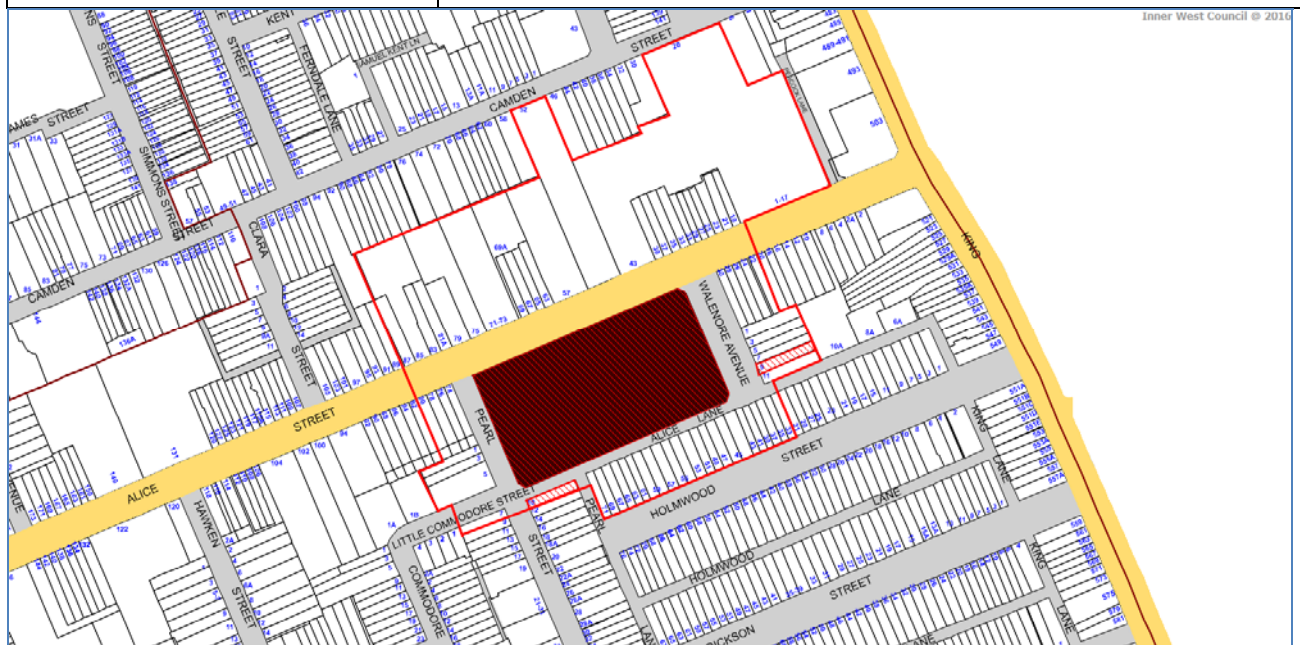







INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201600678.01
Address	2/32-72 Alice Street, Newtown
Proposal	Section 82A review of Determination No. 201600678, dated 19 April 2017, to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking
Date of Lodgement	22 May 2017
Applicant	Two Cubed P/L
Owners	Al Maha P/L
Number of Submissions	7 submissions
Value of works	\$540,000
Reason for determination at Planning Panel	Outside officer delegation as the outcome of the review will involve no substantial change to the prior determination
Main Issues	Urban Design; Site Suitability; Owners Consent; Inadequate Information
Recommendation	Refusal



Subject Site: 	Objectors: 
Notified Area: 	<i>Note: Some submissions were received from properties outside of the map area.</i>

1. Executive Summary

This report concerns a review request under Section 82A of the Environmental Planning and Assessment Act to review Determination No. 201600678, dated 19 April 2017, being a refusal of a development application to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking. The application was notified in accordance with Council's Notification Policy and 7 submissions were received.

The development is considered contrary to aims of Clause 1.2 of Marrickville Local Environmental Plan (MLEP) 2011 and numerous controls within Marrickville Development Control Plan (MDCP) 2011. The proposed outdoor play areas result in adverse impacts to the surrounding public and private spaces by way of obstructing sight lines, creating narrow pathways and limiting passive surveillance with the design and style of fencing considered to be obtrusive and incompatible with the architectural design of the mixed use development and its surrounds. Given the impacts associated with the proposed outdoor play areas it is considered the site is not suitable for the use proposed. Additionally, inadequate information has been submitted with the application to demonstrate whether the proposed works are contained wholly within the stratum lot boundaries and do not encroach into the residential strata scheme thereby requiring the consent of the body corporate.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

2. Proposal

Approval is sought under Section 82A of the Environmental Planning and Assessment Act to review Determination No. 201600678, dated 19 April 2017, to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking. The works include the following:

- Partial demolition the interior walls of commercial tenancies T07, T08 and T09 at the ground floor of the mixed use development to create 1 tenancy;
- Construction and fit-out of the tenancy to accommodate a childcare centre including kitchen and bathroom facilities, play areas and a simulated outdoor play area;
- Construction of three external play areas including the erection of fencing, gates, awnings and landscaping works. One outdoor play area is to be located on the eastern side of the tenancy and two are proposed to be located on the western side of the tenancy. The outer perimeters of all outdoor play areas are proposed to include fencing and awnings, required for noise attenuation, as follows:
 - 1.8m high imperforate fencing fixed to the existing paved ground surface and constructed of metal slat fencing and 6mm thick Perspex;
 - Slanted imperforate awning to the top of the fence at a 45 degree angle extending 600mm above the finished fence height and constructed of 600mm thick Perspex;
 - Solid imperforate awning extending from the building façade over each outdoor play area to 1.8 metres from the western façade and up to 3.3 metres from the eastern building façade; and
 - North and south sections of the perimeter fence where it returns to the building façade to be fully enclosed from ground level to the underside of the extended awning with new metal framed wall with fibre cement render.

3. Site Description

The subject site is centrally located within a mixed use development at 32-72 Alice Street, Newtown which is bound by Alice Street, Walenore Avenue, Alice Lane and Pearl Street. The mixed use building contains 984sqm of commercial floor space in 9 commercial tenancies, 203 apartments, and basement parking for 187 vehicles. Vehicular access to the car park is provided from Pearl Street.

The subject site is legally described as Lot 2 in Deposited Plan 1190094 and is known as commercial tenancies T07, T08 and T09 within the mixed use building. The tenancies in question are located on the ground floor of the development accessible from Alice Street and have a combined floor area of approximately 256sqm. Each tenancy also has access to an area of outdoor space under the Deposited Plan. One area is located to the eastern side of the tenancies with an area of approximately 61sqm and two areas are located to the western side of the tenancies with an area of 59sqm and 41sqm respectively.

The site is surrounded predominantly by residential development. Two storey terrace housing is the predominant built form along the northern side of Alice Street. Single and two storey semi-detached dwellings and terrace housing are the typical forms of housing to the east, west and south. The site is within 150 metres of King Street being the main commercial strip of Newtown.

4. Background

4(a) Site history

Development Application No. 201600678 sought consent to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking. It was considered that the proposal did not comply with the aims, objectives and design parameters contained in MLEP 2011 and MDCP 2011 in that the car parking proposed was inadequate; the materials and finishes proposed for the outdoor play areas were not compatible with the mixed use development the site is located within nor the architectural style of the area; and the proposed enclosure of the outdoor play areas resulted in obstructed sight lines and narrow pathways through the site and prevented an active frontage to the adjoining open space.

Furthermore, it was considered that inadequate information was submitted with the application to determine whether the proposal complied with the FSR development standard contained in Clause 4.4 of MLEP 2011 and Council's Local Traffic Committee did not support the proposed on-street parking arrangement.

The application was refused under delegated authority as part of Determination No. 201600678, dated 19 April 2017, for the following reasons:

1. *The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 because it is considered to be inconsistent with the overall aims (a) and (h) of Marrickville Local Environmental Plan 2011 as listed in Clause 1.2. Specifically with respect to aim (a) the proposal fails to appropriately integrate the use with the transport options required to support the ongoing operation of a child care centre on the site in that inadequate on-site parking is proposed and the parking facilities proposed to not cater for parents, carers and children with a disability. Specifically with respect to aim (h) the proposed methods and materials for enclosing the outdoor play spaces are considered to be incompatible with the standard of design of built form and open spaces which contribute to the*

visual and architectural quality of the mixed use development and adjoining private and public open spaces.

2. *The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with objectives for development in Zone B4 Mixed Use as listed in Marrickville Local Environmental Plan 2011. Specifically the proposed enclosure of outdoor play space and lack of on-site parking is considered to be incompatible with established and approved surrounding land uses.*
3. *The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with the following provisions of Marrickville Development Control Plan 2011;*
 - *Part 2.1 Urban Design Principles;*
 - *Part 2.1.2.4 Building Character;*
 - *Part 2.3 Site and Context Analysis;*
 - *Part 2.5 Equity and Access of Mobility;*
 - *Part 2.9 Community Safety;*
 - *Part 2.10 Parking;*
 - *Part 5 Commercial and Mixed Use Development;*
 - *Part 7.1 Child Care Centres; and*
 - *Part 9.14 Camdenville Precinct.*
4. *The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building.*
5. *The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space.*
6. *The proposal is unacceptable pursuant to the provisions of Section 79C(c) of the Environmental Planning and Assessment Act 1979 in that the site is considered unsuitable for the proposed development due to a lack of on-site parking, a lack of on-site parking for people with a disability, the detrimental impacts to the built environment and detrimental social impacts potentially resulting from the proposed enclosure of outdoor play spaces.*
7. *Insufficient information has been submitted with the development application to determine whether the proposal will result in additional gross floor area and whether the proposal is compliance with the objectives and controls for floor space ratio as specified in Clause 4.4 to Marrickville Local Environmental Plan 2011.*
8. *The proposal is unacceptable pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979 in that the proposal's non-*

compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest.

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter/ Additional Information
22 May 2017	Subject application submitted to Council
15 August 2017	Additional information and amended plans requested from Council to address the following: <ul style="list-style-type: none"> • Reasons for refusal of DA201600678; • Design of fencing and awnings; • Impacts of outdoor play areas; • Owners consent; and • Floor space ratio.
28 August 2017	Additional information submitted including amended architectural plans, amended landscape plans, a statement addressing the architectural merits of the proposal and a statement addressing the reasons for refusal. <p>It is noted that the application originally sought consent for a child care centre for 32 children. Following the submission of the additional information requested, the applicant reduced the number of children to 30 and the description of the application was amended accordingly.</p>

5. Assessment

The applicant has requested that Council review the determination under Section 82A of the Environmental Planning and Assessment Act, 1979. The following information has been submitted with the review request (at Council's request) in support of the proposed development attempting to address the reasons for refusal:

- Amended Plans;
- A written statement addressing the reasons for refusal of Determination No. 201600678, dated 19 April 2017;
- Other associated documentation.

5(a) Grounds of Refusal

Below is an assessment of the additional information provided by the applicant as part of the Section 82A review request having regard to the grounds of refusal of the original development application:

1. **The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 because it is considered to be inconsistent with the overall aims (a) and (h) of Marrickville Local Environmental Plan 2011 as listed in Clause 1.2. Specifically with respect to aim (a) the proposal fails to appropriately integrate the use with the transport options required to support the ongoing operation of a child care centre on the site in that inadequate on-site parking is proposed and the parking facilities proposed to not cater for parents, carers and children with a disability. Specifically with respect to aim (h) the proposed methods and materials for**

enclosing the outdoor play spaces are considered to be incompatible with the standard of design of built form and open spaces which contribute to the visual and architectural quality of the mixed use development and adjoining private and public open spaces.

Comment:

Parking Facilities

The original application proposed 3 car parking spaces within the basement of the mixed use building, accessible from Pearl Street and also sought consent for on-street parking in the form of a pick-up and drop-off zone on Alice Street. Part 2.10 of MDCP 2011 requires 5 car parking spaces for the development and the proposal did not comply with this requirement. Furthermore, the original application was considered by Council's Local Traffic Committee on 2 March 2017 who did not support the application given the shortfall in on-site parking coupled with an increased demand for on-street parking generated by the proposal.

The information submitted as part of the subject Section 82A review request indicates an additional 2 spaces proposed for use by the childcare centre located in the basement of the mixed use building. In total, the development now proposes 5 off street car parking spaces and numerically complies with the requirements of the MDCP 2011 (2 of these spaces are accessible).

The proposed pick-up and drop-off zone on Alice Street proposed as part of this review request was considered by Council's Local Traffic Committee on 6 July 2017. The Committee now supports the application and the proposed pick-up and drop-off zone given the development now complies with the numerical car parking requirements of MDCP 2011 and would not result in a shortfall of car parking that would need to be accommodated by surrounding on street parking.

Notwithstanding compliance with the numerical car parking requirements within Part 2.10 of MDCP 2011 and support from the Local Traffic Committee, concern is raised with the suitability of the car parking arrangement as parents and carers are required to use the basement car parking for the pick-up and drop-off of children as part of the amended application. The proposed car parking spaces are located a considerable distance from the child care centre in the south eastern corner of the basement in the mixed use development and a clearly identifiable route/path from these allocated spaces to the child care centre is likely to be difficult to navigate. The Plan of Management submitted with the application provided very limited detail as to how the parking of parents and carers in the basement would be managed and it is considered that development would require these spaces for parents and carers given the proposed on street drop-off zone can only accommodate 2 cars at any one time. Similarly, the basement is secure and no details have been provided to indicate how access is to be provided and whether it is to be provided to all users of the Centre.

Additionally there are inconsistencies between the amended plans and traffic management plan submitted with the application. The plans and amended documentation indicate the provision of 5 car spaces allocated to both staff and users of the centre. However, the traffic management plan indicates that the secure parking spaces in the basement are allocated to staff, in essence requiring all users of the child care centre to park on the street resulting in increased traffic congestion in an area where parking is highly constrained.

Furthermore, the proposed basement car park serves the entire mixed use development and concern is raised that conflict may arise between the residential strata component of the

development and the child care centre as parents and carers may park within other spaces within the basement not allocated to the child care centre.

Given the lack of information provided with the application to address the operation and management of car parking, uncertainty remains as to whether the proposed car parking arrangement is suitable and will adequately service the child care centre. While the amended application has focused on complying with number of car parking spaces required, it has failed to holistically address the car parking arrangements at the site.

Outdoor Play Areas

The original proposal included the enclosure of 3 outdoor play areas surrounding the tenancy. This included fencing, awnings and walls to provide outdoor plays areas required for a childcare centre and also to meet acoustic requirements. Overall, it was previously assessed that the materials, finishes and overall design of the outdoor areas was not compatible with the surrounding architectural and built form of the mixed use development and did not respond positively to the public areas which they adjoin in that they impede sightlines, create narrow pathways, minimise passive surveillance and did not result in an active frontage to the adjoining public area on the eastern side of the site.

The subject application retains the 3 outdoor play areas and the acoustic treatment including fencing, awnings and walls. Two modifications were made with respect to the design of the outdoor play areas being a change in the materials proposed to the fencing from Colorbond or timber to metal slats and a slight reduction in size of the northern most outdoor play area to the western side of the tenancy by 8sqm.

It is considered that the amended proposal has failed to adequately address the design and built form issues associated with the outdoor play areas and acoustic treatments, and the proposed enclosed outdoor play spaces are detrimental to the structure and connections of existing spaces surrounding the tenancies.

The enclosed outdoor play space on the eastern side of the proposed child care centre will continue to create a narrow corridor between an existing retaining wall and the facades of the apartment and the commercial unit to the south with poor casual surveillance, poor lines of sight and an unappealing narrow and confined space. The enclosed outdoor play spaces on the western side of the proposed child care centre will continue to obstruct lines of sight and accessible paths of movement within the space currently used as private common courtyard area.

The modification to the overall size of the one of the eastern outdoor play spaces does provide additional width between the existing retaining wall and proposed fencing. However, this change provides nominal benefit in terms of the egress through the private open space and has not addressed the issue of obstructed sightlines and the creation of narrow confined spaces holistically. Similarly, the proposed modification to the fencing material to metal slats does not address the reduced sightlines and impeded egress generated by the structures.

The modified proposal continues to require the physical privatisation of large areas of currently open spaces which present poorly to the surrounding public and private open spaces. The proposed acoustic treatments and enclosure mechanisms include fencing with a minimum height of 1.8 metres that provide limited visual permeability and are within close proximity to retaining walls at both the eastern and western side of the tenancy that result in narrow pathways and limited egress. This is further exacerbated by the required 3.3 metre high walls at the northern and southern elevation of each outdoor play area extending from ground level to the proposed awnings above which are completely solid structures reducing and eliminating site lines. While it is understood the proposed structures and outdoor play

areas are required for the proposed childcare centre use, the design of the areas and structures result in adverse impacts to the mixed use development which have not been addressed by the modified proposal.

Overall, the proposed outdoor play areas and works proposed to enclose those areas have not adequately considered the surrounding context and result in poor urban design, accessibility and legibility outcomes at the mixed use site and impinge upon the functional use on the surrounding public and private communal spaces.

Architecturally, the materials and methods proposed for enclosing the outdoor play spaces is considered generally incompatible with the surrounding mixed use development. The proposed 3.3 metre high walls at the northern and southern elevation of each outdoor play area extending from ground level to the proposed awnings project beyond the façade of the ground floor commercial tenancies and are not a design or built form feature that currently exists within the mixed use development. Similarly, the proposed awnings above the outdoor play areas are large, will project beyond the perimeter of the existing ground floor tenancies and the floors above and are not in keeping with the architectural style of the development. Furthermore, limited information has been provided with the amended application detailing the proposed materials and finishes to the walls and awnings in particular. No details have been submitted demonstrating how the metal framed awnings with fibre cement cladding and the metal framed walls with fibre cement cladding are compatible with the architectural style of the development, particularly when they are not existing features of the site. Council has also been unable to make an informed assessment of the architectural merit of these elements of the proposal given no information beyond the general materials proposed has been provided with the amended application with regard to these structures.

With regard to the proposed fencing, the amended application has attempted to address the architectural issues raised by the original application by modifying the fencing materials to be metal slat fencing. This style of fencing is found throughout the mixed use development and is generally consistent the architectural style of the development as a material. Notwithstanding, the instances in which this style of fencing presents to the surrounding public and private open spaces is limited and are generally subordinate to other architectural elements of the building than the presentation of the fencing proposed.

The site contains metal slat fencing serving the residential component of the mixed use development which fronts the centrally located communal open space area to the west of the proposed child care centre. However, the expanse of residential fencing is limited when compared to the extent of fencing proposed for the child care centre and residential fencing is recessive and does not project beyond the perimeter of the buildings. At the eastern side of the site fronting public space, there are no examples of the fencing proposed and privatised outdoor areas are not a feature within this portion of the site. Whilst the fencing material itself may be similar to that found within the development, the design and location of the proposed fencing is not consistent with the architectural style of the development and is visually obtrusive. The proposed fencing would be a prominent feature of the spaces surrounding the site and would not be designed in a recessive manner. The fencing would become a visually intrusive element of the area as it compromises the architectural integrity and design of the building as it removes the openness of the ground floor area and is considered to detract from aesthetics of the site as whole.

Additionally, the highly visual nature of the proposed outdoor play areas will be exacerbated by the landscaping works proposed. An amended landscape plan was submitted with the application indicating the provision of substantial works to be undertaken within the outdoor play areas including trees, plantings and numerous floor materials to be erected over the existing ground cover. These elements of the proposal will further detract from the architectural design of the mixed use development while also eliminating any active frontage

to the tenancies, particularly given these areas are proposed only to be used for 2 hours per day Monday to Friday. It is also noted that the level of construction required to install the landscaping works is unclear and limited details are provided to demonstrate the impact this will have on the existing building.

Overall, the proposed enclosed outdoor play areas are considered incompatible with the site for the reasons discussed above. While these areas of open space are attributed to the tenancies, it was not envisioned that these areas would be permanently enclosed as proposed by this application and are areas that form part of the greater open space provided within the mixed use development which is considered essential to provide suitable sightlines and egress throughout the site. Furthermore, the enclosure of the spaces results in major alterations to the façade and areas surrounding the tenancies which detract from the architectural merits of the mixed use development and the permanent nature of the enclosure eliminates the opportunity for any active frontage of the tenancies.

Given the above, the amended proposal has not adequately addressed the incompatibility of the design of the outdoor play areas with the surrounding public and private spaces or the architectural incompatibility of the proposed enclosing structures with the existing architectural design of the mixed use development. The amended proposal continues to result in obstructed sightlines, narrow pathways, uncharacteristic materials and finishes and imposing structure which are not considered suitable within the context of the mixed use site.

As such, the proposal is considered to be inconsistent with the aims (a) and (h) listed in Clause 1.2 of MLEP 2011. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

- 2. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with objectives for development in Zone B4 Mixed Use as listed in Marrickville Local Environmental Plan 2011. Specifically the proposed enclosure of outdoor play space and lack of on-site parking is considered to be incompatible with established and approved surrounding land uses.**

Comment:

The original application was assessed to be inconsistent with 2 of the objectives of the B4 mixed zone given the proposal did not provide adequate on site or on street car parking and the enclosure of the outdoor play areas was not consistent with the surrounding spaces and architectural treatment of the mixed use development.

