p>		
<p>Regulation 110</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Childcare facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p><i>The proposed development includes indoor spaces to be used by children that:</i></p> <ul style="list-style-type: none"> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> <p><i>and can be maintained at a temperature that ensures the safety and well-being of children.</i></p>	<p>Consistent</p> <p>The proposed child care facility includes indoor spaces that will be well ventilated, have adequate natural light and maintained at an appropriate temperature for the safety and well-being of children.</p>
	<p>Ventilation</p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the childcare facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that childcare facilities ensure natural ventilation is available to each indoor activity room.</p>	<p>Consistent</p> <p>As above, adequate natural ventilation is achieved in the proposed design.</p>
	<p>Natural light</p> <p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning</p>	<p>Consistent</p> <p>As above.</p>

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	<p>environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing childcare facilities consideration should be given to:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate • ceiling heights. <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	
4.5 Administrative space		
<p>Regulation 110</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>Consistent</p> <p>The proposed child care facility includes adequate areas for the administrative functioning of the facility, consultation with parents of children, and conducting of private conversations.</p>
4.6 Nappy change facilities		
<p>Regulation 112</p> <p>Childcare facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><i>The proposed development includes an adequate area for construction of</i></p>	<p>Consistent</p> <p>The proposed child care facility includes adequate areas for the purposes of nappy changing.</p>

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<p>All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Childcare facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p>appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> properly constructed nappy changing bench or benches a bench type baby bath within one metre from the nappy change bench the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area a space to store steps positioning to enable supervision of the activity and play areas. 	
<p>4.7 Premises designed to facilitate supervision</p>		
<p>Regulation 115</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Childcare facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.</p>	<p>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> • solid walls in children’s toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities 	<p>Consistent</p> <p>The proposed toilet and change facilities for children are designed to facilitate adequate supervision of children at all times, including locating windows into bathrooms and avoiding room layouts with hidden corners.</p>
<p>4.8 Emergency and evacuation procedures</p>		

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<p>Regulations 97 and 168</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service. 	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed childcare facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	<p>Consistent</p> <p>The proposed child care facility has been designed for the safe and manageable evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>No emergency and evacuation plan has been submitted with the DA; however, a condition has been recommended to address this issue. This is to be addressed as part of the Operational Plan of Management.</p>
<p>4.9 Outdoor space requirements</p>		
<p>Regulation 108</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p>	<p>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for</p>	<p>Consistent</p> <p>560m² minimum required for 80 children.</p> <p>Approximately 570m² provided.</p>

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<p>Unencumbered space excludes any of the following:</p> <ul style="list-style-type: none"> • pathway or thoroughfare, except where used by children as part of the education and care program. • Car parking area. • Storage shed or other storage area. • Laundry • Other space that is not suitable for children. <p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool aged or under must ensure there is no swimming pool on the premises unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<p>landscaping purposes and not for children's play.</p> <p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p>	
	<p>Verandahs as outdoor space</p> <p>Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements 	<p>Not applicable</p> <p>A covered space is not proposed to be included in outdoor space.</p>
	<p>Simulated outdoor environments</p> <p>Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p> <p>A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p> <ul style="list-style-type: none"> • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate 	<p>Not applicable</p> <p>Outdoor space is provided.</p>

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	<ul style="list-style-type: none"> • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs. 	
4.10 Natural environment		
<p>Regulation 113</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches <p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	<p>Consistent</p> <p>A detailed landscape plan has been provided with this DA. Sufficient details for proposed plantings and landscape design have been included.</p>
4.11 Shade		
<p>Regulation 114</p>	<p><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i></p>	<p>Consistent</p> <p>See below.</p>

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<p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff.</p> <p>Combining built and natural shade will often be the best option.</p>	
	<p>Solar access Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. 	<p>Consistent</p> <p>Sufficient details have been provided regarding solar access and shading coverage.</p>
	<p>Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended. Dense shrubs can also provide shade. They should be planted around the site perimeter so; they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter 	<p>Consistent</p> <p>It is noted that the proposal provides playground areas above ground level, on Level 1 and Level 2.</p> <p>As such, these areas are largely reliant on built shade structures. The submitted landscape plans confirm that natural shade would be provided by trees along the northern and eastern property boundaries.</p>
	<p>Built shade structures Built structures providing effective shade include:</p> <ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) 	<p>Consistent</p> <p>The proposed child care facility provides a fully operable roof</p>

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	<ul style="list-style-type: none"> • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing.</p> <p>Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively</p>	<p>system structure to provide shade to the playground area on Level 2.</p>
4.12 Fencing		
<p>Regulation 104</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age.</p> <p>Childcare facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code.</p>	<p><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></p> <p>Fencing at childcare facilities must provide a secure, safe environment for children and minimise access to dangerous areas.</p> <p>Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. 	<p>Consistent</p> <p>The proposed outdoor spaces will be enclosed with fencing of an appropriate height and material to ensure that children cannot go through, over or under it.</p>

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	<p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.</p>	
4.13 Soil assessment		
<p>Regulation 25</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed childcare facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. 	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	<p>Consistent</p> <p>A soil assessment was included as part of the submitted Preliminary Site Investigation.</p> <p>Council's Environmental Health Officer confirmed that based on the available information the site is suitable for the proposed development from a contaminated land perspective.</p>

Section 3.26 of the SEPP identifies development standards that, if complied with, prevent the consent authority from requiring more onerous standards for those identified matters. It is noted that the section does not prevent the consent authority from refusing a development application in relation to a matter not specified under this section, or from granting development consent even though any standard specified in this section is not complied with.

Subsection 3.26(2) states:

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(2) *The following are non-discretionary development standards for the purposes of section 4.15(2) and (3) of the Act in relation to the carrying out of development for the purposes of a centrebased child care facility –*

- (a) **location** – *the development may be located at any distance from an existing or proposed early education and care facility,*
- (b) **indoor or outdoor space**
 - (i) *for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations 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 Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies – the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,*
- (c) **site area and site dimensions** – *the development may be located on a site of any size and have any length of street frontage or any allotment depth,*
- (d) **colour of building materials or shade structures** – *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.*

Response: Noted.

The non-discretionary development standards have been adequately complied with. The subject site is not a heritage item nor is it located in a heritage conservation area.

Section 3.27 states:

'(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 Child Care Planning Guideline, 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.'

Response: These provisions are noted and are taken into consideration in the assessment of the subject development against the relevant development control plan.

6.4 Wingecarribee Local Environmental Plan 2010 (WLEP 2010)

Zoning:

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The land is in Zone MU1 – Mixed Use under WLEP 2010. The proposed use of the site is within the definition of a *centre-based childcare facility* which is defined as follows:

- ‘Centre-based childcare facility** means –
- (a) a building or place used for the education and care of children that provides any one or more of the following –
 - (i) long day care,
 - (ii) occasional childcare,
 - (iii) out-of-school-hours care (including vacation care),
 - (v) preschool care, or
 - (b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)), but does not include –
 - (c) a building or place used for home-based childcare or school-based childcare, or
 - (d) an office of a family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)), or
 - (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
 - (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children’s parents are using the facility, or
 - (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
 - (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.’

The proposed use is specified as a permissible use within the MU1 zoning of the site.

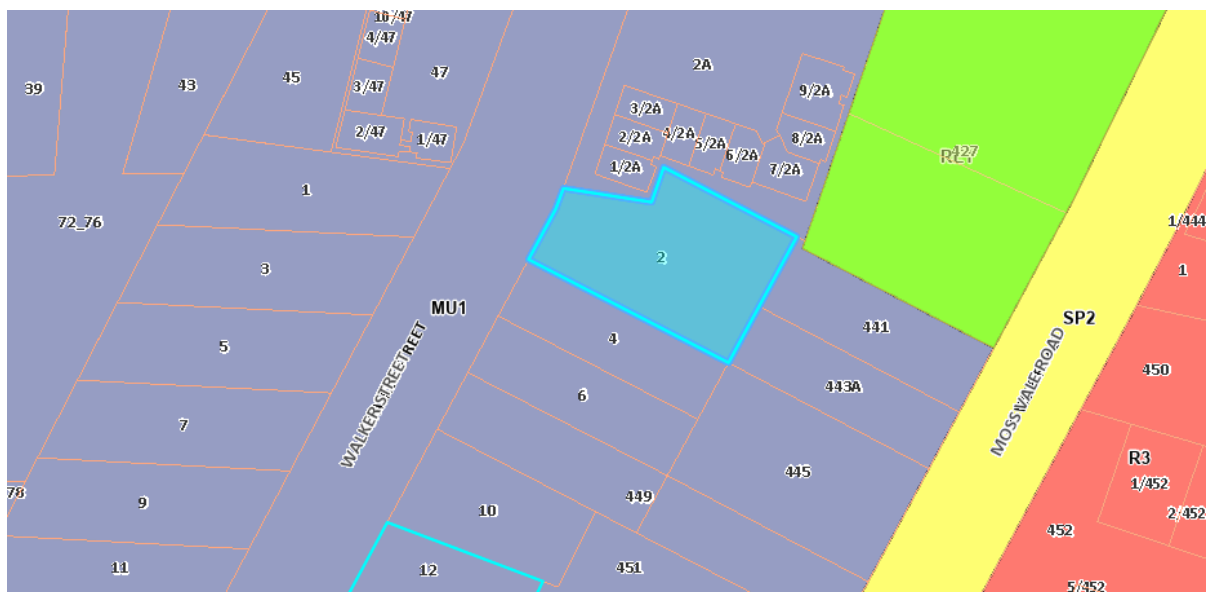


Figure 7: Zoning Map

Principal Development Standards and Other Provisions:

The following principal development standards and other provisions in WLEP 2010 are also relevant to the proposal:

Clause	Development Standard	Proposal	Complies
4.3 Height of buildings	10m height of building standard is specified for the site.	The proposed development has a maximum building	No but considere

		<p>height of 12.015 metres, resulting in a 20.15% variation from the development standard of 10 metres.</p> <p>The proposal seeks a Clause 4.6 variation to the maximum building height applicable to the subject site. The implications of this variation are addressed in the body of this report. The application is subject to a report that adequately addresses the control variation in conjunction with the relevant diagrams indicated on the architectural drawings. The subject site is not a heritage item nor is it located in a heritage conservation area.</p>	<p>d satisfactor y – see detailed discussio n below</p>
4.4 Floor space ratio	Floor space ratio (FSR) standard of 1.1:1 is specified for the site.	The proposed development has a gross floor area of 598m ² resulting in a FSR of 0.6:1.	Yes
4.6 Exceptions to development standards	The proposal seeks a Clause 4.6 variation to the maximum building height applicable to the subject site.	<p>The maximum building height permissible under WLEP 2010 is 10m. The proposed development has a maximum building height of 12.015m resulting in a 20.15% variation from the development standard.</p> <p>As indicated on the height plane envelope diagram that forms a part of the architectural plans, the portions of the proposed development that exceed that maximum building height are the lift overrun, the roof parapet, and a part of the proposed screening for the roof services. It is noted that no habitable spaces are present in the components that exceed the maximum building height.</p>	Yes

		<p>The site is subject to a relatively steep contour with a sewer pipe present under the proposed works. The building form cannot be reduced below the sewer line to protect Council infrastructure.</p> <p>The application is accompanied by a request for contravention of the Development Standard prepared by Sutherland and Associates Planning (refer to Attachment 2) that adequately addresses the control variation in conjunction with the relevant diagrams indicated on the architectural drawings. The subject site does not contain any heritage listed items and is not located in a heritage conservation area. In accordance with the principle established in <i>Wehbe v Pittwater Council</i>. [2007] NSWLEC 827, it has been established that the application of the standard on this occasion is unnecessary or unreasonable having regard to the five (5) ways in which a departure from a development standard can be justified. Furthermore, it has been demonstrated that there are sufficient environmental grounds to justify the contravention of the development standard.</p> <p>The proposed height variation is supported on the basis that:</p> <ul style="list-style-type: none"> • The parts of the structure that exceed the height limit are required to facilitate adequate screening and to support essential services. 	
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		<ul style="list-style-type: none"> • The proposed floor to floor heights internally are in accordance with the relevant requirements in relation to a centre-based child care facility with no habitable spaces exceeding the maximum building height. • The presence of the sewer line below the subject site prevents the building pad from being lowered in order to protect Council infrastructure. • The proposed development is consistent with the requirements of setbacks with provisions in place to ensure adequate visual and acoustic privacy to adjoining developments. • No additional adverse overshadowing or bulk and scale impacts are envisaged as a result of the height variation. 	
5.10 Heritage conservation	The site does not contain a heritage item and is not located in a heritage conservation area.	N/A	N/A
7.3 Earthworks	<p>Section 7.3(2A) provides that development consent is required for earthworks carried out on land identified as “Flood Planning Area” on the Flood Planning Area map.</p> <p>The consent authority must consider a number of matters in deciding whether to grant consent – including the likely disruption of existing drainage patterns and soil stability in the locality.</p>	Sufficient details have been provided regarding proposed earthworks in relation to the development and its impact on the site in relation to the listed items.	Yes

Figure 8: Section of Earthworks

7 Development Control Plans and Policies

7.1 Bowral Township Development Control Plan (DCP)

The Bowral Township DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the Bowral Township DCP are addressed below.

DEVELOPMENT CONTROL PLAN			
SECTION	CONTROL	ASSESSMENT	COMPLIANCE
PART A – ALL LAND			
Section 3 – Biodiversity			
A3.2 Flora & Fauna Assessment	Retain & protect native species, endangered ecological communities, threatened species, Koalas and protect wildlife corridors. Required where the development will potentially impact native vegetation & fauna.	The proposal involves the removal of 21 trees with 5 of these being native. Trees 2, 3, 6, 10 and 11 consist of Weeping bottle brush (<i>Callistemon viminalis</i>), Willow-leaved hakea (<i>Hakea salicifolia</i>). No sensitive biodiversity areas are located on the subject site. The application is accompanied by a satisfactory Arborist Report prepared by Moore Trees Arboricultural Services indicating that the trees are not significant.	Yes
Section 5 – Flood Liable Land			

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A5.3 Flood Liable Land	Development on mapped flood affected land referred to Council's Development Engineer for review and recommendations.	The subject site is not flood affected.	N/A
Section 7 – Subdivision, Demolition, Siting & Design			
A7.4 Cut & Fill	Cut & fill is consistent with LEP & stepping of development to accommodate contours of site.	Proposed earthworks are acceptable in this regard. Cut is up to approximately 2.8m, which is required for the car parking area given the existing slope of the site and would not affect the gross floor area. This will be contained within the walls of the building.	Yes
A7.5 Shipping Containers	The installation of shipping containers on any site is prohibited unless approval has been for the conversion and subsequent for use as a residential building.	Not applicable.	N/A
A7.8 Principles on Minimum Acceptable Heritage Design	New development is to be compatible with the existing streetscape in terms of materials, textures and colours. Modern materials can be used in a traditional streetscape provided their proportions and details are harmonious within the surrounding development.	The proposed design (i.e. materials, textures and colours) is compatible with the existing streetscape.	Yes
A7.9 Alterations to Items of Heritage	Compliant with Clause 5.10 of the WLEP 2010.	Not applicable.	N/A
A7.10 Development within the Vicinity of Heritage Items	Adequately set back to ensure Heritage Item is not dominated by new development. Compatible with architectural elements of nearby Heritage Item. Compatible with the average height, bulk and	Not applicable.	N/A

	scale of buildings located on adjoining or nearby land.		
Section 8 – Safer by Design			
A8.4 Specific Design Requirements	<p>The principles of Safer by Design may be applied to both commercial and residential development.</p> <p>In particular, Council requires all development to demonstrate that it provides:</p> <p>a) Well-defined building entrances which are clearly visible from the street. Narrow or splayed entrances are preferable to deep-set entrance ways.</p> <p>b) Internal spaces must be open and visible, eliminating hidden corners.</p> <p>c) Walkways and connecting paths must be open with good visibility.</p> <p>d) Signs and vegetation should be located so that they do not create ‘entrapment’ points where people are hidden from view.</p> <p>e) On-site garaging must provide clearly defined exit points and be lit at night, both inside the garaging and around the entrance/exit points. Such lighting should be movement-activated lighting that focusses on the access areas.</p> <p>f) Building entrances, walkways, connecting paths and garaging must be well lit in accordance with the provisions of Section A8 of this Plan to ensure that</p>	The design of the proposed child care facility has demonstrated there is ability to meet Safer by Design requirements.	Yes

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	<p>such lighting is down-ward focussed and effective without generating glare or annoyance beyond the area being lit.</p>		
Section 9 – Construction Standards & Procedures			
<p>A9.2 Sites Requiring Geotechnical Reports</p>	<p>Geotechnical report is required for sites identified or potentially subject to geotechnical constraints, including land subject to instability, filling, or with a slope greater than 18 degrees.</p>	<p>Significant earthworks are proposed for the subject site.</p> <p>The application is accompanied by a Geotechnical Investigation Report prepared by Geotechnical Consultants Australia.</p> <p>The application is supported by Council's Development Engineer and Water / Sewer Development Engineer in this regard.</p>	<p>Yes</p>
<p>A9.3 Building close to Sewer Mains & Easements</p>	<p>Development is clear of the sewer zone of influence.</p> <p>Minimum clearance of 1.2m from any manhole.</p>	<p>A sewer conduit is available cutting through the middle of the subject site..</p> <p>It is proposed to concrete encase this existing line in order to facilitate a sufficient fall which would not be possible if the line were to be relocated. The application is accompanied by stormwater management plans, Water and Sewer Modelling Assessment Report and a Water Cycle Management Plan.</p> <p>The application is supported by Council's Water / Sewer Development Engineer and</p>	<p>Yes</p>

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		Water NSW subject to conditions.	
A9.4 Building over 2+ Allotments	Building work is proposed over two or more allotments, Council may require the consolidation of these lots.	Not applicable.	N/A
A9.8 Stormwater Disposal	<p>Connection to inter-allotment drainage line, kerb and guttering, road table drain or council's stormwater mains.</p> <p><u>Onsite Disposal:</u> <4,000m² require hydraulic consultant's report for onsite disposal.</p> <p>>4,000m² onsite trenches permitted.</p>	<p>Stormwater to water tanks adjacent to the northern property boundary with overflow directed away from buildings and neighbouring properties.</p> <p>The application is accompanied by a satisfactory water cycle management report and stormwater drainage plans.</p> <p>The application is supported by Council's Development Engineer in this regard. Water NSW have provided concurrence conditions.</p>	Yes
A9.12 Waste Management & Disposal	A Waste Management Plan is required for all demolition works and /or construction works (with a value greater than \$50,000).	<p>A Waste Management Plan has been submitted addressing demolition and construction works.</p> <p>It is noted that in relation to operational waste, on street collection is proposed. This arrangement has been supported by Council's Engineers.</p>	Yes
A9.15 Re-Sited Buildings	<p>Photos of building and Stat Dec stating the authenticity of photographs</p> <p>Certification from engineer regarding structural stability of building.</p> <p>Termite Certificate.</p>	Not applicable.	N/A

PART C – RESIDENTIAL ZONED LAND

Section 13 – Child Care Centres

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Note: Although the subject site is zoned residential, the following provisions of this section have been considered on a merit basis as they specifically relate to child care centres.			
C13.3 Application Requirements	A statement clearly indicating the proposed number of children, their ages and staff numbers along with proposed hours of operation.	The DA indicates the proposed number of children, their ages and staff numbers along with proposed hours of operation.	Yes
	A letter of acceptance of the proposal from the NSW DOCS	This is not required at this stage.	N/A
	A Site Analysis Drawing (as described in Section A3 of this Plan)	A suitable site analysis plan has been submitted.	Yes
	Where a proposed development does not comply with a provision of this Section of the Plan, a statement explaining how the application otherwise achieves the aims and objectives of this Section.	N/A. The proposed child care facility is compliant.	Yes
	Where a child care centre is proposed on a site that is identified as potentially unhealthy or contaminated, an environmental site contamination assessment, demonstrating that the site is environmentally safe and is suitable for use as a child care centre; and	The subject site is not identified as potentially unhealthy or contaminated. As such, an environmental site contamination assessment is not required.	N/A
	A detailed Landscape Plan prepared by a suitably qualified landscape professional addressing the provisions of this Plan.	A detailed landscape plan prepared by a suitably qualified landscape professional has been submitted that addresses the provisions of this Plan.	Yes
C13.5 Development of New Buildings	In residential areas, a minimum site area of 1,000 m ² is required in order to	The subject site exceeds 1,000sqm in area.	Yes

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<p>overcome the potential problem of noise and nuisance. Sites less than this requirement will be considered on a merits basis.</p>		
<p>Sites other than corner sites need to have a minimum width of 25 metres.</p>	<p>The site frontage is less than 25m in width. However, the provisions (non-discretionary development standards) of section 3.26(2)(c) of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>, allow for development to be located on a site of any size and have any length of street frontage or any allotment depth.</p>	<p>Satisfied on merit (Refer to assessment under <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>)</p>
<p>Child care centres shall be set back a minimum of 4 metres from side and rear boundaries.</p>	<p>A minimum side and rear boundary setback of 4m is required for residentially zoned properties to ensure that a child care facility can be achieved with sufficient setbacks from neighbours to mitigate acoustic and visual privacy impacts. However, the subject site is located within a Mixed Use zone and therefore the minimum 4m setback requirement is not considered relevant and is inconsistent with the prevailing pattern of development surrounding the site.</p> <p>The proposed development provides for a 3m rear setback and variable side setbacks of between 0-1.5m, which is an appropriate response to the context of the site and without adverse impact.</p>	<p>Satisfied on merit</p>
<p>The entry areas of a child care centre should be setback at least 12 metres from the front boundary line. A 9-metre setback</p>	<p>A setback of between 9-12m is required for residentially zoned properties and is not considered to be</p>	<p>Satisfied on merit</p>

