



City of Parramatta	
File No:	DA/460/2021

SECTION 4.15 ASSESSMENT REPORT

Environmental Planning & Assessment Act 1979

DA No:	DA/725/2020
Subject Property:	LOT 14 DP 30791, 45 Mobbs Lane, CARLINGFORD NSW 2118
Proposal:	Section 8.3 Review of DA/725/2020 for the demolition of existing structures, earthworks, removal of seven (7) trees and construction of a child care facility for 56 children (17 x 0-2 year olds, 15 x 2-3 year olds & 24 x 3-6 year olds) with basement level car parking level for fourteen (14) vehicles and associated landscape works. The Section 8.3 Review of Determination application relies upon previously submitted amended plans for 56 children with 14 car parking spaces.
Date of receipt:	7 December 2020 (Section 8.3 Review lodged on 5 April 2022)
Applicant:	Planning Lab
Owner:	Child Care Property Holdings Pty Limited
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	18 unique submissions
Recommendation:	Refusal
Assessment Officer:	Ashleigh Kizana

Legislative Requirements

Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none">• SEPP (Resilience and Hazards) 2021• SEPP (Biodiversity and Conservation) 2021• SEPP (Transport and Infrastructure) 2021• Education and Care Services National Regulations• Parramatta Local Environmental Plan (LEP) 2011• Parramatta Development Control Plan (DCP) 2011
Zoning	R2 Low Density Residential under Parramatta Local Environmental Plan 2011
Bushfire Prone Land	No
Heritage	No
Heritage Conservation Area	No
Designated Development	No
Integrated Development	No
Clause 4.6 variation	No
Delegation	Parramatta Local Planning Panel (PLPP) due to 16 August 2022

1. Executive Summary

Development Application DA/725/2020 was lodged on 5 April 2022 for Section 8.3 Review of DA/725/2020 for the demolition of existing structures, earthworks, removal of seven (7) trees and construction of a child care facility for 56 children (17 x 0-2 year olds, 15 x 2-3 year olds & 24 x 3-6 year olds) with basement level car parking level for fourteen

(14) vehicles and associated landscape works. The Section 8.3 Review of Determination application relies upon previously submitted amended plans for 56 children with 14 car parking spaces.

In accordance with the requirements contained within Council's Consolidated Notification Requirements, objectors to the original development application, owners and occupiers of adjoining and surrounding properties were given notice of the application between 29 April and 20 May 2022. In response, 18 unique submissions were received. Key concerns raised in the submissions are as follows:

- The proposal is inconsistent with the character of the Low Density Residential zone
- The site is not suitable for the proposed development
- Traffic and Parking (reduced safety, reduction of sightlines, increase in traffic movements and proposed no stopping zone)
- Amenity concerns for neighbouring properties (solar access, overlooking, noise)
- Acoustic barrier fence
- Increase in crime
- Tree removal
- Site drainage

In accordance with the Environmental Planning and Assessment Act 1979, Section 9.1 – Directions by the Minister, this application is reported to the Parramatta Local Planning Panel for determination as the application involves a Review of Determination of DA/725/2020 pursuant to Section 8.3 of the Environmental Planning and Assessment Act 1979.

Section 4.15 Assessment Summary

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The proposal is inconsistent with the relevant requirements of Chapter 3 Educational establishments and child care facilities of SEPP (Transport and Infrastructure) 2021, Child Care Planning Guideline, Parramatta Local Environmental Plan 2011 and the Parramatta Development Control Plan 2011. The assessment demonstrates that the proposal will result in adverse traffic and safety impacts and the increase in traffic would compromise the efficient function of the local road network, resulting in a safety concern for children.

Having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, it is recommended Development Application No. DA/725/2020 be refused.

2. Site Description and Conditions

The subject site is known as 45 Mobbs Lane, Carlingford. The current property description is Lot 14 DP 30791.

The site has an area of 932m², frontage of 20.115m, rear boundary length of 20.115m and an eastern and western boundary length of 46.33m. The site is a midblock allotment and has a 1.6m slope from the western boundary to the eastern boundary.



Figure 1 – Lot & DP aerial of allotment (highlighted) map and surrounding properties. *Source: GIS Online*

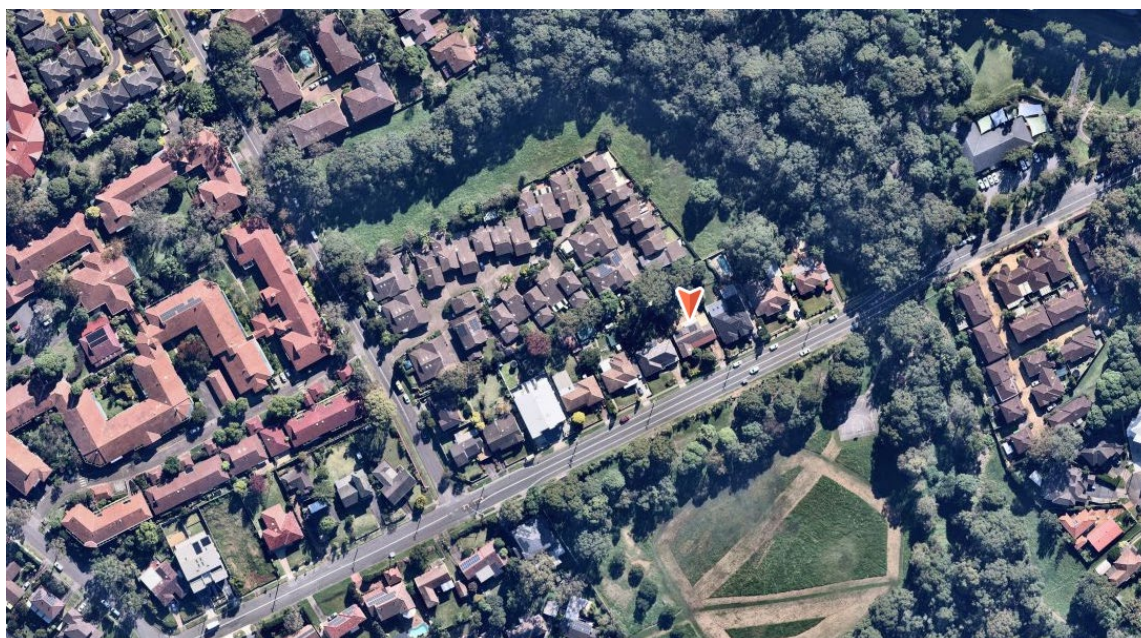


Figure 2 – Aerial view of subject site (orange arrow) and surrounds. *Source: Nearmap dated 26 July 2022*

The site is zoned R2 Low Density Residential. The surrounding properties are zoned R2 Low Density Residential and RE1 Public Recreation.

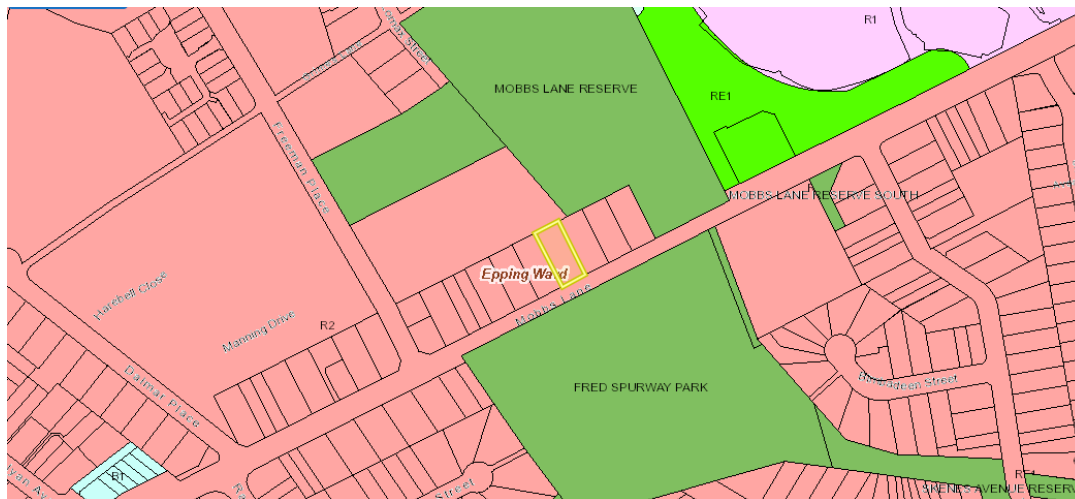


Figure 3 – Zoning Map (highlighted yellow). Source: GIS Online

The subject site currently accommodates a single storey dwelling house. It is located within an established residential area characterised by single and double storey residential dwellings as well as dual occupancy developments. Adjoining the subject site to the east and west are two storey residential dwellings. Adjoining the site to the north is a town house development and to the south, across Mobbs Lane is Fred Spurway Reserve.

3. Relevant Site History

Table 1 below provides details of existing approvals relating to the site.

Development Application	Description
21 May 2018	Development Application DA/332/2018 was lodged for the demolition works, earthworks, removal of four (4) trees and construction of a child care facility for 74 children (24 x 0-2 year olds, 30 x 2-3 year olds & 20 x 3-5 year olds) with basement level car parking for eighteen (18) vehicles with vehicular access from Mobbs Lane, external works and associated landscaping
8 August 2018	The Applicant's Solicitor filed a Class 1 Appeal to the NSW Land and Environment Court (LEC) in accordance with Section 113 of the Environmental Planning and Assessment Regulation 2000 (deemed refusal period) and Section 8.7(1) of the Environmental Planning and Assessment Act 1979.
18 September 2018	<p>The Parramatta Local Planning Panel (PLPP) as the consent authority refused development consent DA/332/2018 for the following reasons:</p> <p><u>Insufficient indoor space requirements</u></p> <p>1. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, the proposal fails to provide sufficient unencumbered indoor space as per <i>Clause 4.1 – Indoor Space Requirements</i> of the Childcare Planning Guideline 2017, <i>Regulation 107</i> of the Education and Care Services National Regulations and <i>Clause 25(2)(a)(i)</i> of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.</p> <p><u>Insufficient outdoor space requirements</u></p> <p>2. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, the proposal fails to provide sufficient unencumbered outdoor space as per <i>Clause 4.9 – Outdoor Space Requirements</i> of the Childcare Planning Guideline 2017, <i>Regulation 108</i> of the Education and Care Services National Regulations and <i>Clause 25(2)(a)(ii)</i> of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.</p> <p><u>Inconsistency with the R2 Zone objectives of Parramatta Local Environmental Plan 2011</u></p>

3. The proposal is inconsistent with the stated objectives (dot point 3) of the R2 Zone of PLEP 2011 as the significant cut and protrusion of the basement level above the natural ground level results in unreasonable amenity impacts to adjoining properties, is of a bulk and scale that adversely impacts on the streetscape and does not achieve satisfactory urban design outcomes.