As discussed under reason 1 above, the enclosure and design of the outdoor play areas is not appropriate and is considered incompatible with the surrounding spaces and land use and the proposed car parking whilst numerically compliant is considered impractical and the application lacks sufficient detail to demonstrate that appropriate access to car parking space can be provided.

Whilst a childcare centre is a use permissible with consent in the B4 Mixed Use zone, it is considered that this site is not suitable for the proposed use and is not compatible with surrounding uses. The proposed enclosure of the outdoor play areas through the introduction of fencing and awnings and the impacts these areas have on the surrounding private and public open space and the architectural quality of the mixed use development are what present a major concern for the amended application.

The need for these outdoor play areas with the associated fencing, awnings, walls and other acoustic treatments are a direct consequence of the proposed childcare centre use. Unlike other permissible uses that may be compatible with the site and may also seek to use the outdoor areas attributed to the tenancies, for example a café or restaurant with outdoor seating, the need for these areas to be largely enclosed with obtrusive structures is inherent to the child care centre.

As such, the amended proposal has not demonstrated consistency with the objectives of the B4 Mixed Use zone in that the development remains incompatible with surrounding land use. Furthermore, the ability of the proposal to mitigate the impacts of the proposed outdoor play areas is limited due to the inherent needs of the use proposed and this indicates the site is not suitable for the development proposed.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

3. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with the following provisions of Marrickville Development Control Plan 2011;

- **Part 2.1 Urban Design Principles;**
- **Part 2.1.2.4 Building Character;**
- **Part 2.3 Site and Context Analysis;**
- **Part 2.5 Equity and Access of Mobility;**
- **Part 2.9 Community Safety;**
- **Part 2.10 Parking;**
- **Part 5 Commercial and Mixed Use Development;**
- **Part 7.1 Child Care Centres; and**
- **Part 9.14 Camdenville Precinct.**

Comment:

The original application was assessed to have non-compliances with Part 2.5 and Part 2.10 of MDCP 2011 given the proposal did not provide the required number of car parking spaces and no accessible spaces were proposed. The amended proposal now provides the required 5 car parking spaces prescribed under Part 2.10 of MDCP 2011 and 2 of those spaces are accessible which satisfy the requirements of Part 2.5 of MDCP 2011. Notwithstanding, for the reasons discussed under reason 1 above, the proposal has not provided adequate information to demonstrate the car parking in the basement is accessible to parents and carers and that it is appropriate to support the ongoing operation of the child care centre.

The original application was also assessed to vary from a number of controls relating to urban design, architectural compatibility, sightlines, passive surveillance, through site links and manoeuvrability – stemming from the proposed enclosed outdoor play areas for the reasons discussed under reason 1 above.

Given the proposed outdoor areas continue to result in undesirable impacts to the surrounding public and private space, the amended application has not adequately addressed the requirements of Part 2.1, Part 2.3, Part 2.9, Part 5, Part 7.1 and Part 9.14 and the non-compliances as assessed in the original application remain unresolved.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

4. **The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building.**

Comment:

This matter is discussed under reason 1 above. The compatibility of the enclosed outdoor play areas with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building have not been adequately addressed by the subject application. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

5. **The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space.**

Comment:

This matter has been discussed in detail under reason 1 above. The social impacts associated with the enclosed outdoor play areas resulting from obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space have not been adequately addressed. Additionally, as discussed under reason 2 above, the inherent needs of the proposed use limit the ability of the applicant to adequately address these issues and whilst the amended plans attempt to minimise the impacts of the outdoor play areas, such as decreasing the overall size of the areas and minimising the structures proposed, this doesn't adequately resolve the outstanding concerns. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

6. **The proposal is unacceptable pursuant to the provisions of Section 79C(c) of the Environmental Planning and Assessment Act 1979 in that the site is considered unsuitable for the proposed development due to a lack of on-site parking, a lack of on-site parking for people with a disability, the detrimental impacts to the built environment and detrimental social impacts potentially resulting from the proposed enclosure of outdoor play spaces.**

Comment:

This matter is discussed under reason 1 and 2 above. The amended application has not adequately demonstrated the site is suitable for the development proposed. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

7. **Insufficient information has been submitted with the development application to determine whether the proposal will result in additional gross floor area and whether the proposal is compliance with the objectives and controls for floor**

space ratio as specified in Clause 4.4 to Marrickville Local Environmental Plan 2011.Comment:

The original application assessed that insufficient information was provided to determine whether the enclosure of the outdoor play areas would result in additional FSR at the site pursuant to the definition of "gross floor area" under MLEP 2011. The additional information submitted by the applicant during the assessment of the subject application attempted to address this issue by way of the following response:

"The definition of GFA in MLEP 2011 includes areas enclosed by a wall over 1.4m if this is to a balcony or terrace. The proposed spaces are courtyards on the ground floor and the "walls" constitute boundary fencing. The areas are partly open to the sky and should not be included in GFA, in the same way a backyard would not be included where boundary fencing is above 1.4m high (whether there was a partial awning or not)....."

According no Clause 4.6 Variation Request regarding FSR is provided."

Whilst in principle, given the awnings do not extend the full depth of the play area and that they remain largely open, they are unlikely to constitute GFA, however, it is considered that the information provided with the subject application remains insufficient to address this reason for refusal. The outdoor play areas do have outer walls with a height greater than 1.4 metres, are largely enclosed, and are of a bulk and scale which is at odds with the built form and are not comparable to residential areas of private open space as suggested by the applicant as these areas are privatised areas associated with the operation of a business.

Notwithstanding, the amended application has not provided adequate information to address this reason for refusal and Council is not satisfied the proposed outdoor play areas do not constitute "gross floor area" pursuant to the definition under MLEP 2011.

Considering the matters raised above, the application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

- 8. The proposal is unacceptable pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979 in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest.**

Comment:

The original application was advertised in accordance with Council's Notification Policy and a total of 8 submissions were received. A number of the issues raised in those were considered to be unresolved including traffic and parking impacts, safety and movement within the public and private spaces surrounding the site, the design and architectural compatibility of the outdoor play areas, fencing, awnings and walls and the obstruction of sightlines and pathways throughout the mixed use development.

The subject application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 7 submissions were received.

The issues raised generally relate to concern surrounding the parking and traffic impacts associated within the use; the architectural compatibility of the outdoor play areas with the existing mixed use development; the permanent enclosure of the outdoor areas associated with the tenancy; impacts on movement around the site; and noise.

Section 79C of the Environmental Planning and Assessment Act requires Council to consider the likely impacts of that [development](#), including [environmental](#) impacts on both the natural and built [environments](#), and social and economic impacts in the locality. Whilst a childcare centre is a permissible use within the B4 Mixed Use zone, the social and built environment impacts generated by the undesirable design of the largely enclosed outdoor play areas are considered unacceptable.

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any potential adverse impacts on the surrounding area and the environment are appropriately managed. As discussed throughout this report, with the exception of numerical compliance with car parking requirements, the amended proposal does not adequately address the reasons for refusal of the original application and results in numerous non-compliances with the MDCP 2011 and inconsistency with the aims of MLEP 2011. Given the non-compliances proposed, the social and built environment impacts and the number of submissions received, the proposal is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

5(b) Other Matters

Below is an assessment of the other relevant matters that relate to the development application that were not addressed by the original application and the grounds for refusal.

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

During the assessment of the subject application, State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education and Child Care SEPP) came into force on 1 September 2017.

Schedule 5 of the Education and Child Care SEPP provides the following savings and transition provisions:

- “(1) This Policy does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.*
- (2) Despite subclause (1), before determining a development application referred to in that subclause for development for the purpose of a centre-based child care facility, the consent authority must take into consideration the regulatory requirements and the National Quality Framework Assessment Checklist set out in Part 4 of the Child Care Planning Guideline, in relation to the proposed development.*
- (3) This Policy does not apply to or in respect of the determination of an application for an approval for an activity made by a proponent to a determining authority under Part 5 of the Act within 2 years before the commencement of this Policy but not finally determined before that commencement.*

- (4) *The following are taken not to be development to which this Policy applies (to the extent that they would otherwise comprise development to which this Policy applies):*
- (a) *the carrying out of an activity for which an approval was granted by a determining authority under Part 5 of the Act before the commencement of this Policy, if the carrying out of the activity under that approval begins within 2 years after that commencement,*
 - (b) *the carrying out of an activity for which an approval was granted by a determining authority in response to an application referred to in subclause (3) if the carrying out of the activity under that approval begins within 2 years after the grant of the approval,*
 - (c) *the carrying out of an activity for which the proponent is also the determining authority and in relation to which an environmental assessment under Part 5 of the Act has been completed if the carrying out of the activity is commenced within 2 years after the completion of the assessment.*
- (5) *In this clause - activity and approval have the same meanings as they have in Part 5 of the Act.”*

Pursuant to Clause (1), this application was lodged prior to the commencement of the Policy and as such the requirements of the Policy do not apply. Notwithstanding, pursuant to Clause (2) the National Quality Framework Assessment Checklist set out in Part 4 of the Child Care Planning Guideline must be taken into consideration as the development application relates to a centre-based child care facility.

The following table provides an assessment of National Quality Framework Assessment Checklist:

Regulation	Proposal	Complies?
104. Fencing or barrier that encloses outdoor spaces.	The proposal includes suitable fencing that would provide safety to children.	Yes
106. Laundry and hygiene facilities	A laundry facility is indicated within the accessible bathroom.	Yes
107. Unencumbered indoor space	The proposal includes 112sqm of unencumbered indoor space for 30 children and is acceptable.	Yes
108. Unencumbered outdoor space	The proposal includes 223sqm of unencumbered outdoor space for 30 children which are acceptable. However, 70sqm of this area is a simulated external play area and no concurrence by the Regulatory Authority is provided.	No
109. Toilet and hygiene facilities	The proposal includes safe and developmentally adequate hygiene facilities	Yes
110. Ventilation and natural light	The plans provided do not demonstrate suitable natural light and ventilation is provided and the proposed awning above the outdoor	No

	play areas are likely to reduce natural light.	
111. Administrative space	An administrative space is provided.	Yes
112. Nappy change facilities	Suitable change facilities are provided.	Yes
113. Outdoor space—natural environment	A landscape plan accompanied the proposal demonstrating suitable outdoor space that will allow children to experience the natural environment.	Yes
114. Outdoor space—shade	The proposal includes shaded outdoor areas.	Yes
115. Premises designed to facilitate supervision	The premise is designed to facilitate supervision.	Yes

While the proposal generally complies with the requirements of the National Quality Framework Assessment Checklist, the proposed simulated outdoor space would require concurrence and approval from the Regulatory Authority. This has not been provided with the subject application. It is noted that a report addressing compliance with the Checklist was provided with the subject review request and the original application which advised concurrence would be required. However, no approval from the Regulatory Authority was provided to Council.

Additionally, the subject application has not demonstrated adequate solar access would be provided to the proposed child care centre particularly given the large awnings proposed above the outdoor play areas that extend beyond the windows and glazed doors serving the proposed centre on the eastern and western side of the tenancy.

Given the above, the application does not comply with the requirements of the Education and Child Care SEPP as the proposed outdoor space may be inadequate and the application has not demonstrated the centre will receive adequate light. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

5(b)(ii) Owners Consent

The owner’s consent submitted with the application is that of the sole owner of the commercial tenancies, Al Maha P/L. However, the commercial tenancies in question are located underneath the residential strata scheme within the mixed use development and it is possible that the works proposed may impact that strata scheme.

The original application determined that the proposed outdoor play areas do not encroach on any common property easements under the Section 88B Instrument and Deposited Plan applying to the site. However, the original application did not address the issue of the multiple stratum lots that exist within the mixed use development.

The existing mixed use development has been stratum subdivided into 4 lots. Following the stratum subdivision, Lots 1 and 4 (containing the residential components of the mixed use development) were strata subdivided. The commercial tenancies in question have not been strata subdivided. As the commercial tenancies are contained within Lot 2 of the stratum subdivision and are not part of a strata scheme, owner’s consent from the body corporate to lodge a development application was not seen to be required.

However, the proposal includes the provision of new external structures that may impose on the adjoining residential strata scheme, particularly the proposed awnings over the outdoor play areas that may be affixed to the underside of the balconies / apartments above. Therefore, work may be proposed within the residential strata scheme above the commercial tenancies and body corporate consent may be required.

On 15 August 2017 Council request the submission of the stratum plan registered with Land and Property Information and the inclusion of GLs, RLs and FLs on all plans in order to demonstrate the proposed works do not encroach into the strata scheme above. To address this issue, the applicant amended the plans to show the awning not affixed to the underside of the balconies above but are to be affixed to the vertical walls of the tenancy.

Notwithstanding the plans illustrate that an absorptive acoustic lining is to be placed in the area above the awning and below the underside of the balconies above. This has the potential to impede on the stratum acknowledging that whilst the structure is not affixed to the underside of the balcony of the units above, the absorptive material lines this and in the absence of definitive stratum boundaries, Council cannot be satisfied the works are contained wholly within lot boundaries.

Furthermore, the proposal requires the provision of 6 separate 3.3 metre high metal framed fibre cement cladded walls to comply with the acoustic measures prescribed by the acoustic report submitted with the proposal. The location of these walls is illustrated below;

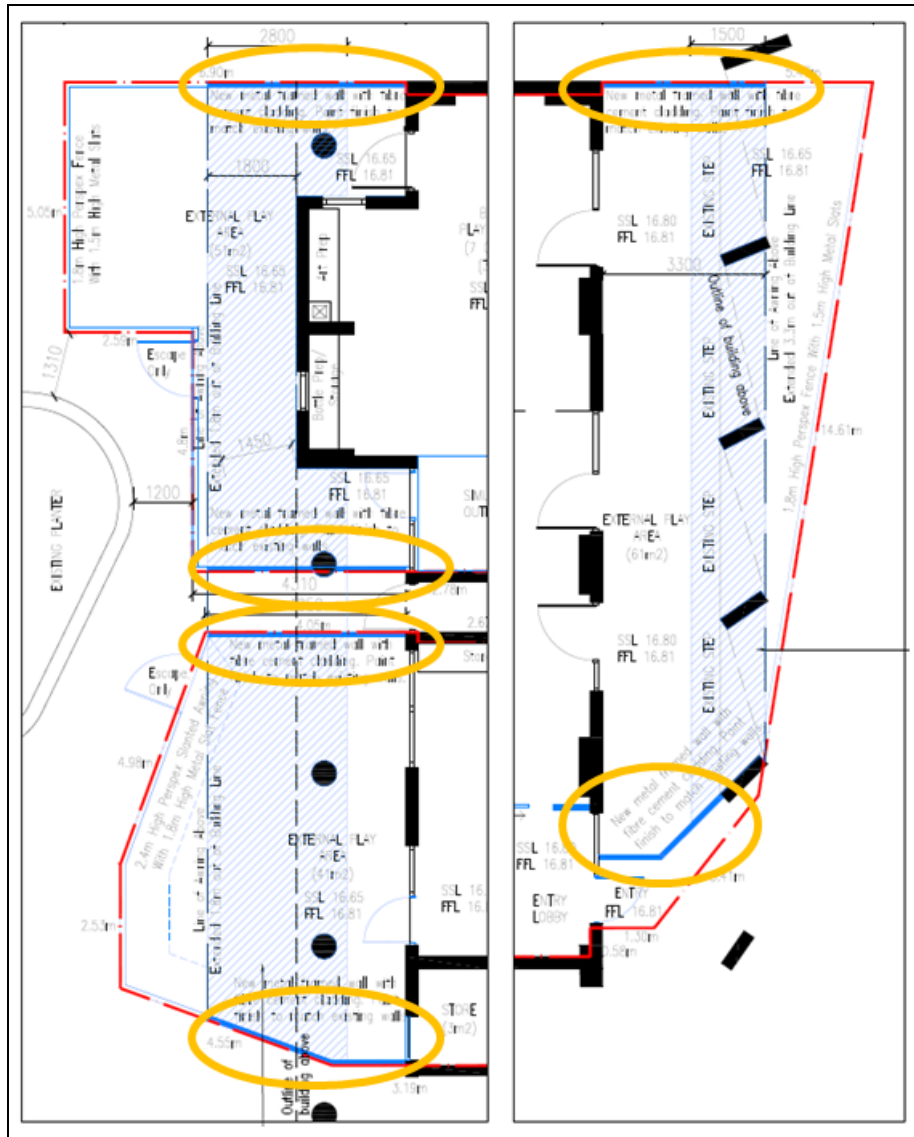


Image: Location of proposed acoustic walls (indicated in Orange)

However, there are no details as how these walls will be constructed without reliance of affixing to the underside of the adjoining balconies above and how they do not extend beyond the subject stratum. Overall the plans lack sufficient detail and the applicant has not submitted the registered stratum plan as requested and the modifications that have been made do not demonstrate the issue of the owners’ consent has been addressed.

As such, there is insufficient information for Council to definitively determine if consent from the body corporate is required and Council is not satisfied appropriate owners’ consent has been provided.

The application is considered unsupported and in view of the circumstances, refusal of the application is recommended.

5(c) The Likely Impacts

The assessment of the Development Application demonstrates that proposal will result in social and built environment impacts by way of the enclosed outdoor play areas. The proposal would result in obstructed sightlines, narrow pathways and undesirable

architectural and visual impacts to the surrounding areas of public and private open space and the mixed use development in which the site is located. Additionally, the application appears to be non-compliant with the National Quality Framework Assessment Checklist in terms of outdoor space and light which may result in amenity impacts for any children in the centre's care.

5(d) The suitability of the site for the development

The site is zoned B4 Mixed Use under MLEP 2011. While the proposed use of a child care centre is permitted with consent in the zone, the issues associated with the enclosed outdoor play areas are driven by the need to provide outdoor space and acoustic treatment that are unique to a child care centre use. It is considered that the impacts associated with the outdoor play areas indicate the development is not compatible with the surrounding area and it is considered the site is not suitable for the development proposed.

5(e) Any submissions

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 7 submissions were received.

The following issues raised in submissions have been discussed in this report:

- Traffic and Parking – See discussion in relation to reason for refusal 1;
- Undesirable external modifications and incompatible architectural design of the proposed outdoor play areas with the existing mixed use development – See discussion in relation to reason for refusal 1;
- The impact on sightlines and manoeuvrability through the site and a loss of open space within the mixed use development as a result of the proposed outdoor play areas – See discussion in relation to reason for refusal 1;
- Suitability of the site for the use of a child care centre – See discussion in relation to reason for refusal 2;
- Lack of details regarding the materials and finishes proposed – See discussion in relation to reason for refusal 1; and
- The need for owners consent from the body corporate – See discussion in Section 5(b)(ii) of this report.

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: Construction Impacts

Comment: A submission raised concerns that construction would result in adverse impacts to the surrounding neighbouring properties. While there would like be impacts resulting from construction, any consent granted would include appropriate conditions to manage those impacts. Additionally, these impacts would be considered temporary as they only relate to the construction stage of the development.

Issue: Waste Disposal

Comment: Submission raised concern that waste generated by the child care centre would not be adequately managed. The application includes a waste management plan which is acceptable. Additionally, the commercial tenancies have waste

management operations in place as part of the mixed use development which are acceptable.

Issue: Noise generated by the child care centre

Comment: A number of submissions raised concern that the operation of the child care centre would result in adverse noise generation and acoustic privacy impacts to the surrounding residential properties.

The Acoustic Assessment submitted with the development application concludes that the child care centre can be appropriately treated and managed to protect the acoustic amenity for surrounding land uses subject to the recommendations contained in the acoustic report. Additionally, the proposed outdoor play areas would only be used for 2 hours a day and the operational hours of the centre would be 7.00am to 6.00pm Monday to Friday which is generally within traditional business hours. Notwithstanding the conclusions of the acoustic report, as discussed in the body of this report, concern is raised regarding not only the aesthetics of the acoustic treatment, but also the whether the works are contained within the stratum lot itself.

Issue: Centre may ask for more children in the future if approved.

Comment: Concern is raised that the centre would request more children if approved and therefore impacts associated with the use would increase. If the application was approved, the number of children would be limited to 30 and the applicant would be required to lodge a Section 96 application in the future to request any amendment to children numbers. The assessment of this and any associated impacts would take place as part of that assessment and is not a matter for consideration as part of this application.

Issue: Landscaping

Comment: Submissions raised concern regarding the level of landscaping works proposed within the outdoor play areas and how these elements would impact drains and other infrastructure within the existing open areas. A landscape plan was submitted with the proposal that depicts a high level of landscaping in the outdoor areas and while the plans provided a high level of detail of the landscaping proposed, they are not clear as to what impacts the works may have on drains, steps and the existing ground coverings at the site. As such, the landscaping proposed is not supported and the outdoor play areas in general are considered to result in adverse impacts and are not supported.

Issue: Property Values

Comment: Submissions raised concern that the proposal would impact property values within the mixed use development. However, there is no evidence to substantiate this assertion and this is not a valid matter for consideration under Section 79C of the Environmental Planning and Assessment Act.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report.