	<p>may be considered by Council where it can be shown that the objectives of A11.13 can be satisfied.</p>	<p>appropriate for the Mixed Use zone within which the site is located. The proposed development provides a front boundary setback which averages the front boundary setbacks of the buildings on either side of the site and therefore achieves a compatible and commensurate streetscape outcome.</p>	
	<p>For safety reasons, the optimal height for a child care centre is one storey. A child care centre that exceeds one storey shall ensure the safety of children by minimising access to stairs.</p>	<p>This is not relevant to the subject site which has a 10m height control and where multi-storey development is appropriate. However, the design ensures the safety by minimising access to stairs.</p>	<p>Satisfied on merit</p>
	<p>A child care centre shall not be erected to a height greater than 2 storeys in height above the natural ground level on any part of the allotment, and in any event shall not exceed 9.5 metres in height above natural ground level to the ridge of the roof, measured at any point above the ridge.</p>	<p>As above in relation to the height. WLEP 2010 allows for a height greater than 9.5m.</p>	<p>Noted</p>
	<p>In order to minimise the possible adverse health effects to children of electromagnetic radiation emitted from telecommunication facilities, child care centres should be no closer than 300 metres to existing mobile phone towers or antennas or transmission line easements or other similar electromagnetic radiation sources.</p>	<p>The proposed facility is not located closer than 300 metres to any mobile phone towers or antennas or transmission line easements or other similar electromagnetic radiation sources.</p>	<p>Yes</p>

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	<p>Where a child care centre is proposed on a site that is identified as potentially unhealthy or contaminated, an environmental site contamination assessment must be produced to Council by the applicant to demonstrate that the site is environmentally safe and is suitable for use as a child care centre. This documentation must be provided with the Development Application.</p>	<p>Council's Environmental Health Officer has confirmed that the subject site is not potentially contaminated following review of the applicants Preliminary Site Investigation.</p>	<p>Yes</p>
	<p>To ensure the safety of children, Council prefers that child care centres are not built:</p> <p>(i) on classified roads or within 30 metres of a classified road.</p> <p>(ii) in residential culs-de-sac, as culs-de-sac do not allow good traffic circulation and can result in additional traffic generation.</p>	<p>Not applicable.</p>	<p>N/A</p>
	<p>Child care centres shall not be located adjacent to service stations or heavy industrial developments, as potentially harmful fumes or noise being emitted from either type of development may affect the health of children.</p>	<p>Not applicable.</p>	<p>N/A</p>
	<p>Child care centres will not be permitted on sites with existing swimming pools. DOCS licensing standards do not permit swimming pools within child care centre developments.</p>	<p>Not applicable.</p>	<p>N/A</p>

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	Car parking areas shall be located and designed to minimise potential danger to children and other users of the centre.	As detailed in earlier in this report, safe access is proposed for pedestrians within the parking aisle. Therefore, the design minimises potential danger to children and other users of the facility.	Yes
	Parking and vehicle access areas are to be separated from any area used by children by safety fencing and gates.	These areas are separated from any area used by children.	Yes
	If appropriate, pedestrian safety measures shall be installed (eg pedestrian crossings and refuges etc).	Pedestrian safety measures are to be installed.	Yes
	Car parking shall be provided at a rate of 1 space for every 4 children. Provision of car parking for permanent staff shall be in addition to this requirement.	Off-street car parking is provided at a rate of 1 space per 4 children (20 spaces) plus two for two (2) permanent staff. A total of 23 car parking spaces is proposed, including one disabled car parking space.	Yes
	Dimensions of parking spaces and vehicle access areas shall comply with Council's requirements as described in Part A.	Dimensions of parking spaces and vehicle access areas are compliant.	Yes
	The centre should be designed to allow the safe drop off and collection of children and safe movement and parking of staff, parents, visitors, and service vehicles.	The proposed design allows for the safe drop off and collection of children and safe movement and parking within the site.	Yes
	Parking spaces and vehicle access points are to be located to ensure the safe	As above.	Yes

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	movement of children to and from the centre.		
	Standing areas for the dropping off and collecting of children are to be provided.	Standing areas are proposed.	Yes
	Access for people with disabilities should be provided to allow continuous wheelchair access from the street, car park, building entry and into individual playrooms and toilets.	Access for people with disabilities is to be provided. Council's Accredited Certifier has confirmed that an accessible design can be achieved.	Yes
C13.7 Noise	Access points should be located so as to minimise disruption to neighbours (ie to reduce the impact of gates opening and slamming car doors when children are dropped off and picked up)	Access points are located so as to minimise disruption to neighbours.	Yes
	Playground areas should be appropriately located.	Playground areas are appropriately located.	Yes
	Appropriate location of windows and doors;	Windows and doors are appropriately located.	Yes
	No public address systems are to be installed at the centre	No public address systems are to be installed.	Yes
	The use of fencing and landscaping to reduce the impact of noise	Fencing and landscaping has been designed to reduce noise impacts.	Yes

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	The proposed hours of operation, particularly the impact of early morning starting times.	The impact of the proposed hours of operation has been considered.	Yes
	To protect children from excessive noise which may be generated by proximity to roads, industrial premises, aircraft, or rail operations.	Children will not be exposed to excessive noise given the locality.	Yes
	o Sites should be chosen which protect children from excessive noise.	As above.	Yes
	o Details of any mitigation measures should be submitted in the Statement of Environmental Effects.	Not applicable.	N/A
	o In situations where noise may be excessive from surrounding areas, an acoustic consultant's report may be required.	Not applicable.	N/A
	o Where sites are adjoining or adjacent to railway land, the Department of Planning's document "Development near Rail Corridors and Busy Roads – Interim Guideline" must be considered.	Not applicable.	N/A
		An outdoor play area is proposed as required.	Yes

C13.8 Outdoor Areas	Play	<ul style="list-style-type: none"> o An outdoor play area shall be provided in each child care centre development, having space for the following areas, equipment and facilities: o (i) An open flat grassed area for running. o (ii) Quiet play areas for focused play (including a sandpit). o (iii) A formal quiet area for contained play (eg finger painting). o (iv) An active area for busy physical play which includes: o (v) some paved surfaces for wheeled toys; and o (vi) suitable play equipment with impact absorbent material beneath. 		
		<ul style="list-style-type: none"> o A transition zone from indoor and outdoor areas for covered outdoor play. The transition zone shall be a veranda with a minimum width of 4 metres. 	A transition zone is proposed as required.	Yes
		<ul style="list-style-type: none"> o A baby/toddler area which is flat, soft, and separated from older children. 	A baby / toddler area is proposed as required.	Yes
		<ul style="list-style-type: none"> o Secure fencing. 	Secure fencing is proposed.	Yes
		<ul style="list-style-type: none"> o A variety of surfaces, such as grass, sand, hard paving and moulding shall be provided in outdoor 	A variety of surfaces is proposed in outdoor play areas.	Yes

	play areas. The heat absorption qualities and texture of materials must be suitable, with surfaces such as bitumen (due to surface temperatures exceeding 45° in summer) being avoided.		
	o Outdoor play areas are not to be located so that they are adjacent to the living/bedroom areas of adjoining residents, busy roadways or driveway areas and other potential noise or pollution sources.	The location and design of outdoor play areas is appropriate.	Yes
	o Outdoor play areas must not be occupied by any motor vehicles during operating hours.	As above.	Yes
	o Outdoor play areas shall have immediate access to toilets.	As above.	Yes
	o Where possible, outdoor play areas shall be located to the north or north-east of the site to ensure that play areas receive adequate sunlight.	As above.	Yes
	o Outdoor play areas shall be designed to allow constant supervision and access to children by staff.	As above.	Yes

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	Outdoor play areas shall utilise the site's natural features (where possible).	As above.	Yes
	Attention should be given to the design and construction of outdoor play areas, to provide a variety of experiences for children.	As above.	Yes
	<ul style="list-style-type: none"> o All outdoor play areas are to be shaded in accordance to the recommendations and considerations of the NSW Cancer Council and the NSW Health Department publication <i>Under Cover: Guidelines For Shade Planning and Design</i>. 	As above.	Yes
C13.9 Landscaping and Vegetation	<ul style="list-style-type: none"> o Retain and protect those individual remnant native specimens that are found scattered throughout the township of Bowral. 	The proposed retention and removal of trees and vegetation is acceptable.	Yes
	<ul style="list-style-type: none"> o Be in keeping with adjoining developments. 	The proposed landscaping is in keeping with adjoining developments.	Yes
	<ul style="list-style-type: none"> o Be designed to provide a noise barrier and privacy screen for adjoining residents. In residential zones, or on land adjoining residential zones, a 1.5 metre landscaping strip shall be provided on all boundaries to help with noise abatement and privacy. 	Suitable noise barriers and privacy screens are proposed.	Yes

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	<ul style="list-style-type: none"> o Ensure that existing natural features and significant vegetation are conserved where possible to help increase the amenity of the area. Where appropriate, existing trees are to be retained and incorporated as shade elements in outdoor play areas. 	Existing natural features are to be conserved where possible.	Yes
	<ul style="list-style-type: none"> o Plant species shall be chosen for their suitability to the site, ease of maintenance and interest to children. 	Proposed plant species are suitable.	Yes
	<ul style="list-style-type: none"> o Plant species shall not be toxic, allergic, prickly or otherwise unsafe for children. 	As above.	Yes
	<ul style="list-style-type: none"> o When choosing plant species, the following shall also be considered: <ul style="list-style-type: none"> o (i) protection from prevailing winds; o (ii) shelter and enclosure; o (iii) shade; o (iv) reduction of reflection from bright surfaces; o (v) emphasis of pedestrian and vehicular routes; and o (vi) good visibility of play areas. 	As above.	Yes
C13.10 Fencing and Gates	<ul style="list-style-type: none"> o Outdoor play areas must be fenced on all sides by fencing of at least 1800 mm in height. 	Proposed fencing is at least 1.8m in height.	Yes

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	<ul style="list-style-type: none"> o No play equipment shall be located adjacent to a fence if, by doing so, it reduces the effective height of the fence and enables it to be scaled. 	No play equipment is to be located adjacent to a fence.	Yes
	<ul style="list-style-type: none"> o All gates leading to or from play areas shall be equipped with child self locking mechanisms. 	All gates are to be equipped with child self locking mechanisms.	Yes
	<ul style="list-style-type: none"> o Access to and from the centre must be through one main door which can be properly supervised by adult staff to ensure the protection of children from intruders. 	Access to and from the proposed child care facility is to be through one main door.	Yes
C13.11 Signage	Signage shall comply with the requirements of Section A10 above.	No signage is proposed as part of this application.	N/A
C13.12 Hours Operation of	<ul style="list-style-type: none"> o Where a child care centre is proposed within a residential area or adjoining a residential area, the hours of operation shall generally be limited to 7 am to 6 pm, Monday to Friday. Operating hours outside these times will be considered on their merits. 	The proposed hours of operation are within these times.	Yes

7.2. Wingecarribee Contributions Plan

Developer contributions are payable on the proposed development as follows:

- Section 7.11

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Not applicable. The proposed development is not subject to a Section 7.11 Contributions Plan.

- Section 7.12

The proposed development is subject to a Section 7.12 Contributions Plan. A condition has been included to address the plan.

- Section 64

Water & Sewer

Day School
0.04 Water & Sewer ET rate per student
 $0.04 \times 80 = 3.2$
 $3.2 - 1 \text{ ET credit} = 2.2 \text{ ETs}$

Stormwater

Proposed site impervious area = 983sqm
Impervious area / 400sqm = 2.45 – 1 ET credit = 1.45 ET

8 Environmental Assessment

The site has been inspected (10 October 2024) and the application has been assessed having regard to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, as amended.

Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(i) – Provision of any environmental planning instrument	See discussion in section 6 and key issues below.
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Nil
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Bowral Township DCP. See the relevant table in this report and the discussion below.
Section 4.15 (1)(a)(iii)a – Provision of any Planning Agreement or draft Planning Agreement.	Not applicable.
Section 4.15 (1)(a)(iv) – Provisions of the Regulations.	The relevant clauses of the Regulations have been satisfied.
Section 4.15 (1)(b) – The likely impacts of the development, including environmental impacts on	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.

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the natural and built environment and social and economic impacts in the locality.	The proposed development is consistent with the dominant character in the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15 (1)(c) – The suitability of the site for the development.	The site is located in close proximity to local services. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	The issues raised in the two (2) submissions have been addressed in this report.
Section 4.15 (1)(e) – The public interest.	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9 Referral Comments

This DA was referred to the following officers within and external to Council:

Internal Council Referrals:

Accredited Certifier:

No objection subject to recommended conditions of consent.

Development Engineer:

The following concerns have been raised; however, recommended conditions of consent have been provided regardless:

Traffic & Parking

- As per the Bowral DCP CL13.5.2, the parking requirement is 1 space for every 4 children and a provision for permanent staff shall be in addition to this requirement. This results in a total parking requirement of 29 spaces.
- The applicant has provided 23 spaces (13 spaces for parent/visitor parking, 1 accessible space and 9 spaces for staffs). This result in a shortfall of 6 parking spaces for parents and is insufficient. Due to the limited parking capacity on the surrounding streets, on-street parking cannot be considered for parents.

As detailed earlier in this report, Council’s independent traffic and parking review of the submitted documentation has been completed with requested matters now resolved.

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The traffic consultant has recommended the following conditions of consent:

- The car parking spaces (and access thereto) shall comply with the relevant clauses of AS2890.1:2004 and AS2890.6:2022.
- A minimum of 23 car parking spaces shall be adequately signposted or linemarked according to the below minimum provisions:
 - Nine (9) staff car parking spaces, and;
 - 13 visitor car parking spaces, and;
 - One (1) accessible space.
- The plans must be compliant with Figure 3.3 of AS2890.1:2004 for pedestrian safety.
- Headroom for vehicles within the undercroft car parking area must comply with the requirements of AS2890.1:2004 and AS2890.6:2022
- The car parking aisle must be signposted and/or linemarked as a "shared zone" where pedestrians are given priority over vehicle movements.
- A Plan of Management must be provided to ensure that the tandem staff car parking spaces are available to staff members at the required times of the day.

Sewer / Water Development Engineer:

No objection subject to recommended conditions of consent.

Environmental Health Officer:

No objection subject to recommended conditions of consent.

External Referral:

Water NSW:

Concurrence granted (dated 23 November 2023).

10 Conclusion

That Development Application No. 24/0215 for Demolition of existing structures and construction of centre-based child care facility (80 place / children), at 2 Walker Street, Bowral, be determined by APPROVAL subject to the conditions detailed in **Attachment 1** of this report:

- The proposal is consistent with the relevant objectives contained within the *Wingecarribee Local Environmental Plan 2010* and the relevant requirements of the Bowral Township Development Control Plan.
- The proposal is consistent with the specific objectives of the MU1 Mixed Use Zone.

ATTACHMENTS

1. 24-0215 - Notice of Determination - 2 Walker Street Bowral - PA N-361924 [6.1.1 - 38 pages]
2. 24-0215 - Clause 4.6 Request - 2 Walker Street Bowral - PA N-361924 [6.1.2 - 12 pages]
3. 24-0215 - Plans - 2 Walker Street Bowral - PA N-361924 [6.1.3 - 14 pages]

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6.2 24/1583 - Demolition of Existing Structures and Construction of a ninety (90) place Child Care Centre - 2 Holmhale Street, Bowral

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment and Regulation

PURPOSE

The purpose of this report is to consider Development Application 24/1583 for the Panel's consideration and recommends determination by REFUSAL of consent for the reasons specified in **Attachment 1**.

Applicant	Adam Dominelli
Address	2 Holmhale Street, Bowral – Lot 1 DP 610257
Landowner	Limedlion Pty Ltd
Consultants	Access Consultant: Nick Cribb – Code Performance Acoustic Report: Acoustic Logistic Arborist: Paul Vezgoff – Moore Trees Building Code of Australia Consultant (“Section J”): B.E.C.A (Building & Energy Consultants Australia Pty Ltd) Innovate Architects (Nominated Architect - Cameron Jones) Heritage Consultant: NBRS Architecture – Heritage Landscape architect: SiteDesign + Studio Civil Design & Stormwater engineer: Greenview Consulting Planning Consultant: Urbanesque Planning - Eugene Sarich Traffic Consultant: The Transport Planning Partnership (TTPP) - Ashwini Uthishtran Geotechnical investigation: Australian Geoenviro Pty Ltd Surveyor: K.F. Williams & Associates
Date Lodged	23 November 2023
Proposed Development	Demolition of Existing Dwelling and Associated Structures and Construction of a Centre-based Childcare Facility (90 Places) and Associated Landscaping, Stormwater and Car Parking Works
Estimated Cost of Development	\$2,946,635
Zoning	R2 Low Density Residential - WLEP 2010
Notification Period	23 August 2024 to 23 September 2024 (31 days)
Number of Submissions	Eleven (11) in objection
Political Donations	None declared
Reason for Referral to Panel	Development that is the subject of 10 or more unique submissions by way of objection.
Assessment Officer	Robert White

OFFICER'S RECOMMENDATION

- 1. THAT the Local Planning Panel determines development application 24/1583 for Demolition of Existing Dwelling and Associated Structures and Construction of a Centre-based Childcare Facility (90 Places) on Lot 1 DP 610257 known as 2 Holmhale Street, Bowral by REFUSAL of consent for the reasons specified in Attachment 1 to this report.**
- 2. THAT Council advise those who made written submissions of the Panel's decision.**

EXECUTIVE SUMMARY

1. Executive summary

Development application (DA) No 24/1583 seeks development consent for the demolition of an existing dwelling and associated structures and construction of a centre-based child care facility at 2 Holmhale Street, Bowral.

The new facility is proposed to have capacity for a maximum of 90 children, with 308.9sqm of indoor space and 695.7sqm of outdoor space, associated landscaping works and a total of 25 onsite car parking spaces.

The DA has been referred to several officers within Council, including the Environmental Health Officer, Development Engineer, Traffic Engineering Consultant, Accredited Certifier, Heritage Advisor and Arborist (Tree Management). The DA has also been referred externally to Water NSW.

Neighbouring properties were notified of the proposed development in accordance with Council's Community Engagement Strategy. The notification period was from 23 August 2024 to 23 September 2024 (30 days). A total of eleven (11) submissions were received from the notification / advertising process with all raising objection and concerns with the proposal (i.e. none in support).

The proposal has been assessed using the heads of consideration listed in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is not considered satisfactory and therefore it is recommended for refusal, for the reasons listed in **Attachment 1**.

This DA is referred to the Local Planning Panel in accordance with the Minister's Direction as the DA received more than ten (10) unique submissions and also in accordance with the Wingecarribee Local Planning Panel's adopted guidelines, is subject to a Class 1 Land and Environmental Court Appeal – for the deemed refusal of the Development Application.

2. Site Description and Locality.

The subject site is known as 2 Holmhale Street, Bowral and is legally described as Lot 1 DP 610257. The site is an irregular shaped allotment with a splayed western boundary to Holmhale Street and has an approximate fall of 3.5 metres from its rear (southern) to front (northern) boundary. It is located at the corner of Holmhale Street and Bowral Street. The site has the following area and dimensions:

Site Area – 2,818.8 square metres (sqm);
Frontage (north) to Bowral Street – 33.4 metres;
Rear (south) – 48.5 metres;
East – 65.9 metres; and
Frontage (west) to Holmhale Street – 63.9 metres.

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The registered DP 610257 shows a 2 metre wide easement to drain water (12 metres in length), benefiting Council, adjacent to the site's eastern boundary towards the front N-E corner of the site; the easement is contained wholly within the site. An extract from the DP is provided below:

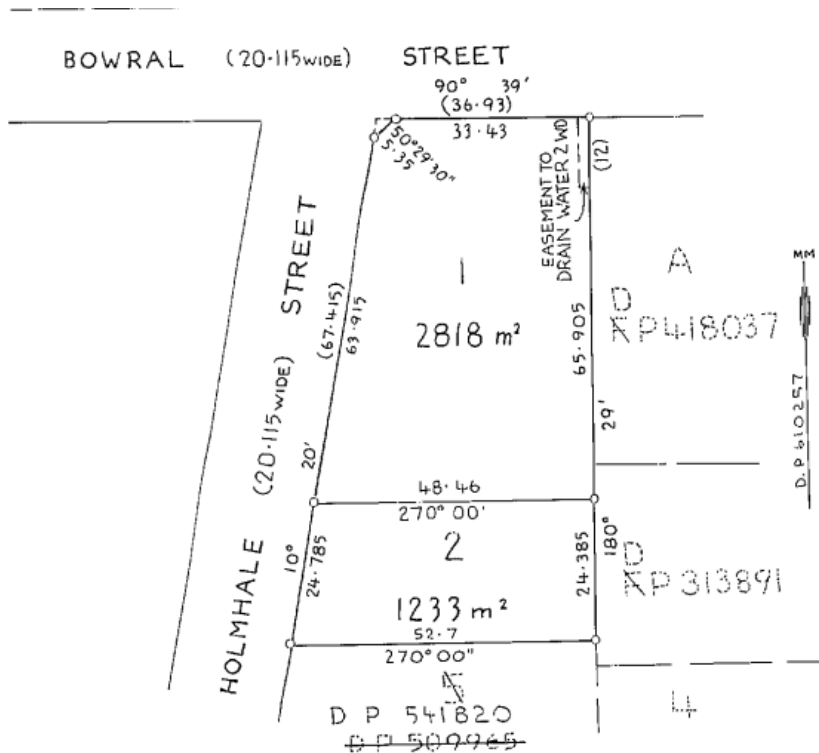


Figure 1: Extract from DP 610257

The site is zoned R3 Medium Density Residential under WLEP 2010 and the surrounding properties are zoned as follows:

- Immediately to the west properties are zoned R3 Medium Density Residential.
- Immediately to the east properties are zoned R2 Low Density Residential and these properties are contained within the Bowral Heritage Conservation Area (HCA).
- Located to the north properties are zoned B2 Local Centre.