Unacceptable streetscape

4. The development application is unsatisfactory because the proposal is inconsistent with the aims of Parramatta Local Environmental Plan 2011, in particular 1.2(2)(h) as the proposal fails to enhance the amenity and characteristics of the established residential area.
5. Part 2.4.6 'Development on Sloping Land' as that the height of the basement car park above natural ground level results in elevated ground floor levels resulting in a development that is excessive in bulk and scale and having adverse amenity impacts on adjoining properties.

Unsatisfactory parking and access under the Parramatta Development Control Plan 2011

6. Part 3.6.2 'Parking and Vehicular access' as the proposal results in an overall shortfall of one (1) vehicle space.

Insufficient information

7. Clause 4.6 'Exceptions to Development Standards' of PLEP 2011 in the absence a written request seeking justification of Clause 4.3 Height of Buildings development standard.
8. Clause 4.6 'Exceptions to Development Standards' of PLEP 2011 in the absence a written request seeking justification of the Clause 4.4 Floor Space Ratio development standard.
9. Clause 6.2 'Earthworks' of PLEP 2011 in the absence of geotechnical assessment report for the site insufficient information has been provided to ascertain whether the proposal satisfies this clause.
10. The proposal has not provided sufficient information regarding the *Child Care Planning Guideline August 2017* with respect to site selection, building orientation, envelope and design, visual and acoustic privacy, indoor/outdoor space requirements, storage, laundry/toilet and hygiene facilities, ventilation and natural light, nappy change facilities and emergency and evacuation procedures.
11. The proposal results in the removal of one (1) tree with the tree protection root zone in the rear adjoining property of the site. No landowners' consent of the adjoining property owners has been provided resulting in a negative impact on the preservation of the amenity of the area.
12. The development is considered to adversely impact on the built environment (Section 4.15(1)(b) Environmental Planning and Assessment Act 1979).
13. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(c) Environmental Planning and Assessment Act 1979 as the constraints together with the design issues renders the site unsuitable for the development.

The proposal fails to satisfy the relevant considerations under Section 4.15(1)(e) Environmental Planning and Assessment Act 1979 in that the adverse impacts generated by the development due to non-compliance with the applicable planning controls is not beneficial within the development site or to the established residential community and as such, it is not considered to be in the wider public interest.

4 October 2019	Land and Environment Court of New South Wales, Commissioner of the Court Peter Walsh, dismissed the Class 1 appeal <i>Childcare Property Holdings Pty Ltd as trustee for the Childcare Property Holdings Trust v City of Parramatta Council</i> [2019] NSWLEC 1473.
26 August 2020	Council held a pre-lodgement meeting (PL/92/2020) for the demolition and construction of a centre-based childcare centre for 64 children. The applicant was advised that the proposal is not supported on planning grounds, urban design and social outcomes.
7 December 2020	DA/725/2020 was lodged for demolition of existing structures, earthworks, removal of seven (7) trees and construction of a child care facility for 58 children (17 x 0-2 year olds, 15 x 2-3 year olds & 26 x 3-6 year olds) with basement level car parking level for fifteen (15) vehicles and associated landscape works.
19 October 2021	<p>DA/725/2020 was presented to the Parramatta Local Planning Panel with a recommendation for refusal.</p> <p>The PLPP deferred the item and resolved the following:</p> <ul style="list-style-type: none"> (a) <i>The applicant to provide clarification within 21 days on the functionality and operation of the basement carpark specifically to understand vehicle movement when entering and exiting the carpark if all carparking spaces were full, assuming that the operation of the childcare centre would require all drop offs and picks up to occur in the basement;</i> (b) <i>The Council Officers to provide details of the operation of the “no parking” area in front of the site in terms of its length and times;</i> (c) <i>The applicant to provide a report within 21 days on vehicular movements at peak childcare times to understand the likely number of vehicles entering and leaving during that period to understand any likely conflict.</i>
2 December 2021	A report recommending approval was prepared for the January 2022 Parramatta Local Planning Panel.
11 January 2022	<p>The Parramatta Local Planning Panel refused the application for the following reasons:</p> <ol style="list-style-type: none"> 1. <i>Whilst the Panel acknowledges that the amended plans provide suitable design for the child care use on the site in term of streetscape presentation and meeting the character of the residential area, the majority of the panel do not find the site suitable for the use on traffic safety terms namely:</i> <ul style="list-style-type: none"> - <i>the large amount of fast travelling road traffic on Mobbs Lane; the site being situated near to the crest of a hill – with resulting poor visibility;</i> - <i>the reliance on basement parking is unsatisfactory and the operators cannot guarantee use of the basement area by parents; the likelihood of queuing of vehicles entering the basement area;</i> - <i>the safety concerns relating to parents parking on the opposite (southern) side of Mobbs Lane and attempting to cross the busy road with young children for drop-off at the centre;</i> - <i>the uncertainty of the Local Traffic Committee’s decision.</i> 2. <i>The Traffic Management plan provided by the applicant is considered insufficient to deal with the serious traffic challenges raised by this location.</i> 3. <i>The traffic safety concerns of the Panel and the local residents have not been sufficiently met by the proposed conditions of consent or the applicant’s proposal.</i>
5 April 2022	The subject 8.3 Review Application was lodged.

4. The Proposal

The proposed development includes the following components:

Demolition of existing structures, earthworks, removal of seven (7) trees and construction of a child care facility for **56** children (17x 0-2 year olds, 15x 2-3 year olds & **24**x 3-6 year olds) with basement level car parking level for **fourteen (14)** vehicles and associated landscape works.

A detailed summary of the proposal is provided as follows:

Demolition works

- Demolition of the existing dwelling house and ancillary on-site structures.

Earthworks

- Cut and fill across the subject site for the part basement and part above-ground car parking level and filling of the in-ground swimming pool.

Tree Removal

- Removal of four (4) on-site trees (excluding the removal of the 'Cocos palms' in the rear yard as they are exempt species under the PDCP 2011).

Landscaping & fencing

- Associated site works and landscaping;
- A 2.1m+0.9m splay at 45 degrees (total height 2.77m) acoustic barrier (as per acoustic consultant's recommendation) along the rear boundary;
- A 2.5m high acoustic barrier (as per acoustic consultant's recommendation) along the eastern and western boundary fences at the rear; and
- A 1.8m high acoustic barrier (as per acoustic consultant's recommendation) along the eastern and western boundary fences from the outdoor play area to the front boundary.

Construction of a Child Care Facility

Part sub-basement car park level (RL 90.00)

- Vehicular car parking for fourteen (14) vehicle spaces with vehicular access from Mobbs Lane;
 - six (6) staff spaces
 - eight (8) visitor/collection/drop off spaces, (one (1) of which is an adaptable space)
- Garbage room; and
- Fire stairs and lift core.

Ground level (RL 93)

- One (1) pedestrian access pathway from Mobbs Lane;
- Three (3) bicycle spaces within the front porch;
- Reception, sign-in wall, lift core and stairs;
- Playroom #1 for 15 children aged 2-3 years old with an interconnecting bathroom shared with playroom#3;
- Playroom #2 for 16 children aged 3-6 years old with separate bathroom;
- Playroom #3 for 17 children aged 0-2 years old with separate cot room and bathroom with interconnecting bathroom with playroom #1
- Under cover play area (RL 93) adjacent to playrooms 1-3; and
- Outdoor modified play area with a 1.8m – 2.77m high acoustic barrier fence.

First floor level (RL 96.30)

- Kitchen, staff room with adjacent manager's room, meeting room, laundry, lift core, fire stairs and staff/accessible bathrooms; and
- Playroom #4 for 8 children aged 3-6 years old with separate bathroom and outdoor play area (RL 96.10) with 1.8m high acoustic balustrading around the perimeter and children's vegetable garden bed.

Hours of Operation

- Monday to Fridays 7:00am – 7:00pm. Closed Saturdays, Sundays and Public Holidays.

Staff

- Eleven (11) educational staff will be employed.
- One (1) managing director (or their delegate) will be present during the operational hours.

Note: Business identification signage or front fences are not sought/proposed for under this application.

5. Relevant Application History

Date	Comment
5 April 2022	Section 8.3 Review lodged.
28 April 2022	The site was inspected.
29 April and 20 May 2022	The application was notified in accordance with Council's Consolidated Notification Requirements. In response 47 submissions were received during the notification period, 18 of which are unique submissions.
10 May 2022	Council's Traffic Engineer provided comments.
2 June 2022	A letter was sent to the Applicant raising traffic concerns and advising that the application will be recommended for refusal. The Applicant was provided with the opportunity to withdraw the application.
7 June 2022	The Applicant responded to Council's letter and advised that the application would not be withdrawn.

6. Referrals

The following section outlines the response and conditions recommended from each of the internal and external referrals in relation to the subject application.

Referral	Comment
Development Engineer	Council's Development Engineer reviewed the original application and supported the application subject to conditions. Were the application to be recommended for approval, engineering and stormwater related conditions would be included in the consent.
Landscape	Council's Landscape Officer reviewed the original application and supported the application subject to conditions. Were the application to be recommended for approval, the recommended conditions would be included in the consent.
Traffic and Transport	Council's Traffic and Transport Engineer reviewed the submitted Traffic Review Letter prepared by TTPP dated 28 March 2022 and provided the following advice. The application is recommended for refusal.

1. Sight lines at the access driveway

Although the site does not have adequate sight distance, this is common at many driveways due to parked vehicles on the kerbside lane.

Generally, it is considered reasonable to assume that users of domestic driveways are familiar with the site access and road conditions. As such, these drivers typically wait for a safe gap before exiting the domestic driveway.

However, at non-domestic driveways, drivers can be unfamiliar with the site access and road conditions and adequate sight distance may be required.

For this site, the following dot points were considered:

- *Mobbs Lane has a steep downgrade on approach to the site (based on Council's contour maps, the downgrade is estimated to be approx. 10.3% at the site)*
- *The steep gradients and the presence of parked cars on the kerbside lane reduces sight visibility to oncoming traffic, eastbound on Mobbs Lane.*
- *Although the applicant conducted a speed survey which indicated that the 85th percentile speed for eastbound vehicles is 53km/h on Mobbs Lane, the speed survey was conducted outside Property 37 which is close to the observed crest and the gradients was not the steepest on approach to the site.*
- *As such, it is considered likely that eastbound vehicles on Mobbs Lane will be travelling at speeds higher*

- than the posted speed limit closer to the site
- Drivers accessing the basement car park are likely to be parents/carers/guardians and they are likely to be unfamiliar with the site access and road conditions on Mobbs Lane.
- Poor visibility to oncoming traffic and vehicles on Mobbs Lane travelling at high speeds can increase the chances of collisions (e.g. drivers may choose unsafe gaps when exiting the driveway).