5(f) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The development is contrary to aims (a) and (h) in Clause 1.2 of Marrickville Local Environmental Plan 2011 and numerous controls within Marrickville Development Control Plan 2011. As discussed throughout this report, the development is not considered to be in the public interest and thus is recommended for refusal.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in Section 5 above.

- Development Engineer; and
- Local Traffic Committee

7. Conclusion

This application seeks a review of Determination No. 201600678, dated 19 April 2017, under Section 82A of the Environmental Planning and Assessment Act to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking.

The development is contrary to aims (a) and (h) in Clause 1.2 of Marrickville Local Environmental Plan 2011 and numerous controls within Marrickville Development Control Plan 2011. The proposed outdoor play areas result in adverse impacts to the surrounding public and private spaces by way of obstructing sight lines, creating narrow pathways, and limited passive surveillance and are considered to be incompatible with the architectural design of the mixed use building and the residential complex it is situated within. Given the impacts associated with the outdoor play areas and the inherent need for these areas being unique to a child care centre, the site is not considered suitable for the use proposed. Additionally, the owner's consent provided with the application is potentially inadequate and insufficient information has been submitted with the application to demonstrate the proposed works do not encroach into the adjoining residential strata scheme requiring body corporate approval.

The subject application has not adequately addressed the grounds for refusal of Determination No. 201600678, dated 19 April 2017.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

8. Recommendation

That Council as the consent authority pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 confirm the original determination of **refusal** for Development Application No. 201600678.01 to fit-out and use the premises as a child care centre for 30 children with hours of operation of 7.00am to 6.00pm Mondays to Fridays with associated on and off street car parking for the following reasons:

1. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 because it is considered to be inconsistent with the overall aims (a) and (h) of Marrickville Local Environmental Plan 2011 as listed in Clause 1.2. Specifically with respect to aim (a) the proposal fails to appropriately integrate the use with the transport options required to support the ongoing operation of a child care centre on the site in that inadequate information has been provided to demonstrate that the parking facilities proposed can cater for parents, carers and children with a disability. Specifically with respect to aim (h) the proposed methods and materials for enclosing the outdoor play spaces are considered to be incompatible with the standard of design of built form and open spaces which contribute to the visual and architectural quality of the mixed use development and adjoining private and public open spaces.
2. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with objectives for development in Zone B4 Mixed Use as listed in Marrickville Local Environmental Plan 2011. Specifically the proposed enclosure of outdoor play space and the impractical / unresolved on-site parking is considered to be incompatible with established and approved surrounding land uses.
3. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with the following provisions of Marrickville Development Control Plan 2011;
 - Part 2.1 Urban Design Principles;
 - Part 2.1.2.4 Building Character;
 - Part 2.3 Site and Context Analysis;
 - Part 2.5 Equity and Access of Mobility;
 - Part 2.9 Community Safety;
 - Part 2.10 Parking;
 - Part 5 Commercial and Mixed Use Development;
 - Part 7.1 Child Care Centres; and
 - Part 9.14 Camdenville Precinct.
4. The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building.
5. The proposal is unacceptable pursuant to the provisions of Section 79C(b) of the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space.
6. The proposal is unacceptable pursuant to the provisions of Section 79C(c) of the Environmental Planning and Assessment Act 1979 in that the site is considered unsuitable for the proposed development due to a lack of on-site parking, a lack of on-

site parking for people with a disability, the detrimental impacts to the built environment and detrimental social impacts potentially resulting from the proposed enclosure of outdoor play spaces.

7. Insufficient information has been submitted with the development application to determine whether the proposal will result in additional gross floor area and whether the proposal is compliance with the objectives and controls for floor space ratio as specified in Clause 4.4 to Marrickville Local Environmental Plan 2011.
8. The proposal is unacceptable pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979 in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest.
9. Inadequate information has been submitted with the application to determine if adequate owners consent has been provided.

Attachment A – Assessment Report for DA201600678

**Delegated Authority Report**
TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

File Ref: DA201600678

Synopsis

This report relates to an application to fit-out and use 3 adjoining commercial tenancies as a child care centre. The premises are known as Tenancies T07, T08 and T09 within Strata Plan 88894 and Part Lot 2 DP 1190094 at 32-72 Alice Street, Newtown. The application was notified in accordance with Council's notification policy and 8 submissions were received. The proposal is:

- Not supported on the grounds it is reliant upon dedicated on-street parking in Alice Street;
- not consistent with Aims (a) and (h) in Clause 1.2 to Marrickville Local Environmental Plan 2011 (MLEP 2011);
- not consistent with the objectives for development in Zone B4 Mixed Use;
- not consistent with Part 2.1 Urban Design Principles, Part 2.1.2.4 Building Character, Part 2.3 Site and Context Analysis, Part 2.5 Equity and Access of Mobility, Part 2.9 Community Safety, Part 2.10 Parking, Part 5 Commercial and Mixed Use Development, Part 7.1 Child Care Centres and Part 9.14 Camdenville Precinct as listed in Marrickville Development Control Plan 2011;
- the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building;
- the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space;
- the lack of parking for parents, carers and children with a disability results in inequitable access to and from the premises which is considered to be a detrimental social impact;
- the proposed tenancies are considered unsuitable for the proposed child care centre for the reasons outlined above; and
- approval of the development application is not in the public interest for the reasons outlined above and because the proposal results in non-compliances and inconsistencies with the provisions of environmental planning instruments and a development control plan which have been adopted in the interests of the public.

The application is considered unacceptable in its current form and is recommended for refusal.

PART A - PARTICULARS

Location: The tenancies that are the subject of the development application are located at ground floor level within the centre of the mixed use complex at 32-72 Alice Street, Newtown. The site of the mixed use development is situated on the southern side of Alice Street and bounded by Walenore Avenue to the east, Pearl Street to the west and Alice Lane to the south. Image 1 is a location map of the site and surrounds with the property No.32-72 Alice Street outlined in red. Image 2 is an aerial photograph of the site and surrounds and the location of the main facade of the subject ground floor tenancies indicated by a red arrow in Figure 2.



Delegated Authority Report
TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

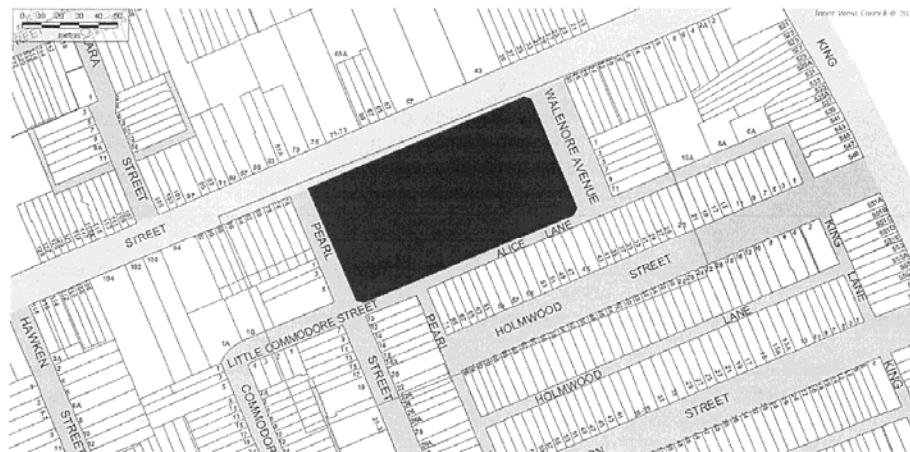


Image 1: Location Map

- DA No:** 201600678
- Application Date:** The application was submitted on 22 December 2016 with owner's consent submitted to Council on 3 February 2017.
- Proposal:** Fitout and use of ground floor commercial tenancies as a child care centre for 32 children.
- Estimated Cost:** \$540,000
- Applicant:** Two Cubed Pty Ltd
- Zoning:** B4 - Mixed Use

PART B - THE SITE AND ITS ENVIRONMENT

- Improvements:** Mixed use building approved with DA201200225 as modified containing 984m² of commercial floor space in nine (9) tenancies, 203 apartments, and basement parking for 187 vehicles.
- Current Use:** The three (3) approved commercial tenancies the subject of this development application are currently vacant and have had no previous use.
- Prior Determinations:** The mixed use development has been completed in accordance with the Court-approved Development Consent DA201200225 as modified.
- Environment:** The site is surrounded predominantly by residential development. Two storey terrace housing is the predominant built form along the northern side of Alice Street. Single and two storey semi-detached dwellings and terrace housing are the typical forms of housing to the east, west and south.

The site is within 150m of King Street being the main commercial strip of Newtown.



Delegated Authority Report
 TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

PART C - REQUIREMENTS

1 Zoning

Is the proposal permissible under zoning provisions?

Yes

Image 3 is an extract from the MLEP 2011 Zoning Map which shows the site (outlined red) being the only area of land in Zone B4 in the immediate locality. The site is surrounded by land mostly in Zone R2 Low Density Residential. Land parcels on the northern side of Alice Street in Zones R3 Medium Density Residential and Zone R4 High Density Residential contain multi dwelling housing and residential flat buildings.



Image 3: Extract from Land Zoning map to MLEP 2011

2 Development Standards (Statutory Requirements):

Type	Required	Proposed
Height of Buildings (max)	20 metres	No change to existing
Floor Space Ratio (max) information	1.85:1	Insufficient

3 Departures from Development Control Plan:

The proposal is inconsistent with various objectives and controls contained in the following sections of the Development Control Plan:

- Part 2.1 Urban Design Principles;
- Part 2.1.2.4 Building Character;
- Part 2.3 Site and Context Analysis;
- Part 2.5 Equity and Access of Mobility;
- Part 2.9 Community Safety;
- Part 2.10 Parking;
- Part 5 Commercial and Mixed Use Development;
- Part 7.1 Child Care Centres; and
- Part 9.14 Camdensville Precinct.

See Section 6 of this report for details of the non-compliances.

4 Community Consultation:



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TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

Required: Yes (newspaper advertisement, on site notice and resident notification)
Submissions: 8 submissions

5 Other Requirements:

ANEF 2033 Affectation (20-25 ANEF)
State Environmental Planning Policy No. 55 – Remediation of Land
State Environmental Planning Policy (Infrastructure) 2007



Delegated Authority Report
TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

PART D - ASSESSMENT

1. The Site and Surrounds

Image 4 is a panoramic photograph of part of the mixed use development as viewed from Alice Street looking south. Image 4 shows the publicly accessible pocket park in the centre of the photograph and the primary frontage of the proposed child care centre is indicated by a red arrow.

Image 5 is a photograph of the commercial tenancies proposed to be used for the child care centre (ground floor level), the residential apartments above and to the south and the pedestrian access to the private courtyard space (to the right of the photo) as viewed from the pocket park.

Image 6 is a photograph of the rear courtyard space to the west of the subject tenancies as viewed from Alice Lane. The location of the subject tenancies is indicated with a red arrow in Image 6.



Image 4: Part of the mixed use development as viewed from Alice Street



Image 5: Eastern façade of subject tenancies



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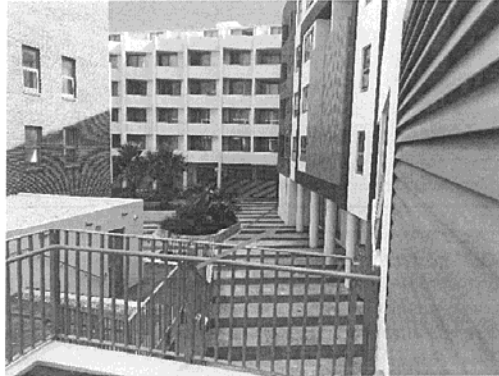


Image 6: Courtyard space west of the subject tenancies

Images 7, 8 and 9 are photographs taken of the existing pedestrian access south of the tenancies the subject of this development application showing the narrow nature of the existing space between existing private courtyard fencing and a retaining wall within the public pocket park. Image 7 shows the existing common pathway has the potential to be further restricted in terms of sight lines should the area adjacent to the eastern façade of the subject tenancies be enclosed. Image 8 is the commercial entry for the commercial tenancy south of the site which cannot be seen directly from the path of travel leading to it from Alice Street.

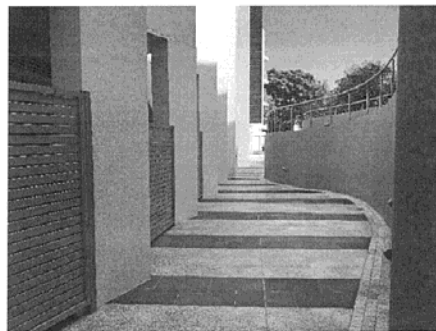


Image 7: Common pedestrian link between commercial tenancy south of the site looking towards Alice Street (area in distance to be further enclosed for outdoor play space)



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Image 8: Entry to commercial tenancy south of the subject tenancies

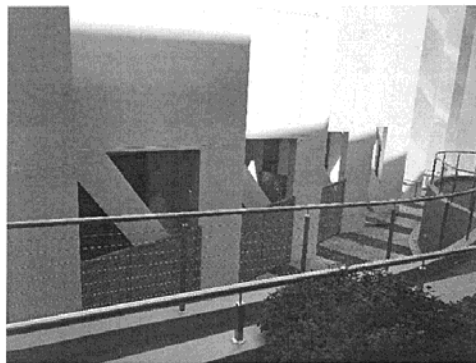


Image 9: Common pedestrian path along eastern façade of the subject tenancies and adjoining apartment to the south as viewed from the adjoining pocket park

Image 10 is a photograph showing the existing line of sight in a south west direction from the common entry point to the private courtyard space. To the left side of the photograph is the existing external façade of Tenancy T07 and the area of the courtyard to the left side of the photo is proposed to be enclosed for an outdoor play space.



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Image 10: View into the private courtyard area with the external wall of Tenancy T07 to the left side of the photo.

There are two bus stops in Alice Street less than 400m from the subject tenancies with services at 10 minute intervals along routes to the Sydney CBD and nearby railway stations. The site is within 850m walking distance to St Peters Railway Station.

The commercial strip along King Street Newtown is 150m east of the site and includes entertainment, recreation, retail and business premises and community services. There are public school, churches and public parks within walking distance of the site.

2. The Proposal

Operational details

Approval is sought for the fitout and use of three (3) adjoining commercial tenancies as a child care centre. The centre is proposed to have capacity for a maximum of 32 children within the following age groups: up to 8 children aged 0-2 years and up to 24 children aged 2-5 years. A maximum of 10 staff will be required. The centre is proposed to operate between 7am and 6pm Monday to Friday inclusive.

Internal works

The internal fitout works include demolition of party walls and installation of new internal walls, amenities, kitchen, staff rooms, reception office and entry foyer, laundry, storage rooms, indoor play rooms and a simulated outdoor play space within the building.

External works

Works proposed outside the building include erection of fences and awnings, gates and shade sails to create external outdoor play areas. One outdoor play area is to be located on the eastern side of the tenancies with an area of 61m². Two outdoor play areas are to be located on the western side of the tenancies which are 41m² and 59m². The outer perimeters of all outdoor play areas are proposed to be fenced with fencing and awnings as specified by the consulting acoustic engineer as follows:

- 1.8m high imperforate fencing fixed to the existing paved ground surface and constructed of Colourbond metal, lapped and capped timber or 6mm thick Perspex;



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TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

- Slanted imperforate awning to the top of the fence at 45 degree angle extending 600mm above the finished fence height and constructed of Colourbond metal, lapped and capped timber or 600mm thick Perspex; and
- Solid imperforate awning extending from the building façade over each outdoor play area to 1.8m from the western façade and up to 3.3m from the eastern building façade; and
- North and south sections of the perimeter fence where it returns to the building façade to be 'blanked off' (ie. Fully enclosed) from ground level to the underside of the extended awning with Colourbond metal, lapped and capped timber or 6mm thick Perspex.

Parking

The development proposal includes the allocation of three (3) existing car parking spaces within the shared basement for use by staff of the centre and seeks Council approval for two (2) on-street parking spaces on the southern kerb-side to Alice Street for use by parents/carers picking up and dropping off children attending the centre.

A copy of the site plan and elevations of the development submitted with the application are reproduced below in Images 11 to 19. No elevation has been provided to demonstrate the proposed change to the internal courtyard west of the tenancies.

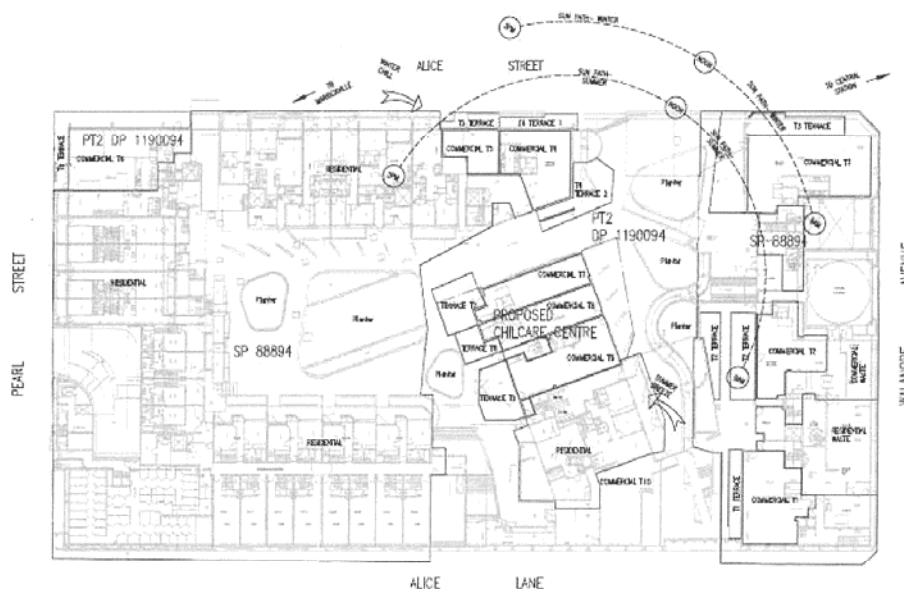


Image 11: Site plan and site analysis



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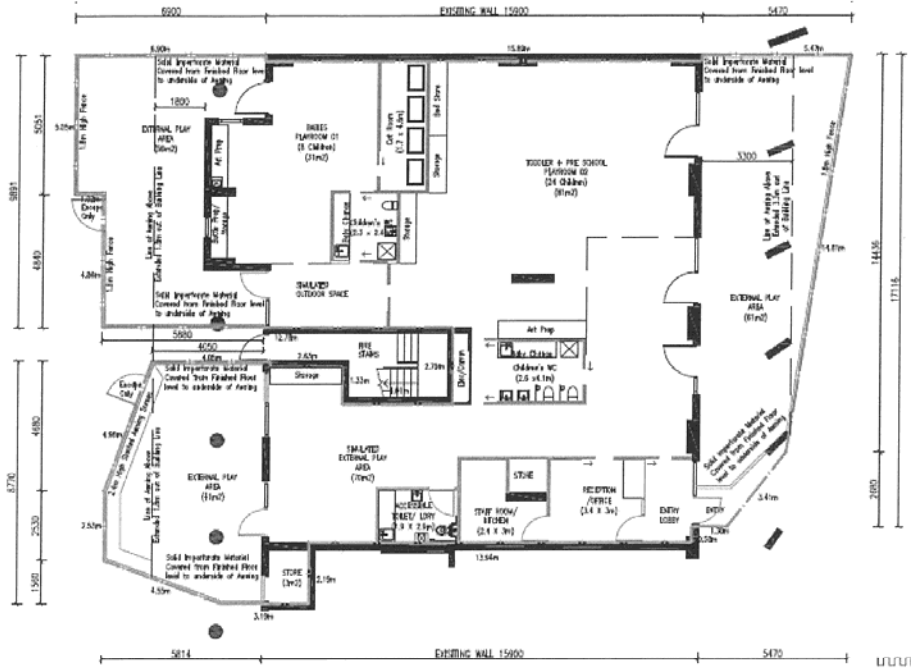


Image 12: Floor Plan



Image 13: East Elevation



Image 14: North Elevation



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SOUTH ELEVATION
NOTE: NO CHANGES TO EXISTING ELEVATION

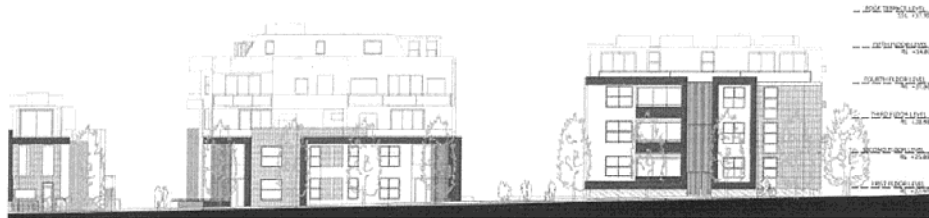


Image 15: South Elevation (no change as viewed from Alice Lane)