An extract from Council's mapping is provided below, to show the location of the site (in blue outline) in relation to the general locality and the relevant zones and conservation area in proximity to the site:

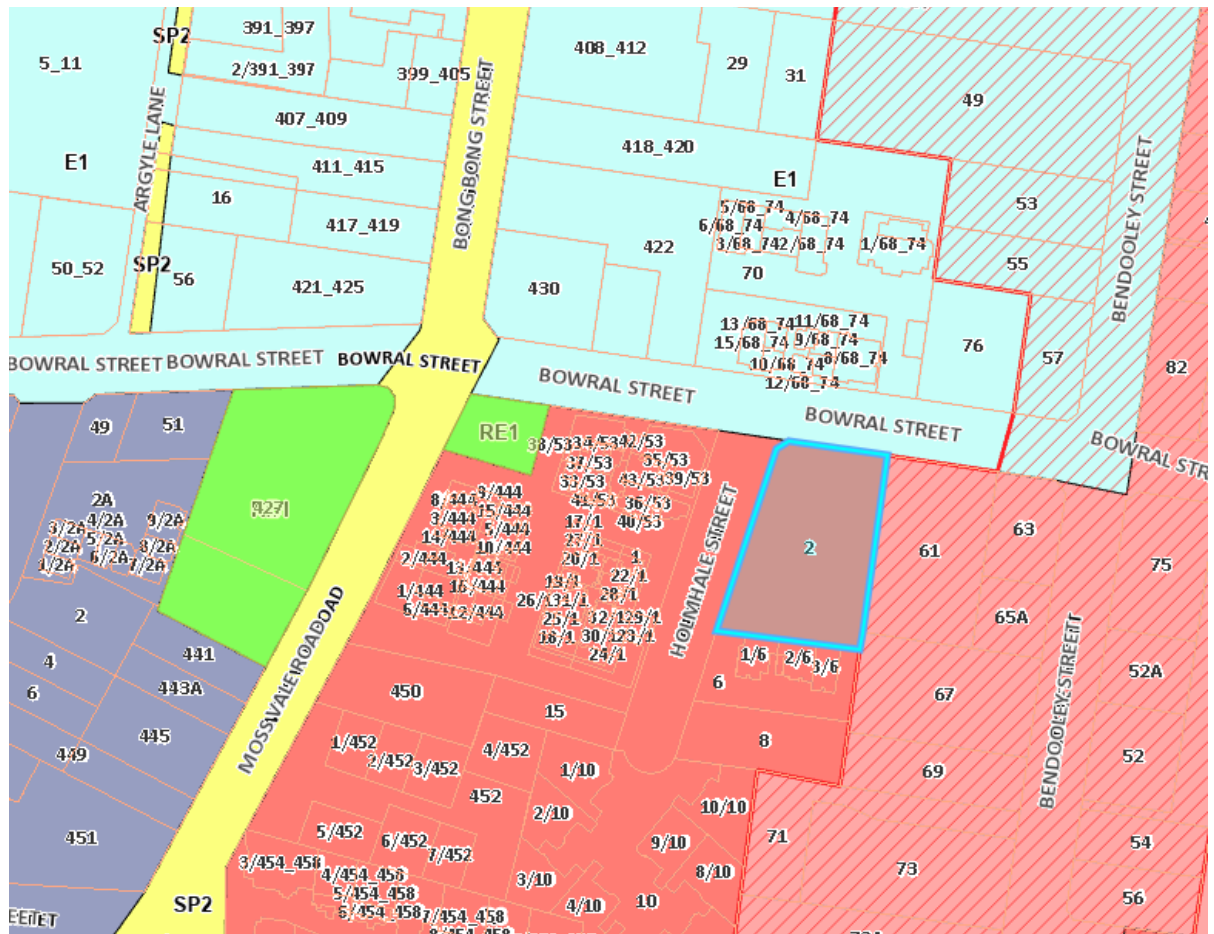


Figure 2: Extract from Council's mapping system

Notably immediately to the east of the site is Bowral Heritage Conservation Area (HCA) and the adjoining property at 67 Bendooley Street contains a local heritage item (single storey house), which adjoins the eastern boundary (approximately 6 metres) of the subject site.

The subject site currently accommodates a single storey weatherboard clad residential dwelling with a detached garage, a shed, hardstand parking area which are accessed from Holmhale Street, and large grassed area at the rear of the property with numerous large trees located behind the dwelling. The front setback area also contains trees and hedges surrounding the existing dwelling. The site has most recently been used as a community centre.

It is located within an area that comprises both retail/commercial uses and residential development, which is undergoing some transition by virtue of the R3 zoning and its proximity to Bowral's town centre and shopping precinct. The existing land uses and development surrounding the site are summarised as follows:

- Adjoining the site to the east at No. 61 Bowral Street is a single storey dwelling house on a large lot containing a large front garden and the dwelling is well set back from Bowral Street.
- Located to the north of the site, on Bowral Street: a range of retail and commercial uses, in particular health consulting rooms (medical suites), coffee shop and a Shell service station at the corner of Bowral and Bong Bong Streets.
- Located to the west of the site at 444 Moss Vale Road: On 12 December 2018 DA no. 17/1638 was granted consent for a residential flat building with basement parking. It is noted this approved development achieved a compliant FSR of 0.60:1 and roof form (3rd storey within roof line) and

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9.0m front and side setbacks from the respective boundaries to Bowral Street and Holmhale Street and is considered to be consistent with the existing character of the locality and sympathetic to the nearby Bowral HCA.

- Further to the east are single storey detached dwellings on properties fronting Bendooley Street, with these properties being within the Bowral HCA that adjoins the eastern boundary of the site. Notably a local heritage item is located at 67 Bendooley Street adjoins the south-east corner of the subject site and another heritage item is within the vicinity of the site at No. 75 Bowral Street (item no.811).
- Land adjoining to the south at No. 6 Holmhale Street contains a single storey villa-style development comprising 3 units and the site at No. 8 Holmhale Street contains 2 residential dwellings.
- Further to the south at No. 10 Holmhale Street is a multi-dwelling housing development located at the end of Holmhale Street (cul-de-sac).

The site is located approximately 850 metres from Bowral train station (11 minutes' walk) and 400m from the southern edge of the Bowral shopping precinct. The closest park (Lions Park) to the site is located approximately 130m to the west, which is a relatively small reserve containing garden beds and lawn areas for passive use, and Bradman Oval is located approximately 750m to the east of the site.



Figure 3: Aerial image of the locality with subject site outlined in blue and surrounding context (Nearmaps 2024).



Figure 4: Aerial image of the subject site indicated in blue and of immediately adjoining and neighbouring properties (Nearmaps 2024)

3. Background

Date(s)	Action(s)
11/06/2024	Development Application (DA) lodged with Council.
20/08/2024	<p>The DA was referred to:</p> <ul style="list-style-type: none"> ▪ Accredited Certifier ▪ Development Engineer ▪ Water & Sewer Engineer ▪ Traffic Engineer ▪ Environmental Health Officer ▪ Heritage Advisor ▪ Trees & Vegetation ▪ Water NSW <p><u>Note:</u> Refer to Section 9 of this report for final referral comments.</p>

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Date(s)	Action(s)
20/08/2024	Additional information requested by Water NSW: “An electronic copy of the MUSIC stormwater quality model referred to in the Civil Design plans.”
21/08/2024	Additional information provided by applicant and issued to Water NSW.
23/08/2024 – 23/09/2024	The DA was advertised in accordance with Council’s Community Engagement Strategy for a period of 30 days. This included notifying the owners of adjoining and affected neighbouring properties, an advertisement on Council’s website and a sign on the development site in a prominent location.
13/09/2024	Additional information requested by Water NSW: <ul style="list-style-type: none"> • high re-use (0.714 kL/day) of rainwater has been proposed compared to indicative values suggested in Water NSW’s Current Recommended Practices of Using MUSIC in the Sydney Drinking Water Catchment, February 2023 (0.1 kL/day/1000 m2 of roof area for internal reuse and 20 kL/yr/1000 m2 external reuse, can be found here). Please provide justification of the reuse adopted and how this would be achieved, and • please confirm the ground cover provided in the play area (modelled as 100% pervious area). Please also note that, if artificial turf is provided, this shall have to be realistically modelled in the MUSIC model.
20/09/2024	Additional information provided by applicant and issued to Water NSW on 21/09/2024.
24/09/2024	Class 1 Deemed refusal appeal lodged at the Land & Environment Court.
04/10/2024	Water NSW raised no objection based on the information provided, subject to concurrence conditions (4/10/24).

4. Proposed Development.

The proposal seeks to demolish an existing dwelling and associated structures and construct a centre-based child care facility to accommodate a total of ninety (90) children, ranging in age from 0-6 years.

The proposed facility is to operate standard long day care hours of 7:00am until 6:00pm Monday to Friday. The permanent number of staff to be employed at the facility has not been specified in the application documents, however, seven (7) parking spaces have been allocated to staff.

The development comprises the following elements:

Onsite Parking

A total of 25 onsite car parking spaces is proposed, with seven (7) allocated to staff and 17 for visitors which includes 1 accessible parking space.

Ground floor level (building in single storey)

- Reception / Entry foyer / circulation spaces
- Five (5) principal learning rooms with store room and adjoining terraces
- Cot rooms and baby change rooms
- Staff room
- Kitchen

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- Laundry
- Children's and staff toilets, including an accessible toilet
- Storage rooms
- Bottle preparation within room 1

Outdoor play areas –

- Play Zone 1 – 127.21m²
- Play Zone 2 – 175.89m²
- Play Zone 3 – 325.90m²
- Learning Zone – 66.75m²
- Total Outdoor Unencumbered Area – 695.75m²

Landscaping

The front setback area facing Bowral Street, the side setback areas facing Holmhale Street, will be landscaped as indicated on the proposed Landscape Plan prepared by Site Design Studios, dated 29/5/2024.

Screen planting is provided adjacent the site's eastern (side) and southern (rear) boundaries to assist in maintaining privacy for adjoining residential properties.

The proposed development includes the installation of 1.8m high lapped and capped timber boundary fence to be perimeter acoustic fencing, along both the northern boundary and along the western boundary, shared with the public pathway.

At pages 25 and 26 of the Statement of Environmental Effects, the front fencing is described as "transparent timber fencing", whereas the Architectural Plans propose a 1.8m high lapped and capped timber boundary fence.

The development application was not accompanied by a plan of management and did not provide sufficient specific details on how the child care facility will operate (e.g. hours of operation being 7am - 6pm, staffing, programs/activities to be undertaken, etc).

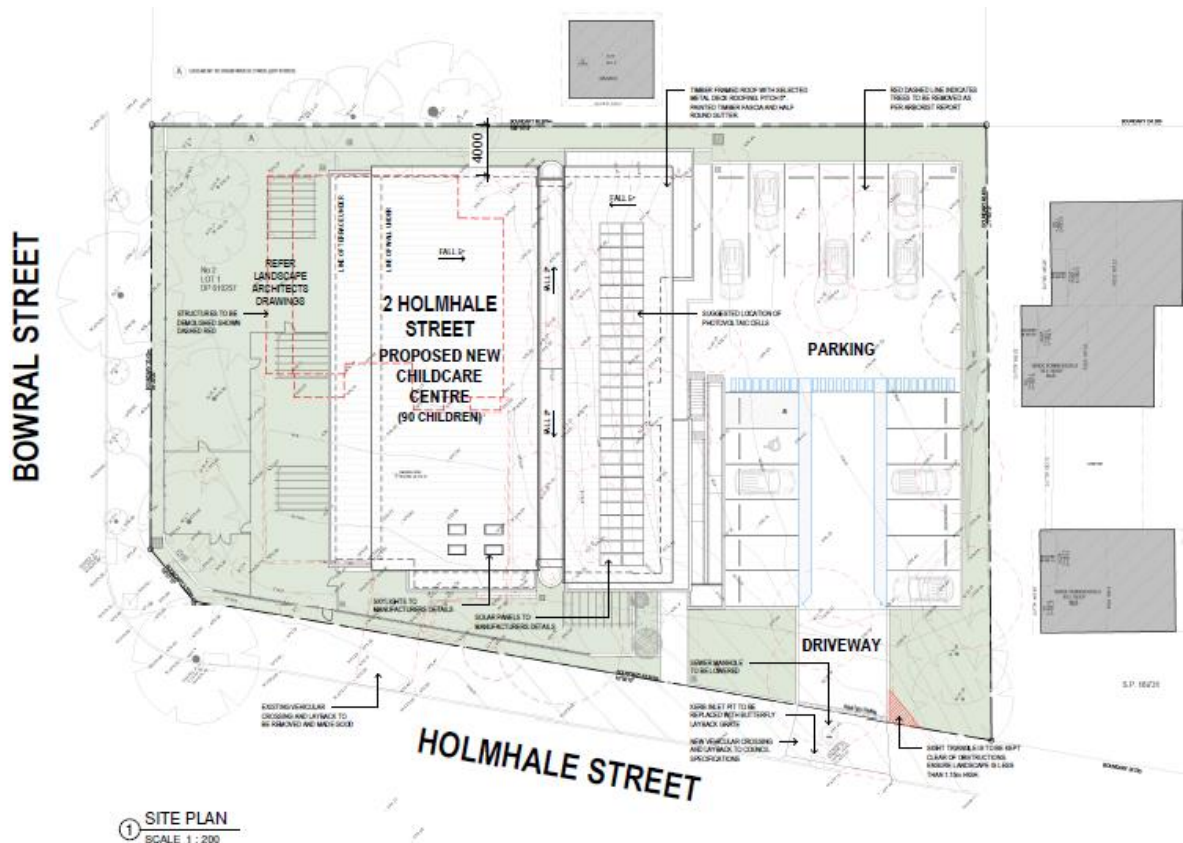


Figure 5: Site plan **Source:** Innovate Architects.



Figure 6: North elevation & west elevation **Source:** Innovate Architects.

5. Notification

Surrounding properties were notified of the proposed development in accordance Council’s Community Engagement Strategy. The notification period was from 23/08/2024 to 23/09/2024 (31 days). Eleven (11) submissions in total were received by Council including a number following the closing date.

The following main issues were raised in the submissions:

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Issue	Council Comment
Traffic impacts in terms of volume and safety.	Council's expert traffic consultant advised that the proposal should be refused as it does not demonstrate that the potential impact upon the surrounding road network is acceptable. It is expected to generate a net of 42 vehicle trips per hour. Austroads Guide to Traffic Management Part 12 states that development which generate between 10-100 peak hour vehicle trips require analysis of the first intersection on either side of the site access. This is one of the reasons the proposal is recommended for refusal.
Inadequate and non-compliant provision of onsite car parking.	The provision of car parking is insufficient for the likely number of staff required for the number of children (90). Refer to below comments on car parking in respect to Bowral Development Control Plan (DCP) and Childcare Planning Guideline as required by chapter 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021. Accordingly, for the reasons outlined below in the report the proposal is recommended for refusal.
Acoustic impacts on surrounding residential properties	The Applicant has not demonstrated that the proposal can operate without resulting in adverse acoustic impacts upon neighbouring properties. Refer to below comments in respect to the acoustic privacy provisions of 'Childcare Planning Guideline' and Bowral Development Control Plan (DCP). Accordingly, for the reasons outlined in the report the proposal is recommended for refusal.
Character – not compatible with existing	The assessment finds that the proposal would adversely affect the established local character of Bowral and the design is incompatible with the low scale, landscaped character of Bowral Street, in particular the Bowral HCA. Whilst the western end of Bowral Street is in transition, the amended proposal would result in the loss of 16 canopy trees, including 5 exotic species and 4 native trees (T7, T8, T9 and t10). This would be inappropriate given the interface with the adjoining R2 zone and Bowral HCA. Accordingly, for the reasons outlined below in the report, the proposal is recommended for refusal.
Tree removal	The proposed tree removal is found to be excessive and contrary to Part A2.2.3 of the Bowral DCP. Tree removal fails to satisfy the objectives and requirements of clause 5.10 of the WLEP 2010. Accordingly, for the reasons outlined below in the report the proposal is recommended for refusal.
Overdevelopment of the site	As stated above and discussed below, the proposal would have a significant adverse impact on the locality's landscape character and setting of the Bowral HCA and heritage item at No. 67 Bendooley Street. As the site is not considered suitable for the proposed development the proposal is recommended for refusal.

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Notification / Lack of consultation with neighbours	The DA was notified to surrounding properties and advertised in accordance with Council's Community Engagement Strategy for 30 days including a public site notice erected onsite and on Council's website.
Impact of traffic pollution and coffee roasting on health of children	<p>Council's Environmental Health Officer (EHO) has reviewed the proposal and the submission which raised these concerns and made the following comments:</p> <ol style="list-style-type: none"> 1. <i>"The proposed child care centre is <u>not</u> near any busy road, i.e. <u>neither</u> Holmhale St <u>nor</u> Bowral St fall under the definition of 'busy road'. Accordingly, an air pollution report is <u>not</u> required under the Development Near Rail Corridors and Busy Roads – Interim Guideline.</i> 2. <i>The coffee roasting operation in question, RUSH Roasting Co, is low to medium scale and located about 70m from the proposed development site. Coffee roasting is <u>not</u> a scheduled activity under the POEO Act, neither it is a hazardous industry under State Environmental Planning Policy (Resilience Hazards) 2021. Under s.128(2) of POEO Act, 'The occupier of any premises must carry on any activity, or operate any plant, in or on the premises by such practicable means as may be necessary to prevent or minimise air pollution'. There is <u>no</u> indication that RUSH Roasting Co is in breach of that provision. No air pollution complaints have been received by Council against that coffee roasting operation."</i> <p>The above EHO's comments are agreed with. As no objection has been raised by Council's EHO in terms of air pollution in relation to the child care centre these are not substantive issues and the proposal is acceptable in this regard.</p>

6. Relevant Environmental Planning Instruments

6.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

The aim of Chapter 4 of SEPP (Resilience and Hazards) 2021 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

Chapter 4 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

The submitted Statement of Environmental Effects (SEE) addressed the provisions of section 4.6 of this SEPP and states in respect to past uses of the land:

"The land has historically been used for residential purposes and therefore it is highly unlikely that the land contains contaminants In our opinion, Council may be satisfied that the land is not contaminated and no further action in this respect is required."

The application has been referred to the Council's Environmental Health Officer, who confirmed the following and that the site is suitable and that no further investigation into site contamination is required or warranted.

- “The SEE and aerial imagery (dating back to 1963) suggest that the site land use history has been residential.
- There is no contaminated land notation recorded against the subject property or the ‘Created from’ property on Council’s Property Rating system.
- Accordingly, I suggest that taking into account that there is no indication that the site in question may be contaminated, Council can be satisfied that the site is suitable for the proposed development from the land contamination perspective.
- The current single storey brick and tile house appears to have been erected some time after 1982 (according to the historic aerial imagery). Accordingly, it is highly unlikely to contain asbestos” (Planner’s comment: could be addressed by a condition of any consent if approval was recommended).

Therefore, the Council is satisfied that the land is not a site of possible contamination and that no further assessment of contamination is required.

6.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 contains provisions replacing the former SEPP (Vegetation in Non-Rural Areas), and the aims are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. This Chapter includes Parts relating to Clearing Vegetation in Non-Rural Areas (Part 2.2); Council Permits for Clearing Vegetation in Non-Rural Areas (Part 2.3); and Approval of Native Vegetation Panel for Clearing Native Vegetation in Non-Rural Areas (Part 2.4).

The application was accompanied by an Arboricultural Impact Assessment and Tree Protection Plan, prepared by Moore Trees, dated 31/05/2024. (refer to attachment 4 – Council referrals).

Council’s Senior Arborist (Trees Management) raised objection with the proposal and made the following key comments on the matter:

- *“The arborist report provides commentary on forty (40) trees including five (5) neighbouring trees and six (6) street trees. Excluding trees located on adjacent land, eight (8) site trees are proposed to be retained with twenty-two (22) proposed to be removed.*
- *Of the twenty-two (22) proposed removals, six (6) trees are either dead, dying, weed species or are under DCP threshold for a tree. The removal of these six trees is supported on this basis, leaving **sixteen (16) trees** located primarily within the footprint of the proposed carpark, driveway and building footprint.*
- *Of the sixteen (16) proposed removals, five (5) of trees T11, T12, T15, T16 and T28 have high retention value, however without a change in proposed development footprint it will be extremely difficult to retain any of these trees. Retention of one or more these trees should be explored.*
- *“The main tree contention relates to the proposed impact on neighbouring trees T39 and T40 located common boundary east of the site. The proposed building footprint and retaining must be repositioned outside of the TPZ of both neighbouring trees T39 and T40. The extent of proposed cut of natural ground level creates an unacceptable encroachment of the tree protection zone (TPZ) of both trees. The encroachment is created by the building footprint (4m off boundary) and a retaining wall structure at approximately 2m off the boundary. Furthermore, the built form will require the pruning of overhanging branches belonging to both trees. Any proposed work impacting these trees will require owner’s consent. Encroachment of the TPZ of T39 and T40 is not supported even if neighbouring owner consents to the impact.”*

The officer’s assessment concurs with the Council Arborist’s objection to the encroachment of the TPZ of both trees T39 and T40 located on 61 Bowral Street and does not support the removal of five (5) healthy T11, T12, T15, T16 and T28 (exotic species) because of their value to the area’s streetscape character. Council’s Heritage Advisor also raises objection to the removal of trees T7, T8, T9 (3 natives) and T11 (non-native – European Ash sp.) due to negative impact on the landscape setting of Bowral

Heritage Conservation Area (see referral Officer's comments below in section 9 of the report). Accordingly for this reason the proposal is recommended for refusal.

6.3 State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and signage

In accordance with the provisions of section 3.6 of this SEPP, the consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.

The north & west elevations (sheet no. 3) indicate three (3) proposed signs on:

Bowral Street:

Sign No. 1: flush sign on front fence, dimensions: 1.88m x 1.06m.

Holmhale Street:

Sign No. 2: Brick fence: 1x flush sign on front fence.

Sign No. 3: 1x flush wall sign on west elevation. Dimensions for signs No. 2 and No. 3: 1.21m wide x 690mm high.

No graphic details for the signage have been provided. The proposal provides insufficient detail in relation to the proposed signage, such that compliance with Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 and the assessment criteria specified in Schedule 5 (no assessment in relation to this SEPP is outlined in the Statement of Environmental Effects). Accordingly for this reason the proposal is recommended for refusal.

6.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 3 Educational establishments and childcare facilities

Section 3.22 of the SEPP specifies the following:

'1) This section applies to development for the purpose of a centre-based child care facility if—

(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or

(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.'

Comment:

Section 107 of the *Education and Care Services National Regulations* requires the provision of 3.25 square metres of unencumbered indoor space, equating to a minimum of 292.5sqm for the proposed child care facility for 90 children.

Approximately 308.9sqm of unencumbered indoor space is to be provided as indicated on the architectural drawings accompanying the application.

Section 108 of the *Education and Care Service National Regulations* states there is a requirement for the provision of 7sqm of unencumbered outdoor space equating to a minimum of 630sqm for the proposed 90 children.

Approximately 695.75sqm of unencumbered outdoor play area is to be provided as indicated on the architectural drawings accompanying the application.

In this regard, the proposed development complies with the minimum requirements of the Regulations.