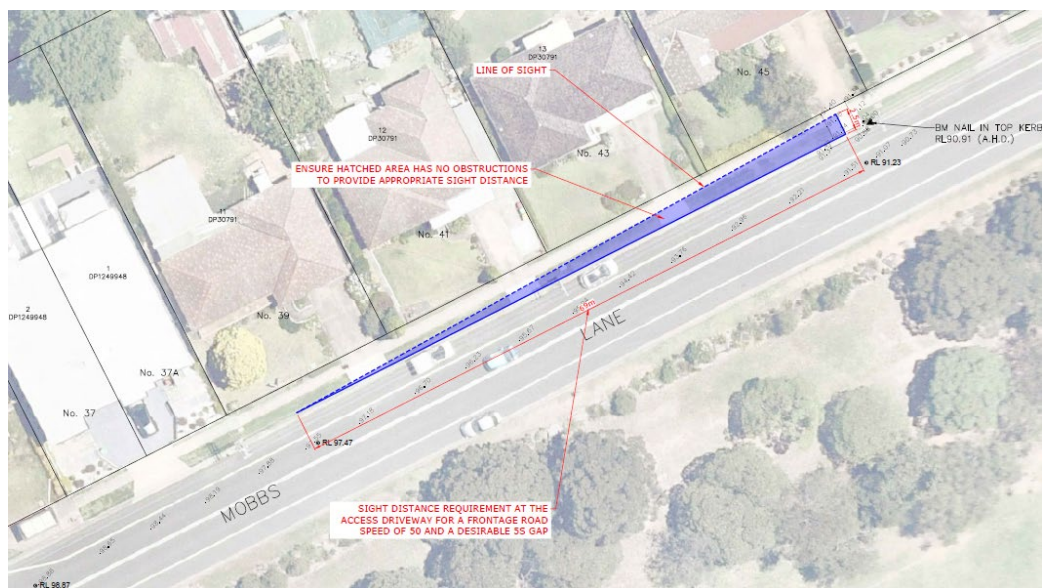
Based on the above reasons, adequate sight distance is required to be provided.

It is noted that Annexure B drawings in the submitted traffic report illustrates the sight distance required based on AS2890.1-2004 and Austroads (minimum gap sight distance and safe intersection sight distance).

These drawings demonstrate that there is insufficient sight distance provided due to the presence parked vehicles on the kerbside lane.

The proposed 'No Stopping' restriction along the site frontage is not supported as this will not provide adequate sight distance and can also set a precedence for other childcare developments within the LGA.

Note that in order to provide adequate sight distance based AS2890.1-2004, a 69m long 'No Stopping' restriction will need to be provided on Mobbs Lane, west of the driveway (see below figure), This will adversely impact parking amenities in the area which is not supported.



2. Safety of children crossing Mobbs Lane

Although there is adequate off-street parking provided, it is anticipated that some pick up/drop off activities may still occur on-street. This can be due to convenience or parents driving larger vehicles (e.g. 7 or 8 seater vans) having difficulties manoeuvring within the basement car park.

This assumption is consistent with the findings of RMS's analysis report prepared by TEF Consulting titled 'Validation Trip Generation Surveys Child Care Centres' dated September 2015 which states in Section 3.7.2, 'Regardless of whether off-street parking was provided on site, some or all children drop-offs and pick-ups occurred on street as well.'

It is considered likely that vehicles travelling eastbound on Mobbs Lane will be travelling at speeds higher than the posted speed limit due to the steep downgrades outside the site.

This raises a safety concern as small children may be crossing the road at this location as parents may undertake on-street pick up/drop offs on the opposite side of the road.

The applicant's proposal to 'ask parents to come into the basement' is not considered adequate to address the above safety concerns.

Given this, the application is recommended for refusal.

Environment and Health (Acoustic)	<p>Council's Environment and Health Officer reviewed the original application and supported the application subject to conditions.</p> <p>Were the application to be recommended for approval, the recommended conditions would be included in the consent.</p>
Social outcomes	<p>Council's Social Outcomes Officer reviewed the original application and did not support the proposal for the following reasons:</p> <ul style="list-style-type: none"> <i>The proposed development – a childcare centre for 92 children – is an overdevelopment of the site in a residential zone, conflicting with Objective 1 in Section 5.2.3.2 of Council's DCP and compromising best practice design and positive developmental outcomes for children.</i> <p>Planner's response: The application complies with the FSR and Height controls contained in PLEP 2011 and generally complies with the building envelope controls contained in PDCP 2011. The proposal also meets the regulations for indoor and outdoor play areas in accordance with regulation 107 and 108 of the Educational and Care Services National Regulations. It is also noted that the number of children has since been reduced from 92 children to 56 children since these comments were received.</p> <ul style="list-style-type: none"> <i>The centre layout proposing the playroom for children aged 0-2 be situated on the first floor is a safety hazard in the event of an emergency or fire evacuation, impractical for access especially for pram users, and means that children of all ages are not able to benefit by learning from each other. Best practice design situates all playrooms on the ground floor.</i> <p>Planner's response: The application was referred to the Department of Education and concurrence has been provided. No concerns were raised by the Department over the two storey development. Furthermore, a condition would be recommended to be included in the consent requiring an emergency and evacuation floor plan prior to the issue of a Construction Certificate should the application be approved.</p> <ul style="list-style-type: none"> <i>The significant proportion of artificial turf and rubberised surfaces proposed for the play areas – especially the 'simulated outdoor play space' on the first floor – do not contribute to positive outcomes for children. Natural play elements should be prioritised according to best practice centre design.</i> <p>Planner's response: The application was referred to the Department of Education and concurrence has been provided. No concern was raised by the Department over the simulated outdoor play area. Refer to the Department's referral for full comments on the simulated outdoor play area.</p> <ul style="list-style-type: none"> <i>The irregular shape of playrooms 1 and 3 may hinder line of sight and supervision of children.</i> <p>Planner's response: The application was referred to the Department of Education and no concern was raised by the Department over the layout of the playrooms.</p> <ul style="list-style-type: none"> <i>The design of the bathroom facilities does not uphold the privacy and dignity of the users.</i> <p>Planner's response: The application was referred to the Department of Education and no concern was raised by the Department over the design of the toilets.</p>
Caltex	<p>No response received.</p> <p>A referral was sent on 3 July 2020, during the assessment of the original application. The Planner at the time, sent a reminder email on 10 December 2020 requesting a response within 7 days. A response has not been received to date.</p>
Department of Education	<p>Concurrence provided</p>

The application was referred to the Early Childhood Education Directorate as the regulatory authority as the outdoor play area for 0-2 years is located indoors as a simulated play area. The areas comply with the unencumbered indoor and outdoor space required under the SEPP (Educational Establishments and Child Care Facilities) 2017 however the 0-2 years outdoor play area is located indoors as a simulated area.

See comments in full below:

"The development application for the purpose of a centre-based child care facility was referred to the department under section 22 of the SEPP which states:

(1) This clause applies to development for the purpose of a centre-based child care facility if:

(a) the outdoor space requirements for the building or place do not comply with clause 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations.

Decision

Following review of the development application, this concurrence request is approved.

Reasons for decision

The applicant has indicated they intend to care for up to 92 children and has provided a combination of natural and simulated outdoor unencumbered space totalling 646.19m². There is 492.11m² of actual outdoor space located on the ground floor that includes a range of natural features such as timber, plants, water pump, sandpit and a vegetable garden.

The ground floor outdoor space is sufficient for 70.58 children. The simulated outdoor space of 154.08m² is located on the first floor, is intended for the 0-2 year's age group and is sufficient for 22.01 children. It is accessed through the first floor lobby and Playroom 4. Children's bathrooms are accessible to the simulated outdoor space through the 0-2 year's room. There are also 4 doors to the cot room and 3 windows facing into the lobby area.

Natural features to simulate the proposed simulated outdoor area include a sandpit, indoor plants, sandstone blocks and built-in timber features. The area also includes a combination of different floor types and textures including wooden decking, artificial grass and uneven surfaces such as built in mounds with tunnels. The proposed facility has been designed to achieve cross ventilation and be temperature controlled to avoid extremes in temperature.

The simulated play room has a raked ceiling and is orientated to capture sun through windows with solar shades that run along one side of the exterior walls. Light and external views of trees and the sky will come from floor to ceiling windows that run along the exterior side of the space and windows along the top section of the north-east facing exterior wall. There are also four (4) doors to the cot room, three (3) windows facing into the lobby area and one (1) into the kitchen.

It is noted that no exceptional circumstances have been provided with the application however, the centre design responds to the context of the surrounding area through a proposed 2 storey building that is consistent with the evolving 2-3 storey medium density residential character within the subject area.

The concurrence approval is based on the architectural plans dated 26 October 2020, Landscape plans dated 5 June 2020 and Statement of Environmental Effects dated 10 June 2020 and the stipulation that the spaces meet the requirements of the National Regulations and The Department of Planning and Environment's Child Care Planning Guideline at the time of completion.

Application for service approval

Once the service is complete, any service approval application submitted to the department should be accompanied by the appropriate waiver application, at which time the Department will consider the application in line with the requirements of the Children (Education and Care Services) National Law (the "National Law") and the Education and Care Services National Regulations (the "Regulations"). A person may not operate an education and care service, as defined by the National Law or the Children (Education and Care Services) Supplementary Provisions Act 2011, unless they hold a service approval.

PLANNING ASSESSMENT

7.0 ASSESSMENT UNDER SECTIONS 8.2 – 8.5 of Environmental Planning and Assessment Act 1979

Section 8.2 Determinations and decisions subject to review (cf previous ss 82A(1), 82B(1))

- (1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—*

- (a) *the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
- (b) *the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
- (c) *the decision of a council to reject and not determine an application for development consent.*

PLANNERS COMMENT: The application proposes a review of a Development Application determined by the Parramatta Local Planning Panel.

- (2) *However, a determination or decision in connection with an application relating to the following is not subject to review under this Division—*
 - (a) *a complying development certificate,*
 - (b) *designated development,*
 - (c) *Crown development (referred to in Division 4.6).*

PLANNERS COMMENT: N/A

- (3) *A determination or decision reviewed under this Division is not subject to further review under this Division.*

PLANNERS COMMENT: Noted.