WEST ELEVATION
NOTE: NO CHANGES TO EXISTING ELEVATION

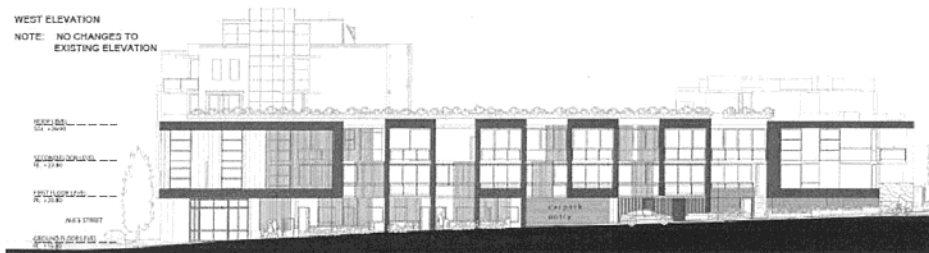


Image 16: West Elevation (no change as viewed from Pearl Street)

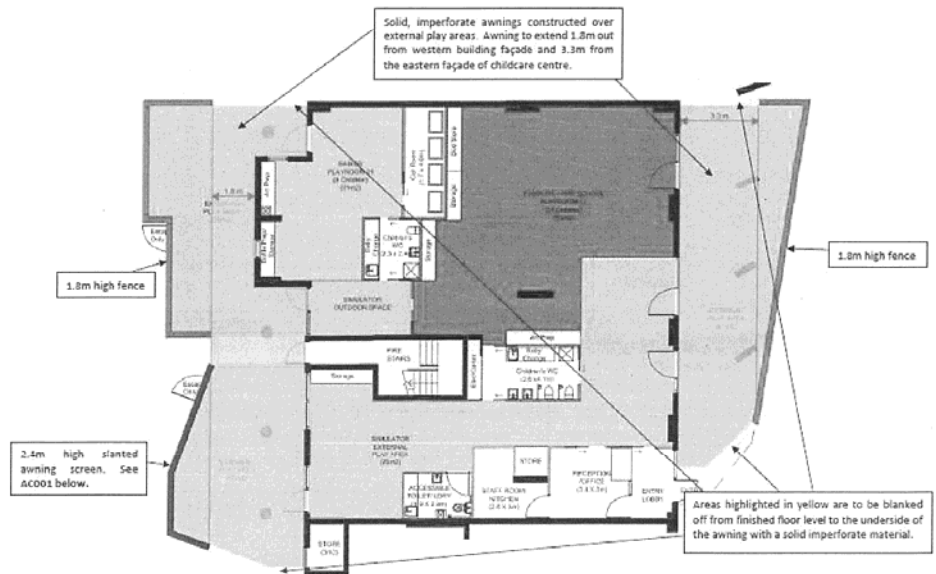


Figure 3 – Recommended Fences and Awning Structures (to be read in conjunction with section 5.5.3)

Image 17: Fencing and awning plan for outdoor play area perimeter



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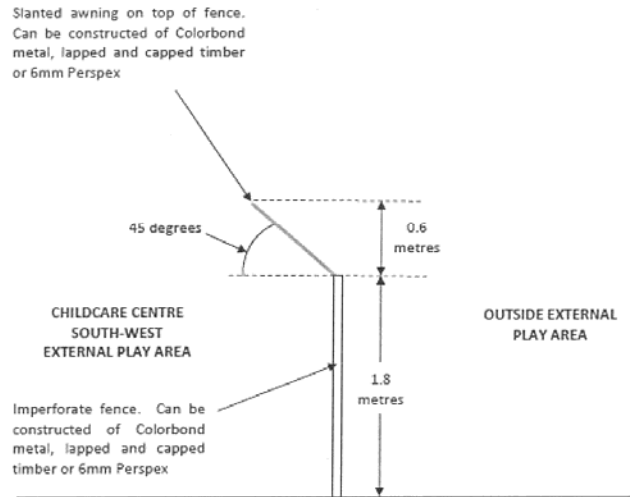


Image 18: Fencing and lower awning section for parts of outdoor play areas (does not include awning to be extended from façades of building)

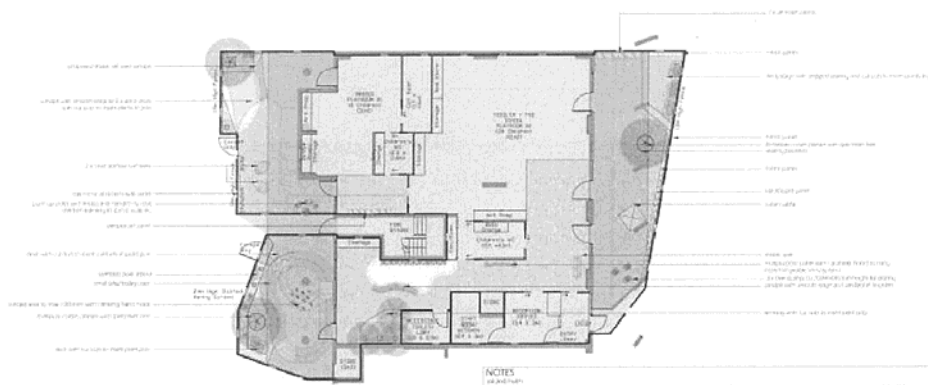


Image 19::Landscape plan

3. State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. MDCP 2011 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

Site remediation has been completed with the mixed use development approved with DA201200225. The proposal does not include excavation or construction works which would potentially risk exposure to contaminants which would be detrimental to human health or the environment. As such the proposal satisfies the relevant provisions contained within SEPP 55.



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4. State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007)

Roads and Traffic (Division 17)

The site has a frontage to Alice Street which is a 'Regional Road' classification. The proposal seeks Council consent for on-street parking allocation for two (2) vehicles ancillary to the child care centre for pick up/drop off of children by parents/carers. The development application was reported to the Local Traffic Committee meeting agenda of 2 March 2017 (Agenda Item T0317 Item 18). The Agenda includes the following assessment comments from Council's Civil Engineer:

(Alice Street has) "unrestricted parking on the southern side and '2P 8am-10pm Permit Holders Exceeded Area M14' restrictions on the northern side";

Council's DCP 2011 (incorporating Amendment No.1) requires provision of off-street parking as follows for Parking Area 1:

1 car parking space per 50m² Gross Floor Area (GFA)

Therefore, the proposed development having a total GFA of 260m² should provide a total of 5 off-street car parking spaces.

Council's DCP 2011 (incorporating Amendment No.1) requires the provision of off-street bicycle parking for child care centres as follows:

1 bicycle parking space per 20 staff for staff + 2 for customers.

Therefore, the proposed development having 10 staff members should provide a total of 3 off-street bicycle parking spaces as follows:

- 1 space for staff bicycle parking, and*
- 2 spaces for parents and carers bicycle parking.*

It is proposed that 3 on-site car parking spaces will be designated for the use of the childcare centre for staff parking which is located in the basement carpark with driveway access through Pearl Street. Due to the position of the allocated spaces, it is proposed that this carpark would be used for staff parking only as it is not positioned close to a lift and not in close proximity to the proposed child care centre. There is no proposal for any visitor parking spaces and mobility parking spaces allocated for this commercial tenancy within the basement carpark. With accordance to Council's DCP 2001 (incorporating Amendment No.1), the proposal leaves a shortfall of 2 off-street parking space.

It should be noted that Council's DCP 2011 (incorporating Amendment No.1) requires motorcycle parking to be provided at a rate of 5% of the car parking required for the development therefore, the provision of motorcycle parking spaces for the child care centre is not required. The proposal does not consider the provision for any bicycle parking spaces and motorcycle parking spaces however as part of the entire development site, the commercial tenancy is provided with bicycle and motorcycle spaces within the carpark but should it be noted that these spaces will also be suited for staff parking only due to the spaces not in close proximity to the proposed childcare centre.

The applicant proposes to make up for the short fall in parking by providing a drop-off and pick-up parking zone during peak periods on weekdays. The applicants proposal is for 2 onstreet parking spaces (near the frontage to the site on the southern side of Alice Street) to be used for drop-off and pick-up.

With the addition of 2 on-street parking spaces, meets the parking provision of the proposal according to Council's DCP 2011 (incorporating Amendment No.1) however site inspections were undertaken by a Council Officer during the afternoon period of a typical weekday on a few occasions and it was observed that on-street parking spaces in Alice Street, Pearl Street, Walenore Avenue and Alice Lane were all highly utilised. Each of these streets, excluding



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Alice Lane, consists of permit parking along one side of the street (out front of the existing single-dwelling residencies). This precinct was recently implemented (October 2016) and falls under the expansion of the Area M14 Permit Parking Precinct where parking restrictions apply to non-permit holders. These restrictions are '2P 8am-10pm Permit Holders Excepted Area M14'. It was observed during the site inspections that these time-restricted parking spaces were all moderate-to-highly utilised. The on-street parking spaces surrounding the development site consists of unrestricted parking in all four streets. It was observed during the site inspections that these unrestricted parking spaces were all highly utilised (refer to the photos below).

Council's DCP 2011(incorporating Amendment No.1) states that assessing development applications for child care centres are a special case due to the high number of car trips generated for a short duration at drop off and pick up times, and the particular safety issues involved with young children around cars. It may be appropriate that the pickup/drop-off area be provided on the street however given that observations show that on-street parking is highly utilised and that the on-site parking arrangement will result in a short fall and will in turn mean a greater demand for on-street parking.



Existing on-street parking along Alice Street



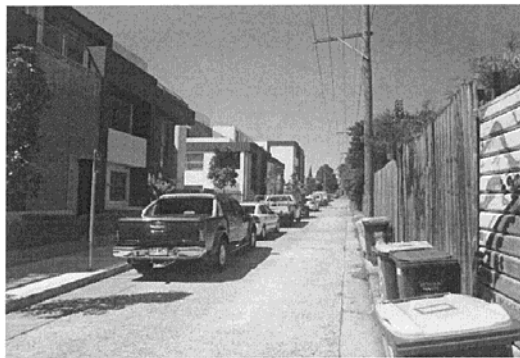
Existing on-street parking along Walenore Avenue



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Existing on-street parking along Pearl Street



Existing on-street parking along Alice Lane

Vehicular Access, waste management (collection) & internal traffic circulation

The vehicular access to the off-street parking spaces will be from Pearl Street, where the existing access driveway is located, while the loading dock access will be from Walenore Avenue.

As part of the original development site proposal for 32-72 Alice Street, Newtown, the proposal consisted of a 3m road widening of Pearl Street (between Alice Street and Alice Lane). This was to facilitate vehicular access movements to and from the basement carpark. At the time of the development assessment for the development site, the traffic consultant provided the internal parking layout and the circulation provides for two-way movements and is considered to be adequate and allows for vehicles to enter and exit the site in a forward direction.

Estimated traffic generation

The applicant's traffic consultant report stated that the total estimated traffic generation from the proposed child care centre would be 26 vehicle trips per hour (morning peak) and 23 vehicle trips per hour (early evening peak). These estimated traffic generation rates are considered to be acceptable and can be accommodated with the surrounding road network.

PUBLIC CONSULTATION



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Consultation/notification regarding the proposal would normally be undertaken by Council's Development and Planning Services as part of the development application process.

CONCLUSION

It is proposed that the following traffic related comments be forwarded to Council's Development Assessment section.

Based on the information presented in the applicant's submission to Council with regards to the distance of the proposed site and the access to the basement carpark and shortage of designated car parking spaces for the proposal, it is acknowledged that these issues will result in a greater shortfall in on-site parking which will in turn need to be accommodated on-street.

It means the Development Application proposal has a shortfall of 40% in parking spaces required and this directly impacts on-street parking which is highly utilised.

Due to the shortfall in on-site parking the applicant needs to review the parking provision for on-site parking for the proposed childcare centre at 2/32-72 Alice Street, Newtown to meet the requirements of Council's DCP 2011 (incorporating Amendment No.1)."

In summary, Council's Civil Engineer has observed that on-street parking in Alice Street is already in high demand and consequently on-site parking dedicated to the child care centre has not been supported. Furthermore there has been no provision made for parking suitable for people with a disability.

At its meeting of 6 April 2017 the Local Traffic Committee resolved to approve the recommendations of Agenda Item 31 being the Newtown/Enmore Parking Implementation Review Report. This report recommends converting existing unrestricted on-street parking in Alice Street to '2P 8am-10pm Permit Holders Excepted'. This resolution is consistent with denying exclusive on-street parking allocation to the proposed child care centre.

Clause 101 Development with frontage to classified road

Council's Civil Engineer has noted the section of Alice Street fronting the development site is classified as a Regional road. Clause 101 to the ISEPP 2007 relates to development with a frontage to a Classified Road. Sub-clause (2) states that:

- "(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road."*

Vehicular access to the basement car park is provided from Pearl Street and as such is provided from a road other than the classified road. As such, the development would not affect the safety, efficiency and on-going operation of Alice Street.



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Clause 102 Impact of road noise or vibration on on-road development

In accordance with the ISEPP 2007, the proposal is a form of development that is sensitive to traffic noise or vehicle emissions.

The site is located adjacent to a road corridor. Clause 102 relates to development in or adjacent to road corridors and road reservations and states the following:

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*
 - (a) *a building for residential use,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or child care centre.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

An Acoustic Assessment was submitted with the application and has analysed background noise which includes external noise sources including traffic and aircraft noise and makes recommendations for standards and materials used in construction including minimum 6.38mm thick laminated glazing for all windows and doors, acoustic seals to all openings, ventilation openings to be 'blanked off' and solid fencing and awnings to surround outdoor place spaces in order to protect internal amenity from external noise sources.

5. Marrickville Local Environmental Plan 2011

(i) Overall Aims of the Marrickville Local Environmental Plan 2011 (Clause 1.2)

The overall aims of MLEP 2011 are listed in Clause 1.2. Those aims relevant to the proposed development are listed below along with assessment comments:

Aim "(a) to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses"

Comment: The proposal fails to appropriately integrate the use with the transport options required to support the ongoing operation of a child care centre on the site in that inadequate on-site parking is proposed and the parking facilities proposed to not cater for parents, carers and children with a disability.

Aim "(h) to promote a high standard of design in the private and public domain."

Comment: The proposed methods and materials for enclosing the outdoor play spaces are considered to be incompatible with the standard of design of built form and open spaces which



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contribute to the visual and architectural quality of the mixed use development and adjoining private and public open spaces.

(ii) Suspension of covenants, agreements and instruments (Clause 1.9A)

Clause 1.9A outlines the status of covenants, agreements and instruments that apply to the title of land in relation to the assessment of development applications under MLEP 2011 and states as follows:

"1.9A Suspension of covenants, agreements and instruments

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*
- (2) *This clause does not apply:*
 - (a) *to a covenant imposed by the Council or that the Council requires to be imposed, or*
 - (b) *to any prescribed instrument within the meaning of section 183A of the Crown Lands Act 1989, or*
 - (c) *to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or*
 - (d) *to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or*
 - (e) *to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or*
 - (f) *to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or*
 - (g) *to any planning agreement within the meaning of Division 6 of Part 4 of the Act.*
- (3) *This clause does not affect the rights or interests of any public authority under any registered instrument.*
- (4) *Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3)."*

Relevant Torrens and Strata Title Terms

The Master Planned mixed use development on the site is subject to terms under registered Torrens and Strata Title schemes. Relevant extracts from the Section 88B Instrument and Registered Plans are included in Images 16, 17, 18 and 19. Within Figure 19 a red outline has been added which represents the approximate boundaries of the internal and external spaces proposed to be used for the child care centre as shown in the site plan analysis submitted with the development application.

To assist in the interpretation of the terms of the Section 88B instrument:

- A "grantor" includes the grantor, its successors and every person who is entitled to an estate or interest in possession of the Lot burdened or any part of it within which the right is capable of enjoyment;
- A "grantee" includes the Grantee, its successors and every person who is entitled to an estate or interest in possession of the Lot burdened or any part of it within which the right is capable of enjoyment; and
- Rules about the location and use of an easement which is a shared facility must be consistent with the rules of a Building Management Committee, Building Management Statement and Strata Management Statement.



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5. Terms of Easement for Access variable width limited in stratum (A) numbered 5 in the Plan
- 5.1 The Grantee has the right to go, pass and repass over the Lot Burdened at all times on foot, with or without, garbage, trolley, garbage/recyclable bin for all lawful purposes including within trafficable areas.
- 5.2 The Grantor may make rules about the use of the site of this easement.
- 5.3 In exercising the powers conferred by this easement, the Grantee must:
- (a) cause as little inconvenience as is practicable to the Grantor and any occupier of the Lot Burdened;
 - (b) cause as little damage as is practicable to the Lot Burdened and any improvement on it;
 - (c) make good any collateral damage; and
 - (d) comply with any rules made by the Grantor according to this easement.
- 5.4 The Grantee may only do a thing under this easement within the site of the easement.
- 5.5 The rights in, and obligations on, the Grantee in this easement extend to every Authorised Person.

*Image 20 :Extract from Section 88B instrument for the mixed use development 32-72 Alice St
Terms of Easement for Access Labelled (A)*



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8. Terms of Easement for Access variable width limited in stratum (C) numbered 8 in the Plan
 - 8.1 The Grantee has the right to go, pass and repass over the Lot Burdened at all times on foot within the easement site.
 - 8.2 The Grantor may make rules about the use of the site of this easement.
 - 8.3 In exercising the powers conferred by this easement, the Grantee must:
 - (a) cause as little inconvenience as is practicable to the Grantor and any occupier of the Lot Burdened;
 - (b) cause as little damage as is practicable to the Lot Burdened and any improvement on it;
 - (c) make good any collateral damage; and
 - (d) comply with any rules made by the Grantor according to this easement.
 - 8.4 The Grantee may only do a thing under this easement within the site of the easement.
 - 8.5 The rights in and obligations on the Grantee in this easement extend to every Authorised Person.

Image 21 : Extract from Section 88B instrument for the mixed use development 32-72 Alice St Terms of Easement for Access Labelled (c)

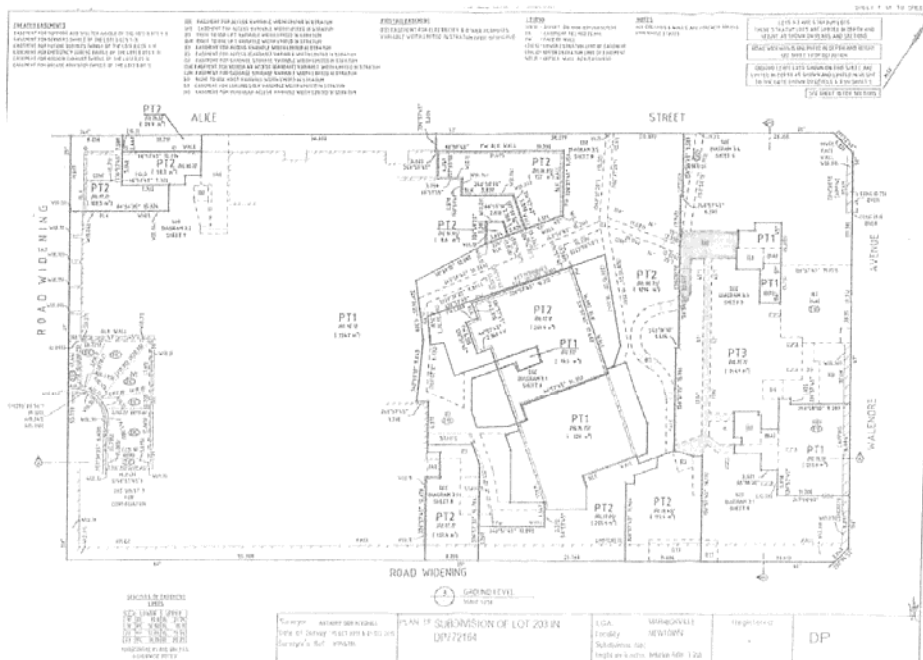


Image 22 : Extract from Deposited Plan showing ground level easements for access labelled (A) (coloured orange) and (C) (coloured yellow) allowing common pedestrian access through the site



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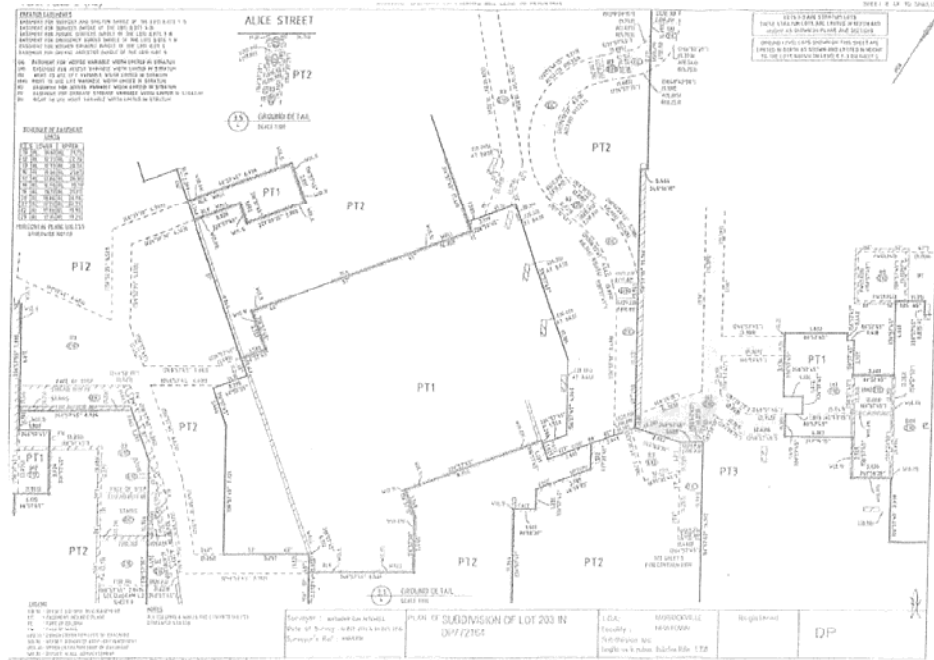


Image 23 :Extract from Deposited Plan showing part of ground level detail of easements for access labelled (A) (coloured orange) and (C) (coloured yellow) allowing common pedestrian access

The terms and location of the easements for access labelled (A) and (C) will not be compromised or breached by the proposed child care centre. The proposal is consistent with Clause 1.9A to MLEP 2011.

