

The NEW City of **CANTERBURY BANKSTOWN**

.....

Agenda for the

Independent Hearing And Assessment Panel Meeting

19 September 2016 – 6.00pm

Function Room

137 Beamish Street, Campsie

IHAP Chairperson and Panel Members

Notice is hereby given that a meeting of the Independent Hearing and Assessment Panel will be held in the Function Room, 137 Beamish Street, Campsie on Monday 19 September 2016 at 6.00 P.M.

Disclosure of Interest: Section 451 of the Local Government Act 1993 requires a panel member who has a pecuniary interest in any matter with which the Council is concerned and who is present at the meeting at which the matter is being considered must disclose the interest, and the nature of that interest, to the meeting as soon as practicable. The panel member is required to leave the room while the matter is being discussed and not return until it has been voted on.

Matthew Stewart
GENERAL MANAGER

9 September 2016

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
-------------	----------------	----------------

CANTERBURY WARD

**1 364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR
COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED
LANDSCAPING AND PARKING..... 5**

ROSELANDS WARD

**2 42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR
LEVEL OF EXISTING REGISTERED CLUB35**

**3 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE
OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING
HOURS.....52**

REPORT SUMMARIES

1 364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING

- The subject application seeks consent to establish an early childhood education and care centre in a mixed use development at 364-374 Canterbury Road, Canterbury, which was approved by the Sydney East Joint Regional Planning Panel on 29 September 2014.
- The site is zoned B5 Business Development by the Canterbury Local Environmental Plan 2102 and the proposed childcare centre is permissible with consent.
- The application has been assessed with regard to applicable environmental planning instruments, Canterbury Development Control Plan 2012 (CDCP 2012) and Canterbury Development Contributions Plan 2013.
- The application requires determination by the Independent Hearing and Assessment Panel due to non-compliance with three standards of the DCP, concerning the number of children proposed to be accommodated, the distance of the proposed centre from a main road and from existing child care centres in the locality.
- Information submitted with the application has justified these variations, demonstrating compliance with National Regulations regarding the number of children and amenity to be provided, Australian Standards regarding noise generated by children's centres and establishing that there is demand in the area for the proposed centre.
- The exhibition was exhibited and neighbours were notified of the application. No submissions were received.
- The assessment concludes that the application is worthy of support and it is recommended that the development application be granted consent, subject to conditions.

2 42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB

- Council has received a Development Application (DA-396/2015), seeking consent to make alterations and additions to an existing registered club. The alterations and additions consist of works to the lower ground floor to provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's ground floor.
- Council engaged the services of an independent town planning consultant (Willana Associates Pty Ltd) to assess and prepare a report in respect of the application. The contents of this report have been prepared by the independent consultant.
- The site is known as 42-44 Albert Street Belmore and is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012 (CLEP

2012). While a registered club is prohibited within the zone, Council has previously determined the premises retain Existing Use Rights in accordance with Part 3, Division 10 of the Environmental Planning and Assessment Act 1979. Those rights however do not transfer across to the use of the premises for other purposes, including those of a Function Centre.

- This Development Application (DA) has been assessed against the provisions contained in CLEP 2012 and Canterbury Development Control Plan 2012 (CDCP 2012). Despite the documentation supplied by the applicant, Council is concerned that the premises are not being used for the purposes of a registered club. The site has been subject to a number of complaints in the past regarding the use of the premises and the impacts to adjoining residential properties. Investigations by Council Officers indicate that the site has been used as a function centre and accordingly, the proposed works do not demonstrate that the legitimate use of the premises as a registered club would continue as the dominant use.
- The DA was publicly exhibited and adjoining land owners notified in accordance with Part 7 of the CDCP 2012. We received six submissions and a petition containing 16 signatures objecting to the plans. Issues raised in the submissions and our responses are provided in the body of this report.
- The development application is recommended for refusal on the basis that the proposal does not demonstrate the use of the premises will be undertaken in a manner that is within the bounds of the Existing Use Rights and is therefore prohibited.