8.3 Application for and conduct of review (cf previous ss 82A(2)–(4) (6), 82B(2)–(4))

- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*

PLANNERS COMMENT: A review of the determination by the Parramatta Local Planning Panel forms the basis of this assessment.

- (2) *A determination or decision cannot be reviewed under this Division—*
 - (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - (b) *after the Court has disposed of an appeal against the determination or decision.*

PLANNERS COMMENT: The application was determined by the Parramatta Local Planning Panel on 11 January 2022. The COVID-19 Legislation Amendment (Emergency Measures – Attorney General) Act 2020 extended the timeframe for the review of a determination to 12 months.

In order to comply with this section of the Act, the review needs to be determined by 11 January 2023. The report is being prepared for the PLPP meeting on 16 August 2022, which is within 12 months of the determination.

- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

PLANNERS COMMENT: The applicant has submitted information to address the reasons for refusal and the Panels concerns, including a Traffic Review Letter prepared by TTPP dated 28 March 2022. No other changes are proposed to the application and all plans and documents from the previous application are to be relied upon for the assessment.

- (4) *The review of a determination or decision made by a delegate of a council is to be conducted—*
 - (a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - (b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*

PLANNERS COMMENT: A report is being prepared for determination by the Parramatta Local Planning Panel.

- (5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*

PLANNERS COMMENT: A report is being prepared for determination by the Parramatta Local Planning Panel.

- (6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*

PLANNERS COMMENT: N/A

- (7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*

PLANNERS COMMENT: N/A

- (8) *The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.*

PLANNERS COMMENT: N/A

- (9) *The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.*

PLANNERS COMMENT: N/A

8. Environmental Planning Instruments

8.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Education and Care Services National Regulations
- Parramatta Local Environmental Plan 2011
- Parramatta Development Control Plan 2011 (PDCP 2011)
- Draft Parramatta Local Environmental Plan 2020 (DLEP 2020).

Compliance with these instruments is addressed below.

8.2 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

8.2.1 Chapter 4 Remediation of Land

- ☒ A site inspection reveals the site does not have an obvious history of a previous land use that may have caused contamination;
- ☒ Historic aerial photographs were used to investigate the history of uses on the site;
- ☒ A search of Council records did not include any reference to contamination on site or uses on the site that may have caused contamination;
- ☒ A search of public authority databases did not include the property as contaminated;
- ☒ The Statement of Environmental Effects states that the property is not contaminated.

The site is not identified in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of a previous non-residential land use that may have caused contamination and there is no specific evidence that indicates the site is contaminated.

Council's Environmental Health Officer reviewed the original Development Application lodged on 7 December 2020 and reviewed the 'Preliminary Site Investigation' report and provided no objections subject to standard asbestos, site investigation, landfill, waste and contamination conditions being imposed on the conditions of consent. It is noted that no changes are proposed to the application that would change the assessment against SEPP (Resilience and Hazards) 2021.

The proposal is acceptable in respect to the requirements of SEPP (Resilience and Hazards) 2021. It is therefore considered that the proposed child care facility poses no risk of contamination and as such no further consideration is required under Clause 4.6 of the SEPP. Therefore, Council is satisfied the land can be used for the purposes of a child care facility.

Were the application recommended for approval, standard asbestos, site investigation, landfill, waste and contamination conditions would be imposed on the Notice of Determination.

8.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

8.3.1 Chapter 2 Vegetation in non-rural areas

The application has been assessed against the requirements of State Environmental Planning Policy (Biodiversity and Conservation) 2021. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

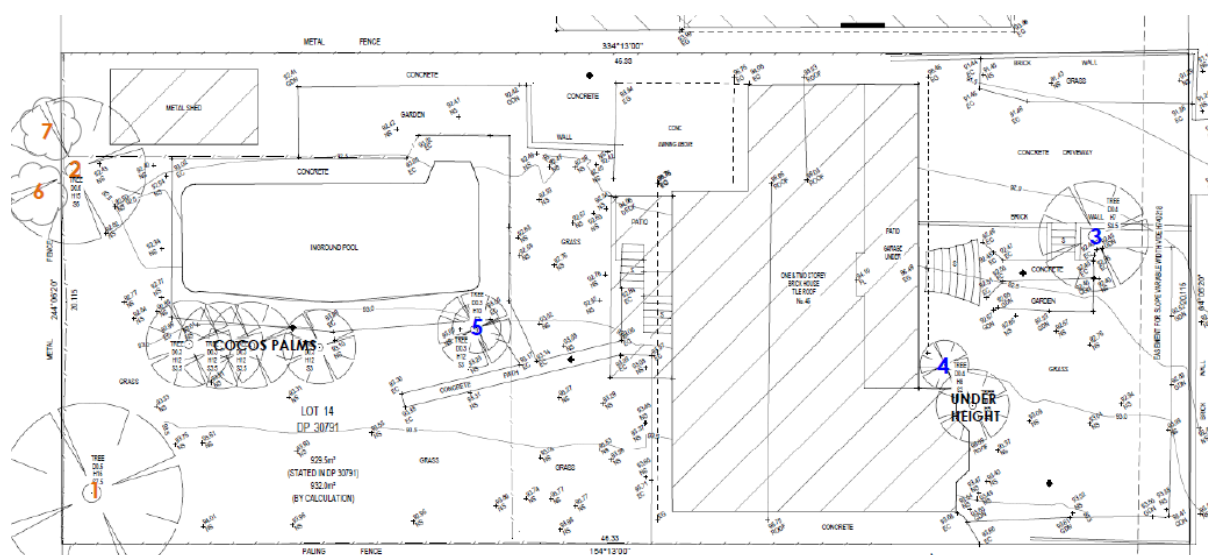


Figure 4 – Proposed tree removal plan (shown in blue) and tree. Source: Arboricultural Impact Assessment (AIA) and Tree Management Plan Report, Ref: 6591, prepared by Redgum Horticultural, dated 13 October 2020

Arboricultural Impact Assessment (AIA) and Tree Management Plan Report, prepared by Redgum Horticultural Management Services, Ref: 6591 dated 13 October 2020 assesses 7 trees; 5 within the site and 2 on the adjacent properties.

The application proposes the removal of the following vegetation from the site:

Tree No.	Name	Common Name	Location	Condition/Height	Reason
3	<i>Callistemon viminalis</i>	Weeping Bottlebrush	Front garden	Good / 6m	Building footprint
4	<i>Corydline australis</i>	Cabbage Tree	Front garden	Fair / 8m	Building footprint
5	<i>Archontophoenix cunninghamiana</i>	Bangalow Palm	Rear garden	Fair / 7m	Building footprint

Council's Tree and Landscape Officer reviewed the original application lodged on 7 December 2020 and raised no objections to the removal of the vegetation from the site subject to conditions of consent requiring sensitive construction methods used to protect adjacent vegetation and to ensure landscaping is to be in accordance with the landscape plan.

It is noted that no changes are proposed to the application that would change the assessment against SEPP (Biodiversity and Conservation) 2021.

If the application were recommended for approval, conditions of consent would have been included to this effect.

8.3.2 Chapter 10 Sydney Harbour Catchment

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The Sydney Harbour Catchment Planning Principles must be considered and where possible achieved in the carrying out of development within the catchment. The key relevant principles include:

- protect and improve hydrological, ecological and geomorphologic processes;
- consider cumulative impacts of development within the catchment;
- improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
- protect and rehabilitate riparian corridors and remnant vegetation.

The site is sufficiently far upstream from the Parramatta River that it is not identified as being within the Foreshores and Waterways Area which extends west only to Parramatta CBD. The proposal, as amended, is consistent with the controls contained within the deemed SEPP.

8.4 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE)

8.4.1 Chapter 2 Infrastructure

The provisions of the SEPP have been considered in the assessment of the development application.

The application is not subject to clause 2.48 of the SEPP as the development does not propose works within the vicinity of electricity infrastructure that trigger a written referral to the energy authority.

The application is not subject to clause 2.119 of the SEPP as the site does not have frontage to a classified road. The application is not subject to clause 2.120 of the SEPP as the average daily traffic volume of Mobbs Lane is less than 20,000 vehicles.

With regards to requirements of Clause 2.120 and, Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP does not apply in this respect.

8.4.2 Chapter 3 Educational establishments and child care facilities

The provisions of the State Environmental Planning Policy (Transport and Infrastructure) 2021 are applicable to the proposed development. The following assessment of the development proposal has been undertaken against the applicable provisions of the environmental planning instrument, in particular Chapter 3 Educational establishments and child care facilities.

It is noted that the original application was assessed against the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, which was the applicable SEPP at the time. SEPP (Transport and Infrastructure) 2021 (Chapter 3 - Educational establishments and child care facilities) is now applicable. No changes were made to the controls applicable to Child Care Facilities upon gazettal of the new SEPP. All controls from the previous SEPP were carried across.

It is noted that the application does not propose any changes to the plans or proposal and relies upon the original plans and documents assessed under the original application.

Chapter 3 Educational establishments and child care facilities.	Compliance/Comment
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3.10 Notification of councils and State Emergency Service—development on flood liable land	The site is not identified as flood liable land, however, is within a grey area.												
3.14 Site compatibility certificates	NA												
Part 3.3 Early education and care facilities—specific development controls													
3.22 Centre-based child care facility—concurrence of Regulatory Authority required for certain development	<p>Concurrence of the Regulatory Authority is required where a development does not achieve the minimum indoor or outdoor unencumbered space requirements in accordance with regulation 107 (indoor unencumbered space requirements) and Regulation 108 (outdoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i>.</p> <p>The proposal meets the minimum indoor and outdoor unencumbered space requirements (as calculated in accordance with the definitions under Clause 107 & 108 of Education and Care Services National</p> <table><tr><td>56 place child facility</td><td>Required</td><td>Proposed</td><td>Concurrence</td></tr><tr><td>Indoor Space</td><td>182m²</td><td>195.2m²</td><td>N/A</td></tr><tr><td>Outdoor Space</td><td>392m²</td><td>412.6m²</td><td>N/A</td></tr></table> <p>Regulations).</p>	56 place child facility	Required	Proposed	Concurrence	Indoor Space	182m ²	195.2m ²	N/A	Outdoor Space	392m ²	412.6m ²	N/A
56 place child facility	Required	Proposed	Concurrence										
Indoor Space	182m ²	195.2m ²	N/A										
Outdoor Space	392m ²	412.6m ²	N/A										
3.23 Centre-based child care facility—matters for consideration by consent authorities	The applicable provisions of the Child Care Planning Guideline have been considered and an assessment against the matters for consideration are provided in the table below.												
3.26 Centre-based child care facility—non-discretionary development standards	The non-discretionary development standards subject of this clause including location, indoor / outdoor space, site area and dimensions, and building materials and finishes have not been used as a basis for refusal of this application.												
3.27 Centre-based child care facility—development control plans	<p>The provisions contained in the Parramatta Development Control Plan 2011 pertaining to this clause have not been applied when assessing the proposed development.</p> <p>Non-discretionary development standards subject of this clause have not been used as a basis for refusal of this application.</p>												

8.4.2.1 Child Care Planning Guideline August 2017

The SEPP (TRANSPORT AND INFRASTRUCTURE) 2021 (Chapter 3 - Educational establishments and child care facilities) requires consideration of the provisions contained within the Child Care Planning Guideline. An assessment is provided below.