(iii) Land Use Table and Zone Objectives (Clause 2.3)

The site is zoned B4 - Mixed Use under the provisions of MLEP 2011. A child care centre is permissible with Council's consent under the zoning provisions applying to the land.

The objectives of the B4 - Mixed Use zone are as follows:

- "To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.
- To promote commercial uses by limiting housing.
- To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.
- To constrain parking and restrict car use."

The development is considered to be inconsistent with some of the objectives for development in the zone. The proposed location and set out of the child care centre is considered to be incompatible with the surrounding land uses for the following reasons:



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- The enclosure of space around the eastern façade to create an acoustically treated outdoor play space:
 - does not present an active frontage to the publicly accessible pocket park;
 - creates a long, narrow corridor with poor amenity and poor surveillance between an existing retaining wall and the access to the residential apartment and commercial unit further south at ground floor level;
 - prevents passive surveillance between the ground floor tenancies and the adjoining pocket park;
- The enclosure of space around the western façade to create acoustically treated outdoor play spaces:
 - Presents a poor land use relationship between private (commercial) space and the remaining private common open space courtyard;
 - Is not compatible with safe lines of sight and convenient and accessible paths of travel within the private courtyard space;
 - Is not compatible with the existing landscape treatment and areas of planting and pathways within the private courtyard space;
- The proposed acoustic perimeter treatments to the outdoor play spaces are not compatible with the visual amenity, architectural treatment and arrangement and use of space surrounding the tenancies; and
- The on-street parking to be allocated exclusively to the child care centre would set an undesirable precedent and is incompatible with the already high demand for on-site parking in the adjoining and nearby streets.

(iv) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works for the removal of existing internal walls and minor fitout completed to date in accordance with development consent DA201200225 as modified.

(v) Height (Clause 4.3)

A maximum building height of 20 metres applies to the site as indicated on the Height of Buildings Map that accompanies MLEP 2011. The proposal will not change the existing approved building height.

(vi) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.85:1 applies to the site as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. The proposed methods of enclosing the outdoor play spaces potentially create additional floor space consistent with the definition of gross floor area in MLEP 2011. However, insufficient information has been submitted with the development application to address this matter.

(vii) Preservation of Trees or Vegetation (Clause 5.9)

Clause 5.9 of MLEP 2011 concerns the protection of trees identified under MDCP 2011.

There are no trees or vegetation to be removed by the proposal.

(viii) Heritage Conservation (Clause 5.10)

The site is located within the vicinity of heritage items and adjacent to the Holmwood Estate Heritage Conservation Area as indicated in Image 20 which is an extract of the Heritage Map to MLEP 2011.



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The proposed changes to the external appearance of the existing contemporary building are considered to have minimal impact to the context and setting of the nearby heritage item and do not detract from the cultural and social significance of the Heritage Conservation Area.

The development satisfies Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011.



Image 24 :Extract from Heritage Map to MLEP 2011

(ix) Development in areas subject to Aircraft Noise (Clause 6.5)

Clause 6.5 applies to development that is in an ANEF contour of 20 or greater, and the consent authority considers is likely to be adversely affected by aircraft noise.

The site is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour.

The child care centre is likely to be affected by aircraft noise.

Clause 6.5(3) of MLEP 2011 reads as follows:

- “(3) Before determining a development application for development to which this clause applies, the consent authority:
- (a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and
 - (b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2000, and
 - (c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2000.”

The carrying out of development would result in an increase in the number of people affected by aircraft noise.

The acoustic assessment submitted with the development application addressed the potential impact of aircraft noise on the internal noise levels of the proposed centre. The report concludes that external noise can be appropriately attenuated with the implementation of construction standards and materials used including minimum 6.38mm thick laminated glazing for all windows and doors, acoustic seals to all openings, ventilation openings to be ‘blanked off’ and solid fencing



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and awnings to surround outdoor place spaces in order to protect internal amenity from external noise sources.

The provisions of Clause 6.5 have been satisfactorily addressed. However, acoustic attenuation also relies upon the installation of perimeter fencing and awnings to the outdoor play space which also reduces interior noise levels. As stated previously in this assessment the proposed treatments of the outdoor play spaces are considered incompatible with:

- the desired 'active frontage' requirements of the MDCP 2011;
- the interface with the pocket park;
- the interface with the common private courtyard space;
- the facilitation of casual surveillance to the surrounding common and publicly accessible spaces;
- the maintenance of safe, clear lines of sight to and within public and private common open space;
- the landscape treatments and common paths of travel throughout the development site; and
- the visual amenity, aesthetic appeal, architectural treatment and arrangement and use of space surrounding the tenancies.

In summary components of the proposed acoustic attenuation are considered unacceptable for the reasons listed above.

6. Marrickville Development Control Plan 2011

PART 1 – STATUTORY INFORMATION

Section 1.1.12 of the DCP lists the order of priority for applying the controls and states as follows:

"If there is any inconsistency between controls within the DCP, to the extent of the inconsistency, the controls are generally to be applied in the following order of priority:

- 1 – site-specific controls within Part 9
- 2 – precinct-specific controls within Part 9
- 3 – heritage controls within Part 8 (in some instances these will take priority)
- 4 – controls for specific development types within Parts 3 to 7
- 5 – generic controls within Part 2.

However, assessment of a proposal will involve consideration of all relevant DCP objectives and controls applied collectively to the specific circumstance to achieve an appropriate development outcome."

Noting this priority, the following assessment is presented in the same numeric order as the contents of the DCP.



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PART 2 - GENERIC PROVISIONS

(i) Urban Design (Part 2.1)

Part 2.1 of MDCP 2011 contains the objectives and controls relating to urban design. These principles are contained in the following table along with assessment comments relating to the proposal.

Table 1: Urban Design Principles Compliance Table

Urban Design Principle	Comment in relation to proposal	Complies Y/N?
<p>Principle 1: Structure and connections</p> <p>Organise places that are consistent with, or improve, the urban structure and are well connected.</p>	<p>The proposed enclosed outdoor play spaces are detrimental to the structure and connections of existing spaces surrounding the tenancies, within the private courtyard and the publicly accessible pocket park and associated movement spaces.</p> <p>The enclosed outdoor play space on the eastern side of the proposed child care centre will create a narrow corridor between an existing retaining wall and the facades of the apartment and the commercial unit to the south with poor casual surveillance, poor lines of sight and an unappealing narrow and confined space.</p> <p>The enclosed outdoor play spaces on the western side of the proposed child care centre will obstruct lines of sight and accessible paths of movement within the space currently used as private common courtyard area.</p> <p>The enclosing fences and awnings to the outdoor play spaces do not integrate with the function of existing spaces. They create a longer, narrow access/egress from the common stair between tenancy T08 and T09 with only one option for a path of travel into the private courtyard space and a longer narrow corridor with reduced lines of sight along the common pedestrian entry/egress to the private courtyard space between commercial tenancies T07 and T4.</p>	No
<p>2.1.1.2 Principle 2: Accessibility</p> <p>Provide ease, safety and choice of access for all people</p>	<p>The enclosed outdoor play spaces reduce the choice of access routes for people using the surrounding space.</p> <p>The outdoor play space on the eastern side creates a narrow, long corridor for access to the apartment and commercial tenancy further south and reduces lines of sight.</p> <p>The outdoor play spaces on the western side close off a current path of travel along the eastern side of the planter beds and create a longer, narrow corridor to the common stair between tenancies T08 and T09.</p> <p>There are no options for access to the site for parents/carers or children with a disability who intend to use cars or taxis for transport as there are no disabled parking spaces proposed.</p>	N
<p>2.1.1.3 Principle 3:</p>	<p>For the reasons outlined above in this table and in Section</p>	N



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<p>Complementary mix of uses and types</p> <p>Maintain and create a complementary mix of uses and types of buildings and spaces</p>	<p>5(i) of this assessment report, the type of building work proposed is considered not to be complementary to the existing built form.</p>	
<p>2.1.1.4 Principle 4: Appropriate density</p> <p>Provide appropriate density, with the highest density focused on commercial centres and public transport nodes where accessibility is the greatest</p>	<p>No change to the density of development.</p>	<p>N/A</p>
<p>2.1.1.5 Principle 5: Urban form</p> <p>Manipulate urban form to clearly define public and private space and create spaces that are appropriate to the hierarchy, function and character of places</p>	<p>The proposal would create a poor relationship and interface between:</p> <ul style="list-style-type: none"> (i) publicly accessible spaces and private space on the eastern side of the proposed child care centre; and (ii) common private courtyard space and private space on the western side of the proposed child care centre. <p>The proposed methods of enclosing the outdoor play spaces are considered to be potentially detrimental to the character of the adjoining public and private spaces creating narrow spaces with poor sight lines, restricting and obstructing paths of travel, abutting planter beds in an inappropriate manner to create ambiguous and 'left over' spaces and preventing casual surveillance.</p>	<p>N</p>
<p>2.1.1.6 Principle 6: Legibility</p> <p>Help people to understand how places work and to find their way around</p>	<p>The proposed methods for enclosing the outdoor play spaces will be detrimental to the legibility of spaces by:</p> <ul style="list-style-type: none"> (i) creating a long narrow corridor to access the apartment and commercial tenancy T10 to the south; (ii) reducing the lines of sight, elongating and enclosing the common pathway to the private courtyard area between tenancy T07 and T04; (iii) reducing lines of sight, elongating and enclosing the route to the common stair between tenancy T09 and T08; (iv) obstructing lines of sight and pathway options within the private common courtyard space. 	<p>N</p>
<p>2.1.1.7 Principle 7: Activation</p> <p>Stimulate activity and a sense of vitality in public places</p>	<p>The proposed methods for enclosing outdoor play spaces will reduce lines of sight and prevent casual surveillance between the façade of Tenancies T07, T08 and T09 to the adjoining public pocket park to the east and common courtyard space to the west.</p> <p>The hours and days of operation and the limit of use of the outdoor play spaces to 2 hours per day (for acoustic</p>	<p>N</p>



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	controls) results in the spaces adjacent to public and private open space being unused for the majority of the time which lessens activity and vibrancy which would otherwise be anticipated from an active commercial tenancy (for which the tenancies have been approved).	
<p>2.1.1.8 Principle 8: Fit and adaptable public space</p> <p>Support the intended use of spaces while also allowing for adaptability</p>	The proposed enclosure of outdoor play areas is not conducive to supporting the use and safety of the adjoining public space as it prevents lines of sight and casual surveillance and reduces the appeal and functionality of the adjoining space by creating longer, narrower corridors, ambiguity in navigation and spaces not compatible with existing landscaping beds.	N
<p>2.1.1.9 Principle 9: Sense of place and character in streetscapes and townscapes</p> <p>Recognise, preserve and enhance the characteristics that give places a valued identity and create high quality and distinctive streetscapes and townscapes</p>	The materials and methods for enclosing the outdoor play spaces are considered to be incompatible with the colours, materials and finishes and architectural style of the existing building thereby detracting from the identity and distinctive architectural themes of the overall mixed use development.	N
<p>2.1.1.10 Principle 10: Consistency and diversity</p> <p>Balance design consistency and diversity to create order and interest</p>	The materials and methods for enclosing the outdoor play spaces are not unifying elements and are incompatible with the architectural features and overall coherence and order of the building facades.	N
<p>2.1.1.11 Principle 11: Continuity and change</p> <p>Enhance the sense of place and time by embracing change yet respecting heritage values</p>	The materials and methods for enclosing the outdoor play spaces are not consistent with the architectural features and style, colours, materials and finishes of the existing building. The existing features and style of the mixed use development were subject to assessment in terms of their impacts on the context and setting in relation to nearby heritage items and the Holmwood Estate Heritage Conservation Area.	N
<p>2.1.1.12 Principle 12: Sensory pleasure</p> <p>Create places that engage the senses and delight the mind</p>	The proposal is considered to make no tangible positive contribution to the potential sensory experience of the space and surrounds.	N

In summary, the proposal is considered to be inconsistent with:

- the design principles in Section 2.1 to MDCP 2011 as detailed in table above;
- inconsistent with Objective 2.1 O1 which seeks to achieve high quality urban design; and



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- Non-compliant with Control 2.1 C1 which requires all development applications involving substantial external changes that are visible from or effect public domain must be consistent with the relevant aspects of the 12 urban design principles.

2.1.2.1 Topography

No significant change to the existing finished ground surface levels.

2.1.2.2 Subdivision pattern

No change to the Torrens pattern.

2.1.2.3 Street space and scale

No change to the setbacks, building height and proportions of larger built elements. However, the methods and materials proposed for enclosing private open space areas is not consistent with the established pattern for enclosing private open spaces throughout the mixed use development and is considered to be detrimental to the overall presentation of the development as viewed from Alice Street and from the publicly accessible pocket park within the site.

2.1.2.4 Building Character

The proposal is considered to be incompatible with the architectural character of the mixed use development.

2.1.2.5 Walls and fences

The materials and design of the fences and awnings proposed to enclose the outdoor play spaces are considered to be incompatible with the external colours, materials and finishes and overall architectural style and detailing of the mixed use development.

2.1.2.6 Landscaping

The proposed enclosed outdoor play spaces are not compatible with the layout of existing landscaped areas within the public pocket park to the east and the common private courtyard space to the west because they obstruct lines of sight, reduce options for paths of travel, create longer, narrower movement spaces, create uninviting spaces and create ambiguous and unusable spaces.

(ii) Site and Context Analysis (Part 2.3)

A site and context analysis was submitted with the application and is acceptable with the exception that the plan shows drainage infrastructure and spaces within the site that are available for movement corridors but does not adequately examine the potential impacts of the proposal on drainage infrastructure and movement paths.

(iii) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 requires consideration to be given to equity of access and mobility before granting development consent. The table below summarises the minimum access requirements with regard to accessible facilities, dwelling and parking requirements as prescribed by Part 2.5.10 of MDCP 2011 and the proposal's compliance with those requirements.

Table 2: Equity of Access and Mobility Compliance Table Child Care Centre Class 9b building



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Control	Standard	Proposal	Assessment Comment	Complies?
Statement of Consistency submitted with application	<p>DDA Compliance and BCA Compliance Statement submitted with development application.</p> <p>The Premises standard requires that early childhood centres be accessible to and within all areas normally used by the occupants.</p>	<p>DDA Compliance and BCA Compliance Assessment was submitted with the development application and concludes the parts of the building can be compliant. However with regard to accessible parking states as follows: <i>"should on-site carparking be proposed/ required to serve the child care centre"</i></p>	<p>The Development Application does not satisfactorily address accessible parking for carers/parents nor the provision of an accessible path of travel to and from such parking.</p> <p>No accessible parking is proposed for parents / carers with a disability.</p>	No
Access and Mobility	<p>Access for all persons through the principal entrance and within the interior and ancillary outdoor spaces for</p> <ul style="list-style-type: none"> - continuous accessible path of travel; - accessible seating arrangements; - comparable sight lines; - gradient of floor surface; - measures for people with hearing impairments; - appropriate sanitary facilities. 	<p>The DDA and BCA Compliance Report submitted with the development application concludes all interior and outdoor play areas of the proposed development are accessible or can meet requirements subject to further detail.</p>	<p>All spaces and facilities within the private space of the child care centre can be accessible.</p>	Yes
Accessible Car Parking	<p>1 accessible parking space for every 10 carparking spaces or part thereof</p>	<p>The development application does not clearly undertake to provide one disabled parking space for staff within the allocated</p>	<p>The development application does not make satisfactory provision for parking for staff with a disability nor for parents / carers with a disability.</p>	No



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Control	Standard	Proposal	Assessment Comment	Complies?
		commercial parking spaces in the basement. The development application does not propose disabled parking spaces for carers / parents.		

(iv) Visual and Acoustic Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy.

The Acoustic Assessment submitted with the development application concludes that the child care centre can be adequately protected from external noise sources (including vehicles and aircraft) and appropriately treated and managed to protect the acoustic amenity for surrounding land uses subject to the recommendations contained in the acoustic report.

The awnings and fencing proposed to surround and enclose the outdoor play spaces will obscure lines of sight between the interior and exterior spaces of the child care centre and the adjoining and surrounding apartments, public space and common private spaces. Whilst this may achieve visual privacy, the obstruction of lines of sight to and from publicly accessible space and common private open space areas is not supported (see comments in Table 1 above).

(v) Solar Access and Overshadowing (Part 2.7)

Part 2.7.5.3 applies to solar access and overshadowing for commercial, industrial and other development. Control C13 requires new buildings and additions to be sited and designed to maximise direct solar access to reduce reliance on artificial lighting and heating. The outdoor play spaces are to be mostly enclosed by awnings and fencing and are therefore likely to receive very limited direct solar access. Windows to the child care centre are oriented to the east and west and recessed beneath the building colonnade and proposed awnings and are unlikely to receive direct solar access. The centre will be reliant upon artificial lighting and temperature control.

(vi) Social Impact Assessment (Part 2.8)

In accordance with Table 1 to Control 2.8.5 of the DCP, the proposed child care centre does not require a Social Impact Comment or Social Impact Statement as it is not located within a residential area.

(vii) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives and controls relating to community safety. Those controls are based on the Crime Prevention Through Environmental Design (CPTED) principles including Surveillance, Access Control, Territorial Reinforcement and Space Management and Maintenance.

The proposal is considered to be inconsistent with the requirements of Part 2.9.3.1 – Surveillance for the following reasons:



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- The fencing and enclosure of outdoor play spaces as proposed will prevent direct lines of sight to the adjoining public open space pocket park and the private common courtyard area;
- The fencing and enclosure of outdoor play spaces as proposed will reduce and obscure lines of sight and create blind corners along common movement pathways; and
- The visibility of the proposed entry is poor.

The proposal is considered to be inconsistent with the requirements of Part 2.9.3.2 – Access Control because the proposed fencing and awnings to enclose the outdoor play areas will obstruct lines of sight between public, common and private spaces.

(viii) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

The site is located in Parking Area 1 under Part 2.10 of MDCP 2011. MDCP 2011 applies car, bicycle and motorcycle parking requirements as listed in Table 3.

Table 3: Car, Bicycle and Motorcycle Parking Control Compliance Table

Land use	Control	Required	Proposed	Complies?
Car Parking				
Child care centre	1 space per 50m ² GFA	5 spaces (GFA 260m ²)	3 spaces	No 3 spaces deficient
Bicycle Parking				
Child care centre	1 bicycle parking space per 20 staff for staff and 2 for customers	0.5 for staff 2 for parents / carers	Nil spaces	No
Motorcycle Parking				
Child care centre	5% of the total car parking requirement	0.25 spaces (rounded down to nil)	Nil spaces	Yes

As detailed above, the development does not comply with the car parking requirements.

Part 2.10.7 of MDCP 2011 states:

"In assessing development applications for child care centres, a thorough merit assessment will be required in addition to consideration of the provision rates for this land use, as specified in Table 1. Child care centres are a special case due to the high number of car trips generated for a short duration at drop off and pick up times, and the particular safety issues involved with young children around cars. It may be appropriate that the pickup/dropoff area be provided on the street with appropriate kerbside parking regulations."

A merit assessment has been undertaken by Council's Civil Engineer as detailed in Section 4 of this assessment report where it was concluded that on-street parking in Alice Street is already in high demand and consequently on-site parking dedicated to the child care centre is not supported. Furthermore there has been no provision made for parking suitable for people with a disability.

(ix) Energy Efficiency (Part 2.16)

Part 2.16 of MDCP 2011 prescribes the energy efficiency requirements for non-BASIX affected developments. The DCP requires that the Statement submitted with the development application



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address matters which achieve energy efficiency by setting minimum star ratings for appliances. Council's standard conditions could be recommended relating to the provision of energy and water efficient fixtures and fittings for the development. However, the application is not recommended for approval.

(x) Water Sensitive Urban Design (Part 2.17)

Part 2.17 of MDCP 2011 contains objectives and controls relating to Water Sensitive Urban Design (WSUD) including requirements for mixed use developments. No changes are proposed to the approved and installed measures.

(xi) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.4 of MDCP 2011 prescribes landscaped area and common open space controls but does not include specific controls for child care centres and there are no specific objectives in Part 2.18.11.7 for landscaping of mixed use development which relate to the proposal.