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Section 3.23 of the SEPP specifies the following:

'Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the Childcare Planning Guideline, in relation to the proposed development.'

The following table is an assessment of the proposed childcare facility against the criteria of the 'Childcare Planning Guideline' as required by the SEPP.

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
<p>C1 To ensure that appropriate zone considerations are assessed when selecting a site</p>	<p>For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	<p>Not Consistent</p> <p>The proposed child care facility has not adequately considered acoustic and privacy impacts, setbacks and siting of the building, and traffic and parking impacts. The proposal's acoustic impacts on the rear adjoining dwellings at No. 6 Holmhale Street are unreasonable and not acceptable for the reasons outlined below.</p> <p>Council's traffic expert objects to the proposal's traffic and parking impacts and believes the proposal will adversely affect the residential amenity of neighbours, noting that:</p> <p>It does not demonstrate compliance with AS2890.1:2004, the Child Care Planning Guideline and BTDCP regarding the site's proposed parking arrangements.</p> <ul style="list-style-type: none"> - <i>It does not demonstrate that the potential impact upon the surrounding road network is acceptable.</i> - <i>The proposed development is expected to generate a net of 42 vehicle trips per hour. Austroads Guide to Traffic Management Part 12 states that development which generates between 10-100 peak hour vehicle trips require analysis of the first intersection on either side of the site access.</i> <p>The minimal separation between the car park and the surrounding residences is not supported and contributes to adverse acoustic impact, particularly for 6 Holmhale Street.</p> <p>Furthermore, the proposal has been reviewed by Council officers and who have concerns in respect to:</p> <ul style="list-style-type: none"> - Council's arborist raised issue to the unacceptable encroachment of

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		<p>the tree protection zone of neighbours' trees (T39 & T40) on 61 Bowral Street.</p> <p>- Council's Heritage Advisor has objected to the loss of four (4) mature trees due to the car park, which would adversely affect the landscape setting of Bowral HCA. From a planning perspective, the loss of 16 canopy trees (including 5 of high retention value) is not supported as it would detract from the established streetscape and character of Bowral HCA.</p>
<p>C2 To ensure that the site selected for a proposed childcare facility is suitable for the use</p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> • size of street frontage, lot configuration, dimensions and overall size • number of shared boundaries with residential properties • the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>Not Consistent</p> <p>The subject site is suitable for the proposed child care facility in relation to flooding and bushfire prone land.</p> <p>The facility would not be located in proximity to any known socially incompatible activities and uses. The site is safe in terms of environmentally hazards such as flooding, land slip, bushfires.</p> <p>The proposal is not supported as the Applicant has not demonstrated that the proposal can operate without resulting in adverse acoustic impacts upon neighbouring properties.</p> <p>(a) The applicant's Acoustic Report (Acoustic Logic, dated 4 June 2024) is inaccurate and inadequate, as it:</p> <ul style="list-style-type: none"> (i) identifies the adjoining dwelling to the east at 65 Bowral Road as a "commercial receiver" and fails to adequately consider the potential acoustic impacts on this property, (ii) does not consider the potential acoustic impact upon the dwelling at 76 Bowral Street, which is in close proximity to the proposed outdoor play zones. <p>(b) The accompanying Acoustic Report relies upon an inappropriate assumption that all windows and doors to indoor childcare rooms will be closed during operation.</p> <p>(c)The Acoustic Report is inconsistent with the accompanying Statement of</p>

		<p>Environmental Effects (Urbanesque Planning, dated 7 June 2024), in so far as the Acoustic Report adopts a breakdown of individual age groups whereas the Statement of Environmental Effects states:</p> <p><i>“The application seeks an overall cap of 90 children and does not specify a further breakdown into age groups. This is in order to facilitate a fluid centre population based on changing demand for services.”</i></p> <p>(e) The Acoustic Report has not considered the impacts on the neighbour’s (61 Holmhale Street) acoustic amenity associated with the use of the Staff Breakout Space adjacent to the eastern side boundary.</p> <p>(f) The Acoustic Report does not appear to have considered the change of levels across the site and has not satisfactorily demonstrated that the proposed 1.8m high acoustic fence along the front boundary will provide appropriate acoustic attenuation for noise generated on the terrace of Room 1, which is 1m higher than ground levels along the front boundary.</p> <p>Also the proposed loss of 16 canopy trees is excessive, particularly for the car parking area and is not supported.</p>
<p>C3 To ensure that sites for childcare facilities are appropriately located</p>	<p>A childcare facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>Consistent</p> <p>The proposed child care facility is appropriately located near compatible social uses, near the Bowral town centre, with access to public transport (being approximately 150m from a bus stop), and in an area with pedestrian connectivity.</p>

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<p>C4 To ensure that sites for childcare facilities do not incur risks from environmental, health or safety hazard</p>	<p>A childcare facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> ○ heavy or hazardous industry, waste transfer depots or landfill sites ○ LPG tanks or service stations ○ water cooling and water warming systems ○ odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	<p>Consistent</p> <p>The proposed child care facility is to be located on a site that would not incur risks from environmental, health or safety hazards, being within an established residential area.</p> <p>However, Council has concerns about the proposal's impact on local traffic and street parking and associated impact on amenity of surrounding residences – see section 9 of the report.</p>
<p>3.2 Local character, streetscape and the public domain</p>		
<p>C5 To ensure that the childcare facility is compatible with the local character and surrounding streetscape</p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>Not Consistent</p> <p>Landscaping is proposed to the building and outdoor play areas that will complement the existing streetscape and surrounding locality.</p> <p>The proposal is not compatible with the local character and surrounding streetscape, noting that it adjoins Bowral Conservation Area, given that:</p> <p>(a) The proposal is inconsistent with regards to the height and finish of fencing presenting to Bowral and Holmhale Streets.</p> <p>(b) The fencing and landscaping treatment are monotonous, with little to no variation along the 68 metre plus length presenting to Bowral and Holmhale Streets.</p> <p>(c) The loss of substantial trees from the site and the loss of four (4) mature trees in good health are not supported by Council's Heritage Advisor and Council's arborist. Retention of these trees will require design amendments to the proposed carparking area. The large open car park has not been integrated into site's landscaping design given the loss of at least four (4) healthy and mature trees.</p>
<p>C6, C7, C8 To ensure clear delineation between the childcare facility and public spaces</p>	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility 	<p>Consistent</p> <p>Fencing is provided to delineate spaces and ensure safety for children.</p>

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	<ul style="list-style-type: none"> windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community integrating existing and proposed landscaping with fencing. 	<p>Windows are provided on all elevations towards the public domain and the street.</p> <p>Landscaping and fencing have been integrated appropriately.</p>
	<p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the childcare facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p>Not applicable</p> <p>Only one (1) building and one (1) entry is proposed.</p>
	<p>Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> clearly defined street access, pedestrian paths and building entries low fences and planting which delineate communal/ private open space from adjoining public open space minimal use of blank walls and high fences. 	<p>Not applicable</p> <p>The site does not adjoin any public parks, open space or bushland.</p>
<p>C9, C10 To ensure that front fences are retaining walls respond to and complement the context and character of the area and do not dominate the public domain</p>	<p>Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p>Not Consistent</p> <p>The proposed front fence is a 1.8m high lapped and capped timber boundary fence along the frontages to Bowral Street and Holmhale Street. This is not visually permeable.</p>
	<p>High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p>	<p>Not applicable</p> <p>The site does not front a classified road.</p>
<p>3.3 Building orientation, envelope and design</p>		
<p>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</p>	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties placing play equipment away from common boundaries with residential properties locating outdoor play areas away from residential dwellings and other sensitive uses 	<p>Not Consistent</p> <p>Proposed outdoor play areas and equipment have been sited to minimise noise and privacy impacts to and from neighbours.</p> <p>Outdoor spaces are adequately optimised for solar access. Indoor spaces are capable of adequate solar access.</p> <p>The learning room doors and outdoor play areas are located towards Bowral Street away from the residences to the south. However, the open car park</p>

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	<ul style="list-style-type: none"> • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a childcare facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>containing 25 spaces is located close to the rear boundary, shared with No. 6 Holmhale Street, which contains three dwellings.</p> <p>The single storey height of the building will not unreasonably overshadow the adjacent properties.</p> <p>The building addresses both frontages to Bowral Street and Holmhale Street.</p>
<p>C12 To ensure that the scale of the childcare facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed childcare facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character. 	<p>Not Consistent</p> <p>The height of the proposed child care facility is generally consistent with the building height of other buildings in the locality and is appropriate to the scale and character of the street.</p> <p>Adequate building setbacks have been provided for visual privacy and to allow access for building maintenance while remaining consistent with the existing setback character of the locality. However, the lack of separation between the car park and rear adjoining residences results in adversely affect the amenity of Units 1-3 at No. 6 Holmhale Street.</p>
<p>C13, C14 To ensure that setbacks from the boundary of a childcare facility are consistent with the predominant development within the immediate context</p>	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p> <p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>Consistent</p> <p>The site is not adjoining a classified road.</p> <p>The proposed child care facility is setback over 14.4 metres from Bowral Street. There is no consistent front setback pattern of the adjacent properties and the dwelling at No. 61 Bowral Street has an irregularly large front setback.</p> <p><u>3 closest buildings - front setback</u> No. 53 Bowral St: 11m No. 61 Bowral St: 41m No. 63 Bowral St: 11.4m Average: 21m</p> <p>Consistent</p> <p>The side and rear boundary setbacks of the proposed child care facility have observed the prevailing setbacks required for a dwelling house. The rear setbacks of the dwelling houses at Nos. 61 and 63 Holmhale Street are minimal, being approx. 6 metres and 1 metre.</p>

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<p>C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character</p>	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place. 	<p>Not Consistent</p> <p>The built form of the proposed child care facility is consistent with the residential built form of the locality. However, due to the loss of at least five (5) healthy, mature trees it is inconsistent with the established visual character of surrounding dwelling houses in the locality and Bowral Street, which is defined by a dominance of landscaping over built form.</p> <p>Therefore, as it fails to make a positive contribution to the streetscape and negatively impacts the character of the area. It does not satisfy this control.</p>
<p>C15 To ensure that buildings are designed to create safe environments for all users</p>	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>Consistent</p> <p>Pedestrian entry is restricted to one access point via a gate provided on the eastern boundary to Holmhale Street. This is capable of being easily monitored. The entry is not accessed through an outdoor play area.</p> <p>The entry would be visible from the street frontage.</p>
<p>C16 To ensure that childcare facilities are designed to be accessible by all potential users</p>	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. 	<p>Consistent</p> <p>Council's Accredited Building Certifier has reviewed the proposal and advised that there are no obvious BCA non compliances that would require a Modification to any Development Consent. Any non-compliances could be addressed at CC stage and would not present any issues that would prevent the issue of a Development Consent.</p> <p>Council's Building Certification officers have no objections to the proposal.</p> <p>This would need to be demonstrated at Construction Certificate stage with disabled access provisions to common and public areas to be in accordance with AS1428 Design for Access</p>

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	<p>NOTE: <i>The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</i></p>	<p>and Mobility and the Premises Code.</p>
3.4 Landscaping		
<p>C17, C18 To provide landscape design that contributes to the streetscape and amenity</p>	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>Not Consistent</p> <p>The proposal would result in an unacceptable loss of canopy trees (16 in total), including five (5) exotic trees and three (3) native trees all with high retention value. The loss of so many trees, including high significance trees, is unacceptable and inconsistent with the provisions of clause C13.9 (Landscaping and Vegetation) of Section 13 of Part C of Bowral DCP (BDCP), which seek to ensure that existing natural features and significant vegetation are conserved. Such tree removal would have a negative impact on the landscape setting of Bowral HCA and is objected by Council's Heritage Advisor.</p> <p>As confirmed on page 17 of the supplied Arboricultural Impact Assessment (Moore Trees, dated 31 May 2024), there has been no consideration of the potential impact upon retained canopy trees associated with underground services proposed. The Ground Floor Drainage Plan (Greenview Consulting, dated 5 June 2024) proposes underground stormwater infrastructure within the immediate vicinity of Tree T24 (near N-W corner) and eastern neighbour's trees T39 and T40, the impact of which has not been considered or addressed.</p>
	<p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas. 	<p>Not Consistent</p> <p>Car parking dominates the rear setback area and includes five (5) trees with high retention value – T7, T8, T9, T11 and T28. The loss of this many trees, including high significance trees, is unacceptable and inconsistent with the provisions of clause C13.9 (Landscaping and Vegetation) of Section 13 of Part C of BDCP, which seek to ensure that existing natural features and significant vegetation are conserved.</p> <p>Due to the substantial loss of mature trees, there is a lack of</p>

		<p>shade trees adjacent the car parking area, which will result in the development failing to reduce heat radiating into buildings.</p> <p>Low level landscaping (orchard grove) has been proposed to soften the boundary between the carpark and the child care facility.</p> <p>No landscaping is proposed along part of the western boundary (either side of the driveway to Holmhale Street) to ensure pedestrian sightlines and safe movements into / out of the site are maintained.</p>
3.5 Visual and acoustic privacy		
C19, C20 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	Not applicable The proposal is not a mixed-use development.
	<p>Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design. 	Consistent Overlooking into indoor rooms and outdoor play spaces is minimised through the design of the building and proposed screening measures and proposed landscape along the Bowral Street and Holmhale Street frontages.
C21 To minimise impacts on privacy of adjoining properties	<p>Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening. 	Consistent The proposed child care facility is sited and designed so as to minimise overlooking of internal living areas of dwelling houses. Landscaping and screening minimise overlooking into neighbouring private open space (POS). The play areas face Bowral Street and will not have a direct line of sight due to the building layout and careful placement of fencing and landscaping.
C22, C23 To minimise the impact of childcare facilities on the acoustic privacy of neighbouring residential developments	<p>A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	Not Consistent The plans indicate a 1.8m high acoustic (lapped & capped) timber fencing. However, this is inconsistent with pages 25 and 26 of the Statement of Environmental Effects, as the front fencing is described as “transparent timber fencing”. The play areas face Bowral Street and away from neighbouring residences to the east and south. However, the staff break out area is orientated to POS area of No. 61

		<p>Holmhale Street (residence) and the Acoustic Report has not considered the impacts on No. 61 associated with the use of the Staff Breakout Space adjacent to the eastern side boundary.</p> <p>The applicants Acoustic Report appears not to have considered the change of levels across the site and has not satisfactorily demonstrated that the proposed 1.8m high acoustic fence along the front boundary will provide appropriate acoustic attenuation for noise generated on the terrace of Room 1, which is 1m higher than ground levels along the front boundary.</p>
	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a childcare facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>Unsatisfactory – included as a reason for refusal</p> <p>The submitted Acoustic Report has been prepared by a suitably qualified acoustic professional; however, it has not adequately addressed the relevant matters, for the following reasons.</p> <p>(a) The Acoustic Report (Acoustic Logic, dated 4 June 2024) is inaccurate and inadequate, as it:</p> <p>(i) identifies the adjoining dwelling to the east at No. 65 Bowral Road as a “commercial receiver” and fails to adequately consider the potential acoustic impacts on this property,</p> <p>(ii) does not consider the potential acoustic impact upon the dwelling at No. 76 Bowral Road, which is in close proximity to the proposed outdoor play zones.</p> <p>(b) The accompanying Acoustic Report relies upon an inappropriate assumption that all windows and doors to indoor childcare rooms will be closed during operation.</p> <p>As stated above, the applicant’s Acoustic Report does not appear to have considered the change of levels across the site and has not satisfactorily demonstrated that the proposed 1.8m high acoustic fence along the front boundary will provide appropriate acoustic attenuation for noise generated on the terrace of Room 1. It is 1m higher than ground levels along the front boundary. The SEE does not provide a breakdown of individual</p>

		<p>age groups whilst the Acoustic Report adopts an age breakdown. The number and age of children at the proposed child care centre alters the anticipated noise emissions, and in the absence of a specific breakdown, the likely noise emissions cannot be determined.</p>
<p>3.6 Noise and air pollution</p>		
<p>C24, C25 To ensure that outside noise levels on the facility are minimised to acceptable levels</p>	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources 	<p>Not Consistent</p> <p>The proposal is recommended to be refused as it does not ensure appropriate amenity for the children in care or staff members for the following reasons:</p> <p>(a) The accompanying Acoustic Report (Acoustic Logic, dated 4 June 2024) requires doors and windows to internal childcare rooms to be closed at all times.</p> <p>(b) The Architectural Plans (Innovate Architects, issue A, dated June 2024) do not propose air-conditioning to the internal spaces .</p> <p>(c) The lack of natural and mechanical ventilation results in poor internal amenity, inconsistent with the following principles of the Child Care Planning Guideline:</p> <p><i>(i) Principle 3 – Adaptive learning spaces, which seeks to ensure that good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff,</i></p> <p><i>(ii) Principle 4 – Sustainability, which promotes well-designed facilities that are resource efficient and include the use of natural cross ventilation,</i></p> <p><i>(iii) Principle 6 – Amenity, which confirms that good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight and natural ventilation.</i></p>
	<p>An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a childcare facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000 • along a railway or mass transit corridor, as defined by State 	<p>Consistent</p> <p>The site is not industrial zoned land, not affected by ANEF 20-25, not along a railway or mass transit corridor and not on other land that is impacted by substantial external noise. It is not located on a major road. The accompanying Acoustic Report (Acoustic Logic, dated 4 June 2024) requires doors and windows to internal childcare rooms to be closed at all times. Council’s Environmental Health</p>

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	<p>Environmental Planning Policy (Infrastructure) 2007</p> <ul style="list-style-type: none"> • on a major or busy road • other land that is impacted by substantial external noise. 	Officer (EHO) has reviewed the proposal and raised no objection in this regard.
C26, C27 To ensure air quality is acceptable where childcare facilities are proposed close to external sources of air pollution such as major roads and industrial development	Locate childcare facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	Not applicable The site is not in proximity to external sources of air pollution.
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed childcare facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility. 	Not applicable The site is not in proximity to a major road or industrial development.
3.7 Hours of operation		
C28, C29 To minimise the impact of the childcare facility on the amenity of neighbouring residential developments	C28 Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed childcare facility may be extended if it adjoins or is adjacent to non- residential land uses.	Consistent The facility's proposed hours are between 7.30am and 6pm weekdays. If approval was recommended, a condition would be recommended to ensure this is enforced.
	C29 Within mixed use areas or predominantly commercial areas, the hours of operation for each childcare facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Consistent The proposed facility is surrounded by residential uses. The site is to the south of a commercial area which is located on the northern side of Bowral Street.
3.8 Traffic, parking and pedestrian circulation		
C30, C31, C32 To provide parking that satisfies the needs of users and demand	C30 Off street car parking should be provided at the rates for childcare facilities specified in a Development Control Plan that applies to the land.	Not consistent The Bowral DCP's off street car parking rates for childcare facilities is 1 space for every 4 children.

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<p>generated by the centre</p>	<p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> • 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site. 	<p>Provision of car parking for permanent staff shall be in addition to this requirement.</p> <p>Parking required: Children: 23 spaces plus provisions for staff.</p> <p>It is expected that there will be up to 17 staff members on site (including 15 educators, 1 manager and 1 cook) to meet required child to staff ratios. The provision of seven (7) staff parking spaces is not sufficient for a maximum of 17 staff members.</p> <p>A total of 25 car parking spaces is proposed at an on-grade car park within the rear setback and includes:</p> <ul style="list-style-type: none"> - one (1) accessible car space. - seven (7) staff parking spaces. <p>The proposal does not provide sufficient parking for the needs of users and demand generated by the centre. The proposal is recommended for refusal as it does not demonstrate compliance with AS2890.1:2004, the Child Care Planning Guideline and BTDCP regarding the site's proposed parking arrangements, given that:</p> <ul style="list-style-type: none"> - The staff parking spaces (1-7) are provided as tandem behind visitor car parking spaces. It is unclear how these spaces would be managed, such that staff parking is available to staff at appropriate times such that there is no overflow staff parking onto the surrounding streets. - The "safe zone" adjacent to parking spaces 15-25 is located directly behind car parking spaces. There is an unacceptable risk that reversing vehicles will not be able to view children walking directly behind the car parking spaces. This is contrary to Consideration 35 of the Child Care Planning Guideline that seeks to ensure a safe pedestrian environment.
	<p>C31 In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.</p>	<p>Not applicable</p> <p>The site is within the R3 medium density zone.</p> <p>On-street parking has not been considered as part of this proposal.</p>
	<p>C32 A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the</p>	<p>Unsatisfactory</p>

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	<p>surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> the amenity of the surrounding area will not be affected there will be no impacts on the safe operation of the surrounding road network. 	<p>A Traffic & Parking Impact Assessment has been lodged with this DA.</p> <p>Council's traffic expert has reviewed the documentation and raised concerns in respect to the proposals parking quantities, arrangements and traffic impacts – see above comments for C30.</p>
<p>C33, C34 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows</p>	<p>Alternate vehicular access should be provided where childcare facilities are on sites fronting:</p> <ul style="list-style-type: none"> a classified road roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> the prevailing traffic conditions pedestrian and vehicle safety including bicycle movements the likely impact of the development on traffic. 	<p>Not applicable</p> <p>The subject site does not front a classified road or a road which carries freight traffic or transports dangerous goods or hazardous materials.</p>
	<p>Childcare facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>Consistent</p> <p>Safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>
<p>C35, C36, C37 To provide a safe and connected environment for pedestrians both on and around the site</p>	<p>C35 The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> separate pedestrian access from the car park to the facility defined pedestrian crossings included within large car parking areas separate pedestrian and vehicle entries from the street for parents, children and visitors pedestrian paths that enable two prams to pass each other delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas vehicles can enter and leave the site in a forward direction. 	<p>Unsatisfactory – included as a reason for refusal</p> <p>The “safe zone” adjacent to parking spaces 15-25 is located directly behind car parking spaces. Council's Traffic expert has raised an objection as there is an unacceptable risk that reversing vehicles will not be able to view children walking directly behind the car parking spaces. This is contrary to Consideration 35 of the Child Care Planning Guideline that seeks to ensure a safe pedestrian environment.</p>
	<p>C36 Mixed use developments should include: N/A to proposal</p>	<p>Not applicable</p> <p>The proposal does not form part of a mixed-use development.</p>

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	<p>C37 Car parking design should:</p> <ul style="list-style-type: none"> include a child safe fence to separate car parking areas from the building entrance and play areas provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards include wheelchair and pram accessible parking. 	<p>Consistent</p> <p>The proposal includes fencing to separate the car park from the building entrance and play areas.</p> <p>Accessible parking is provided close to the primary entrance.</p>
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The following table is an assessment of the proposed childcare centre against the *Education and Care Services National Regulations* as detailed within the 'Childcare Planning Guideline'.