Part 3 – Matters for Consideration	
3.1 Site Selection and Location	
<p>C1 For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> • The acoustic and privacy impacts of the proposed development on the residential properties; • The setbacks and siting of buildings within the residential context; • Traffic and parking impacts of the proposal on residential amenity. 	<p>The site is located in a R2 Low Density Residential zone.</p> <p>To achieve adequate acoustic privacy, an acoustic barrier with a maximum height of 1.8m-2.77m (which includes a 0.9m high inward splay), is proposed on the boundaries around the outdoor play areas (as per the acoustic report).</p> <p>Council's Environmental Health Officer reviewed the application and found the acoustic treatment to be satisfactory.</p> <p>The proposed setbacks of the building are consistent with the setbacks for residential development.</p>

	Traffic and parking impacts have been considered in the assessment of the application and considered unsatisfactory and will form the reasons for refusal.
<p>C2 When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • The location and surrounding uses are compatible with the proposed development or use; • The site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards; • There are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed; • The characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> ○ size of street frontage, lot configuration, dimensions and overall size; ○ number of shared boundaries with residential properties; and ○ the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas; • Where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use; • There are suitable drop off and pick up areas, and off and on street parking; • The type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use; • It is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>The site is located within a residential environment and within proximity to schools and open space.</p> <p>The site is not known to have any environmental hazards or contaminants that would impact the safety of children, staff or visitors.</p> <p>The scale and type of development proposed is compatible with the site characteristics in terms of street frontage, lot configuration and dimensions. The site shares boundaries with residential properties to the sides and rear. The proposal does not detract from sensitive environmental or cultural areas.</p> <p>Parking and drop off/pick up areas are proposed within the basement.</p> <p>Mobbs Lane is a local road.</p> <p>The site is not located in proximity to incompatible social uses.</p>
<p>C3 A child care facility should be located:</p> <ul style="list-style-type: none"> • Near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship; • Near or within employment areas, town centres, business centres, shops; • With access to public transport including rail, buses, ferries; and • In areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>The site is in close proximity to:</p> <ul style="list-style-type: none"> • primary schools including Carlingford Public School and Epping West Public School • Fred Spurway Reserve • Mobbs Lane shops • Eastwood Shopping Centre • Several bus stops along Mobbs Lane and Marsden Road
<p>C4 A child care facility should be located to avoid risks to children, staff or visitors</p>	<p>The site is not located within close proximity to any Industrial zones or within close proximity to heavy or hazardous industrial uses.</p>

<p>and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • Proximity to: <ul style="list-style-type: none"> ○ heavy or hazardous industry, waste transfer depots or landfill sites; ○ LPG tanks or service stations; ○ water cooling and water warming systems; ○ odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses; ○ extractive industries, intensive agriculture, agricultural spraying activities; and • Any other identified environmental hazard or risk relevant to the site and/or existing buildings within the site. 	
3.2 Local Character, Streetscape and Public Domain Interface	
<p>C5 The proposed development should:</p> <ul style="list-style-type: none"> • Contribute to the local area by being designed in character with the locality and existing streetscape; • Reflect the predominant form of surrounding land uses, particularly in low density residential areas • Recognise predominant streetscape qualities, such as building form, scale, materials and colours; • Include design and architectural treatments that respond to and integrate with the existing streetscape; • Use landscaping to positively contribute to the streetscape and neighbouring amenity; and • Integrate car parking into the building and site landscaping design in residential areas. 	<p>The proposal has been designed to be in character with the locality and existing streetscape, proposing a two storey building with face brick and a pitched roof.</p> <p>Mobbs Lane consists of single storey dwelling houses and two storey dual occupancies.</p> <p>The proposal complies with the LEP building height control and two storey developments are permitted under the Parramatta DCP.</p> <p>The building scale is similar to a residential dwelling house, and the proposed architectural treatments which comprise masonry is consistent with that of a dwelling house.</p> <p>Landscaping is proposed within the front setback and OSD is located under the hardstand areas, increasing deep soil zones.</p> <p>Car parking is located within the basement.</p>
<p>C6 Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • Fencing to ensure safety for children entering and leaving the facility; • Windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community; and • Integrating existing and proposed landscaping with fencing. 	<p>Fencing and landscaping is used to differentiate public and private spaces and provide screening and security around play areas. The building has windows within the front elevation, which allow for passive surveillance to the street.</p>
<p>C7 On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p>The pedestrian entry is clearly delineated and is located off Mobbs Lane.</p> <p>A pedestrian entry is also provided from within the basement via stairs and a lift.</p>

<p>C8 Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> • Clearly defined street access, pedestrian paths and building entries; • Low fences and planting which delineate communal/ private open space from adjoining public open space; and • Minimal use of blank walls and high fences. 	<p>The development does not adjoin a public park, open space or bushland.</p>
<p>C9 Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p>Details are not provided for a front fence. Were the application to be recommended for approval a condition would be included in the consent regarding front fencing.</p>
<p>C10 High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p>	<p>The site does not adjoin a classified road.</p>
<p>3.3 Building Orientation, Envelope and Design</p>	
<p>C11 Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • Ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> ○ Facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties; ○ Placing play equipment away from common boundaries with residential properties; ○ Locating outdoor play areas away from residential dwellings and other sensitive uses; • Optimise solar access to internal and external play areas; • Avoid overshadowing of adjoining residential properties; • Minimise cut and fill; • Ensure buildings along the street frontage define the street by facing it; and • Ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>The site adjoins residential properties to the sides and rear.</p> <p>The plans indicate highlight windows within the side elevations on both the ground and first floor to mitigate any overlooking impacts.</p> <p>The ground floor outdoor play area is located at the rear of the site. The proposed built form utilises a 'U' shaped layout on the first floor level, to act as a physical noise and privacy barrier for the outdoor play area.</p> <p>The outdoor play area is located to the north of the site, receiving full sunlight between 9am and 3pm.</p> <p>Adjoining residential properties are able to achieve the minimum solar access requirements under PDCC 2011.</p> <p>Excluding excavation for the basement, cut and fill is minimised and the development responds to the topography of the site.</p> <p>The building has been designed to ensure that it faces the street and outdoor play areas are protected from wind and other climatic conditions.</p> <p>The proposed facility has been designed to achieve cross ventilation and temperature controlled to avoid extremes in temperature.</p>
<p>C12 The following matters may be considered to minimise the impacts of the proposal on local character:</p>	<p>The proposal complies with the maximum permissible building height controls and required setbacks and responds to the scale and character of the street.</p>

<ul style="list-style-type: none"> • Building height should be consistent with other buildings in the locality; • Building height should respond to the scale and character of the street; • Setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility; • Setbacks should provide adequate access for building maintenance; and • Setbacks to the street should be consistent with the existing character. 	
<p>C13 Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>The prevailing setback controls are outlined in the DCP. See below.</p>
<p>C14 On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>The development provides adequate setbacks consistent with that of a dwelling house.</p>
<p>C15 The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • Respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage; • Retains and reinforces existing built form and vegetation where significant; • Considers heritage within the local neighbourhood including identified heritage items and conservation areas; • Responds to its natural environment including local landscape setting and climate; and • Contributes to the identity of place. 	<p>The built form of the development is similar to low density residential development within the locality, and the architectural style is of a contemporary nature. Notwithstanding, the building form also contributes to the identity of the development as a childcare centre.</p>
<p>C16 Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • Located to allow ease of access, particularly for pedestrians; • Directly accessible from the street where possible; • Directly visible from the street frontage; • Easily monitored through natural or camera surveillance; • Not accessed through an outdoor play area; and • In a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>There is one vehicular access and one pedestrian entry proposed from Mobbs Lane.</p> <p>The entrance is not accessed through an outdoor play area.</p> <p>The child care centre is not within a mixed use building.</p>
<p>C17 Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • Providing accessibility to and within the building in accordance with all relevant legislation; 	<p>Accessibility is provided to the building and within the proposed child care facility. The proposed building entry is accessible from the existing footpath and a lift is provided within the basement.</p>

<ul style="list-style-type: none"> • Linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry; • Providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible; and • Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The <i>National Construction Code</i>, the <i>Discrimination Disability Act 1992</i> and the <i>Disability (Access to Premises – Buildings) Standards 2010</i> set out the requirements for access to buildings for people with disabilities.</p>	
3.4 Landscaping	
<p>C18 Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • Reflecting and reinforcing the local context; and • Incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	Screen planting has not been included in outdoor space calculations.
<p>C19 Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • Planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings; • Taking into account streetscape, local character and context when siting car parking areas within the front setback; and • Using low level landscaping to soften and screen parking areas. 	The car parking area is located within the proposed basement and is not visible from the street.
3.5 Visual and Acoustic Privacy	
<p>C20 Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p>	The development is not a mixed use development.
<p>C21 Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitably locating pathways, windows and doors; and • Permanent screening and landscape design. 	The proposal has been designed to minimise overlooking of indoor rooms through the use of landscaping within the front setback.