(xii) Site Facilities and Waste Management (Part 2.21)

2.21.2.1 Recycling and Waste Management Plan

No change proposed to the existing waste management provisions installed and operated in accordance with Development Consent DA201200225 as modified.

(x) Stormwater Management (Part 2.25)

No change to stormwater management provisions approved and installed in accordance with Development Consent DA201200225 as modified.

PART 5 – COMMERCIAL AND MIXED USE DEVELOPMENT

Part 5 of MDCP 2011 contains controls and objectives for commercial and mixed use development including newly constructed works and fit out and use of existing premises. The controls which are relevant to the proposed child care centre are summarised in Table 4 along with assessment comments.

Table 4: DCP Controls for Commercial fitout and use

Control	Proposal	Assessment Comment	Complies?
C47 The active frontage component of a building must:			
i. Be built to the front and any secondary frontage boundaries except for recessed entries (where appropriate) or where the building type or situation makes a setback appropriate;	The frontage of the tenancies are currently visible from Alice Street but will be obscured by the proposed fencing and awnings to enclose the outdoor play areas.	The proposed fencing and awnings will result in the main entry becoming recessed and not clearly visible for people arriving to the site from Alice Street.	No
ii. Include a frontage to the street that contains	Existing clear glazing to be obscured by	Existing clear glazing will be obscured.	No



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Control	Proposal	Assessment Comment	Complies?
<p>more than 80% of clear glazing with sill heights that are a maximum of 700mm above the finished footpath level;</p> <p>iii. Include a clearly identifiable pedestrian entry from the street; and</p> <p>iv. Include a pedestrian awning.</p>	<p>proposed fencing and awnings.</p> <p>Pedestrian entry to be recessed behind the fencing to outdoor play space.</p> <p>Covered pedestrian area currently created within colonnade.</p>	<p>Fencing will visually obscure the main pedestrian entry from Alice Street.</p> <p>The proposed outdoor play space will reduce the amount of covered space beneath the colonnade which currently protects pedestrians</p>	<p>No</p> <p>No</p>
<p>C48 Buildings requiring active frontages (including those specifically identified in a masterplan site within the relevant planning precinct statement) must only include non-residential uses at street level, with the exception of access areas to the residential uses at upper floor levels.</p>	<p>The tenancies are identified by the Master Plan as requiring active frontage to the eastern façade.</p>	<p>The proposed use is non-residential.</p>	<p>Yes</p>
<p>C70. A POM will be required when a commercial or light industrial use is proposed in proximity of a residential land use and Council considers it may unreasonably impact on the amenity of surrounding residences.</p>	<p>A Plan of Management is required with the development application.</p>	<p>A Plan of Management is included in Appendix E of the Statement of Environmental Effects submitted with the development application.</p>	<p>Yes</p>
<p>C75 All development must comply with the relevant noise control guidelines.</p>	<p>Noise control requirements apply to protect from external noise sources and to protect the amenity of neighbouring and nearby residential apartments.</p>	<p>An Acoustic Assessment has been submitted with the development application.</p>	<p>Yes</p>



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Control	Proposal	Assessment Comment	Complies?
C76 Where sites adjoin a residential area or are located within a mixed use building, Council will consider the potential noise generation of any proposed activities including the use of equipment or machinery, the use of amplified music/noise on the site and proposed hours of operation.	The tenancies are within a mixed use building and adjoin residential apartments.	Noise amenity impacts have been assessed throughout this report.	Yes
C78 All applications for noise generating uses adjacent to or located in a building containing a residential use must be accompanied by documentation from a qualified acoustic engineer certifying that the acoustic standards can be met.	The tenancies are adjacent to residential apartments.	An Acoustic Assessment has been submitted with the development application and makes recommendations to achieve acoustic standards. As detailed throughout this report the proposed methods and materials for enclosing the outdoor play spaces to achieve noise attenuation are considered unacceptable.	No
C85 Hours of operation for the use of a site will be restricted by Council if it is likely that the use will cause an impact on any nearby residential or other sensitive use.	Hours and days of operation are proposed in the development application.	The proposed days and hours of operation are considered appropriate for a child care centre.	Yes

PART 7 – MISCELLANEOUS DEVELOPMENT

Part 7.1 to MDCP 2011 applies to Child Care Centres and the relevant controls and objectives of this section of the DCP are summarised in Table 5 along with assessment comments.

Table 5: DCP Controls for Child Care Centres

Control	Proposal	Assessment Comment	Complies?
7.1.1 Objectives			
<i>O1 To accommodate the demand for children's education and care in Marrickville, particularly where</i>	The proposal seeks to provide care and education as detailed in the Plan of Management submitted with the	Plan of Management makes commitments for education and care for children.	Yes



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Control	Proposal	Assessment Comment	Complies?
<i>there is a geographical or aged related undersupply.</i>	development application.		
<i>O2 To provide a range of children's services that are safe, provide good quality education and care, and that accommodate children with special needs and those from culturally and linguistically diverse communities</i>	The proposal seeks to provide these services as detailed in the Plan of Management submitted with the development application.	Plan of Management makes commitments to the diversity and quality of education and care to be provided to suit a range of needs. However, due to a lack of provision of parking for parents and carers (and/or children) with a disability – the centre cannot provide enrolment to children with a disability or parents / carers with a disability.	No
<i>O3 To ensure that child care centres are compatible with the context, particularly the residential context, in terms of built form, building design and the amount of landscaped area provided.</i>	The proposal involves the fitout and use of existing premises in a mixed use development including use of interior and exterior space.	The proposed methods and materials for enclosing the outdoor play spaces are considered to be incompatible with the context, utility and function of space surrounding the building and the landscape design and layout as detailed throughout this report including the assessment in accordance with Part 2 to the DCP.	No
<i>O4 To enhance the amenity of neighbours and avoid detrimental impact from the operation of child care centres.</i>	The proposal includes measures for acoustic attenuation which will also achieve visual screening.	As stated in the assessment with respect to Part 2 of the DCP, the proposed measures for protecting neighbour amenity are considered to be incompatible with the materials, colours and finishes of the building and surrounding spaces and incompatible with the visual amenity, safety and use of space by other residents, commercial tenants and customers	No
<i>O5 To ensure that child care centres have adequate,</i>	The proposal includes 3 on-site parking spaces for staff and	Allocation of on-street parking is not supported by Council's Civil	No



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Control	Proposal	Assessment Comment	Complies?
<i>convenient and safe parking.</i>	seeks Council consent to allocate two parking spaces on Alice Street for parents and carers.	Engineer. The deficiency in on-site parking is considered unacceptable.	
<i>National Quality Framework and Licensing Requirements Education and Care Services National Law 2011 and Regulation 2011, and the National Quality Standard</i>	The development application includes a checklist of compliance and potential for compliance with these requirements.	The proposal appears to have potential to comply. However, detailed compliance would be subject to assessment of further information by others.	Yes subject to further information.
Minimum requirements			
<i>C1 Child care centres in two storeys, or more, buildings must have at least one lift access to all floors, including to any basement parking.</i>	N/A	N/A	N/A
<i>C2 Locate any lift adjacent to the entry (or main entry if more than one) and adjacent to drop off area and parking that parents will use. Access for children and their parents</i>	The proposal nominates existing basement parking spaces for staff. The proposal requests the allocation of on-street parking for parents and carers.	On-street parking for parents and carers is not supported.	No
<i>C3 Locate the main entry and sign on area as close as possible to the drop off area or parking that parents will use.</i>	The proposal requests allocation of on-street parking in Alice Street for drop off and pick up.	On-street parking is not supported.	No
Safety and wellbeing			
<i>C8 Do no locate a child care centre on a state road.</i>	Alice Street has Regional Road classification.	Alice Street has Regional Road classification.	See Section 4 of this report.
<i>C9 Lodge supporting documentation (prepared by a suitably qualified person) with the application to demonstrate there will not be negative impact on the health and wellbeing of children and staff of the child care centre in relation to: i. Air quality</i>	The development application includes appropriate documentation.	The development application includes appropriate documentation.	Yes



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Control	Proposal	Assessment Comment	Complies?
ii. Soil quality iii. Lead and other metals iv. Dust, fumes and chemicals v. Traffic vi. Nearby land uses (such as industrial, telecommunications, sex services premises).			
Aircraft noise			
C10 Do not locate a child care centre on that is in an ANEF contour of 25 or greater	The site is within ANEF contour 20-25.	Complies.	Yes
C11 Where appropriate provide noise attenuation in accordance with the Association of Australian Acoustical Consultants document <i>Guideline for Child Care Centre Acoustic Assessment (September 2010)</i> .	An Acoustic Assessment has been submitted with the development application which addresses noise attenuation from external road and aircraft noise and the control of noise emissions from the centre.	The Acoustic Report makes recommendations for noise attenuation of the outdoor play spaces by enclosing the space with awnings and fences. The proposed methods for noise attenuation are considered to be incompatible with the context, setting, use and safety of the existing outdoor shared spaces and incompatible with the materials, colours and finishes, landscape setout and architectural style of the mixed use development.	No
Clustering			
C12 Applies if proposal is within 200 metres of another child care centre	Site is not within 200m of another child care centre.	N/A	N/A
Open space			
C13 Take advantage of existing site conditions, identifying both desirable and undesirable elements, and emphasise the natural or garden environment.	The proposal provides outside play space within the private tenancy boundaries and encloses the spaces with high solid fencing and awnings.	The outdoor play spaces have not been designed to be compatible with desirable and undesirable elements of the existing space nor designed to be compatible with the layout and function of	No



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Control	Proposal	Assessment Comment	Complies?
		the existing spaces adjacent to the western and eastern facades.	
<i>C14 Ensure that the external areas are free from lead contamination.</i>	External areas are paved and sealed new surfaces and new building materials.	It is unlikely that any new materials and surfaces will be a source of contamination.	Yes
<i>C15 Do not locate between the front alignment of the building and the street, or in a side set back.</i>	All components of the proposal are behind the building line to Alice Street and are not within side setbacks.	Complies.	Yes
Visual and acoustic privacy			
<i>C16 Lodge an acoustic report (prepared by a suitably qualified acoustic consultant) with the application that demonstrates:</i> <i>i. That noise from any source will not adversely impact on the occupants of the child care centre, and</i> <i>ii. That noise generated by the child care centre will not impact on occupiers of nearby premises or land.</i>	An Acoustic Assessment prepared by a suitably qualified and experienced acoustic engineer has been submitted with the development application and addresses both external noise sources and noise anticipated to be generated by the centre.	Complies.	Yes
<i>C17 Incorporate measures to minimise noise impacts on neighbouring properties, such as:</i> <i>i. Orientating the facility with regard to neighbouring property layout, including locating playgrounds and playroom windows and doorways away from neighbouring bedrooms</i> <i>ii. Using double-glazing where necessary;</i>	The Acoustic Assessment submitted with the development application includes recommended measures for materials and construction to attenuate for external noise sources and noise generation.	The proposal includes measures for noise attenuation. However, the proposed methods for fencing and enclosing the outdoor play spaces are not supported for the reasons outlined throughout this report and particularly as detailed in assessment under Part 2 of the DCP.	Yes



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Control	Proposal	Assessment Comment	Complies?
<i>iii. Fencing that minimises noise transmission and loss of privacy (such as lapped and capped timber fencing, cement block, brick).</i>			
<i>C18 Do not increase building bulk or detrimentally affect building appearance through use of privacy screens or other impact reduction measures.</i>	The proposed methods for noise attenuation of the outdoor play spaces will enclose existing open space area with solid fencing and awnings.	The proposed awnings and fencing to the outdoor play spaces will add bulk to the existing building.	No

PART 8 - HERITAGE

The matter of heritage is discussed in Section 5 of the report and below under Part 9.14 of the DCP.



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PART 9 – STRATEGIC CONTEXT

Part 9.14 to the MDCP 2011 applies to the Camdenville Precinct (Precinct 14) which includes the subject site. The map of Precinct 14 indicates No.32-72 Alice Street is a Master Planned site. Table 6 is a summary of the provisions of Part 9.14 that apply to the proposed child care centre and includes assessment comments.

Table 6: DCP Controls for Precinct 14 Camdenville

Control	Proposal	Assessment Comment	Complies?
9.14.2 Desired future character			
<i>4. To protect significant streetscapes and/or public domain elements within the precinct including landscaping, fencing, open space, sandstone kerbing and guttering, views and vistas and prevailing subdivision patterns.</i>	The proposal has an interface with the public pocket park to the east.	The proposal presents a poor relationship and interface with the adjoining public pocket park by: - proposing the enclosure of outdoor play spaces in a manner which is not consistent with the materials, colours, architectural design and style of the existing mixed use building; - obscuring lines of sight and reducing passive surveillance between the tenancies and the public pocket park; and - not providing an active frontage to the park.	No
<i>8. To ensure orderly development on the masterplan site in accordance with the principles of the masterplan vision, including allotment amalgamations, where required, that are not detrimental to achieving the overall masterplan structure and achieve an efficient and high quality built outcome.</i>	The development application applies to the first use of approved commercial tenancies.	The proposal includes changes to the approved built form to enclose outdoor play spaces and is considered to be detrimental to the visual appearance and balance between the built form and surrounding open spaces. The proposal is also inconsistent with the Master Plan vision in that it does not provide an active frontage to the eastern façade.	No
<i>9. To facilitate the redevelopment of the underutilised industrial site at 32-60 Alice Street, Newtown for a</i>	The development application applies to the first use of approved commercial tenancies.	The redevelopment was achieved with Development Application DA201200225. This	N/A



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<i>mix of uses that will contribute to the character and diversity of the precinct.</i>		application is not required to achieve the envisaged redevelopment.	
9.14.3.3 HCA 15: Holmwood Estate Heritage Conservation Area (C15)	See Section 5 regarding heritage impact assessment.	See Section 5 regarding heritage impact assessment.	See Section 5 regarding heritage impact assessment.
9.14.5 Site-specific planning controls			
9.14.5.1 32-60 Alice Street, Newtown Masterplan Area (MA 14.1) Objectives			
<i>O1 To provide planning provisions that encourage the former industrial property at 32-60 Alice Street to be redeveloped for mixed residential and employment uses. The redeveloped site must incorporate new publicly accessible open space on the Alice Street frontage that functions as a through site link to Alice Lane, neighbourhood shops and services and residential dwellings.</i>	The development application proposes the use of existing commercial tenancies approved and constructed as part of the mixed use redevelopment of the site. The proposal is an employment use.	The proposal is an employment generating use. However the use is considered to be incompatible with the context and setting for reasons including: - a deficiency in on-site parking and the potential generation of demand for on-street parking which is already high; - fencing and awnings to obscure the commercial façade of the tenancies facing the pocket park which prevent and active frontage and obscure lines of sight between the tenancies and the adjoining pocket park; - the potential for the creation of a poor quality common space being a narrow corridor with poor lines of sight linking the adjoining apartments and commercial tenancy to the south with the public pocket park and common circulation space in general.	No
Building height C5 The height of proposed buildings must conform to the	No change to building height.	No change to building height.	Yes



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control diagram(s) in Figures (14.1a) and (14.1b). The height is expressed in number of storeys.			
Boundary setbacks C6 The boundary setbacks of proposed buildings must conform to the control diagram(s) in Figures (14.1a) and (14.1b). The setbacks are expressed in metres.	No change to the setbacks indicated in Figures 14.1a and 14.1b.	No change to the setbacks indicated in Figures 14.1a and 14.1b.	Yes
Sustainable envelopes and occupant amenity C7 The siting, orientation, depth and separation of proposed buildings must conform to the control diagram(s) in Figures (14.1a) and (14.1b). The dimensions are expressed in metres.	No change to the dimensions labelled in Figures 14.1a and 14.1b.	No change to the dimensions labelled in Figures 14.1a and 14.1b. However, Figure 14.1a shows the entire open space area surrounded mostly by buildings on the western portion of the site as 'Courtyard'. The proposal seeks to occupy part of the area labelled 'Courtyard' as enclosed outdoor play space for the exclusive use of the child care centre. This is considered to be contrary to the intent of the detail in Figures 14.1a and 14.1b which appears to indicate that the 'courtyard' space is intended to create separation between the built form within the site.	No
Domain interface and structure C8 New development must conform to the control diagram in Figure (14.1b) in regards to: i. The location of active land uses and frontages at ground level; ii. The location of vehicular entries; iii. The location of publicly accessible	The tenancies the subject of the development application are required to provide an active land use frontage along the eastern façade. No change to vehicle entries. No change to the	The proposed enclosure of outdoor play space adjacent to the eastern façade of the tenancies fails to achieve an active frontage. No change. No change to the	No N/A No



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TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

and dedicated pedestrian links; and	location of pedestrian links.	potential for pedestrians to physically move through the public pocket park. However, the proposed enclosure of outdoor play spaces is considered to be potentially detrimental to the amenity and perception of safety of the publicly accessible space to the east of the tenancies including the publicly accessible route to the apartment and commercial tenancies south of the proposed centre and obscuring the potential for active sight lines between the subject tenancies and the adjoining public pocket park.	
iv. The location and extent of public domain infrastructure.	No change to the location of public domain infrastructure.	No change.	N/A
Landscape and public open spaces			
C9 The landscaping and public open space on the site must:			
i. Be representative of the species indigenous to the area;	No change to the species provided in landscaping treatments within the publicly accessible pocket park.	No change to existing.	N/A
ii. Provide planting for shade in summer and sunlight penetration in winter for the open public spaces;	No change to the planting within the pocket park.	No change to existing.	N/A
iii. Provide for deep soil planting within proposed pocket park with sufficient soil depth and volume to allow trees to reach maturity;	No change to the existing area of deep soil planting in the pocket park.	No change to existing.	N/A



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iv. Ensure a minimum of 25% of the open space area of the site is a deep soil zone; and v. Activate the through site link by adjoining retail spaces along Alice Street and within the internal courtyard.	No change to the existing area of deep soil planting within the pocket park.	No change to existing.	No
	The proposal does not provide a retail space along Alice Street or the internal courtyard.	The proposal does not provide an active retail space to the courtyard area or as viewed from Alice Street.	

7. Marrickville Section 94/94A Contributions Plan 2014

The carrying out of the development would not increase the floor space of the approved development and the proposal for dedication of on-street parking spaces is not supported. The proposal would not result in an increased demand for public amenities and public services within the area. However, a Section 94A levy would be imposed on any approved development in accordance with the Section 94/94A Contributions Plan 2014.

8. Community Consultation

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's policy. 8 submissions were received raising the following concerns (some of which have been discussed throughout this report):

- (i) Noise detrimental to amenity of residential apartments;
- (ii) Detrimental to privacy of residential apartments;
- (iii) Increased traffic detrimental to traffic flows and safety;
- (iv) Inadequate on-site parking;
- (v) Increased on-street parking when current availability of on-street parking is poor;
- (vi) Risk of visitor parking spaces within the basement being used by child care centre staff;
- (vii) Risks to pedestrian safety within basement;
- (viii) Risks to pedestrian safety within common private space areas;
- (ix) Fencing of outdoor play space not compatible with expectations for use of current areas of open space;
- (x) Fencing and awning design and materials not compatible with the visual quality of the space surrounding the buildings and adds to building bulk;
- (xi) Fencing and awning design and materials not compatible with the colours, materials and architecture of existing building;
- (xii) Fencing and awnings of outdoor play space not compatible with the ambience of the private courtyard space and detrimental to the amenity of residents using the private courtyard space;
- (xiii) Fencing of outdoor play spaces will obstruct paths of travel within the private courtyard;
- (xiv) Landscaping of the outdoor play areas not compatible with existing stormwater drainage infrastructure;
- (xv) Inadequate facilities for frequent waste disposal;
- (xvi) Individual strata owners have not provided consent to the lodgement of the application.

Those issues raised in submissions which have not already been considered and addressed elsewhere in this report are discussed under the respective headings below:

- (i) *Risk of visitor parking being used by child care centre staff*



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Comment: Existing signage clearly labels the use of car parking spaces within the basement. Ongoing appropriate use of spaces in accordance with the space allocation is a matter for resolution by the Body Corporate and Strata Management in the first instance.

(ii) Risk to pedestrian safety in basement

Comment: The basement parking dimensions and layout have been assessed and approved in accordance with DA201200225.

(iii) Risk to pedestrian safety within common open space areas

Comment: It has been concluded elsewhere in this report that the proposed enclosure of existing open space areas for the establishment of outdoor play space will create narrow common spaces with poor lines of sight and poor surveillance and along the eastern side of the building as well as ambiguous spaces, narrow spaces, poor sight lines and restricted surveillance within the private courtyard space on the western side of the building. These changes are considered to be potentially detrimental to the safe movement of pedestrians around the site.

(iv) Landscaping of the outdoor play areas not compatible with existing stormwater drainage infrastructure

Comment: A stormwater pit is located within the proposed outdoor play area to the west of Tenancy T9. Potential compatibility with the stormwater pit could be resolved subject to further information. The proposed landscaping and use of the outdoor play space does not breach the terms of the Section 88B instrument.