Regulation	Guidelines	Comments
4.1 Indoor space requirements		
<p>Regulation 107</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> passageway or thoroughfare (including door swings) used for circulation toilet and hygiene facilities nappy changing area or area for preparing bottles area permanently set aside for the use or storage of cots area permanently set aside for storage area or room for staff or administration kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program, e.g. a learning kitchen on-site laundry other space that is not suitable for children. <p>All unencumbered</p>	<p>The proposed development includes at least 3.25 sqm of unencumbered indoor space for each child.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a childcare facility provide:</p> <ul style="list-style-type: none"> a minimum of 0.3m³ per child of external storage space a minimum of 0.2m³ per child of internal storage space. <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p> <p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p>	<p>Consistent – concurrence not required.</p> <p>312m² is the minimum required for 96 children.</p> <p>313.5m² provided.</p> <p>Noted</p> <p>The verandah has not been included as indoor space.</p> <p>Not Consistent – included as a reason for refusal</p> <p><u>Internal storage – Not Consistent</u> 18m³ minimum of internal storage space required for 90 children.</p> <p>Applicant claims 60m³ provided. Insufficient information on plans and not able to be confirmed.</p> <p><u>External storage – Insufficient information</u> 27m³ minimum of external storage space required for 90 children.</p> <p>SEE states “to be allocated: Ample space for compliance”.</p> <p>However, this is not confirmed on the submitted plans - due to insufficient information it does not comply with this Design Guidance.</p>

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<p>indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exception circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>	<p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	
<p>4.2 Laundry and hygiene facilities</p>		
<p>Regulation 106</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p>	<p><i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i></p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p>	<p>Consistent</p> <p>An on-site laundry has been provided in the building at the ground floor level, with an approximate area of 11sqm.</p>
<p>Childcare facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p>On site laundry</p> <p>On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer 	<p>Consistent</p> <p>An on-site laundry has been provided with appropriate facilities including laundry sinks and storage for soiled items as</p>

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	<ul style="list-style-type: none"> laundry sinks adequate storage for soiled items prior to cleaning an on site laundry cannot be calculated as usable unencumbered play space for children 	well as space for washers and dryers.
	<p>External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	<p>Not applicable An on-site laundry is provided.</p>
<p>4.3 Toilet and hygiene facilities</p>		
<p>Regulation 109</p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Childcare facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</p> <p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> junior toilet pans, low level sinks and hand drying facilities for children a sink and handwashing facilities in all bathrooms for adults direct access from both activity rooms and outdoor play areas windows into bathrooms and cubicles without doors to allow supervision by staff external windows in locations that prevent observation from neighbouring properties or from side boundaries 	<p>Consistent</p> <p>The proposed facility contains adequate and appropriate toilets for use by children with washing and drying facilities, direct access from indoor and outdoor play areas, windows for supervision by staff, and external windows that are not visible from neighbouring properties.</p>
<p>4.4 Ventilation and natural light</p>		
<p>Regulation 110</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Childcare facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p>The proposed development includes indoor spaces to be used by children that:</p> <ul style="list-style-type: none"> will be well ventilated; and will have adequate natural light; and can be maintained at a temperature that ensures the safety and well-being of children. 	<p>Not Consistent</p> <p>(a) The accompanying Acoustic Report (Acoustic Logic, dated 4 June 2024) requires doors and windows to internal childcare rooms to be closed at all times.</p> <p>(b) The Architectural Plans (Innovate Architects, issue A, dated June 2024) do not propose air-conditioning to the internal spaces.</p> <p>(c) The lack of natural and mechanical ventilation results in poor internal amenity, inconsistent with the following principles of the Child Care Planning Guideline:</p>

		<p>(i) Principle 3 – Adaptive learning spaces, which seeks to ensure that good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff,</p> <p>(ii) Principle 4 – Sustainability, which promotes well-designed facilities that are resource efficient and include the use of natural cross ventilation,</p> <p>(iii) Principle 6 – Amenity, which confirms that good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight and natural ventilation.</p> <p>Ventilation diagrams not provided by applicant.</p>
	<p>Ventilation</p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the childcare facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that childcare facilities ensure natural ventilation is available to each indoor activity room.</p>	<p>Not Consistent</p> <p>Ventilation diagrams not provided</p> <p>As above, inadequate natural ventilation is achieved in the proposed design.</p> <p>The lack of natural and mechanical ventilation to each indoor activity room is inconsistent with Regulation 110 of the Education and Care Services National Regulations, which states that services must be well ventilated, and the Design Guidance in Part 4.4 of the Child Care Planning Guideline.</p>
	<p>Natural light</p> <p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing childcare facilities consideration should be given to:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate 	<p>Consistent</p> <p>Each learning room has a 2.4m ceiling height to comply with NCC, rising to 4.8m in the play rooms.</p> <p>Rooms 1 and 5 – have windows to different orientations.</p> <p>Rooms 2, 3 and 4 have north-facing windows.</p>

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	<ul style="list-style-type: none"> ceiling heights. <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	
4.5 Administrative space		
<p>Regulation 110</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>Consistent</p> <p>The proposed child care facility includes adequate areas for the administrative functioning of the facility, consultation with parents of children, and conducting of private conversations.</p>
4.6 Nappy change facilities		
<p>Regulation 112</p> <p>Childcare facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing.</p> <p>All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Childcare facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> properly constructed nappy changing bench or benches a bench type baby bath 	<p>Consistent</p> <p>The proposed child care facility includes adequate areas for the purposes of nappy changing.</p>

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	<p>within one metre from the nappy change bench</p> <ul style="list-style-type: none"> the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area a space to store steps positioning to enable supervision of the activity and play areas. 	
4.7 Premises designed to facilitate supervision		
<p>Regulation 115</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Childcare facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.</p>	<p><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> solid walls in children’s toilet cubicles (but no doors) to provide dignity whilst enabling supervision locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities 	<p>Not Consistent – reason for refusal.</p> <p>The proposed toilet and change facilities for children are designed to facilitate adequate supervision of children at all times, including locating windows into bathrooms and avoiding room layouts with hidden corners.</p> <p>Proposed Play Zone 3, at the north-east corner of the site, includes a 2m wide area to the side of the building that comprises landscaping and a timber tunnel with climbers. The area is not readily able to be supervised, inconsistent with Regulation 115 of the Education and Care Services National Regulations which requires spaces to be designed to facilitate adequate supervision of children at all times and the Design Guidance in Part 4.7 of the Child Care Planning Guideline which recommend that hidden corners where supervision is poor should be avoided. But this is able to viewed through room 5’s windows.</p>
4.8 Emergency and evacuation procedures		
<p>Regulations 97 and 168</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> instructions for what 	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed childcare facilities above ground level may consider providing additional measures to protect staff and children (N/A as proposal is single storey)</p> <p>An emergency and evaluation plan</p>	<p>Consistent</p> <p>The proposed child care facility has been designed for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>No emergency and evacuation plan has been submitted with the DA; however, this issue could be</p>

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<p>must be done in the event of an emergency</p> <ul style="list-style-type: none"> • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service. 	<p>should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	<p>addressed by a condition if recommended for approval.</p>
<p>4.9 Outdoor space requirements</p>		
<p>Regulation 108</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered space excludes any of the following:</p> <ul style="list-style-type: none"> • pathway or thoroughfare, except where used by children as part of the education and care program. • Car parking area. • Storage shed or other storage area. • Laundry • Other space that is not suitable for children. <p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in</p>	<p>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</p> <p>If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children’s play.</p> <p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p>	<p>Consistent</p> <p>630m² minimum required for 90 children.</p> <p>Proposed unencumbered outdoor space: 706.1m² provided.</p> <p>Assessment measurements:</p> <p>Play zone 1 – 110sqm Play zone 2 – 204sqm Play zone 3 – 326sqm Learning zone – 66.1sqm (67.4 – 1.3sqm) Total: 706sqm</p>
	<p>Verandahs as outdoor space</p> <p>Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements 	<p>Consistent</p> <p>The verandah has been included as outdoor space and is not included in indoor space calculations.</p> <p>The verandah meets the listed requirements for its inclusion in outdoor space calculations.</p>
	<p>Simulated outdoor environments</p>	<p>Not applicable</p> <p>Outdoor space is provided.</p>

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<p>regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool aged or under must ensure there is no swimming pool on the premises unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<p>Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p> <p>A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p> <ul style="list-style-type: none"> • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs. 	
4.10 Natural environment		
<p>Regulation 113</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand</p>	<p>Consistent</p> <p>A detailed landscape plan has been provided. Sufficient details for proposed plantings and landscape design have been included.</p>

	<p>and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches <p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	
4.11 Shade		
<p>Regulation 114</p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff.</p> <p>Combining built and natural shade will often be the best option.</p>	<p>Consistent</p> <p>See below.</p>
	<p>Solar access</p> <p>Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year.</p> <p>Outdoor play areas should:</p> <ul style="list-style-type: none"> • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of 	<p>Consistent</p> <p>Sufficient details have been provided regarding solar access and shading coverage. Given that play areas have a northern orientation, these areas will receive sufficient solar access. The proposed play areas will achieve a good a balance of sunlight and shade that changes throughout the day.</p>

	<p>trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area</p> <ul style="list-style-type: none"> • have evenly distributed shade structures over different activity spaces. 	
	<p>Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so; they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter 	<p>Not Consistent</p> <p>Details have been provided regarding provision of tree canopy and natural shade for outdoor play areas.</p> <p>The proposal will retain 6 trees near the Bowral Street frontage within the proposed outdoor play areas 2 and 3. This would serve to provide some natural shade over these areas.</p> <p>Two mature trees T26 and 27 (adjacent to Holmhale Street) will be removed, which would reduce natural shade to play zone 1. As stated above, the proposal will remove in total up to 16 canopy trees from the site and the cumulative impact of such tree removal would be a significant reduction in natural shade over the outdoor areas.</p> <p>The Landscape Plan provides appropriately scaled trees near the eastern and western elevations.</p>
	<p>Built shade structures Built structures providing effective shade include:</p> <ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing.</p> <p>Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively</p>	<p>Consistent</p> <p>The proposed child care facility provides:</p> <ul style="list-style-type: none"> • a verandah structure over the terrace (outdoor space) attached to the main building. • Two (2) pergolas are provided in play zone 1 and one (1) pergola in play zone 3.

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4.12 Fencing		
<p>Regulation 104</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age.</p> <p>Childcare facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code.</p>	<p><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></p> <p>Fencing at childcare facilities must provide a secure, safe environment for children and minimise access to dangerous areas.</p> <p>Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.</p>	<p>Consistent</p> <p>The proposed outdoor spaces will be enclosed with fencing of an appropriate height (1.8m high timber lapped and capped) and material to ensure that children cannot go through, over or under it.</p>
4.13 Soil assessment		
<p>Regulation 25</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • a soil assessment for the site of the proposed education and care 	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> • the application is to alter or extend the premises • the alteration or extension requires 	<p>Consistent</p> <p>A preliminary investigation of the soil was not considered necessary given the existing residential land use.</p> <p>Council's Environmental Health Officer (EHO) has commented that aerial imagery (dating back to 1963) suggests that the site's land use history has been residential. Council's EHO has advised that as there is no indication that the site in question may be</p>

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<p>service premises</p> <ul style="list-style-type: none"> • if a soil assessment for the site of the proposed childcare facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. 	<p>earthworks or deep excavations (exceeding a depth of one metre)</p> <ul style="list-style-type: none"> • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	<p>contaminated, "Council can be satisfied that the site is suitable for the proposed development from the land contamination perspective."</p> <p>Also, with reference to the submitted landscape plan, children are very unlikely to have contact with the onsite soil because the outdoor play areas are going to predominantly have the following surfaces: faux grass, decking, pavers and mulch. Imported topsoil, compost and mulch are most likely going to be used in the vegie garden and landscaped areas indicated on the plan.</p> <p>A geotechnical report (by Australian GeoEnviro 1/06/24) has been submitted.</p> <p>Council's Environmental Health Officer confirmed that the proposal is satisfactory under this section.</p>
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6.5 Wingecarribee Local Environmental plan 2010 (WLEP)

Zoning:

The land is in Zone R3 Medium Density Residential under WLEP 2010. The proposed use of the site is within the definition of a *centre-based childcare facility* which is defined as follows:

'Centre-based childcare facility means –

(a) a building or place used for the education and care of children that provides any one or more of the following –

- (i) long day care,
- (ii) occasional childcare,
- (iii) out-of-school-hours care (including vacation care),
- (v) preschool care, or

(b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)), but does not include –

- (c) a building or place used for home-based childcare or school-based childcare, or
- (d) an office of a family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)), or

(e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or

(f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or

- (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
- (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.’

The proposed use is specified as a permissible use within the R3 zoning of the site.

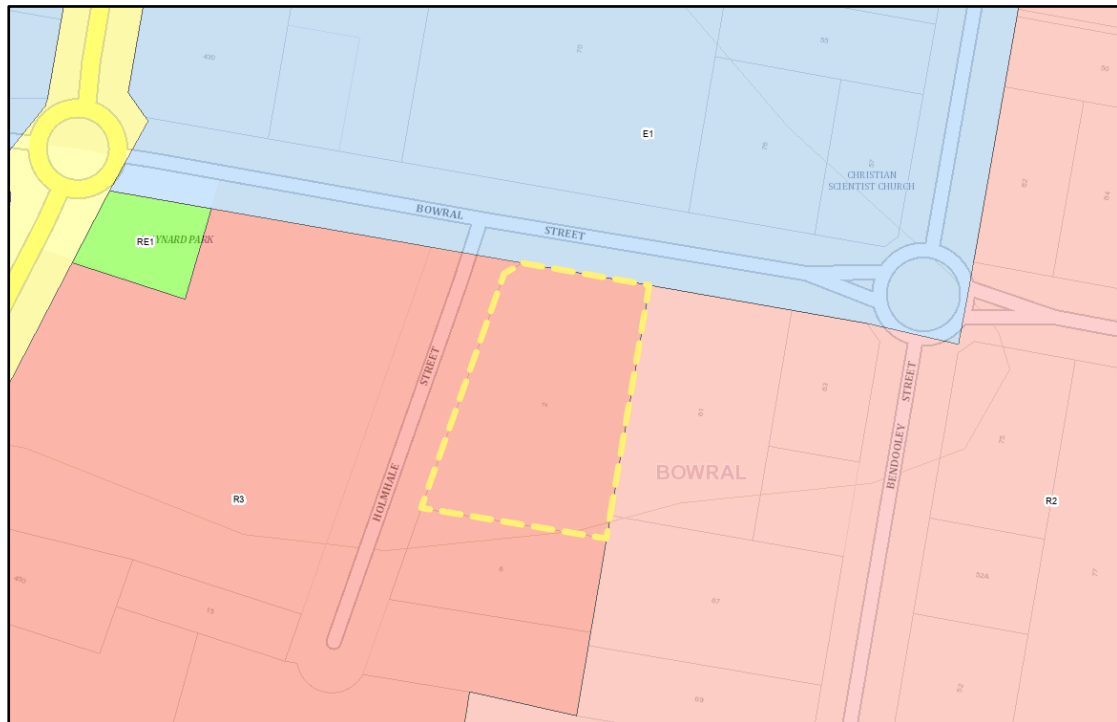


Figure 7: Extract of Zoning Map of WLEP with site bordered in yellow
Source: NSW Planning Portal Spatial Viewer

2.3 Zone Objectives and Land Use Table

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The Objectives of the R3 Medium Density Residential Zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposal is not consistent with the specific objectives of the R3 zone as the proposed development does not achieve a satisfactory urban design outcome having regard to its prominent corner location within Bowral Street and the streetscape character of Bowral Street and the adjoining Heritage Conservation Area noting the loss of numerous healthy trees and the adverse impact on the amenity of neighbouring residential properties.

Principal Development Standards and Other Provisions:

The following principal development standards and other provisions in WLEP 2010 are also relevant to the proposal:

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Clause	Development Standard	Proposal	Compliance
4.3 Height of buildings	No height of building standard is specified for the site.	N/A	N/A
4.4 Floor space ratio	No floor space ratio (FSR) standard is specified for the site.	N/A	N/A
5.10 Heritage conservation	<p>The objectives of this clause are;</p> <p>(a) to conserve the environmental heritage of Wingecarribee,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas (HCAs), including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p> <p>The site is:</p> <ul style="list-style-type: none"> • Located directly adjoining the Bowral Heritage Conservation Area, and • Adjoins a local heritage item (house) at 67 Bendooley Street (the item shares approx. 6m of the eastern boundary of the site). <p>The site does not contain a heritage item and it is not located in a heritage conservation area (HCA).</p>	<p>See Heritage Advisor's comments below in section 9 of the report, who raised concerns that the development was not suitable because of its adverse heritage impact on the Bowral HCA and nearby heritage item.</p> <p>The assessment finds that the proposal fails to satisfy CI 5.10 of LEP due to adverse impact on the setting and heritage significance of the Bowral HCA and that of the surrounding heritage items – refer to comments immediately below in respect to Clause 5.10.</p> <p>This has been included as a reason for refusal.</p>	No
7.3 Earthworks	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land,</p> <p>(b) to allow earthworks of a minor nature without separate development consent.</p> <p>(2) Development consent is required for earthworks unless—</p> <p>(a) the work does not alter the ground level (existing) by more than 600 millimetres, or</p>	<p>The proposal seeks to the alter the existing ground levels as follows:</p> <p><u>Long Section AA</u></p> <ul style="list-style-type: none"> • Cut is approx. 1.8m (at kitchen) - 2.1m (rear end of building) and 900mm for car parking area; and <p><u>Cross Section BB</u></p> <p>Cut is approx. 1.8m-2.6m depth Fill is max. 300-400mm. respectively.</p> <p><u>Driveway Section</u></p> <p>Cut is 500mm (western edge) – 3.9m (eastern edge)</p> <p>This earthworks clause is not addressed in submitted SEE.</p>	Acceptable in this instance

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	(b) the work is exempt development under this Plan or another applicable environmental planning instrument, or (c) the work is ancillary to other development for which development consent has been granted.	Notwithstanding this, the proposed earthworks are generally acceptable noting the sloping nature of the site (fall of 3.5m approx. towards the street), and the habitable floor areas are located above the proposed finished levels and the need to accommodate subterranean car parking underneath the residential flat building.	
7.10: Public utility infrastructure	Public utility infrastructure is available to the land	The proposal simply satisfies the requirement that utility infrastructure is available to the land, water supply, electricity supply and sewerage infrastructure.	Yes

Clause 5.10 – Heritage Conservation

Part 5.10 (4) of the LEP requires Council to consider the effect of the proposed development on the heritage significance of the item or area concerned before granting consent.

The relevant planning instrument and Development Control Plan to the assessment are:

- Wingecarribee Local Environmental Plan 2010 (LEP)
- Bowral Township Development Control Plan (DCP)

The site, No. 2 Holmhale Street:

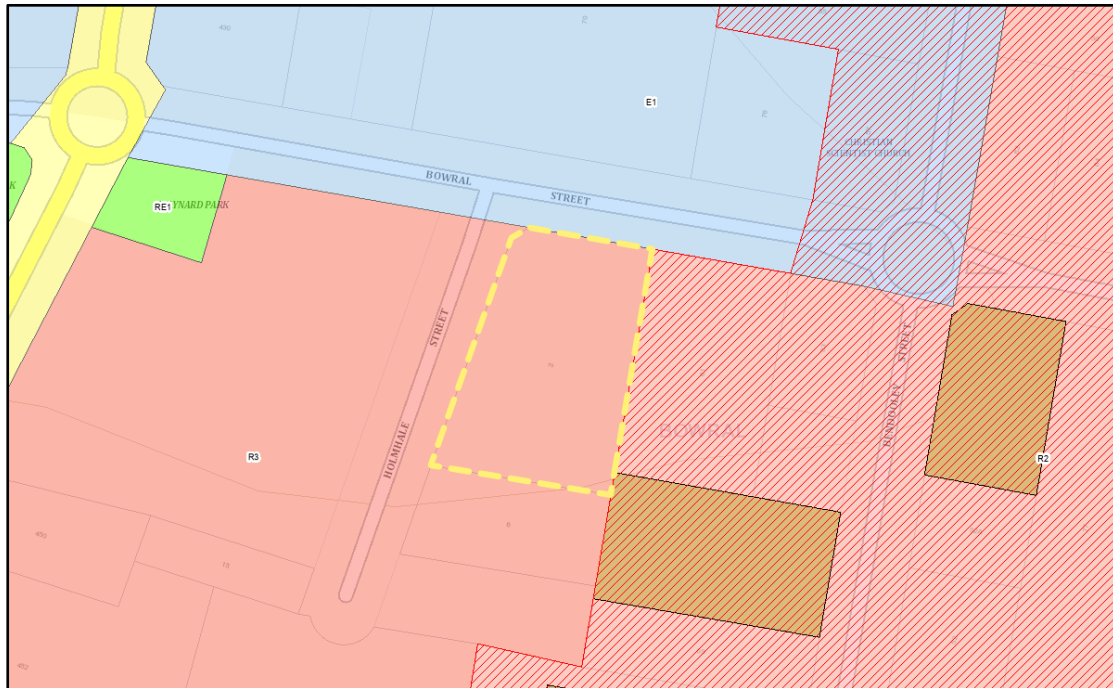
- is not a heritage item
- is located within the immediate vicinity of heritage items – being No. 67 Bendooley Street (item no. 805) which adjoins the south-east corner of the site and No. 75 Bowral Street (item no.811), which is located further (approximately 80m) to the east. Refer to figure 6 below.
- is not located within a Heritage Conservation Area
- immediately adjoins the Bowral Heritage Conservation Area (HCA), located directly east of the site's entire eastern boundary.