<p>C22 Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitable location of pathways, windows and doors; and • Landscape design and screening. 	<p>The proposal has been designed to minimise overlooking of internal areas and private open spaces of adjoining developments, with the use of highlight windows within the side and rear elevations.</p>
<p>C23 A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> • Provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence); and • Ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	<p>Acoustic fencing, with a maximum height of 2.77m, is proposed along the side and rear boundaries adjoining residential properties.</p> <p>Were the application to be approved, a condition of consent would be recommended to ensure that mechanical plant equipment is appropriately screened.</p>
<p>C24 A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • Identify an appropriate noise level for a child care facility located in residential and other zones; • Determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use; and • Determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>An acoustic report was submitted with the application detailing appropriate noise levels for a child care facility in a residential zone. The acoustic report details requirements for acoustic fencing to enable noise criteria to be met. The proposed acoustic fencing has a height of 2.1m+0.9m splay at 45 degrees (total height of 2.77m), along the rear boundary, 2.5m along the western boundary and 1.8m along the eastern boundary.</p> <p>The acoustic report concludes that providing the recommendations in this report are implemented, the noise from the proposed development is predicted to comply with acoustic requirements of the PDCP 2011 and EPA noise policies.</p> <p>Council's Environmental Health Officer has reviewed the application and submitted acoustic report and raises no objection to the proposed development subject to recommended conditions of consent.</p>
<p>3.6 Noise and Air Pollution</p>	
<p>C25 Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • Creating physical separation between buildings and the noise source; • Orienting the facility perpendicular to the noise source and where possible buffered by other uses; • Using landscaping to reduce the perception of noise; • Limiting the number and size of openings facing noise sources; • Using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens); • Using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits; and 	<p>Noise attenuation measures such as glazing and construction methods are recommended.</p>

<ul style="list-style-type: none"> • Locating cot rooms, sleeping areas and play areas away from external noise sources. 	
<p>C26 An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • On industrial zoned land; • Where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000; • Along a railway or mass transit corridor, as defined by <i>State Environmental Planning Policy (Infrastructure) 2007</i>; • On a major or busy road; and • Other land that is impacted by substantial external noise. 	<p>An acoustic report was submitted with the application. The site is not located on industrial land, on land where the ANEF contour is between 20 and 25, along a rail or mass transit corridor, on a major or busy road, or on land impacted by significant external noise.</p>
<p>C27 Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p>The site is not located in an area that is likely to be impacted by sources of air pollution such as major roads or industrial development.</p>
<p>C28 A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • Creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution; • Using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway; and • Incorporating ventilation design into the design of the facility. 	<p>The site is not located close to a major road or industrial developments.</p>
<p>3.7 Hours of Operation</p>	
<p>C29 Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to on-residential land uses.</p>	<p>Complies</p>
<p>C30 Within mixed use areas or predominantly commercial areas, the</p>	<p>The site is not in a mixed use or commercial area.</p>

hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	
3.8 Traffic, Parking and Pedestrian Circulation	
C31 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.	<p>The Parramatta DCP 2011 specifies a parking rate of <i>1 space per 4 children</i>.</p> <p>The parking required for the proposal based on the above is 14 spaces.</p> <p>14 off-street car parking spaces including one (1) accessible space are proposed within the basement.</p>
C32 In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	The site is not located in a commercial or industrial zone.
C33 A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: <ul style="list-style-type: none"> • The amenity of the surrounding area will not be affected; and • There will be no impacts on the safe operation of the surrounding road network. 	<p>A Traffic Review Letter prepared by TTPP dated 28 March 2022 was submitted with the Review, addressing the PLPP concerns and demonstrating that the proposed traffic impacts are acceptable.</p> <p>However, upon review of this information, Council's Traffic and Transport Engineer has stated that the application cannot be supported on traffic and parking grounds due to inadequate sight distances provided at the driveway and safety concerns with children crossing Mobbs Lane.</p> <p>Please see <i>Traffic Comments</i> below for the full comments in regard to the traffic and parking assessment.</p>
C34 Alternate vehicular access should be provided where child care facilities are on sites fronting: <ul style="list-style-type: none"> • A classified road; and • Roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • The prevailing traffic conditions; • Pedestrian and vehicle safety including bicycle movements; and • The likely impact of the development on traffic. 	The site does not front a classified road or a road which carries freight traffic or transports dangerous and hazardous materials.
C35 Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	Mobbs Lane is not a cul-de-sac or narrow lane.
C36 The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: <ul style="list-style-type: none"> • Separate pedestrian access from the car park to the facility; • Defined pedestrian crossings included within large car parking areas; 	The car parking area is located within the basement, off Mobbs Lane, which is separated from the proposed pedestrian entrance and pedestrian path off Mobbs Lane. Vehicles are able to enter and leave the site in a forward direction.

<ul style="list-style-type: none"> • Separate pedestrian and vehicle entries from the street for parents, children and visitors; • Pedestrian paths that enable two prams to pass each other; • Delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities; • In commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas; and • Vehicles can enter and leave the site in a forward direction. 	
<p>C37 Mixed use developments should include:</p> <ul style="list-style-type: none"> • Driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks; • Drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site; and • Parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>The development is not a mixed use development.</p>
<p>C38 Car parking design should:</p> <ul style="list-style-type: none"> • Include a child safe fence to separate car parking areas from the building entrance and play areas; • Provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards; and • Include wheelchair and pram accessible parking. 	<p>The car parking is located in the basement and a lift is provided from basement to the ground and first floors.</p>
<p>Part 4 – Applying the National Regulations to Development Proposals</p>	
<p>4.1 Indoor Space Requirements</p>	
<p>Regulation 107 Education and Care Services National Regulations</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. <i>Unencumbered indoor space excludes any of the following:</i></p> <ul style="list-style-type: none"> • <i>Passageway or thoroughfare (including door swings) used for circulation;</i> • <i>Toilet and hygiene facilities;</i> • <i>Nappy changing area or area for preparing bottles;</i> 	<p>195.2m² of unencumbered indoor space is provided which is greater than 3.25m² indoor area per child.</p> <p>The proposal complies with 3.25m² of unencumbered indoor space provided for each child.</p>

4.4 Ventilation and Natural Light	
Regulation 110 Education and Care Services National Regulations Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i> . Ceiling height requirements may be affected by the capacity of the facility.	The child care facility is well ventilated and has adequate natural light.
4.5 Administrative Space	
Regulation 111 Education and Care Services National Regulations A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	Complies
4.6 Nappy Change Facilities	
Regulation 112 Education and Care Services National Regulations Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i> .	Nappy change facilities are provided.
4.7 Premises designed to facilitate supervision	
Regulation 115 Education and Care Services National Regulations A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the <i>National Construction Code</i> .	Complies
4.8 Emergency and Evacuation Procedures	
Regulations 97 and 168 Education and Care Services National Regulations Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including:	An evacuation plan has been provided. A condition requiring further details and sign off by Department of Education would have been included as a condition if the application was recommended to be approved.

<ul style="list-style-type: none"> • Instructions for what must be done in the event of an emergency; • An emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit; and • A risk assessment to identify potential emergencies that are relevant to the service. 	
4.9 Outdoor Space Requirements	
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.</p> <p><i>Unencumbered outdoor space excludes any of the following:</i></p> <ul style="list-style-type: none"> • Pathway or thoroughfare, except where used by children as part of the education and care program; • Car parking area; • Storage shed or other storage area; • Laundry; and • Other space that is not suitable for children. <p><i>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play (refer to Figures 9 and 10).</i></p>	<p>412.6m² of unencumbered outdoor space is provided which is 7.02m² outdoor space per child.</p> <p>The proposal complies with 7m² of unencumbered indoor space provided for each child.</p>
4.10 Natural Environment	
<p>Regulation 113 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	Complies
4.11 Shade	
<p>Regulation 114 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	Shaded areas are provided.
4.12 Fencing	
<p>Regulation 104 Education and Care Services National Regulations</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the</p>	The proposal is able to comply.

requirements for fencing and protection of outdoor play spaces that are contained in the <i>National Construction Code</i> .	
4.13 Soil Assessment	
<p>Regulation 25 Education and Care Services National Regulations</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required:</p> <ul style="list-style-type: none"> • A soil assessment for the site of the proposed education and care service premises; • If a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken; and • A statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. 	<p>The site is not identified in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of a previous non-residential land use that may have caused contamination and there is no specific evidence that indicates the site is contaminated.</p>

8.4.2.2 Education and Care Services National Regulations

The *Education and Care Services National Regulations* provides specific requirements that service providers must achieve in order to be approved by NSW Department of Education.

The requirements of the National Regulations are included within the Child Care Planning Guideline.

The following regulations are not specifically addressed as part of the Child Care Planning Guideline:

<p>Regulation 123 Educator to child ratios – centre based services</p> <p>The minimum number of educators is required in the following ratios:</p> <p>(a) for children from birth to 24 months of age—1 educator to 4 children;</p> <p>(b) for children over 24 months and less than 36 months of age—1 educator to 5 children;</p> <p>(c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;</p> <p>(d) for children over preschool age, 1 educator to 15 children.</p> <p>Required:</p>	<p>The application indicates that the centre will be run by 11 educators and 1 on-site managing director, however, does not provide any division of staff.</p> <p>Regulation 122 of <i>National Regulations</i> states “An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service”.</p> <p>The proposed development would require 10 educators working directly with children and any administration staff would be additional.</p> <p>Further information is required for the division of staff to determine compliance.</p>	<p>Further information is required to the division of staff/educators</p>
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<ul style="list-style-type: none"> • 0-2 years – 5 educators • 2-3 years – 3 educators • 3+ years – 2 educators <p>Total of 10 educators are required.</p>		
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9. Parramatta Local Environmental Plan 2011

This Development Application is made pursuant to the Parramatta LEP 2011 (LEP 2011). The relevant matters considered under the PLEP 2011 are outlined below:

Clause 1.2 Aims of Plan

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to encourage a range of development, including housing, employment and recreation, that accommodates the needs of the existing and future residents, workers and visitors of Parramatta,*
- (b) *to foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city,*
- (c) *to identify, conserve and promote Parramatta's natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,*
- (d) *to improve public access to the city and facilitate the maximum use of improved public transport, together with walking and cycling,*
- (e) *to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,*
- (f) *to protect and enhance the natural environment, including areas of remnant bushland in Parramatta, by incorporating principles of ecologically sustainable development into land use controls,*
- (g) *to improve public access along waterways where natural values will not be diminished,*
- (h) *to enhance the amenity and characteristics of established residential areas,*
- (i) *to retain the predominant role of Parramatta's industrial areas,*
- (j) *to ensure that development does not detract from the economic viability of Parramatta's commercial centres,*
- (k) *to ensure that development does not detract from the operation of local or regional road systems,*
- (l) *to ensure development occurs in a manner that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependant ecosystems,*
- (m) *to protect and enhance the viability, identity and diversity of the Parramatta City Centre and recognise it as the pre-eminent centre in the Greater Metropolitan Region,*
- (n) *to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles.*

It is considered that the development does not satisfactorily meets the aims of the plan. The proposed development is not considered appropriate for the site from a safety aspect and is considered to detract from the safe operation of Mobbs Lane.