(v) Inadequate facilities for frequent waste disposal

Comment: A private contracted waste disposal service would be anticipated to be required to address the specific waste generated from the proposed child care centre should the application have been recommended for approval.

(vi) Individual strata owners have not provided consent to the lodgement of the application.

Comment: The sole Director of the Section 88B instrument is Al Maha Pty Ltd and this Director provided owners consent to the development application in a letter to Council dated 3 February 2017.

All relevant matters raised in the submissions were able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act and have been discussed in this report.

9. Conclusion

The application seeks consent to fit-out and use three (3) adjoining commercial tenancies as a child care centre being tenancies T07, T08 and T09 within Part Lot 2 DP 1190094 at No.32-72 Alice Street, Newtown.

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application. With reference to the matters for consideration under Section 79C the proposal is considered unacceptable because:

- the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building;



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- the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space;
- the lack of parking for parents, carers and children with a disability results in inequitable access to and from the premises which is considered to be a detrimental social impact;
- the proposed tenancies are considered unsuitable for the proposed child care centre for the reasons outlined above; and
- approval of the development application is not in the public interest for the reasons outlined above and because the proposal results in non-compliances and inconsistencies with the provisions of environmental planning instruments and a development control plan which have been adopted in the interests of the public.

A maximum floor space ratio (FSR) of 1.85:1 applies to the site as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. The proposed methods of enclosing the outdoor play spaces potentially create additional floor space consistent with the definition of gross floor area in MLEP 2011. However, insufficient information has been submitted with the development application to determine whether the proposal complies with the FSR control in Clause 4.4 to MLEP 2011.

The proposed on-street parking arrangement is not supported by Council's Local Traffic Committee and will not be granted in accordance with Report Item 18 to the Traffic Committee Agenda of 2 March 2017 and the final recommendations of the Newtown/Enmore Parking Review Report Item 31 to the Local Traffic Committee Agenda of 6 April 2017.

The proposal is considered to be inconsistent with aims (a) and (h) listed in Clause 1.2 to MLEP 2011. The proposal is considered to be inconsistent with some of the objectives for development in Zone B4 Mixed Use as listed in the MLEP 2011 in that the enclosure of outdoor play space and lack of on-site parking is considered to be incompatible with established and approved surrounding land uses.

The proposal does not comply with the following provisions of MDCP2011:

- Part 2.1 Urban Design Principles;
- Part 2.1.2.4 Building Character;
- Part 2.3 Site and Context Analysis;
- Part 2.5 Equity and Access of Mobility;
- Part 2.9 Community Safety;
- Part 2.10 Parking;
- Part 5 Commercial and Mixed Use Development;
- Part 7.1 Child Care Centres; and
- Part 9.14 Camdensville Precinct.

PART E - RECOMMENDATION

- A. **THAT** the development application to fit-out and use 3 adjoining commercial tenancies as a child care centre at Tenancies T07, T08 and T09 within Strata Plan 88894 and Part Lot 2 DP 1190094 at No.32-72 Alice Street, Newtown be **REFUSED** for the following reasons:
1. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) to the Environmental Planning and Assessment Act, 1979 because it is considered to be inconsistent with the overall aims (a) and (h) of Marrickville Local Environmental Plan 2011 as listed in Clause 1.2. Specifically with respect to aim (a) the proposal fails to appropriately integrate the use with the transport options required to support the ongoing operation of a



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child care centre on the site in that inadequate on-site parking is proposed and the parking facilities proposed to not cater for parents, carers and children with a disability. Specifically with respect to aim (h) the proposed methods and materials for enclosing the outdoor play spaces are considered to be incompatible with the standard of design of built form and open spaces which contribute to the visual and architectural quality of the mixed use development and adjoining private and public open spaces.

2. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(i) to the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with objectives for development in Zone B4 Mixed Use as listed in Marrickville Local Environmental Plan 2011. Specifically the proposed enclosure of outdoor play space and lack of on-site parking is considered to be incompatible with established and approved surrounding land uses.
3. The proposal is unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) to the Environmental Planning and Assessment Act 1979 because it is considered to be inconsistent with the following provisions of Marrickville Development Control Plan 2011;
 - Part 2.1 Urban Design Principles;
 - Part 2.1.2.4 Building Character;
 - Part 2.3 Site and Context Analysis;
 - Part 2.5 Equity and Access of Mobility;
 - Part 2.9 Community Safety;
 - Part 2.10 Parking;
 - Part 5 Commercial and Mixed Use Development;
 - Part 7.1 Child Care Centres; and
 - Part 9.14 Camdensville Precinct.
4. The proposal is unacceptable pursuant to the provisions of Section 79C(b) to the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of the proposed outdoor play spaces are considered to have detrimental impacts to the built environment in that they are not consistent with the materials, colours, finishes, design and architectural style and detail of the existing mixed use building.
5. The proposal is unacceptable pursuant to the provisions of Section 79C(b) to the Environmental Planning and Assessment Act 1979 in that the proposed methods and materials for noise attenuation and enclosure of outdoor play spaces are considered to have detrimental social impacts by obstructing lines of sight, creating narrow pathways with poor sight lines and ambiguous blind spots, obscuring the potential for passive surveillance and preventing an active frontage to adjoining public open space and private courtyard space.
6. The proposal is unacceptable pursuant to the provisions of Section 79C(c) to the Environmental Planning and Assessment Act 1979 in that the site is considered unsuitable for the proposed development due to a lack of on-site parking, a lack of on-site parking for people with a disability, the detrimental impacts to the built environment and detrimental social impacts potentially resulting from the proposed enclosure of outdoor play spaces.
7. Insufficient information has been submitted with the development application to determine whether the proposal will result in additional gross floor area and whether the proposal is compliance with the objectives and controls for floor space ratio as specified in Clause 4.4 to Marrickville Local Environmental Plan 2011.

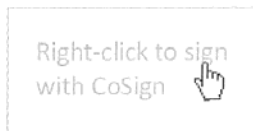


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TENANCIES T07, T08 T09 AT 32-72 ALICE STREET, NEWTOWN

- 8. The proposal is unacceptable pursuant to the provisions of Section 79C(e) to the Environmental Planning and Assessment Act 1979 in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest.

- B. **THAT** those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.



Development Assessment Officer: Planning Ingenuity (Consultants for Council)
Date: 12/4/17

DELEGATED DETERMINATION

I, Daniel Julian East, Acting Team Leader, Development Assessment (Planning) for Marrickville Council, by virtue of the delegation given to me by the General Manager of which I have no notice of revocation, and pursuant to the Environmental Planning and Assessment Act 1979, determine the application in the manner set out in the recommendation section of this report.

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.

- There is no Councillor Interest recorded in P&R for this application.

Delegate: Daniel East

Date: 19/4/17



Delegated Authority Report
TENANCIES T07, T08 AND T09
32-72 ALICE STREET, NEWTOWN

* * *

ADMIN INSTRUCTIONS

- Refusal - D2
- Letter to Objector D71

DADelAuth.doc

Premises: 32-72 Alice Street, Newtown
Applicant: Two Cubed Pty Ltd
Proposal: Fitout and use of ground floor commercial tenancies as a child care centre for 32 children
Determination: Refusal
DA No: 201600678

I declare to the best of my knowledge, there is no matter in relation to my role in processing this application that would give rise to the need to disclose any Conflict of Interest under Council's Code of Conduct.

Admin Officer: Clare Fitzpatrick-Clark..... Date: ...19/04/17.....

Attachment B – Conditions in the circumstance the application is approved

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
A01 Rev H	Site Plan / Site Plan Analysis	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A02 Rev H	Demolition Plan	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A03 Rev H	Ground Floor Plan	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A04 Rev H	Childcare Compliance Plan	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A05 Rev H	Floor Area & Fsr	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A06 Rev H	North & East Elevations	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A07 Rev H	South & West Elevations	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A08 Rev H	Sections	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A09 Rev H	Metal Slat Fence Details	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A10 Rev H	Vehicle Parking Plan	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A12 Rev A	North & East Elevations	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A13 Rev A	Awning Details	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
A14 Rev A	Metal Slat Fence Details 2	21.08.2017	Kaunitz Yeung Architecture	28.08.2017
1 of 3	Play space / Landscape Design Plan - Plants	25.08.2017	Tessa Rose Play space and landscape Design	28.08.2017
2 of 3	Play space / Landscape Design Plan - Surfacing	25.08.2017	Tessa Rose Play space and landscape Design	28.08.2017
3 of 3	Landscaping Details	25.08.2017	Tessa Rose Play space and landscape Design	28.08.2017
-	Plan of Management	-	Childcare by Design P/L	24.05.2017
Rev 0	Plan of Childcare Service	10.12.2016	Childcare by Design P/L	24.05.2017
Rev 1	Acoustic Assessment	13.12.2016	Acoustic Logic P/L	24.05.2017
Rev 2	BCA & Access Report	15.12.2016	Matt Shuter + Associates	24.05.2017

and details submitted to Council on 24 May 2017 and 28 August 2017 with the Section 82A review request and as amended by the following conditions.

2. The window display area must be maintained at all times with no roller shutters being installed across the child care centre.
3. The operation of the child care centre complying at all times with the approved Plan of Management. The Plan of Management as approved is not to be amended without the prior written approval of Inner West Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.
4. A total of 5 off-street car parking spaces must be provided, paved, linemarked and maintained at all times within the basement of the mixed use development at 32-72 Alice Street, in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.
5. Installation of 'P10minute 7:00am-9:00am, 4:00pm-6:00pm, Mon- Fri' restrictions for a distance of 12 metres along the southern side of Alice Street, Newtown directly outside 2/32-72 Alice Street, Newtown before commencement of the use of the child care centre. The person acting on this consent shall pay all costs associated with the supply and installation of the associated parking signage (in accordance with Council's Fees and Charges) before the installation works are undertaken by Council.
6. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
7. The use of the premises must not give rise to:
 - a) transmission of unacceptable vibration to any place of different occupancy;
 - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
8. Noise and vibration from the use and operation of any plant and equipment and/or building services associated with the premises must not give rise to 'offensive noise' as defined by The Protection of the Environment Operations Act 1997 (NSW).
9. A separate application must be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.
10. The hours of operation of the child care centre being restricted to between the hours of 7.00am to 6.00pm Mondays to Fridays (excluding Public Holidays). The centre is not to operate on Saturdays Sundays and Public Holidays.
11. No storage of goods or equipment external to any building on the site being permitted.
12. No signs or goods are to be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
13. All waste collection in connection with the child care centre being carried out during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public.

14. All loading and unloading in connection with the use must be carried out during the approved hours of operation in such a manner as not to cause inconvenience to the public.
15. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

For the purpose of interpreting this consent, a Principal Certifying Authority (PCA) means a principal certifying authority appointed under Section 109E(1) of the Environmental Planning and Assessment Act 1979. Pursuant to Section 109E(3) of the Act, the PCA is principally responsible for ensuring that the works are carried out in accordance with the approved plans, conditions of consent and the provisions of the National Construction Code (Building Code of Australia).

16. No work must commence until:
 - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice given to Council of the intention to commence work.
17. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
18. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences. Facilities must be located so that they will not cause a nuisance.
19. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
20. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences. Enquiries for site fencing and hoardings in a public place, including the need for Council approval, can be made by contacting Council's Infrastructure Services Division.
21. The person acting on this consent shall apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.
22. Where it is proposed to carry out works in public roads or Council controlled lands, a road opening permit shall be obtained from Council before the carrying out of any works in public roads or Council controlled lands. Restorations shall be in accordance with Marrickville Council's Restorations Code. Failure to obtain a road opening permit for any such works will incur an additional charge for unauthorised works as noted in Council's adopted fees and charges.
23. The person acting on this consent shall provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent shall submit a hoarding application and pay all relevant fees before commencement of works

24. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include proposed truck parking areas, construction zones, crane usage, truck routes etc.
25. The person acting on this consent shall submit a dilapidation report including colour photos showing the existing condition of the footpath, roadway and the public and private areas within the mixed use development adjacent to the site before commencement of works.
26. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign must include:
 - a) The name, address and telephone number of the PCA;
 - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

For the purpose of interpreting this consent the Certifying Authority (Council or an Accredited Certifier) is that person appointed to issue the Construction Certificate.

34. A levy of \$5,400.00 has been assessed as the contribution for the development under Section 94A of the Environmental Planning and Assessment Act 1979 and Marrickville Section 94/94A Contributions Plan 2014 (a copy of which may be inspected at the offices of the Council).

The Section 94A Levy referred to above is based on the estimated cost of the proposed development at time of lodgement of the application indexed quarterly in accordance with Marrickville Section 94/94A Contributions Plan 2014.

The Section 94A levy (as adjusted) must be paid to the Council **in cash or by unendorsed bank cheque (from an Australian Bank only) or EFTPOS (Debit only) or credit card* before the issue of a Construction Certificate**. Under Marrickville Section 94/94A Contributions Plan 2014 payment of Section 94A levies **CANNOT** be made by Personal Cheque or Company Cheque.

*NB A 1% credit card transaction fee applies to all credit card transactions.

(LEVY PAYMENT REFERENCE NO. DC002050)

NOTE: Under Marrickville Section 94/94A Contributions Plan 2014, the proposed cost of carrying out development is adjusted quarterly at time of payment of the levy in line with the Consumer Price Index: All Groups Index Number for Sydney provided by the Australian Bureau of Statistics.

35. Evidence of payment of the building and construction industry Long Service Leave Scheme, must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).
36. Lighting details of the pedestrian areas, parking areas and all entrances being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

37. Prior to the issue of any Construction Certificate, detailed floor plans including location of all proposed fixtures, fittings and equipment, sectional elevations and schedule of finishes must be prepared by a suitably qualified person and certified in accordance with the Food Act 2003, Australian and New Zealand Food Standards Code and Australian Standard 4674-2004 Design, Construction and Fitout of Food Premises and must be submitted to the Principal Certifying Authority. The plans shall include but not be limited to food storage areas, refrigeration/freezer area, storage of cleaning equipment and chemicals, personal belongings etcetera
38. To ensure the adequate storage and collection of waste from the occupation or the use of the food premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area. In this regard, detailed plans and specifications are to be submitted to the Principal Certifying Authority demonstrating compliance with Section 2.4 of Australian Standard 4674-2004 for the Design, Construction and Fitout of Food Premises.
39. Before the issue of a Construction Certificate the owner or builder shall sign a written undertaking that they shall be responsible for the full cost of repairs to footpath, kerb and gutter, or other Council property damaged as a result of construction of the proposed development. Council may utilise part or all of any Building Security Deposit (B.S.D.) or recover in any court of competent jurisdiction, any costs to Council for such repairs.
40. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction indicating the following:
 - a) Access to the premises via the principal place of entry to the building complying with AS 1428.1- 2009 'Design for access and mobility'; and
 - b) An accessible toilet complying with AS 1428.1- 2009 'Design for access and mobility'.
41. Plans and specifications are to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate that the methods of construction meet the recommendations detailed in the Acoustic Report submitted with the application prepared by Acoustic Logic P/L dated 12 December 2016 (Rev 1).
42. Plans and specifications are to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate demonstrating compliance with the recommendations detailed in the Building Code of Australia and Access for People with Disabilities report submitted with the application prepared by Matt Shuter + Associates dated 15 December 2016 (Rev 2).
43. Plans and specifications are to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate demonstrating compliance with the recommendations detailed in the Plan for Childcare Service Report submitted with the application prepared by Childcare by Design dated 10 December 2016 (Rev 0).
44. Payment to Council of \$2,100.00 before to the issue of a Construction Certificate as a Building Security Deposit (B.S.D.) to provide security against damage to Council's infrastructure. Council may utilise part or all of the B.S.D. to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

SITE WORKS

45. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work must be carried out on any Saturday that falls adjacent to a Public Holiday.

46. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
47. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'. Enquiries are to be made with Council's Infrastructure Services Division.
48. The works must be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
 - a) At the commencement of the building work;
 - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
 - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
 - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

You are advised to liaise with your PCA to establish if any additional inspections are required.

49. All demolition work being carried out in accordance with the following:
 - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of asbestos cement is to be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition are to be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Recycling and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications are to be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, only having access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site being deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent is responsible for ensuring that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.

50. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
51. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection after the building work has been completed and prior to any occupation certificate being issued in relation to the building can only be carried out by the PCA. You are advised to liaise with your PCA to establish if any additional inspections are required.
52. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
53. Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating.
54. New or replacement toilets must have a minimum 3 Star WELS rating and being 6/3 litre dual flush or more efficient.

BEFORE OCCUPATION OF THE BUILDING

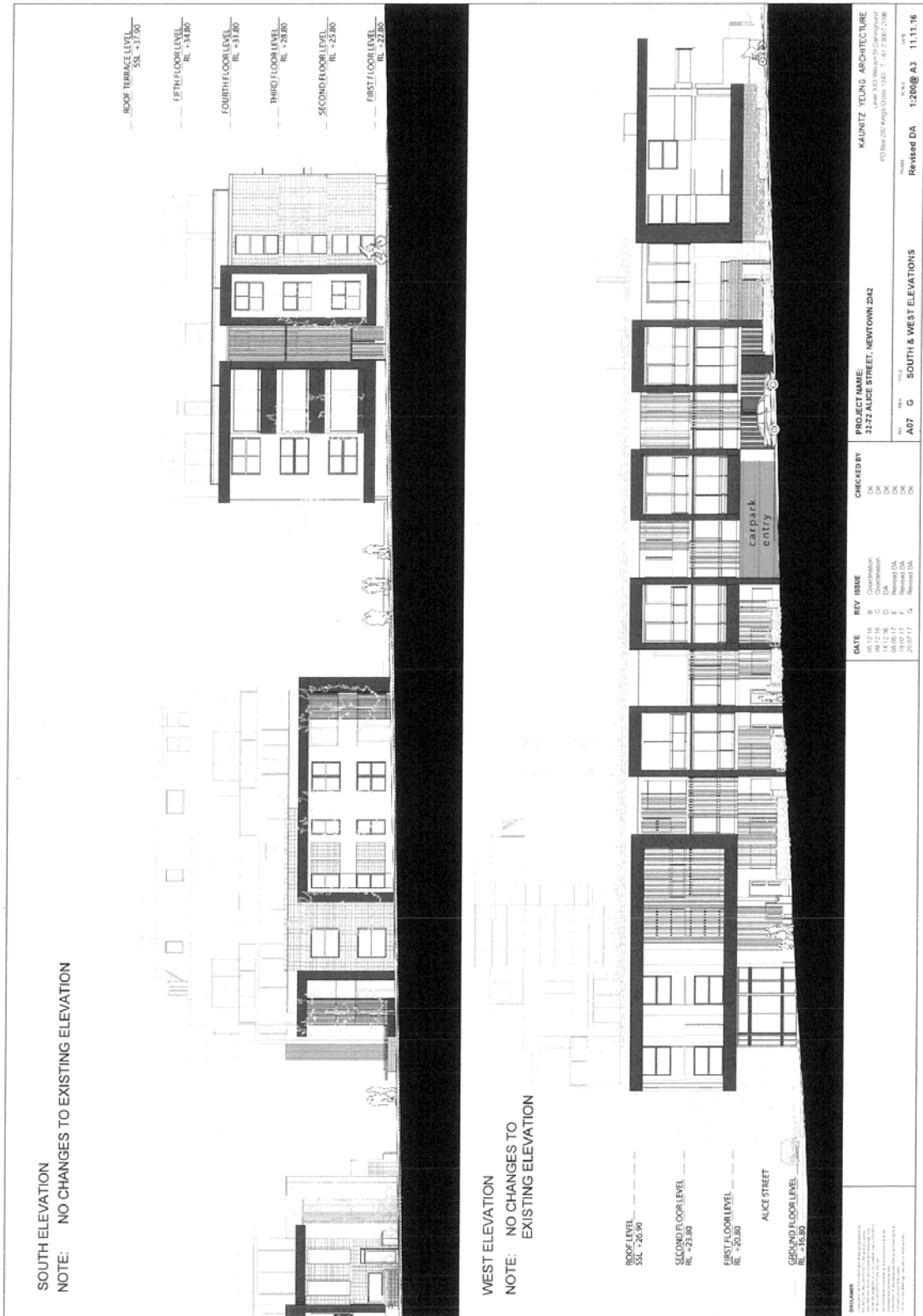
55. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
 - a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections; and
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
56. Occupation of the building must not be permitted until such time as:
 - a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
 - c) An Occupation Certificate has been issued.
57. Prior to the issue of an Occupation Certificate, a suitably qualified acoustic consultant Acoustic Logic P/L is to certify that the methods of construction required by condition 40 of this consent have been carried out. Further, within 1 month of commencement of the use of the building or when 80% occupancy is achieved (whichever occurs last), a suitably qualified acoustic consultant independent of Acoustic Logic P/L is to carry out acoustic testing to certify that the standards required by the Acoustic Report prepared by Acoustic Logic P/L dated 12 December 2016 (Rev 1) are being achieved. Any non-compliance with those standards that are detected by the independent acoustic consultant are to be reported to the Council and the operator of the centre is take immediate steps to carry out ameliorative measures to achieve the standards required by the Acoustic Report.