The Statement of Significance for the Bowral Heritage Conservation Area (sourced from the NSW State Heritage Inventory database, reference number 2680089) is as follows:

“The Bowral Urban Conservation Area is significant as an urban cultural landscape which provides evidence of the phases of major development of the town of Bowral. Each precinct has a different character and presents different aspects of town foundation and growth. Periods represented range from its establishment as a private town in the 1860s through to the interwar period. Functions represented include residential, civic, religious and educational. While the nature of the buildings and the gardens, public and private, illustrate the importance of Bowral as a 'rural retreat' for wealthy Sydneysiders in particular, associations with other community groupings are also represented in more modest vernacular streetscapes which are included in the Area.

In addition to the historical attributes the precincts in the Area, possess significant streetscapes which, considered as a whole, reveal the harmonious townscape character which is highly valued by the local community and visitors alike.”

Figure 8: Extract of Heritage Map of WLEP 2010 with site bordered in yellow, Bowral Heritage



Conservation Area in red hatching and local heritage items in brown.

Source: NSW Planning Portal Spatial Viewer

A search of the NSW State Heritage Inventory database has not yielded a specific statement of significance for the heritage item at No. 67 Bendooley Street. However, it is noted that the house was built in the mid-1920s and was listed because of its historic and aesthetic significance as a representative example of an Inter-War period detached dwelling (bungalow) and also due to its contributory value to the Bowral HCA.

The proposal, as shown on Architectural Plans (Issue A) and Landscaped plans (Issue B) was reviewed by Council's Heritage Advisor, and they provided comments which raised objections to the proposal in respect to the heritage impacts aspects of the proposal – refer to the Heritage Advisor's comments in the attachments to the report. In summary, the conclusion and recommendation received from Council's Heritage Advisor on the proposal is as follows:

Recommendation by the Council's Heritage Advisor:

"The proposal is not considered to satisfy the objectives and requirements of clause 5.10 of the *Wingecarribee LEP 2010* and does not demonstrate satisfactory consistency with the provisions of Part A2.2.3 of the *Bowral DCP*.

The following additional information is required:

- i) Amended plans are required to show the retention of trees T7, T8, T9 and T11.
- ii) The Heritage Impact Statement is to consider the archaeological potential of the site, given the historical occupation and development of the site. The HIS must consider the potential archaeological significance and impacts thereon."

Assessment Officers Comment: The assessment concurs with the concerns raised by the Heritage Advisor and their recommendation that the proposal cannot be supported from a Heritage Conservation perspective. The character of the Bowral HCA is defined by a low-scale residential development which has generously spatial separation between the detached dwellings, i.e. detached dwelling, interspersed

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by mature trees and vegetation, so that the streetscape is defined by a dominance of mature landscaping over built form. Whilst it is noting that the western part of Bowral Street is undergoing change within the R3 Medium Density zone to accommodate medium density development (recently completed at No. 444 Moss Vale Road), any new development adjoining the Conservation Area needs to maintain trees that contribute to the landscape setting of the Bowral HCA, as required by Part A.2.23(c) of the Bowral DCP and comply with the relevant DCP development provisions as these provisions determine the desired future character of the area that will form the setting of the Bowral HCA. Furthermore, the proposal has failed to consider the site's potential archaeological significance and the proposal's impacts thereon. Therefore, the proposal does not satisfy the heritage objectives of the WLEP 2010 and this is a reason for recommending refusal.

7. Development Control Plans and Policies

7.1 Bowral Town Plan Development Control Plan (BTDCP)

The Bowral Town Plan DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome, with any impacts on neighbours minimised and adequately mitigated by good design.

An assessment of the applicable provisions in the Bowral Town Plan DCP is undertaken as follows:

Bowral Town DCP Compliance Table			
Control	DCP Provisions	Proposed and comments	Compliance
Part A – All Land			
A2.2.3 Heritage Conservation	<p>(a) <i>Preserve and protect buildings of heritage and cultural value.</i></p> <p>(b) <i>Ensure that redevelopment immediately adjacent to buildings of heritage or cultural value in no way detracts from the visual quality or amenity of heritage buildings.</i></p> <p>(c) <i>Ensure that redevelopment within or immediately adjacent to Conservation Areas reflects the high heritage value of the Area and contributes to that value.</i></p>	As previously stated, the proposal is found to have an adverse impact on the landscape setting and heritage values of the adjoining Bowral Heritage Conservation Area and of the adjoining heritage item at No. 67 Bendooley Street because of the loss of mature trees within the rear setback (car park). Noting the concern raised by Council's Heritage Advisor, the proposal is not considered to satisfy the objectives and requirements of clause 5.10 of the WLEP 2010 and does not demonstrate satisfactory consistency with Part A2.2.3(c) of the Bowral DCP.	No – included as a reason for refusal
A3.2 Flora & Fauna Assessment	Retain & protect native species, endangered ecological communities,	The site is not mapped on the NSW Biodiversity Map and is not identified as containing endangered	No

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	<p>threatened species, Koalas and protect wildlife corridors.</p> <p>Required where the development will potentially impact native vegetation & fauna.</p>	<p>ecological communities, threatened species.</p> <p>However, the proposal does not comply with the provisions of C13.9 (Landscaping and Vegetation) of Section 13 of Part C of BTDCP, which seek to ensure that existing natural features and significant vegetation are conserved.</p>	
A4 Water Management	<p>Sections 4.1 & 4.2 are N/A as the site is not riparian land and does not contain any watercourses.</p>	<p>Satisfactory – no impact.</p>	<p>N/A</p>
	<p>A4.3 Development in Sydney’s Drinking Water Catchments controls (a) to (c) are considered</p>	<p>Water NSW has provided concurrence (raised no objection) subject to conditions</p>	<p>Yes</p>
A6 Vegetation Management & Landscaping	<p>The relevant objectives of this Section of the Plan are to: <i>(a) preserve the amenity, biodiversity and ecology of the Bowral township through the preservation of trees and other vegetation as described in Clause 5.9 of WLEP 2010 (repealed).</i> <i>(b) preserve the amenity and heritage value of trees and other vegetation associated with Items of Heritage or within Heritage Conservation Areas.</i></p>	<p>As previously stated, the proposal would result in the removal of 16 canopy trees on the site, including five (5) non-native trees and 3 native trees all with high retention value. Council’s Heritage Advisor raised objection to the loss of mature canopy trees due to the car park area and does not support the removal of trees T7, T8, T9 and T11 as this would have an adverse heritage impact on the landscape setting and backdrop to Bowral HCA and nearby heritage item.</p> <p>The loss of so many trees, including high significance trees, is unacceptable and inconsistent with the provisions of clause C13.9 (Landscaping and Vegetation) of Section 13 of Part C of BTDCP, which seek to ensure that existing natural features and significant vegetation are conserved.</p>	<p>No</p>
Section 8 – Safer by Design			
A8.4 Specific Design Requirements	<p>The principles of Safer by Design may be applied to both commercial and residential development.</p>	<p>The design of the proposed child care facility has demonstrated there is ability</p>	<p>Yes – Can comply</p>

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	<p>In particular, Council requires all development to demonstrate that it provides:</p> <p>a) Well-defined building entrances which are clearly visible from the street. Narrow or splayed entrances are preferable to deep-set entrance ways.</p> <p>b) Internal spaces must be open and visible, eliminating hidden corners.</p> <p>c) Walkways and connecting paths must be open with good visibility.</p> <p>d) Signs and vegetation should be located so that they do not create 'entrapment' points where people are hidden from view.</p> <p>e) On-site garaging must provide clearly defined exit points and be lit at night, both inside the garaging and around the entrance/exit points. Such lighting should be movement-activated lighting that focusses on the access areas.</p> <p>f) Building entrances, walkways, connecting paths and garaging must be well lit in accordance with the provisions of Section A8 of this Plan to ensure that such lighting is down-ward focussed and effective without generating glare or annoyance beyond the area being lit.</p>	<p>to meet Safer by Design requirements.</p> <p>Details would be required at Construction Certificate stage, to ensure lighting is provided at pedestrian entry points and car parking areas. It must not be directed to shine or cause nuisance to neighbouring properties and must be installed in accordance with AS4282 "Control of the obtrusive effects of outdoor lighting".</p>	
Section 7 – Subdivision, Demolition ,Siting and Design			
Control	DCP Provisions	Proposed and comments	Compliance
A7.1.5 Street Trees	Street tree planting is required to provide consistency between subdivision developments.	Were the application to be recommended for approval, relevant conditions of consent would be included in the recommendation.	Yes
A7.4	Development to be designed to respond to a site's	The proposed cut and fill whilst moderate in scope	Yes

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Cut and Fill	topography to minimise cut and fill	(>600mm) is considered acceptable given the site's sloping topography from the southern boundary to northern boundary – see dove comments in the LEP table in section 8 of the report.	
A10 Signage and Outdoor Advertising	<p>A10.3 General requirements for all signage have been considered.</p> <p><i>Business identification Signs shall be permitted without consent provided they comply with all of the following controls. If not, a development application will be required.</i></p> <p>a) One sign per premises.</p> <p>b) If a sign for the purposes of a home business, home industry or home occupation, a maximum size of 1m² is permitted</p> <p>c) If a sign for a purpose other than home business, home industry or home occupation, a maximum size of 2.5m² is permitted</p> <p>d) Must not be illuminated.</p> <p>e) Located wholly within property boundaries of the land to which the sign relates, or is flush mounted to the front fence or front wall of a building as long as the sign does not protrude beyond the physical limits of that fence or building.</p> <p>f) If a window sign for the purposes of a home business, home industry or home occupation, maximum size limited to 20% of the window surface or 6m², whichever is the smaller.</p>	<p>The north & west elevations (dwg no. 3) indicate three (3) proposed signs on:</p> <p><u>Bowral Street:</u> Sign No. 1: flush sign on front fence, dimensions: 1.88m x 1.06m.</p> <p><u>Holmhale Street:</u> Sign No. 2: Brick fence: 1x flush sign on front fence. Sign No. 3: 1x flush wall sign on west elevation. Dimensions for signs No. 2 and No. 3: 1.21m wide x 690mm high.</p> <p>No graphic details for the signage have been provided.</p>	<p>Insufficient information provided – compliance cannot be determined. Accordingly, the proposal is recommended for refusal.</p>
A11 Outdoor Lighting	<p><i>In assessing any application which includes the provision of external night lighting, Council will have due regard to the following objectives:</i></p> <p>(a) Lighting for security purposes shall be adequate for that purpose without drawing</p>	<p>The DA is not supported by sufficient detail in relation to outdoor lighting, such that potential impacts upon neighbouring residential properties cannot be determined.</p> <p>This matter could be addressed by condition if</p>	<p>Insufficient information provided – compliance cannot be determined. Accordingly, the proposal is recommended for refusal.</p>

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	<p><i>unnecessary attention to the development;</i></p> <p><i>(b) Lighting shall not adversely impact on surrounding development;</i></p> <p><i>(c) Lighting shall not create 'twilight' impacts on the surrounding environment; and</i></p> <p><i>(d) Lighting shall not diminish the quality of the night sky.</i></p>	<p>recommendation was for approval.</p>	
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The following table contains the assessment in relation to Part C of the BTDCP, which includes provision that apply to Child Care Centres (Section 13).

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BTDCP - PART C – RESIDENTIAL ZONED LAND

Section 13 – Child Care Centres

C13.3 Application Requirements	A statement clearly indicating the proposed number of children, their ages and staff numbers along with proposed hours of operation.	The DA indicates the proposed maximum number of children is 90, along with proposed hours of operation. However it does not provide the breakdown of child care spaces per age group, which is essential to determine compliance with clause 60 of the Children (Education and Care Services) Supplementary Provisions Regulation, which specifies the maximum number of children per group based on age.	No
	A letter of acceptance of the proposal from the NSW DOCS	This is not required at this stage.	N/A
	A Site Analysis Drawing (as described in Section A3 of this Plan)	A suitable site analysis plan has been submitted.	Yes
	Where a proposed development does not comply with a provision of this Section of the Plan, a statement explaining how the application otherwise achieves the aims and objectives of this Section.	N/A. The proposed child care facility is compliant.	Yes
	Where a child care centre is proposed on a site that is identified as potentially unhealthy or contaminated, an environmental site contamination assessment, demonstrating that the site is environmentally safe and is suitable for use as a child care centre; and	The subject site is not identified as potentially unhealthy or contaminated. As such, an environmental site contamination assessment is not required.	N/A

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	A detailed Landscape Plan prepared by a suitably qualified landscape professional addressing the provisions of this Plan.	A detailed landscape plan prepared by a suitably qualified landscape professional has been submitted that addresses the provisions of this Plan.	Yes
C13.5 Development of New Buildings	a) In residential areas, a minimum site area of 1,000 m ² is required in order to overcome the potential problem of noise and nuisance. Sites less than this requirement will be considered on a merits basis.	The subject site (2,818sqm in area) exceeds 1,000sqm in area.	Yes
	b) Sites other than corner sites need to have a minimum width of 25 metres.	The site is a corner site. The site's 33m frontage to Bowral Street exceeds 25m in width.	Yes
	c) Child care centres shall be set back a minimum of 4 metres from side and rear boundaries.	The proposed child care facility is set back a minimum 4m from side and rear boundaries.	Yes
	d) The entry areas of a child care centre should be setback at least 12 metres from the front boundary line. A 9-metre setback may be considered by Council where it can be shown that the objectives of A11.13 can be satisfied.	The proposed child care facility's entry is set back 39m from the front boundary (Bowral Street) and is set back 13.9m from Holmhale Street.	Acceptable
	e) For safety reasons, the optimal height for a child care centre is one storey. A child care centre that exceeds one storey shall ensure the safety of children by minimising access to stairs.	The proposal is single storey in height. The proposed design has minimised access to stairs.	Yes
	f) A child care centre shall not be erected to a height greater than 2 storeys in height above	The proposed child care centre is single storey in height and is less than 9.5m in height.	Yes

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	the natural ground level on any part of the allotment, and in any event shall not exceed 9.5 metres in height above natural ground level to the ridge of the roof, measured at any point above the ridge.		
	g) In order to minimise the possible adverse health effects to children of electromagnetic radiation emitted from telecommunication facilities, child care centres should be no closer than 300 metres to existing mobile phone towers or antennas or transmission line easements or other similar electromagnetic radiation sources.	Not applicable.	N/A
	h) Where a child care centre is proposed on a site that is identified as potentially unhealthy or contaminated, an environmental site contamination assessment must be produced to Council by the applicant to demonstrate that the site is environmentally safe and is suitable for use as a child care centre. This documentation must be provided with the Development Application.	Council's Environmental Health Officer has confirmed that the subject site is not potentially contaminated.	Yes
	i) To ensure the safety of children, Council prefers that child care centres are not built: (i) on classified roads or within 30 metres of a classified road. (ii) in residential culs-de-sac, as culs-de-sac do not allow good traffic circulation and can result in additional traffic generation.	(i) Not applicable. (ii) The centre is to be located on the corner of Bowral Street and Holmhale Street. Bowral Street is a main thoroughfare (council controlled road) providing access to Bowral's town centre / commercial precinct and for commuters travelling from Bowral.	Acceptable

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	j) Child care centres shall not be located adjacent to service stations or heavy industrial developments, as potentially harmful fumes or noise being emitted from either type of development may affect the health of children.	Not applicable.	N/A
	k) Child care centres will not be permitted on sites with existing swimming pools. DOCS licensing standards do not permit swimming pools within child care centre developments.	Not applicable.	N/A
	l) Car parking areas shall be located and designed to minimise potential danger to children and other users of the centre.	Car parking is accessed via Holmhale Street and located away from the entry and indoor/outdoor areas to be used by children and other users of the facility. Council's traffic consultant has raised concern with the "safe zone" adjacent to parking spaces 15-25 is located directly behind car parking spaces. There is an unacceptable risk that reversing vehicles will not be able to view children walking directly behind the car parking spaces.	No. Accordingly, the proposal is recommended for refusal.
	m) Parking and vehicle access areas are to be separated from any area used by children by safety fencing and gates.	These areas are to be separated by safety fencing and gates.	Yes
	n) If appropriate, pedestrian safety measures shall be installed (eg pedestrian crossings and refuges etc).	Pedestrian safety measures are to be installed. However, the "safe zone" adjacent to parking spaces 15-25 is located directly behind car parking spaces. There is an unacceptable risk that reversing vehicles will not be able to view children walking directly behind the car parking spaces. This is contrary to Consideration 35 of the	No

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		Child Care Planning Guideline that seeks to ensure a safe pedestrian environment.	
	n) Car parking shall be provided at a rate of 1 space for every 4 children. Provision of car parking for permanent staff shall be in addition to this requirement.	<p>Off-street car parking is provided at a rate of 1 space per 4 children, noting 90 places: 23 spaces required. Plus spaces for permanent staff.</p> <p>Total proposed: 25 car parking spaces, with two (2) spaces for permanent staff.</p> <p>The provision of car parking is insufficient and proposed parking is unacceptable given that it does not demonstrate compliance with AS2890.1:2004, the Child Care Planning Guideline and BTDCP regarding the site's proposed parking arrangements given that:</p> <p>(a) The staff parking spaces (1-7) are provided in tandem behind visitor car parking spaces. It is unclear how these spaces are managed such that staff parking is available to staff at appropriate times such that there is no overflow staff parking onto the surrounding streets.</p> <p>(b) It is expected that there will be up to 17 staff members on site (including 15 educators, 1 manager and 1 cook). The provision of seven (7) staff parking spaces is not sufficient for 17 staff members.</p>	<p>No. Accordingly, the proposal is recommended for refusal.</p> <p>No – included as reason for refusal</p>
	o) Dimensions of parking spaces and vehicle access areas shall comply with Council's requirements as described in Part A.	<p>Dimensions of parking spaces and vehicle access areas are compliant.</p> <p>A signage and line-marking plan would need to be submitted at Construction Certificate stage for approval by the Local Traffic Committee (however</p>	Yes

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		recommendation is for refusal).	
	q) The centre should be designed to allow the safe drop off and collection of children and safe movement and parking of staff, parents, visitors, and service vehicles.	See above comments for 13.5(l) and (n) in relation to the 'safe zone' behind parking spaces 15-25 and the unacceptable risks this poses.	No. Accordingly, the proposal is recommended for refusal.
	r) Parking spaces and vehicle access points are to be located to ensure the safe movement of children to and from the centre.	As above.	Yes
	s) Standing areas for the dropping off and collecting of children are to be provided.	Standing areas are proposed.	Yes
	t) Access for people with disabilities should be provided to allow continuous wheelchair access from the street, car park, building entry and into individual playrooms and toilets.	<p>Access for people with disabilities is to be provided. Council's Accredited Certifier has confirmed that an accessible design can be achieved.</p> <p>The submitted Access Report by Code Performance (30/04/24) states that the proposed design is readily capable of compliance with the deemed-to-satisfy' (DTS) requirements of NCC 2022 and Disability (Access to Premises – Building) Standards 2010 as the design progresses</p> <p>Should the proposal be approval, this would need to be demonstrated at Construction Certificate stage with disabled access provisions to common and public areas to be in accordance with AS1428 Design for Access and Mobility and the Premises Code.</p>	Yes subject to conditions
C13.7 Noise	Access points should be located so as to	Access points are located so as to minimise disruption to neighbours.	Yes

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	minimise disruption to neighbours (ie to reduce the impact of gates opening and slamming car doors when children are dropped off and picked up)		
	Playground areas should be appropriately located.	Playground areas are appropriately located.	Yes
	Appropriate location of windows and doors;	Windows and doors are appropriately located.	Yes
	No public address systems are to be installed at the centre	No public address systems are to be installed.	Yes
	The use of fencing and landscaping to reduce the impact of noise	Fencing and landscaping has been designed to reduce noise impacts.	Yes
	The proposed hours of operation, particularly the impact of early morning starting times.	The impact of the proposed hours of operation has been considered.	Yes
	To protect children from excessive noise which may be generated by proximity to roads, industrial premises, aircraft, or rail operations.	Children will not be exposed to excessive noise given the locality.	Yes
	Sites should be chosen which protect children from excessive noise.	As above.	Yes
	Details of any mitigation measures should be submitted in the Statement of Environmental Effects.	Not applicable.	N/A
	In situations where noise may be excessive from surrounding areas, an acoustic consultant's report may be required.	Not applicable.	N/A
		Not applicable.	N/A

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	Where sites are adjoining or adjacent to railway land, the Department of Planning's document "Development near Rail Corridors and Busy Roads – Interim Guideline" must be considered.		
C13.8 Outdoor Areas	Play a) An outdoor play area shall be provided in each child care centre development, having space for the following areas, equipment and facilities: (i) An open flat grassed area for running. (ii) Quiet play areas for focused play (including a sandpit). (iii) A formal quiet area for contained play (eg finger painting). (iv) An active area for busy physical play which includes: (v) some paved surfaces for wheeled toys; and (vi) suitable play equipment with impact absorbent material beneath.	An outdoor play area is proposed as required.	Yes
	b) A transition zone from indoor and outdoor areas for covered outdoor play. The transition zone shall be a veranda with a minimum width of 4 metres.	A transition zone is proposed. However, the 3.5m-3.6m width of the terrace or "transition zone" between the indoor and outdoor areas is non-compliant with the 4m width minimum requirement of C13.8(b) of BTDCP.	No. Accordingly, the proposal is recommended for refusal.
	c) A baby/toddler area which is flat, soft, and separated from older children.	A baby / toddler area is proposed as required.	Yes
	d) Secure fencing.	Secure fencing is proposed.	Yes
	e) A variety of surfaces, such as grass, sand, hard paving and	A variety of surfaces is proposed in outdoor play areas.	Yes

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	moulding shall be provided in outdoor play areas. The heat absorption qualities and texture of materials must be suitable, with surfaces such as bitumen (due to surface temperatures exceeding 45° in summer) being avoided.		
	f) Outdoor play areas are not to be located so that they are adjacent to the living/bedroom areas of adjoining residents, busy roadways or driveway areas and other potential noise or pollution sources.	The location and design of outdoor play areas is appropriate.	Yes
	g) Outdoor play areas must not be occupied by any motor vehicles during operating hours.	As above.	Yes
	h) Outdoor play areas shall have immediate access to toilets.	As above.	Yes
	i) Where possible, outdoor play areas shall be located to the north or north-east of the site to ensure that play areas receive adequate sunlight.	Play areas are located to the north of the site and receive adequate sunlight.	Yes
	j) Outdoor play areas shall be designed to allow constant supervision and access to children by staff.	Proposed Play Zone 3, at the north-east corner of the site, includes a 2m wide area to the side of the building that comprises landscaping and a timber tunnel with climbers. The area is not readily able to be supervised, inconsistent with Regulation 115 of the Education and Care Services National Regulations which requires spaces to be designed to facilitate adequate	No. Accordingly, the proposal is recommended for refusal. No – included as a reason for refusal

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		supervision of children at all times. The Design Guidance in Part 4.7 of the Child Care Planning Guideline which recommend that hidden corners where supervision is poor should be avoided.	
	k) Outdoor play areas shall utilise the site's natural features (where possible).	As above.	Yes
	l) Attention should be given to the design and construction of outdoor play areas, to provide a variety of experiences for children.	As above.	Yes
	m) All outdoor play areas are to be shaded in accordance to the recommendations and considerations of the NSW Cancer Council and the NSW Health Department publication <i>Under Cover: Guidelines For Shade Planning and Design</i> .	As above.	Yes
C13.9 Landscaping and Vegetation	a) Retain and protect those individual remnant native specimens that are found scattered throughout the township of Bowral.	<p>The proposed retention and removal of trees and vegetation and impacts on neighbour trees have been considered by Council's Trees & Vegetation Section and is not supported.</p> <p>It is proposed to remove 3x native trees - T7, T8, T9 - which is not supported by Council's Heritage Advisor as the removal of these native trees would have a negative impact on the landscape setting of Bowral Heritage Conservation Area (see referral Officer's comments below in section 9 of the report).</p> <p>It is proposed to remove five (5) non-native trees with high retention value from the site – see comments below for C13.9(d).</p>	No - Not Consistent

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	b) Be in keeping with adjoining developments.	The proposed landscaping is in keeping with adjoining developments.	Yes
	c) Be designed to provide a noise barrier and privacy screen for adjoining residents. In residential zones, or on land adjoining residential zones, a 1.5 metre landscaping strip shall be provided on all boundaries to help with noise abatement and privacy.	<p>1.0m wide strip is provided around the outdoor learning areas.</p> <p>The car park area has the following boundary setbacks which are landscaped: E 2.8m S 1.9m W 7.5m</p> <p>The applicant's Acoustic Report relies upon an inappropriate assumption that all windows and doors to indoor childcare rooms will be closed during operation.</p> <p>As stated above, the applicant's Acoustic Report does not appear to have considered the change of levels across the site and has not satisfactorily demonstrated that the proposed 1.8m high acoustic fence along the front boundary will provide appropriate acoustic attenuation for noise generated on the terrace of Room 1, which is 1m higher than ground levels along the front boundary. The SEE does not provide a breakdown of individual age groups whilst the Acoustic Report adopts an age breakdown. The number and age of children at the proposed child care centre alters the anticipated noise emissions, and in the absence of a specific breakdown, the likely noise emissions cannot be determined.</p>	<p>No.</p> <p>Acoustic impact on adjoining residences is unsatisfactory. Accordingly, the proposal is recommended for refusal.</p>
	d) Ensure that existing natural features and significant vegetation are conserved where	As previously stated, the proposal would result in the removal of 16 canopy trees on the site, including five (5)	No – Accordingly, the proposal is recommended for refusal.