Clause 2.3 Zone objectives and Land Use Table

The site is zoned R2 Low Density Residential. The aims and objectives for the R2 Low Density Residential zone in Clause 2.3 – Zone Objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that non-residential land uses are located in a context and setting that minimises impacts on the amenity of a low density residential environment.*
- *To allow for a range of community facilities to be provided to serve the needs of residents, workers and visitors in residential neighbourhoods.*

The application proposes a 56 place Centre-based child care facility. The proposed development is inconsistent with the aims and objectives of the R2 Low Density Residential zoning applying to the land, as the proposed works are not located in a context and setting that minimises impacts on the amenity of the residential environment.

Standards and Provisions	Compliance
Part 4 Principal development standards	
Cl. 4.3 Height of buildings Allowable = 9m Proposed = 8.6m	Complies
Cl. 4.4 Floor space ratio Allowable 0.5:1 = 466m ² Proposed = 0.49:1 (457.7m ²)	Complies
Cl. 4.6 Exceptions to Development Standards	NA
Part 5 Miscellaneous provisions	
Cl. 5.10 Heritage conservation	NA
Cl. 5.21 Flood Planning	The site is not identified by council as being flood prone.
Part 6 Additional local provisions	
Cl. 6.2 Earthworks	Excavation is required for the basement. Council's Development Engineer reviewed the proposal and recommended appropriate conditions. Were the application recommended for approval, conditions would be imposed on the Notice of Determination.

10. Draft Environmental Planning Instruments

The Draft Parramatta Local Environmental Plan 2020 was placed on public exhibition from 31 August 2020 to 12 October 2020. The draft LEP will replace the five existing LEPs that apply within the Local Government Area and will be the primary legal planning document for guiding development and land use decisions made by Council.

Whilst the draft LEP must be considered when assessing this application under Clause 4.15 (1) (a) (ii) of the Environmental Planning & Assessment Act 1979, the LEP is neither imminent nor certain and therefore limited weight has been placed on it.

Control	PLEP 2011	Draft LEP 2022
Zoning	R2 Low Density Residential	R2 Low Density Residential
Height	9m	9m
FSR	0.5:1	0.5:1

There are no changes proposed under the draft LEP that amend key development standards applicable to the site. As such, the proposal is inconsistent with the provisions of this draft LEP in the same manner as the current LEP 2012.

11. The Parramatta Development Control Plan 2011

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within of the PDCP 2011.

Where there is conflict between PLEP 2011 and the SEPPs listed above the SEPP controls prevail to the extent of the inconsistency and as such are not included below.

The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Development Control	Comment	Comply
Part 2 Site Planning		
2.4.1 Views and Vistas	The site is not identified as containing significant views.	Yes
2.4.2 Water Management	Refer to assessment under PLEP 2011.	Yes
2.4.3 Soil Management	Adequate sediment and erosion control measures would have been proposed as part of this development as are supporting conditions, if the application was recommended for approval.	Yes
2.4.4 Land Contamination	Refer to body of report.	Yes
2.4.5 Air Quality	The proposal complies. Relevant conditions for air quality would be included in the report if the application was recommended for approval, to ensure no adverse air quality impacts are generated from the development during demolition, construction and ongoing use.	Yes
2.4.6 Development on Sloping Land	The development responds to the topography of the site. The building is stepped, and appropriate excavation and fill is proposed enabling an adequate building platform.	Yes
2.4.7 Biodiversity	Complies	Yes
2.4.8 Public Domain	The proposal satisfactorily addresses the public domain.	Yes
Part 3 Development Principles		
The desired future character of the area is primarily dwelling houses and dual occupancy development. Notwithstanding, dual occupancy development is a prohibited land use under the draft LEP 2020, the building envelope controls for dwelling housing are applied in this instance.		
3.1.3 Preliminary Building Envelope Tables		
Height Control: 9m, two storeys Proposed: 8.6m, two storeys	Complies	Yes
Minimum Site Frontage Control: 15m Proposed Site Frontage: 20.1m	This control is not relevant in accordance with the requirements of Clause 3.26 of SEPP (TRANSPORT AND INFRASTRUCTURE) 2021.	Yes
Front Setback Control: 5-9m, prevailing street setback Proposed Front Setback: 8m-9.8-m, consistent with streetscape	Complies	Yes
Side Setback Control: 900mm Proposed Side Setback: 2m	Complies	Yes
Rear Setback Control: 13.899m /30% Proposed Rear Setback: 14.69m / 31%	Complies	Yes
Deep Soil Area Control: 30% of the site / 278.85m ² Proposed: 26% / 244.4m ²	No, however acceptable given the proposal meets the objectives of Section 3.3.1 Landscaping of PDCP 2011 by: <ul style="list-style-type: none"> providing a continuous vegetation corridor with deep soil zone located at the rear of the site, retaining and providing for mature vegetation, particularly large and medium sized trees along the rear boundary, planting of indigenous, native and low water consumption plants and trees, and enhancing the existing streetscape and promoting a scale and density of planting that softens the visual impact of buildings.	No
Landscaped Area Control: 40% of the site / 371.8m ² Proposed: 26% / 244.4m ²	No, however acceptable given the proposal meets the objectives of Section 3.3.1 Landscaping of PDCP 2011 by: <ul style="list-style-type: none"> providing a continuous vegetation corridor with deep soil zone located at the rear of the site, 	No

	<ul style="list-style-type: none"> retaining and providing for mature vegetation, particularly large and medium sized trees along the rear boundary, planting of indigenous, native and low water consumption plants and trees, and <p>enhancing the existing streetscape and promoting a scale and density of planting that softens the visual impact of buildings.</p>	
3.2.1 Building Form and Massing	<p>The proposed building height complies with the maximum building height permitted and responds to the site topography.</p> <p>The building footprint is consistent with that of a dwelling house and the building massing and proportion is compatible with the existing building patterns along Mobbs Lane.</p> <p>The proposed building height and mass does not result in unreasonable loss of amenity to adjacent properties, open space or the public domain. The overshadowing impacts resulting from the proposed building height and mass are acceptable.</p> <p>The proposed building form and massing is appropriate for the R2 Low Density residential zoning applying to the land and provides a transition between the adjoining residential dwellings.</p> <p>The proposed development is not a mixed use development.</p>	Yes
3.2.2 Building Façade and Articulation	The proposed building facades are well articulated through the use of building modulation, glazing, materials and landscaping.	Yes
3.2.3 Roof Design	The proposed roof design is compatible with the prevailing roof form in the street which are pitched roofs.	Yes
3.2.5 Streetscape	The proposed built form is compatible with existing low density residential development along Mobbs Lane, in terms of height, setbacks, floor space and colours and materials.	Yes
3.2.6 Fences	No fences are proposed.	N/A
3.3.3 Visual and Acoustic Privacy	The proposal is adequately setback from side boundaries and does not result in adverse overlooking impacts to adjoining properties, with the use of highlight windows within the side elevations. The proposed built form utilises a 'U' shaped layout on the first floor level, to act as a physical noise and privacy barrier for the outdoor play area.	Yes
3.3.4 Acoustic Amenity	The application was accompanied by an acoustic report prepared by Acouras Consultancy and reviewed by Council's Environmental Health Officer.	Yes
3.3.5 Solar Access and Cross Ventilation	The proposed building results in some overshadowing to the adjoining properties to the east and west however adjoining properties are still able to achieve the minimum 3 hours of solar access to living and private open space areas required under the DCP between 9am and 3pm on 21 June.	Yes
3.3.6 Water Sensitive Urban Design	The proposed development complies with the DCP controls relating to stormwater management. Refer to referral comments provided by Council's Development Engineer.	Yes
3.3.7 Waste Management	The submitted Waste Management Plan details the types, volumes and methods of waste disposal for the development during the demolition and construction phase. An ongoing waste management plan has also been submitted detailing the methods of waste disposal during the operation of the child care centre. Council's Environmental Health Officer has reviewed the proposal and raises no objections with the proposed waste management measures subject to recommended conditions of consent.	Yes
3.4.3 Amenities in Buildings Available to the Public	The proposal is not a public building.	N/A
3.5 Heritage	Refer to PLEP 2011 section of this report above.	Yes
3.6.2 Parking and Vehicular Access	Complies	Yes

Car Parking Rate: 1 car parking space per 4 children Required: 14 spaces Provided: 14 spaces		
3.6.3 Accessibility and Connectivity	A Traffic Review Letter prepared by TTPP dated 28 March 2022 was submitted with the application. Council's Traffic Engineer has reviewed the additional information and does not support the application due to inadequate sight distances provided at the driveway and safety concerns with children crossing Mobbs Lane.	Yes
3.7.1 Residential Subdivision - general	NA	Yes
Part 5 – Other Provisions, 5.2 Child Care Centres		
5.2.1 Development to which this section of the DCP applies	The proposed development is for a new child care centre.	Yes
5.2.3.1 Site Selection	This control is not relevant in accordance with the requirements of Clause 3.26 of SEPP (TRANSPORT AND INFRASTRUCTURE) 2021.	Yes
5.2.3.2 Child Care Centres in Residential Zones		Yes
Except where provided by this Section, the child care centre shall comply with the relevant height, floor space ratio, minimum frontage, minimum street and side setback and building envelope controls for the respective Residential zones contained in both the relevant environmental planning instrument applying to the land and any other section applying to this land.	<p>The proposal complies with the relevant FSR, height and front setbacks stipulated within this DCP.</p> <p>Site requirements such as area or minimum frontage under the DCP have not been taken into consideration as these are non-discretionary development standards outlined within Clause 3.26 of SEPP (TRANSPORT AND INFRASTRUCTURE) 2021.</p>	Yes
5.2.3.5 Acoustic and Visual Privacy		
Acoustic privacy The design of the child care centre should aim to locate sleep rooms and play areas away from external noise sources. Centres must be designed in a manner that minimises noise transmission to neighbouring residential premises. The following design and operational matters are to be adopted for the management of noise generated by the centre:	The application was accompanied by an acoustical assessment report prepared by Acouras Consultancy and reviewed by Council's Environmental Health Officer.	Yes
Where feasible, designs should be based on a 'U' shaped or 'L' shaped layout for the buildings, with external activity areas positioned such that the building structures act as a noise barrier (refer to Figures A10.2 and A10.3 in Appendix A10). If one of these layouts is not adopted, the applicant must provide a valid justification to Council as to why an alternative approach is more suitable or necessary.	The proposed built form utilises a 'U' shaped layout on the ground and first floor level, to act as a physical noise barrier for the outdoor play area.	Yes
Orienting the building and outdoor play spaces having regard to impacts	The building has been oriented with regard to impacts on adjoining properties.	Yes