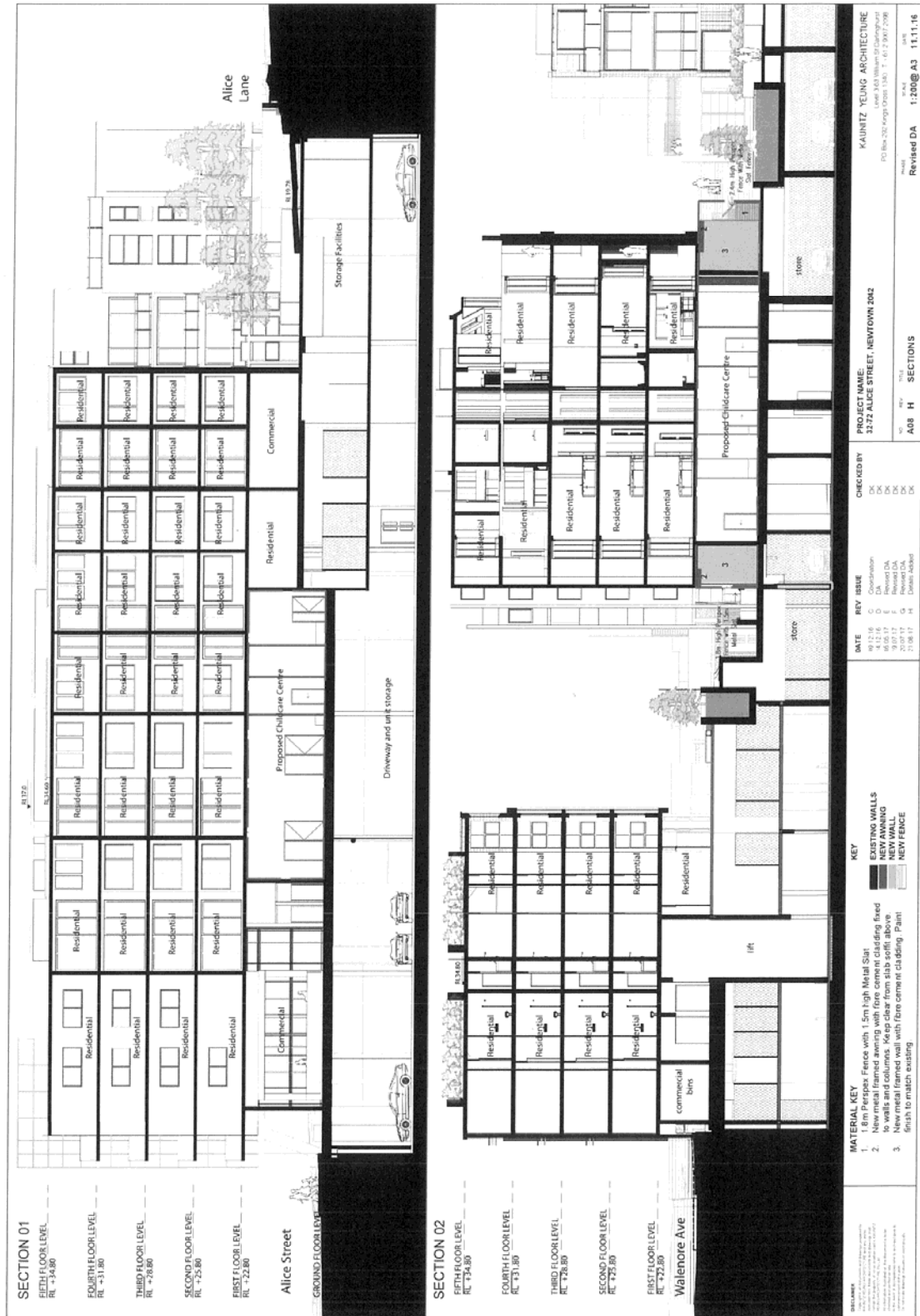
58. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
 - Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

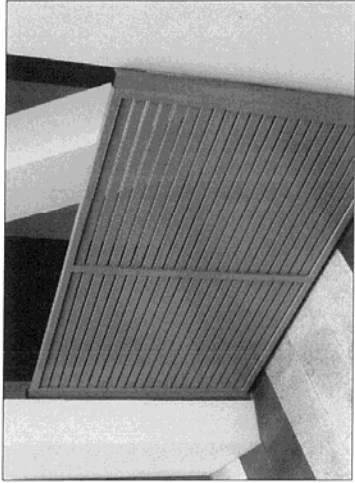
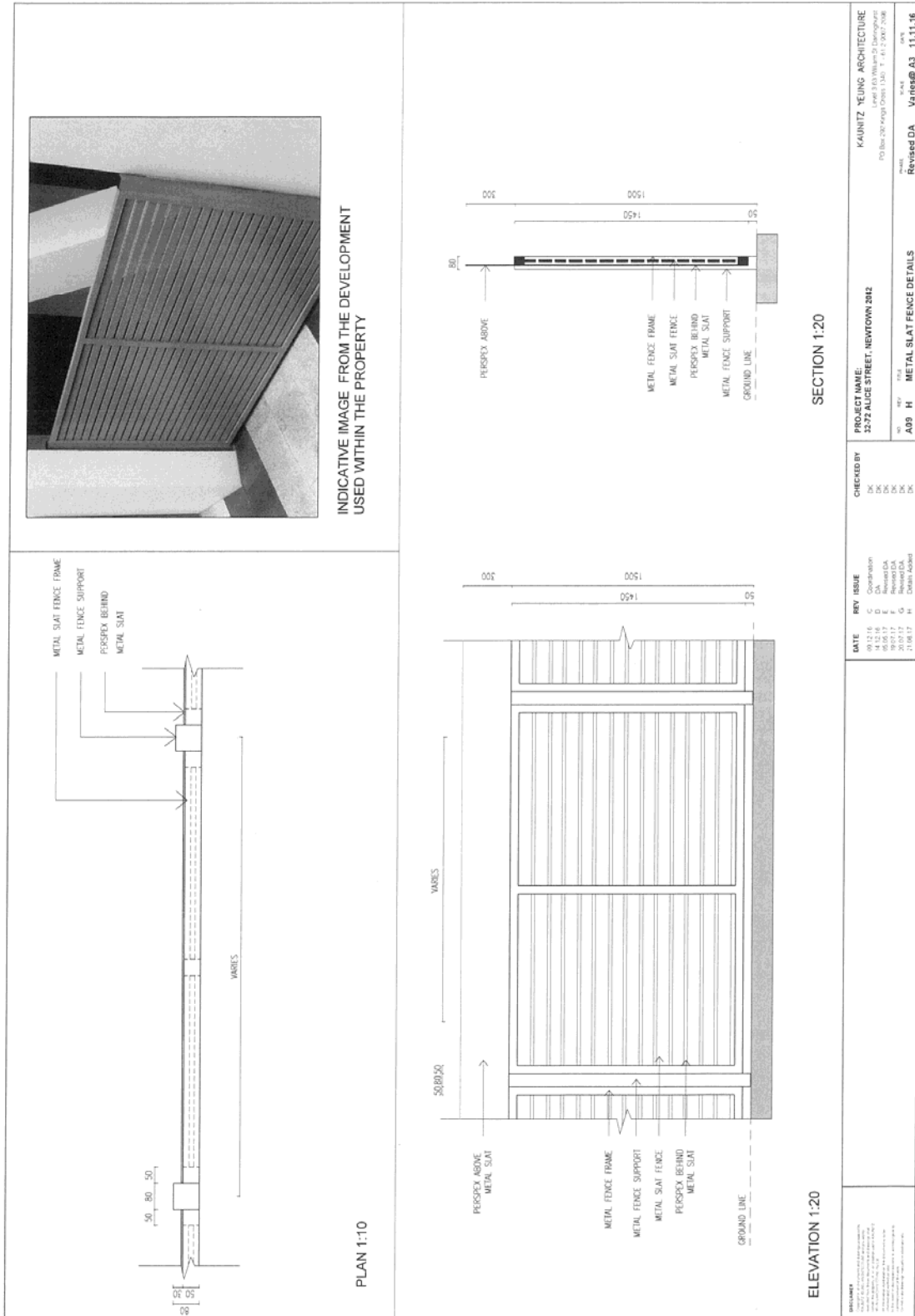
Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

59. Before the issue of an Occupation Certificate, the operator must notify the NSW Food Authority. You may notify the NSW Food Authority via the Internet on www.foodnotify.nsw.gov.au or by contacting the Council for a notification form.
60. Before the issue of an Occupation Certificate, Council's Environmental Health Unit must be notified that the premises is being used for the preparation, manufacture or storage of food so that the premises can be registered on Council's food premises database.
61. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of the Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
62. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
63. No encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
64. An application to Council's Traffic Committee shall be submitted for the installations of 2 drop off/pick up car spaces on Alice Street. The spaces shall be signposted "10 minutes parking, between 7:00am to 9:00am and 4.00pm to 6:00pm, Monday to Friday" so as to allow for drop off/pick up during the peak times of the child care centre. The signage if approved shall be installed before the issue of the Occupation Certificate.
65. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of the Occupation Certificate.
66. The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved plan, and must be maintained at all times to Council's satisfaction.
67. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of the Occupation Certificate.









INDICATIVE IMAGE FROM THE DEVELOPMENT USED WITHIN THE PROPERTY

PLAN 1:10

ELEVATION 1:20

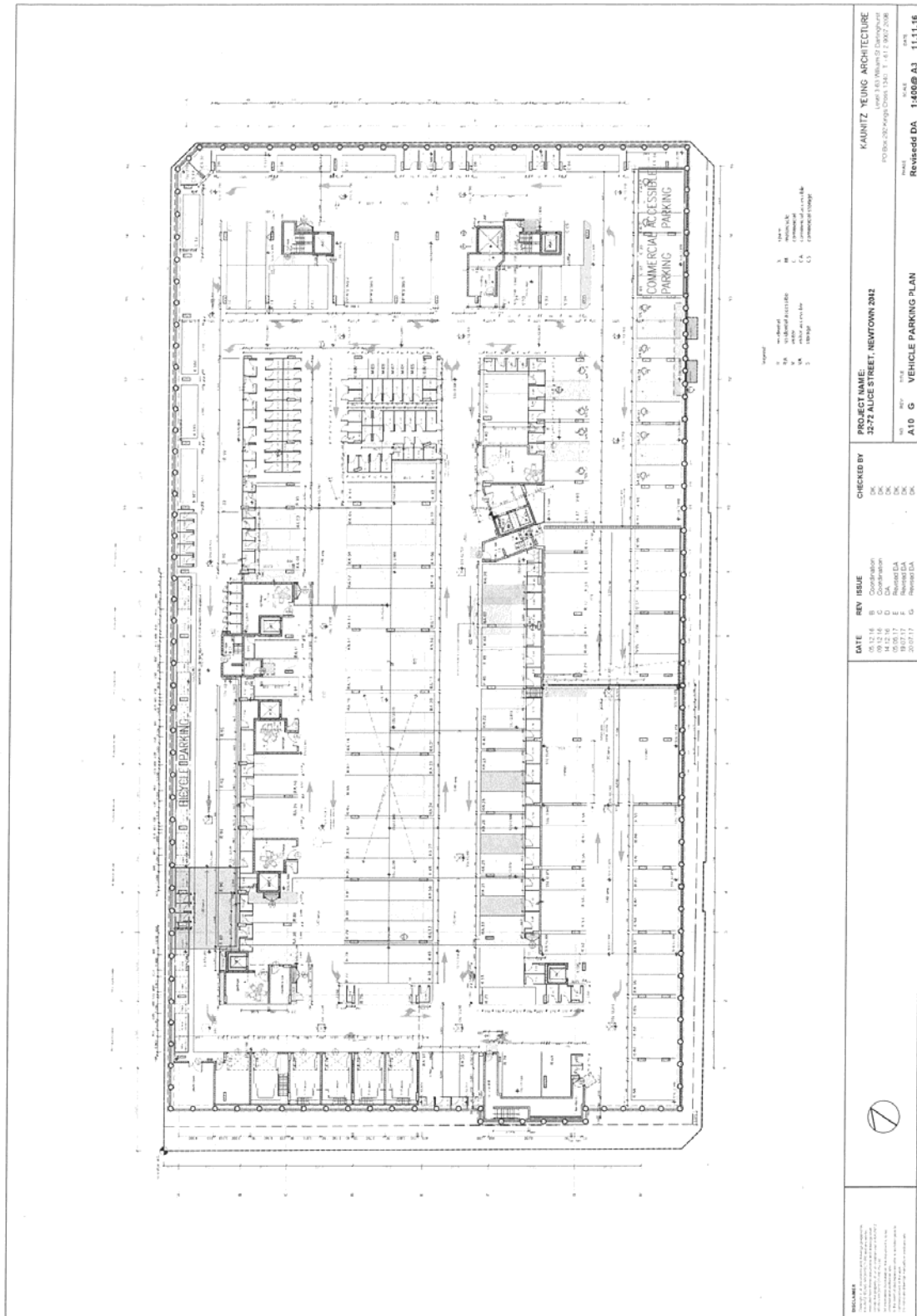
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DATE	REV	ISSUE	CHECKED BY
09/12/16	C	Coordination	DK
14/05/17	E	Revised DA	DK
20/07/17	F	Revised DA	DK
21/08/17	H	Detail Adjust	DK

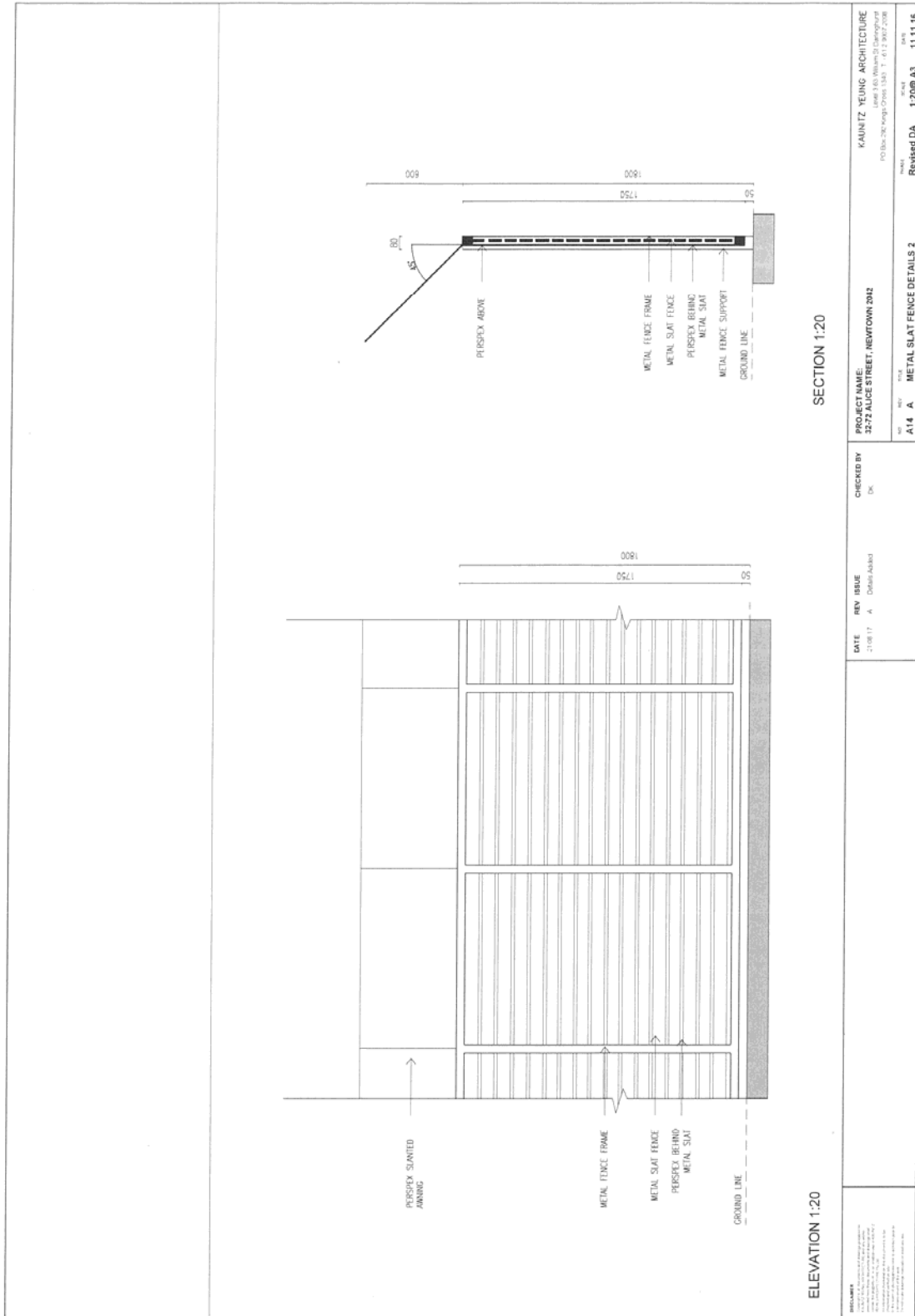
PROJECT NAME	KAUNITZ YEUNG ARCHITECTURE		
33-72 ALICE STREET, NEWTOWN 2042	Level 1/10, Market Street, Newtown NSW 2042		
NO	REV	DATE	BY
A09	H	21/08/17	DK

METAL SLAT FENCE DETAILS

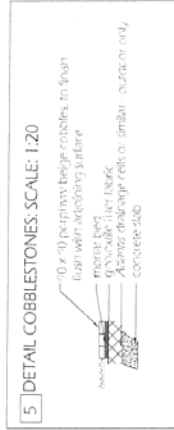
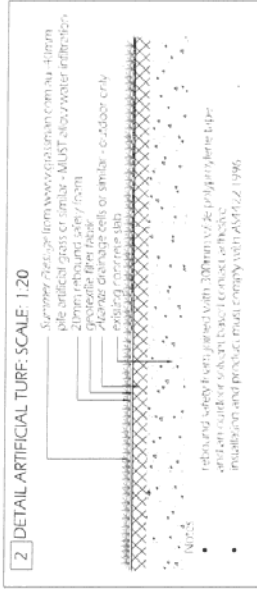
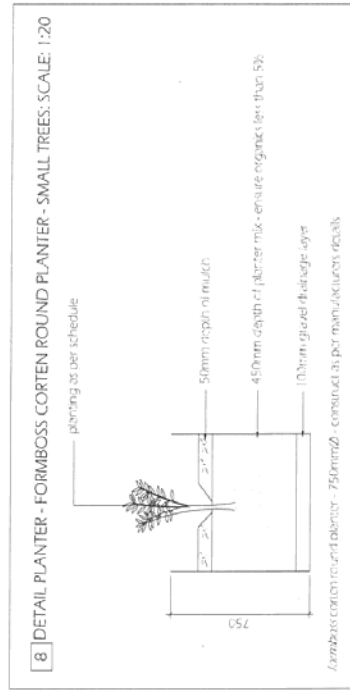
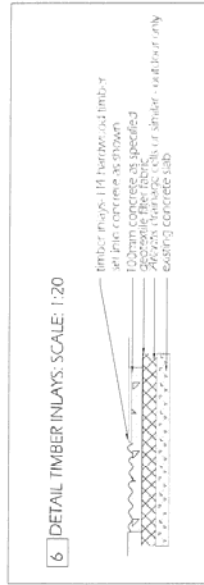
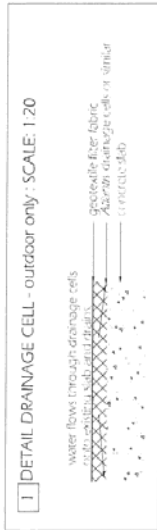
Revised DA: Vane@A3 11.11.16







<p>REVISIONS</p> <p>NO. REV. DATE DESCRIPTION</p> <p>1 A 14 A METAL SLAT FENCE DETAILS 2</p> <p>Revised DA 1200@A3 11.11.16</p>		<p>PROJECT NAME</p> <p>32-72 ALICE STREET, NEWTOWN 2012</p>		<p>CHECKED BY</p> <p>DK</p>	
<p>DATE</p> <p>21.08.17</p>		<p>REV ISSUE</p> <p>A Detail Added</p>		<p>PROJECT NAME</p> <p>32-72 ALICE STREET, NEWTOWN 2012</p>	
<p>DATE</p> <p>21.08.17</p>		<p>REV ISSUE</p> <p>A Detail Added</p>		<p>PROJECT NAME</p> <p>32-72 ALICE STREET, NEWTOWN 2012</p>	
<p>DATE</p> <p>21.08.17</p>		<p>REV ISSUE</p> <p>A Detail Added</p>		<p>PROJECT NAME</p> <p>32-72 ALICE STREET, NEWTOWN 2012</p>	



	PROJECT: Proposed Child Care Centre 127-131 WILSON ROAD, WILSON NSW 2155
	DATE: 15 August 2017 SCALE: as shown/A2
DESIGNER: Tessa Rose Architects Pty Ltd 127-131 WILSON ROAD, WILSON NSW 2155	

FINAL - revision 1
 details