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	<p>possible to help increase the amenity of the area. Where appropriate, existing trees are to be retained and incorporated as shade elements in outdoor play areas.</p>	<p>non-native trees with high retention value identified as Trees T11, T12, T15, T16 and T28 in the supplied Arboricultural Impact Assessment (Moore Trees, dated 31 May 2024). Council's Heritage Advisor raised objection to the loss of mature canopy trees due to the car park area and does not support the removal of trees T7, T8, T9 and T11 as this would have an adverse heritage impact on the landscape setting and backdrop to Bowral HCA and nearby heritage item.</p> <p>Furthermore, the proposal will have an unacceptable impact on trees T39 and T40 (mature & good condition) located on No. 61 Bowral Street east of the site.</p> <p>The loss of this many trees, including high significance trees, is unacceptable because of its adverse impact on the amenity of the locality and inconsistent with the provisions of clause C13.9 of BTDCP.</p>	
	<p>e) Plant species shall be chosen for their suitability to the site, ease of maintenance and interest to children.</p>	<p>Proposed plant species are suitable.</p>	<p>Yes</p>
	<p>f) Plant species shall not be toxic, allergic, prickly or otherwise unsafe for children.</p>	<p>As above.</p>	<p>Yes</p>
	<p>g) When choosing plant species, the following shall also be considered: (i) protection from prevailing winds; (ii) shelter and enclosure; (iii) shade;</p>	<p>As above.</p>	<p>Yes</p>

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	(iv) reduction of reflection from bright surfaces; (v) emphasis of pedestrian and vehicular routes; and (vi) good visibility of play areas.		
C13.10 Fencing and Gates	Outdoor play areas must be fenced on all sides by fencing of at least 1800 mm in height.	Proposed fencing is at least 1.8m in height.	Yes
	No play equipment shall be located adjacent to a fence if, by doing so, it reduces the effective height of the fence and enables it to be scaled.	No play equipment is to be located adjacent to a fence.	Yes
	All gates leading to or from play areas shall be equipped with child self locking mechanisms.	All gates are to be equipped with child self locking mechanisms.	Yes
	Access to and from the centre must be through one main door which can be properly supervised by adult staff to ensure the protection of children from intruders.	Access to and from the proposed child care facility is to be through one main door.	Yes
C13.11 Signage	Signage shall comply with the requirements of Section A10 above.	Signage is proposed as part of this application. As sufficient signage details have not been provided the proposal does not satisfy the DCP's Section A10 Signage and Outdoor Advertising.	No. Accordingly, the proposal is recommended for refusal.
C13.12 Hours of Operation	Where a child care centre is proposed within a residential area or adjoining a residential area, the hours of operation shall generally be limited to 7 am to 6 pm, Monday to Friday. Operating hours outside these times will be considered on their merits.	The proposed hours of operation, 7am to 6pm Monday – Friday, are within these times.	Yes

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8. Environmental Assessment

The site has been inspected (27 September and 7 November 2024) and the application has been assessed having regard to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, as amended.

Section 4.15 'Matters for Consideration	Comments
Section 4.15 (1)(a)(i) – Provision of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15 (1)(a)(ii) – Provision of any draft environmental planning instrument.	Nil
Section 4.15 (1)(a)(iii) – Provisions of any development control plan	The assessment finds the proposal to be unsatisfactory in respect to numerous objectives and controls of the Bowral Town Plan DCP and accordingly recommended for refusal.
Section 4.15 (1)(a)(iia) – Provision of any Planning Agreement or draft Planning Agreement.	Not Applicable.
Section 4.15 (1)(a)(iv) – Provisions of the Regulations.	The relevant clauses of the Regulations have been satisfied.
Section 4.15 (1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.	<p>As detailed in this report, the proposal is found to have an adverse impact on the landscape setting and heritage values of the adjoining Bowral Heritage Conservation Area and of the adjoining heritage item at 67 Bendooley Street.</p> <p>The concerns raised by Council's Heritage Advisor, the proposal is not considered to satisfy the objectives and requirements of clause 5.10 of the WLEP 2010 and does not demonstrate satisfactory consistency with the provisions of Part A2.2.3 of the Bowral DCP.</p> <p>The proposal will have adverse impact on the acoustic amenity of neighbouring residential properties for the reasons outlined in this report.</p> <p>The proposal is likely to result in detrimental social and economic impacts on the locality due to the impacts from traffic including parking concerns.</p> <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report and considered in comments below this table.</p>
Section 4.15 (1)(c) – The suitability of the site for the development.	The site is located in close proximity to local services. As discussed in the report above, the proposal has numerous non-compliances with the applicable planning controls including the Local Environmental Plan, Development Control Plan and the NSW Childcare Planning Guideline which in

Section 4.15 'Matters for Consideration	Comments
	<p>summary would result in adverse impacts on the amenity of neighbouring properties and locality.</p> <p>Based on this the site is not considered suitable for the proposed development.</p>
Section 4.15 (1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation.	The issues raised in the submissions have been addressed in this report.
Section 4.15 (1)(e) – The public interest.	The proposal fails to satisfy the objectives of the zone, meet required heritage considerations, is unsatisfactory in respect to the NSW Childcare Planning Guideline, the Bowral Town DCP and would result in any significant adverse on the amenity of locality. Accordingly, the proposal is considered to not be in the public interest noting the assessment above and therefore is recommended for refusal.

8.1 Discussion of Key issues.

Section 4.15 (1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.

Impacts on the built environment

As previously stated, the proposal is found to have an adverse impact on the landscape setting and heritage values of the adjoining Bowral Heritage Conservation Area and of the adjoining heritage item at No. 67 Bendooley Street due to the loss of trees T7, T8, T9 and T11 which are mature and in good health (as identified in the submitted Arborist Report by Moore Trees, dated 31 May 2024). Noting the concern raised by Council’s Heritage Advisor, the proposal is not considered to satisfy the objectives and requirements of clause 5.10 of the WLEP 2010 and does not demonstrate satisfactory consistency with the provision of Part A2.2.3(C) Heritage Conservation of the Bowral DCP.

The proposal will have adverse impact on the acoustic amenity and privacy of neighbouring residential properties, in particular the adjoining properties at No. 61 Bowral Street and No. 6 Holmhale Street (due to lack of separation between the car park and rear boundary) for the reasons outlined in this report (see above comments in respect to the Childcare Planning Guideline in section 6.4 and assessment in relation to Bowral DCP – section 7.1 of the report).



Figure 7. The primary private open space of 61 Bowral Street (directly east of the site) which is



Figure 8. The rear adjoining neighbours (3 dwellings) at 6 Holmhale Street, which will be

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located within the front setback area (source: site inspection on 7/11/2024).

directly adjacent to the proposed car parking (source: site inspection on 27/09/2024).

Impacts on the natural environment

The proposal results in the removal of 16 canopy trees on the site, including five (5) trees with high retention value identified as Trees T11, T12, T15, T16 and T28 in the supplied Arboricultural Impact Assessment (Moore Trees, dated 31 May 2024). The average height and spread of these trees are 11.4m and 5.6m respectively and consist of cultural exotic species tolerant of development disturbances providing they are limited to outside of Tree Protection Zone (TPZ). Equally significant trees in terms of contribution to local amenity and canopy provision are local endemic Eucalypts T7, T8, T9 and T10 located generally in the South-Eastern portion of the land. The average height and spread of these trees are 16m and 5.5m respectively. However, these trees are less adaptable to environmental changes associated with development even with strict adherence to relevant tree protection standards. The loss of so many trees, including high significance trees, is unacceptable and inconsistent with the provisions of clause C13.9 (Landscaping and Vegetation) of Section 13 of Part C of BTDCP, which seek to ensure that existing natural features and significant vegetation are conserved.

Therefore, given the adverse impacts on the built and natural environment the proposal cannot be supported and is recommended for refusal.

Social and economic impacts

The proposal is likely to result in detrimental social and economic impacts on the locality due to the impacts from traffic including parking concerns.

Further the application has not been supported by a social or economic impact assessment.

9. Referrals Comments

This DA was referred to the following technical teams for advice within and external to Council. Detailed comments have been provided and a summary of them is provided below:

Internal Referral	Summary of Advice
Arborist	<p>As discussed above, the Arborist raised objection based on the information provided, for the following reasons:</p> <ul style="list-style-type: none"> • The proposed impact on neighbouring trees T39 and T40 located on No. 61 Bowral Street, near the site's eastern boundary. The proposed building footprint and retaining must be repositioned outside of the TPZ of both neighbouring trees T39 and T40. The extent of proposed cut of natural ground level creates an unacceptable encroachment of the tree protection zone (TPZ) of both trees. The encroachment is created by the building footprint (4m off boundary) and a retaining wall structure at approximately 2m off the boundary. • Of the sixteen (16) proposed removals, five (5) of trees T11, T12, T15, T16 and T28 have high retention value, however without a change in proposed development footprint it will be extremely difficult to retain any of these trees. Retention of one or more these trees should be explored. <p>Assessment Officer Comment: Agreed. The proposal's adverse impact on the canopy coverage of the streetscape adjoining Bowral Conservation Area due to the loss of trees of high retention value is not supported and contrary to clause C13.9 (Landscaping and Vegetation) of Part C of BTDCP and the heritage provisions of the WLEP 2010 and BTDCP.</p>

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Heritage Advisor	<p>Raised an objection to the DA and advised the proposal does not satisfy objectives and requirements of clause 5.10 of the <i>Wingecarribee LEP 2010</i> and does not demonstrate satisfactory consistency with the provisions of Part A2.2.3 of the <i>Bowral DCP</i>, for the following reasons:</p> <ul style="list-style-type: none"> • Amended plans are required to show the retention of trees T7, T8, T9 (3 natives) and T11 (exotic) within the proposed car park (rear setback area), as these trees contribute to the landscape setting of the adjoining Bowral HCA. • The Heritage Impact Statement is to consider the archaeological potential of the site, given the historical occupation and development of the site. The HIS must consider the potential archaeological significance and impacts thereon.” <p>Assessment Officer Comment: Agreed. The proposal’s adverse impact on the heritage value of the Bowral HCA and heritage item is a reason for refusal.</p>
Registered Certifier	<p>Raised no objection based on the information provided and has the provided the following comment:</p> <p>“A review of the plans, BCA report and Access compliance report reveals that there are no obvious BCA non compliances that would require a Modification to the Development Consent. Any non-compliances could be addressed at CC stage and would not present any issues that would prevent the issue of a Development Consent. Building Certification have no objections to the application.”</p> <p>Assessment Officer Comment: Noted (conditions have not been provided noting the recommendation for refusal). Certifier has advised the building is a class 9b under the NCC.</p>
Development Engineer	<p>Raised an objection to the DA based on the information provided, for the following reasons:</p> <p>“The provision of car parking is insufficient, noting the required parking spaces as per Section 13 – Child Care Centre of the Bowral DCP is 1 space per 4 children with provisions for car parking spaces for permanent staff. The required number of parking spaces are 30 spaces inclusive of 22 visitor spaces, 1 accessible space, and 7 staff spaces. The number of parking spaces provided are 25 spaces inclusive of 17 visitor spaces, 1 accessible space, and 7 staff spaces. The proposed parking is short of 5 spaces and is not satisfactory with the DCP requirements.”</p> <p>The applicant is proposing a private onsite waste collection via a small rigid waste vehicle. Council’s traffic Engineer has raised no concerns regarding the waste collection.</p> <p>Assessment Officer Comment: Agreed. The proposal’s shortfall in onsite car parking for the child care facility is a reason for refusal.</p>
Environmental Health Officer (EHO)	<p>Raised no objection to the DA in respect to noise, food safety and land contamination, with conditions recommended.</p> <p>Assessment Officer Comment: Noted</p>
Traffic Consultant	<p>Raised an objection to the proposed parking arrangements, for the following reasons:</p> <p>(a) The staff parking spaces (1-7) are provided in tandem behind visitor car parking spaces. It is unclear how these spaces are managed such that staff parking is available to staff at appropriate times such that there is no overflow staff parking onto the surrounding streets.</p> <p>(b) It is expected that there will be up to 17 staff members on site (including 15 educators, 1 manager and 1 cook). The provision of seven (7) staff parking spaces is not sufficient for 17 staff members.</p>

	<p>(c) The “safe zone” adjacent to parking spaces 15-25 is located directly behind car parking spaces. There is an unacceptable risk that reversing vehicles will not be able to view children walking directly behind the car parking spaces. This is contrary to Consideration 35 of the Child Care Planning Guideline that seeks to ensure a safe pedestrian environment.</p> <p>Assessment Officer Comment: Agreed with and noted. A plan of management would also be required to demonstrate how parking arrangements could be managed.</p>
Water Sewer Development Engineer	<p>Raised no objection to the DA, with conditions recommended. The site is already connected to the reticulated water and sewer network.</p> <p>Assessment Officer Comment: Noted</p>
External Referral	Comments
WaterNSW	<p>Raised no objection based on the information provided, subject to concurrence conditions (4/10/24).</p> <p>Assessment Officer Comment: Noted</p>

10. Conclusion

The proposal has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The proposed Centre-based Childcare Facility is inconsistent with the requirements of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the NSW Child Care Planning Guideline, the Wingecarribee Local Environmental Plan 2013 and the Bowral Development Control Plan.

The proposal is permissible with consent in the R3 Medium Density Residential Zone. However, it results in a development which is unsuitable in the context of the existing streetscape character and the future desired character of the Bowral locality including adverse impact on the Bowral Heritage Conservation Area and adjoining heritage item at No. 67 Bendooley Street. The proposal’s numerous non-compliances with the applicable planning provisions (in respect to both objectives and controls) have been identified and discussed within this report. An assessment of the application has determined that the proposal is unsatisfactory and results in unreasonable impacts to the amenity of the proposed use, adjoining properties, heritage values of the area and the locality.

For the reasons outlined above, the proposal is not suitable for the site and inappropriate for the locality of Bowral and therefore is not in the public interest. As such, the application is recommended for refusal.

11. RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979:

That the Wingecarribee Local Planning Panel determines Development Application No. DA24/1583 for demolition of existing structures and construction of a ninety (90) place childcare centre on Lot 1 DP 610257 at 2 Holmhale Street, Bowral, by way of REFUSAL for the following reasons as outlined within **Attachment 1 – Recommended Reasons for Refusal**.

ATTACHMENTS

1. Attachment 1 - Recommended Reasons for Refusal - D A 24 1583 - 2 Holmhale Street [6.2.1 - 5 pages]
2. Plans of Proposed Development and Supporting Documentation [6.2.2 - 237 pages]
3. 24-1583 Consolidated Referral responses - Internal & External Referral [6.2.3 - 20 pages]

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6.3 1 Bowman Road, Moss Vale (DA24/1388) - Section 4.55(1A) Modification

Report Author: Development Officer - Planning (External Planner)

Authoriser: Manager Development Assessment and Regulation

PURPOSE

The purpose of this report is to consider a Section 4.55(1A) Modification Application to amend the wording of conditions 20 and 60 in the consent issued for DA22/1835 at 1 Bowman Road, Moss Vale, 2577.

Applicant:	Figgis & Jefferson TEPA Pty Ltd
Address:	1 Bowman Road, Moss Vale - as Lot 35 DP878862
Date Lodged:	18 April 2024
Landowner:	Wingecarribee Shire Council
Approved Development:	WSC Animal Shelter & SES Facility
Proposed Modification:	Application to amend Conditions 20 and 60 to allow new design for stormwater drainage system
Applicant's estimated cost of proposed development:	N/A
Zoning	E4 General Industrial
Notification period:	7 August 2024 to 23 August 2024
Number of submissions:	No submissions were received.
Political donations:	None declared
Reason for Referral to Panel:	Council is the landowner

OFFICER'S RECOMMENDATION

THAT Modification Application No. (DA24/1388) for a 4.55(1A) Modification to Condition 20 and 60 associated with DA approval for the Wingecarribee Animal Shelter and State Emergency Services (SES) development at 1 Bowman Road, Moss Vale, be determined by APPROVAL subject to the reasons detailed in Attachment 1 of this report.

EXECUTIVE SUMMARY

Executive summary

Council is in receipt of a Section 4.55(1A) Modification Application (DA24/1388) submitted on 18th April 2024, seeking approval for amendments to the previously approved (DA22/1835) Wingecarribee Animal Shelter and State Emergency Services (SES) at 1 Bowman Road, Moss Vale which was approved by the consent authority on 14 October 2022.

DA24/1388 was determined by the Southern Regional Planning Panel (SRPP) on 12 October 2022. A Section 4.55(2) Application, seeking internal and external amendments to the approved development was also determined by the SRPP on 18 July 2023.

This proposed modification (DA24/1388) seeks consent for the rewording of Conditions 20 and 60 of the approval to allow a new design for stormwater drainage.

The application was referred to Council's Development Engineer and was notified to surrounding properties. No public submissions were received.

The assessment has found that the modification is consistent with the aims and objectives of and the following legislation and environmental planning instruments:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resilience and Hazard) 2021;
- Wingecarribee Local Environmental Plan 2010

The proposed modifications are consistent with all relevant environmental planning instruments and do not result in any change to the approved use or essence of the development as originally approved. The development as modified is considered to be substantially the same as approved under DA22/1835 and warrants favourable consideration.

The Proposed amendments have been considered under the 'Matters for consideration' listed in Section 4.15 of the Environmental Planning & Assessment Act 1979, including likely impacts, the suitability of the site for the development, and the public interest and is generally considered to be satisfactory. Approval is recommended subject to conditions.

Site Description and Locality.

The subject site is a corner allotment located to the south east of Bowman Road and south west of Berrima Road. The site forms part of the Moss Vale Enterprise Corridor which is transitioning from rural residential to industrial land uses.

The site is commonly known as 1 Bowman Road, Moss Vale and is legally described as Lot 35 DP878862.

The site is currently under construction for the approved DA22/1835 and contains easements for water mains, telecommunication lines and pipelines. The site also contains an underground optus service and a water basin situated towards the northern boundary.

The subject site has a total site area of approximately 8,264m² with a gentle slope from the southern corner of the site to the intersection of Bowman Road and Berrima Road.

The surrounding areas generally comprises a range of industrial land uses associated Moss Vale Enterprise Corridor. Adjoining the site north east is the Wingecarribee Community Recycling Centre, existing Animal Shelter and Resource Recovery Centre. To the east of the site is the Moss Vale Cemetery.

Figures 1 and 2 illustrate the site's location and context.