on neighbours (for example, locating play areas away from neighbouring bedrooms).		
Maximising the separation between the active outdoor play area (as opposed to passive activities such as sand pits, painting, storytelling etc.) and the façade of any neighbouring premises.	Complies	Yes
Ensuring openable windows at the child care centre and external play areas do not have a direct line of sight to neighbouring sensitive uses	Complies	Yes
Locate pedestrian access ways and ramps away from neighbouring sensitive premises where practicable.	Complies	Yes
Adopt low noise features such as self-closing gates with soft closure (i.e. low noise) hinges, selection of low noise air conditioning equipment, minimising the use of speed humps and ensuring car park surfaces and access ways are smooth. The applicant should note that use of acoustic controls and management measures will not be accepted in cases where the design has not adequately addressed the above objectives.	Complies	Yes
Acceptable Acoustic Management Measures The preferred approach to acoustic management is through provision of physical measures such as barriers, enclosures, changes to glazing and provision of air conditioning. Management measures that must be implemented and monitored by staff and parents are not considered appropriate for a well designed child care centre. Acceptable acoustic mitigation solutions include, but are not necessarily restricted to, the following:	The recommended acoustic measures in accordance with the submitted acoustic report includes construction methods, glazing and operation of air conditioning.	Yes
Erection of noise barriers, which may include fencing types and other barriers that minimise noise transmission, to a maximum height of 2m for a flat site. Noise barriers in excess of 2m in height will be considered for sloping sites (eg. where a barrier is positioned on a retaining wall due to changes in levels).	A 2.1 meter high acoustic fence, with a 900mm awning angled at 45 degrees (total height approx. 2.77m) along the eastern, northern and western boundary. The proposed acoustic fencing will appear as 2.1m high when viewed from adjoining properties.	Yes
The majority of internal surfaces are to utilise absorptive materials as opposed to reflective to reduce the potential for reverberant fields to	The proposal is able to comply.	Yes

increase noise emissions and reduce speech intelligibility.		
Provision of mechanical ventilation and fixed windows (at the child care centre or adjacent receptors) where windows and doors must remain closed to achieve the appropriate noise criteria.	Complies	Yes
<p>The following approaches are not considered appropriate for management of noise emissions from child care centre activities:</p> <ul style="list-style-type: none"> Restricting the number of children utilising external play areas at any one time. Restricting the time periods and/or times of day that children are allowed to use external play areas. <p>Staging of outdoor activities to reduce the number of children playing outdoors at any one time.</p>	<p>The acoustic report states the following:</p> <ul style="list-style-type: none"> To control activity noise, there will be restricted outdoor activity before 8:00am or after 5.30pm. The time made available for outdoor activities is approximately an hour in the morning and in the afternoon. For the assessment of the children <p>The acoustic report does not restrict the number of children playing at any one time. All children can play at the same time, however restricted for one hour twice a day. This is not unreasonable given it is typical play times for a child care centre.</p>	Yes
5.2.3.6 Indoor Areas	Complies	Yes
5.2.3.7 Outdoor Areas	Complies	Yes

12. Development Contributions

A condition of consent relating to the payment of Development Contributions would have been imposed, if the application was recommended for approval.

13. Bonds

In accordance with Council's Schedule of Fees and Charges, the developer will be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site. A standard condition of consent would be imposed requiring the Security Bond to be paid prior to the issue of a Construction Certificate, if the application was recommended for approval.

14. EP&A Regulation 2021

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would be addressed via conditions, if the application was recommended for approval.

15. The likely impacts of the development

The assessment demonstrates that the proposal will have significant adverse traffic and safety impacts. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report, including natural impacts such as tree removal and excavation, and built environment impacts such as traffic and built form. In the context of the site and the assessments provided by Council's experts, the development is not considered satisfactory in terms of environmental impacts.

16. Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The location of the site on Mobbs Lane, having a steep downgrade on approach to the site, raises traffic concerns for small children and therefore, the site is not suitable for the proposed development.

17. Public Consultation

The application was notified in accordance with Council's Consolidated Notification Requirements, between 22 April and 17 May 2022. The application was re-advertised between **29 April and 20 May 2022**, due to incorrect advertising dates being included in the original letter.

In response 47 submissions were received, **18** of which are unique submissions.

The issues raised within those submissions are addressed below. Issues have been grouped to avoid repetition.

Issue	Response
Traffic & Parking	
<ul style="list-style-type: none"> Reduced safety Reduction of sightlines Increase in traffic movements 	<p>Concern is raised over the location of the child care centre, given its proximity to the crest of a hill, with heavy traffic at peak times.</p> <p>Council's Traffic & Transport Engineer reviewed the proposal together with the submitted Traffic Review Letter prepared by TTPP dated 28 March 2022 and concluded that the site is not suitable from a safety aspect.</p> <p>The application is recommended for refusal.</p>
<ul style="list-style-type: none"> Proposed no stopping zone 	<p>Council's Traffic & Transport Engineer reviewed the proposal together with the submitted Traffic Review Letter prepared by TTPP dated 28 March 2022 and concluded that the site is not suitable from a safety aspect.</p> <p>The application is recommended for refusal.</p>
Amenity	
<ul style="list-style-type: none"> Loss of privacy 	<p>The proposal is not considered to result in adverse overlooking impacts to adjoining properties, as the proposal is adequately setback from side boundaries with highlight windows within the side elevations. The proposed built form also utilises a 'U' shaped layout on the first floor level, to act as a physical noise and privacy barrier for the first floor outdoor play area.</p>
<ul style="list-style-type: none"> Acoustic impacts of the development 	<p>The application was accompanied by an acoustic report prepared by Acouras Consultancy and reviewed by Council's Environmental Health Officer and found to be satisfactory.</p>
<ul style="list-style-type: none"> Loss of sunlight 	<p>The proposed building results in some overshadowing to the adjoining properties to the east and west however adjoining properties are still able to achieve the minimum 3 hours of solar access to living and private open space areas required under the DCP between 9am and 3pm on 21 June.</p>
<ul style="list-style-type: none"> Acoustic fence exceeds 1.8m high fence 	<p>The application was accompanied by an acoustic report prepared by Acouras Consultancy and reviewed by Council's Environmental Health Officer and found to be satisfactory.</p>
<ul style="list-style-type: none"> Crime 	<p>The issue of possible crime as a result of a use is not a consideration under Section 4.15 'Evaluation' of Environmental Planning and Assessment Act 1979 and does not warrant refusal or further amendment of the application.</p>
Use	
<ul style="list-style-type: none"> The proposed use is inappropriate for the site 	<p>The site is zoned R2 Low Density Residential under Parramatta Local Environmental Plan 2011. The proposed use is defined as "Centre-based childcare centre" under Parramatta LEP 2011. The proposal satisfies the definition of a "centre-based child care facility" and is permissible under the R2 Low Density zoning applying to the land.</p>
<ul style="list-style-type: none"> Unauthorised use of the site 	<p>The issue of future possible unauthorised use, is not a consideration under Section 4.15 'Evaluation' of Environmental Planning and Assessment Act 1979 and does not warrant refusal or further amendment of the application.</p>
Childcare Centres in the area	
<ul style="list-style-type: none"> There is an existing oversupply of CCC in the area Expansion of the existing Papilio Childcare Centre 	<p>Concern is raised over the number of child care centres in the area and that the existing Papilio CCC which is in close proximity to the site should made bigger to accommodate more children, in lieu of a new CCC in the area.</p> <p>Clause 3.26 of SEPP (TRANSPORT AND INFRASTRUCTURE) 2021 prevents Council from refusing an application for a child care centre based on the proximity of the proposed centre from any other centre.</p>
Tree removal	

• Tree removal	The application was reviewed by Council's Landscape Officer and found to be satisfactory. No concerns were raised subject to conditions.
Site drainage	
• Site drainage	Council's Development Engineer has reviewed the application and supports the proposal subject to conditions.

18. Public interest

Subject to implementation of conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

19. Conclusion

The application has been assessed relative to section 4.15 and 8.3 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The proposal is inconsistent with the relevant requirements of Chapter 3 Educational establishments and child care facilities of SEPP (Transport and Infrastructure) 2021, Child Care Planning Guideline, Parramatta Local Environmental Plan 2011 and the Parramatta Development Control Plan 2011.

The proposal is permissible in the R2 Low Density Residential Zone. The proposal is not considered to result in a development, which is suitable in the context of the emerging character within the locality. Non-compliances are acknowledged within the current proposal; these have been discussed within this report. A merit assessment of the application has determined that the site is not suitable for a child care centre.

This assessment shows the proposed increase in traffic would compromise the efficient function of the local road network and results in a safety concern for children.

The application has been assessed under Section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant State and local planning controls. On balance, the proposal demonstrates an unsatisfactory response to the objectives and controls of the applicable planning framework. The proposal is not suitable for the site and is not in the public interest. As such, the application is recommended for refusal.

20. Recommendation

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

- A. **That** the Parramatta Local Planning Panel (PLPP), exercising the functions of Council, pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, **refuse** Development Application No. DA/725/2020 for Section 8.3 Review of DA/725/2020 for the demolition of existing structures, earthworks, removal of seven (7) trees and construction of a child care facility for 56 children (17 x 0-2 year olds, 15 x 2-3 year olds & 24 x 3-6 year olds) with basement level car parking level for fourteen (14) vehicles and associated landscape works on land at Lot 14 in DP 30791, 45 Mobbs Lane, Carlingford, for the following reasons:

Parramatta Local Environmental Plan 2011

1. The proposed development is inconsistent with the aims and objectives of the R2 Low Density Residential zoning applying to the land, as the proposed works are not located in a context and setting that minimises impacts on the amenity of the residential environment.

Child Care Planning Guideline

2. The proposed development does not meet the following objectives of *Section 3.1 Site selection and location* of the Child Care Planning Guideline:
 - a. 'To ensure that appropriate zone considerations are assessed when selecting a site', as the traffic and parking as a result of the proposal would have a negative impact on the residential amenity.
 - b. 'To ensure that the site selected for a proposed child care facility is suitable for the use', as the location of the site on Mobbs Lane is inappropriate and unsafe for the proposed use.

3. The proposed development does not meet the following objective of *Section 3.8 Traffic, Parking and Pedestrian Circulation* of the Child Care Planning Guideline:
 - a. *'To provide vehicle access from the street in a safe environment that does not disrupt traffic flows'*, as the proposal does not ensure that safe vehicular access can be provided to and from the site.

Parramatta Development Control Plan 2011

4. The proposed development does not meet the objectives of Section 3.6.2 Parking and Vehicular Access of Parramatta Development Control Plan 2011, as the proposal does not ensure the location and design of the driveway and basement is safe.
- B. **Further, that** Council advise those who made a submission of the determination.