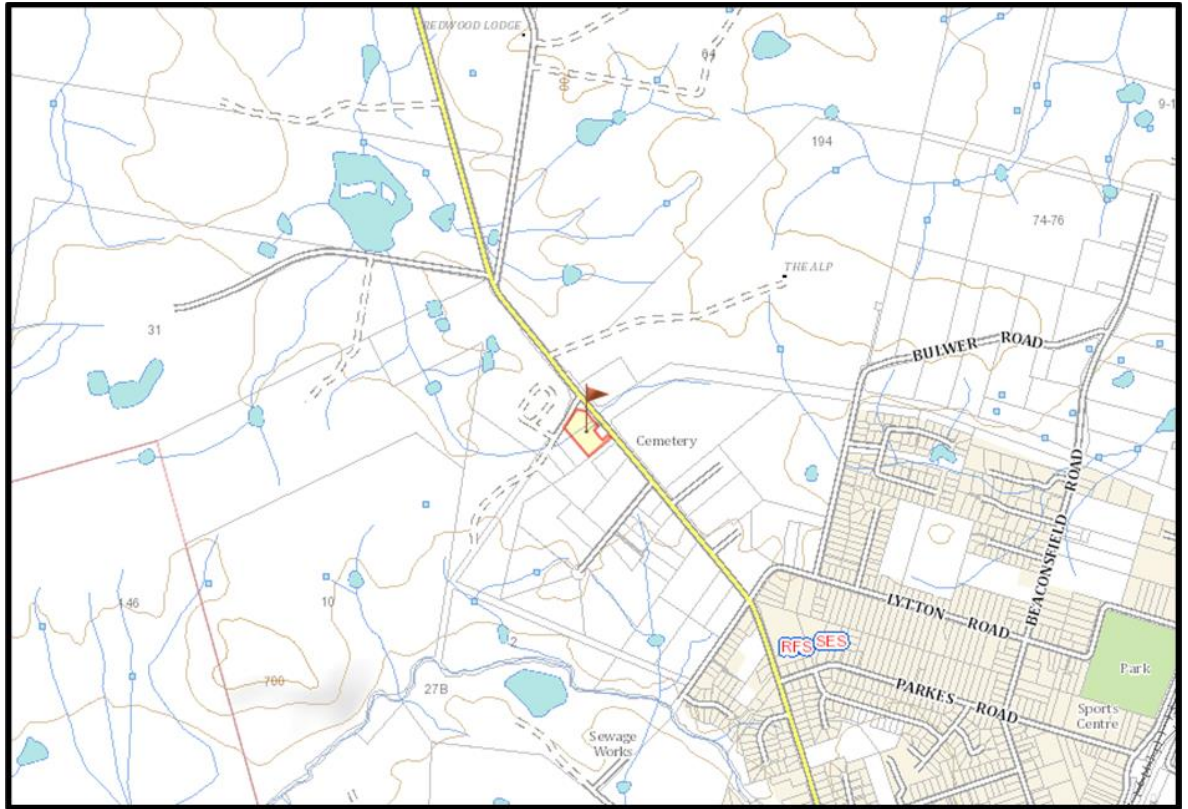


Figure 1: Locality Map (Source: Six Maps)

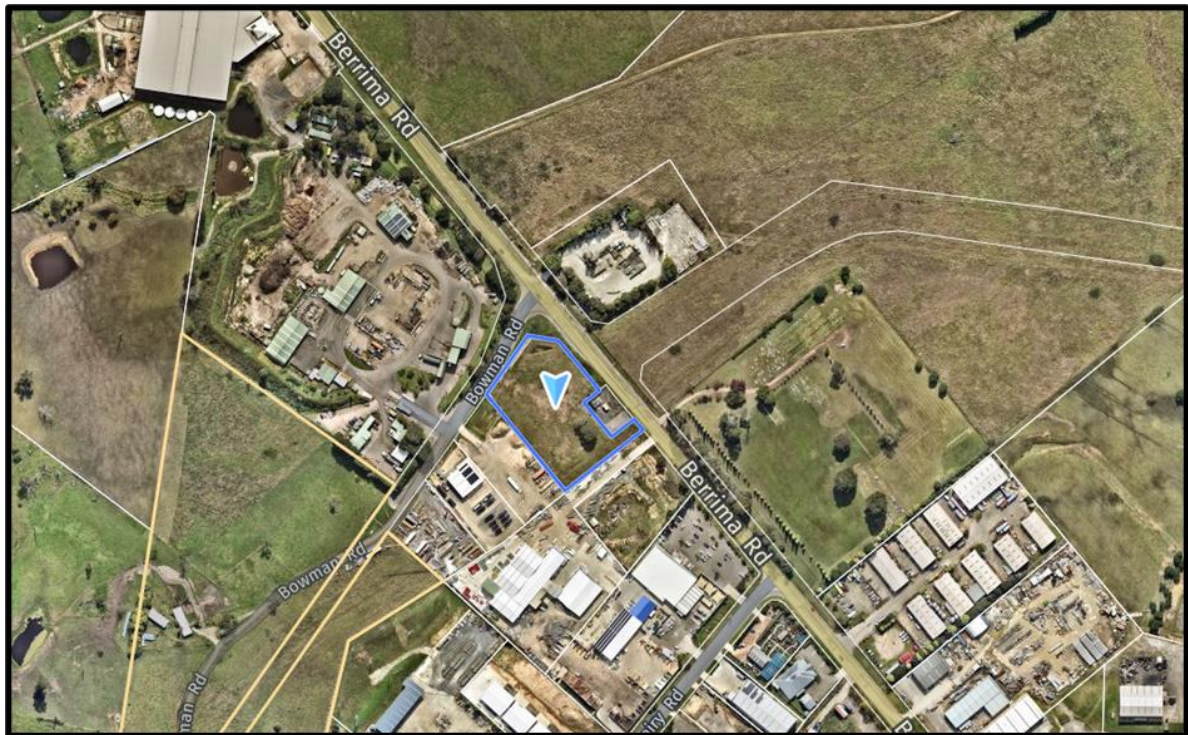


Figure 2: Aerial Photo of Subject Site (Source: Nearmap)



Figure 3: Aerial Photo showing location of the proposed works within the road reserve (existing concrete culvert denoted by red arrow and site boundary outlined red) (Source: Nearmap)

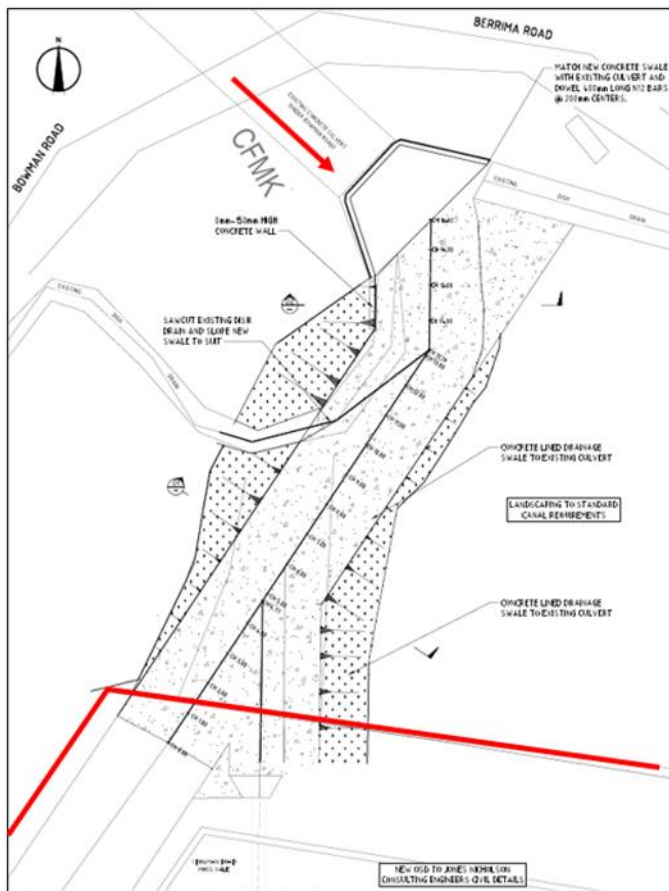


Figure 4: Extract of General Arrangement Plan (existing concrete culvert denoted by red arrow and site boundary outlined red) (Source: Nearmap)

Description of Proposed Development

Development Summary

This modification application seeks a Section 4.55(1A) Modification Application to amend Conditions 20 and 60 in **DA22/1835** which approved the WSC Animal Shelter and SES Facility.

This proposed modification seeks consent for the rewording of Conditions 20 and 60, as detailed below, with bold new wording and strikethrough deletion of words.

20. Detailed Stormwater Drainage System Design

Prior to the issue of the Construction Certificate, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted to and approved by Council's Development Engineer.

The existing site outlet from the basin to be piped to the existing inlet at the corner of Berrima Road and Bowman Road. ~~The kerb return (dish drain) at intersection shall be formalised to Standard Drawing SD105.~~ **shall have a new open concrete swale constructed. The existing site outlet from the basin to the existing inlet at the corner of Berrima Road and Bowman Road The existing kerb return (dish drain) along Berrima Road and along Bowman Road will be directed into this new concrete swale. The new concrete swale will extend to the south to connect to the existing concrete swale inside the western boundary of 1 Bowman Road.**

Should any changes be required to the approved storm water drainage plan, the amended design shall achieve equivalent performance standards in accordance with Design Specifications.

Note: Construction Certificate Approval does not include approval for works external to the property or civil works.

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council's Development Engineering Section prior to the commencement of works.

The applicant is advised to contact Council's Development Engineering Section for clarification of proposed works for which approval under Section 138 of the Roads Act 1993 applies.

Reason: To ensure adequate storm water management.

60. Construction of Kerb & Gutter and Drainage

Concrete dish drain and associated drainage system in Berrima Road and Bowman Road intersection for the adequate discharge of storm water shall be constructed in accordance with Council's Engineering Design and Construction Specifications and drawings prior to the issue of the Occupation Certificate.

The existing site outlet from the basin to be piped to the existing inlet at the corner of Berrima Road and Bowman Road. ~~The kerb return (dish drain) at intersection shall be formalised to Standard Drawing SD105.~~ **shall have a new open concrete swale constructed. The existing kerb return (dish drain) along Berrima Road and along Bowman Road will be directed into the new concrete swale. The new concrete swale will extend to the south to connect to the existing concrete swale inside the north western boundary of 1 Bowman Road.**

Reason: To ensure that storm water is appropriately managed.

Section 4.55 Modification of Consent Generally

The applicant has proposed this modification application under the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 being Modifications involving minimal environmental impact. The relevant matters under this section have been taken into consideration in the assessment of this report and are as follows:

The provisions of any EPI and DCP and any other matters prescribed by the Regulations.

Section 4.55(1A) Provisions

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the determining authority has to be satisfied that:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment

The proposed Section 4.55(1A) application seeks consent to modify DA22/1835 to reword Conditions 20 and 60 of the approval. The proposed works are deemed to have minimal environmental impact and the modified development is substantially the same development as the development originally approved.

Section 4.15 (1) (a) (i)—The provisions of any environmental planning instrument that apply to the land

The application has been considered with regard to the matters for consideration specified by Section 4.46 and section 4.15 (1) of the Environmental Planning and Assessment Act 1979, as detailed below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

In accordance with Part 6.5 of this SEPP, development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority is satisfied the development would have a neutral or beneficial effect on water quality.

Pursuant to Clause 109 (Notification of concurrence authorities and approval bodies) of the Environmental Planning and Assessment Regulation 2021, as soon as practicable after a section 4.55(1A) application is lodged, the consent authority must give a copy of the application to Water NSW, if:

- the modification affects a condition imposed by a concurrence authority; and
- if the modification affects the general terms of approval of an approval body.

The proposed modification does not affect any of the conditions imposed by Water NSW or the general terms of approval; given the modification application relates to works within the road reserve, outside the site boundary.

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These external works will not impact the water quality of the development, given they are essentially receiving and conveying water from the development site to the existing concrete culvert under Bowman Road.

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 Regionally Significant Development of the SEPP, the original development application (DA22/1835) was estimated to cost \$6,387,000. Due to the cost of works being upwards of \$5 million this Original Development Application qualified as being Regionally Significant Development and was therefore required to be determined by a Regional Planning Panel.

In accordance with Clause 275 (1) of the Environmental Planning and Assessment Regulation 2021, the determination of an application to modify a development consent under the Act, section 4.55 is prescribed as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area.

As the works are proposed on Council land, the application is being referred to the Wingecarribee Local Planning Panel for determination.

State Environmental Planning Policy (Resilience and Hazard) 2021

The SEPP requires the Council to be satisfied that the site is suitable for its intended use (in terms of contamination) prior to granting consent.

In particular, Chapter 4 Remediation of Land contains a number of objectives that aim to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and the environment:

- a) By specifying when consent is required, and when it is not required, for a remediation work; and
- b) By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular; and
- c) By requiring that a remediation work meet certain standards and notification requirements

Subject to Section 4.6 of the SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated.

The subject site was deemed suitable for its intended use under DA22/1835, and conditions associated with detailed site investigation for future stages are retained. As such, further investigation for the purpose of this modification application is deemed unnecessary.

Wingecarribee Local Environmental Plan (LEP) 2010

As shown in **Figure 3** below, the site is mapped as E4 General Industrial and in this zone an Animal Shelter is permissible with development consent. The proposed development relates to the rewording of conditions 20 and 60 of an approved development application permitted with consent.

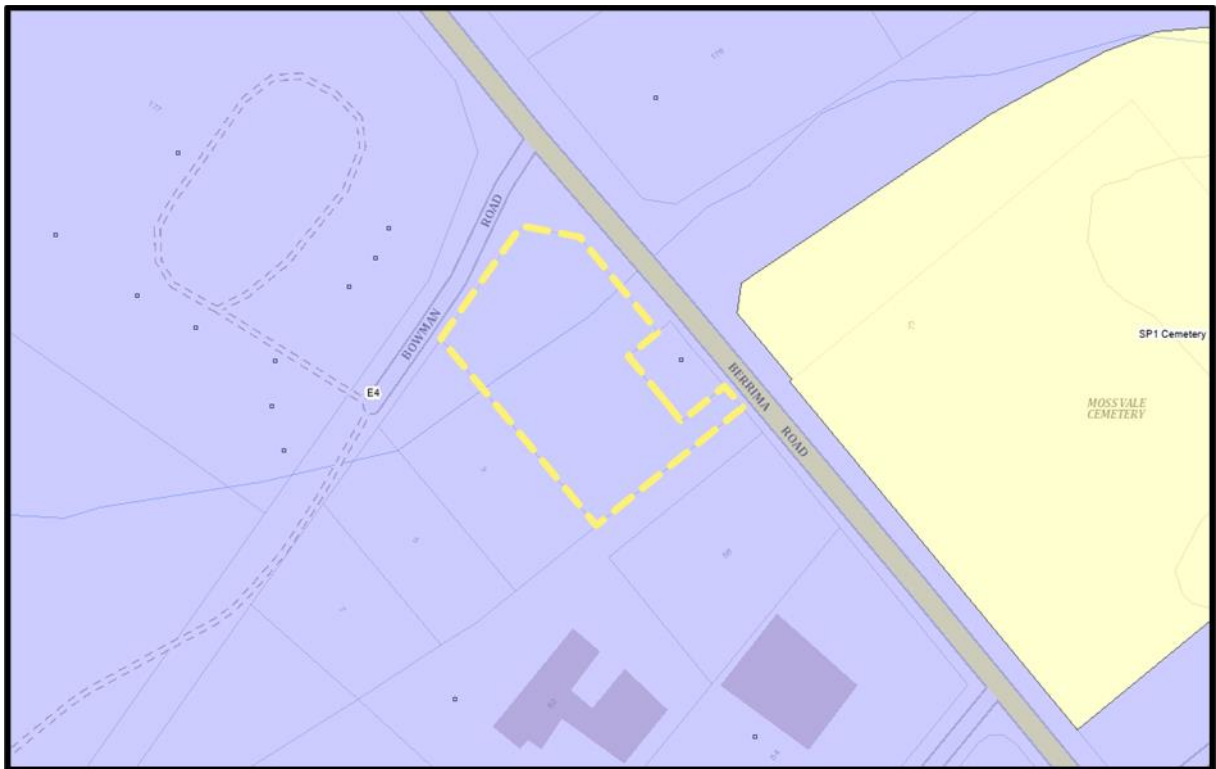


Figure 3: Zoning Map with the site outlined in red (Source: NSW Legislation)

The relevant provisions of the LEP are addressed in the table below.

Zone Objectives

E4 General Industrial

- To provide a range of industrial, warehouse, logistics and related land uses.
- To ensure the efficient and viable use of land for industrial uses.
- To minimise any adverse effect of industry on other land uses.
- To encourage employment opportunities.
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.
- To allow non-industrial land uses, including certain commercial activities, that, because of the type, scale or nature of the use, are appropriately located in the zone and will not impact the viability of business and commercial centres in Wingecarribee.
- To ensure new development and land uses incorporate measures that take into account the spatial context and mitigate potential impacts on neighbourhood amenity and character and the efficient operation of the local and regional road system.

Comment

The proposal is consistent with the aims and objectives of the zone, which have been demonstrated and discussed throughout this report.

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Wingecarribee Local Environmental Plan (LEP) 2010			
Clause	Control	Discussion	Compliance
7.3 Earthworks	To ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.	Minor additional earthworks are proposed under this modification application to allow for the development of a new open concrete swale constructed as part of this modification.	Yes.
7.10 Public utility infrastructure	Development consent must not be granted for development on land to which this clause applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.	The site is capable of being services by adequate arrangements of public utility infrastructure. Councils Sewer and Water Department Engineers internal referral supports the proposed modification to adopt Condition 20 and Condition 60 as suggested by the applicants Modification Statement.	Yes.

Section 4.15 (1) (a) (ii)—The provisions of any proposed instrument that apply to the land

No other draft instrument is relevant to the proposed development.

Section 4.15 (1) (a) (iii)—The provisions of any development control plan that apply to the land

Moss Vale Enterprise Corridor Development Control Plan

Section 3 Development Controls			
Section	Control	Assessment	Compliance
Section 3.16 Flood-prone land and stormwater management	Flood-prone land is protected from development. The risk to life and property due to flooding is not increased by development. Stormwater is managed on-site to ensure post-development runoff does not exceed pre-development levels. Development does not adversely impact on water quality in local watercourses. Sustainable development practices form part of the stormwater management strategy for site development.	Stormwater Plans have been amended to show a new open concrete swale at the corner of Bowman Road and Berrima Road where the existing kerb return will be directed to. The new concrete swale will extend to the south to connect to the existing concrete swale on the western boundary of 1 Bowman Road. This is to be reflected in Conditions (20 and 60).	Yes.

Section 4.15 (1) (a) (iv)—The provisions of any planning agreement that apply to the land

This modification does not impact on the existing planning agreement applying to the site.

Section 4.15 (1) (a) (v)—The provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph) that apply to the land

No provisions of the Environmental Planning and Assessment Regulation 2021 are relevant to the proposed development. Wingecarribee is not a coastal Council, therefore the government coastal policy does not apply. Furthermore, the application does not require any fire upgrades, does not involve a temporary structure and does not propose demolition.

Section 4.15 (1) (b)—The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The likely impacts of the development on the context and setting are considered acceptable. The proposed development will not adversely impact on the streetscape or amenity of adjoining lots.

There are no identified issues with respect to the access to the site and car parking. A S138 Roads Act Approval is to be applied for with Council for the driveway crossover access point.

The property is serviced by Council's reticulated sewer and water. Stormwater Plans have been amended to show a new open concrete swale at the corner of Bowman Road and Berrima Road where the existing kerb return will be directed to. The new concrete swale will extend to the south to connect to the existing concrete swale on the western boundary of 1 Bowman Road. This is to be reflected in Conditions. Electricity and communications are available to the subject site subject to provision by the relevant service provider.

The subject development will not have any impact on land resources, such as mineral resources, water or otherwise. All productive land resources are well distant from the subject development site.

The proposed development is well clear of any areas mapped by Council's GIS based fauna atlas and is not expected to adversely impact on threatened species. The subject development will not have any significant impact on water resources. The proposed development will not give rise to ongoing waste disposal issues. The subject development will not have any significant soils impacts. The site is not subject to any significant soils constraints, i.e. is not noted as acid sulphate, highly erodible, saline or of high productive value.

The proposed development is not excessive when considered in a wider context and will not give rise to excessive cumulative impacts.

Section 4.15 (1) (c)—The suitability of the site for the development

The proposed modifications to Conditions 20 and 60 do not alter the suitability of the site as assessed under DA22/1835; the site remains suitable for the development.

Section 4.15 (1) (d)—Any submissions made in accordance with the Act or the regulations

The application was notified between 7th of August 2024 and 23rd of August 2024 in line with Councils Community Participation Plan. No submissions were received.

Section 4.15 (1) (e)—The public interest

The development as amended has been designed in accordance with the objectives of the relevant zone under WLEP 2010 and is considered to be in the public interest.

Internal communication and consultation

Development Engineer	<p>The Development Engineer is in support of the modification from an engineering point of view.</p> <p>The development engineer recommended the following:</p> <ol style="list-style-type: none">1. Please include the below plans within the approved documentation table and the stamped modification plans.<ol style="list-style-type: none">a. External Works Referenced N0211564 C600 1 Dated 17.07.24 by JN Consulting (ECM Document Set ID 5540851).b. General Arrangement Plan Referenced 2441 1-40218 Dated 08.04.24 by Wingecarribee Shire Council (ECM Document Set ID 5461001).c. Flow Plan Referenced 2441 1-40218 Dated 08.04.24 by Wingecarribee Shire Council (ECM Document Set ID 5461003).2. Please adopt Condition 20 and Condition 60's as suggested by the applicant in the Modification Statement by Figgis & Fefferon Tepa Pty Ltd Dated 17/04/2024.
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Conclusion

That Modification Application No. (DA24/1388) for a 4.55(1A) Modification to Conditions 20 and 60 of the development consent to DA22/1835 for the Wingecarribee Animal Shelter and State Emergency Services (SES) development at 1 Bowman Road, Moss Vale, be determined by APPROVAL subject to the reasons detailed in Attachment 1 of this report.

ATTACHMENTS

1. Attachment 1 - Draft Conditions of Consent - 1 Bowman Rd [6.3.1 - 24 pages]
2. Attachment 2 - Proposed Stormwater Plans [6.3.2 - 2 pages]
3. Attachment 3 - 23-1087 - Stamped Plans (1) [6.3.3 - 6 pages]

6.4 Development Applications Greater Than 180 Days to be reported to the WLPP

Report Author: Manager Development Assessment and Regulation
Authoriser: Director Communities and Place

PURPOSE

The purpose of this report is to provide the Wingecarribee Local Planning Panel with detail regarding the current Development Applications that exceed 180 days.

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel note the Development Applications that are currently being assessed which have exceeded 180 days since lodgement.

REPORT

The table, provided in Attachment 1, includes a list of DAs that are currently being assessed which have exceeded 180 days since lodgement which are to come to the Wingecarribee Local Planning Panel for determination.

A short commentary has been included against each Application. The table is being provided to the Wingecarribee Local Planning Panel for information and feedback.

ATTACHMENTS

Attachment 1 – List of Development Applications exceeding 180 days as at 20 November 2024

7 MEETING CLOSURE