3 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS

- This Section 96 application has been prepared by an external consultant (DFP) who also assessed the original development application.
- This application is seeking approval to modify a temporary place of worship to a permanent place of worship by modifying Condition 6 of the consent to remove reference to a '6 month trial period', noise attenuation and provision of a customer hotline; modifying Condition 8 by amending the times of prayer during daylight savings time at night from 7pm - 8pm to 8:30pm - 9:30pm and permit midday prayer on Fridays to occur from 12noon - 1pm and 1pm - 2pm during daylight saving time.
- This application has been referred to the Independent Hearing and Assessment Panel due as it involves significant development and seeks permission for the permanent use of the site as a place of worship.
- The subject site is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012. The existing and continued use of the site is consistent with the definition of 'places of public worship' which is a permissible use within the R3 Medium Density Residential zone.
- In accordance with our notification policy, all owners and occupiers of adjoining properties were notified of the proposed development. It was first notified between 15 December 2015 and 29 February 2016. We received nine

submissions. It was notified a second time between 30 May 2016 and 22 June 2016 where the concerns raised include policy/traffic, noise, etc. We received one formal submission objecting to the proposed modifications.

- The application has been assessed against the relevant environmental planning instruments and development control plan.
- DFP Planning recommended that the development application be approved, subject to conditions.
- The application is recommended for approval.

CANTERBURY WARD**1 364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING****FILE NO:** 150/364D PT6 & 7**REPORT BY:** CITY DEVELOPMENT**WARD:** CANTERBURY

D/A No:	DA-629/2015
Applicant: Owner:	Porters Lane Pty Ltd *As above
Zoning:	B5 Business Development – Canterbury Local Environmental Plan 2012
Application Date:	18 December 2015, amended plans and additional information received 21 June 2016, 2 August 2016 and 26 August 2016

Summary:

- The subject application seeks consent to establish an early childhood education and care centre in a mixed use development at 364-374 Canterbury Road, Canterbury, which was approved by the Sydney East Joint Regional Planning Panel on 29 September 2014.
- The site is zoned B5 Business Development by the Canterbury Local Environmental Plan 2102 and the proposed childcare centre is permissible with consent.
- The application has been assessed with regard to applicable environmental planning instruments, Canterbury Development Control Plan 2012 (CDCP 2012) and Canterbury Development Contributions Plan 2013.
- The application requires determination by the Independent Hearing and Assessment Panel due to non-compliance with three standards of the DCP, concerning the number of children proposed to be accommodated, the distance of the proposed centre from a main road and from existing child care centres in the locality.
- Information submitted with the application has justified these variations, demonstrating compliance with National Regulations regarding the number of children and amenity to be provided, Australian Standards regarding noise generated by children's centres and establishing that there is demand in the area for the proposed centre.
- The exhibition was exhibited and neighbours were notified of the application. No submissions were received.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- The assessment concludes that the application is worthy of support and it is recommended that the development application be granted consent, subject to conditions.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports our Community Strategic Plan long term goal of Balanced Development.

Report:

Background

The subject application seeks consent to establish an early childhood education and care centre (ECECC) in a mixed use development at 364-374 Canterbury Road, Canterbury which was approved by the Sydney East Joint Regional Planning Panel on 29 September 2014 (DA-505/2014) on the site,.

The approved development includes a pair of six storey mixed use buildings comprising 95 residential units and ten commercial premises with a three-level basement car park. Each building respectively faces Canterbury Road (the Canterbury building) and Onslow Street and Onslow Lane (the Onslow building) at the rear of the site. Other features of the approved development include a rooftop communal terrace on the Canterbury building and a large, centrally located communal space at ground level between the two buildings.

The subject application proposes that an ECECC occupy commercial premises in the Onslow building and use of the ground level open space as an outdoor play and learning area, with reallocation of basement parking to permit exclusive use of 27 spaces for the staff, parents and carers of the centre.

A separate application was submitted with an application made under s96(1A) of the Environmental Planning and Assessment Act 1979 to modify the Onslow building's commercial premises, the central open space and basement parking to satisfy the requirements of the proposed ECECC. The s96 (1A) application was granted consent under delegated authority on 9 September 2016.

Site and locality

The site is located on the southern side of Canterbury Road between its intersection with Cooks Avenue and Allan Street. The site enjoys frontage to Canterbury Road and a rear frontage to Onslow Street and Onslow Lane. The Canterbury Road frontage is 51.49m and the rear frontage to Onslow Street/Onslow Lane is 53m. The total site area is 3158m². The site falls between 1.39m and 1.48m from the Canterbury Road frontage to the rear of the site and has a cross fall of 1.0m from west to east.

East of the site is a relatively new, mixed use building and a motor showroom is to the west. Surrounding the site is a mix of older commercial premises and low and medium density housing. Canterbury Railway Station and town centre are north-east along Canterbury Road, 820m away.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

The site is part of the 'Canterbury Road Corridor', earmarked for urban revitalisation and intensification, much in the manner approved for this site.



Aerial view of the site of the approved mixed use development

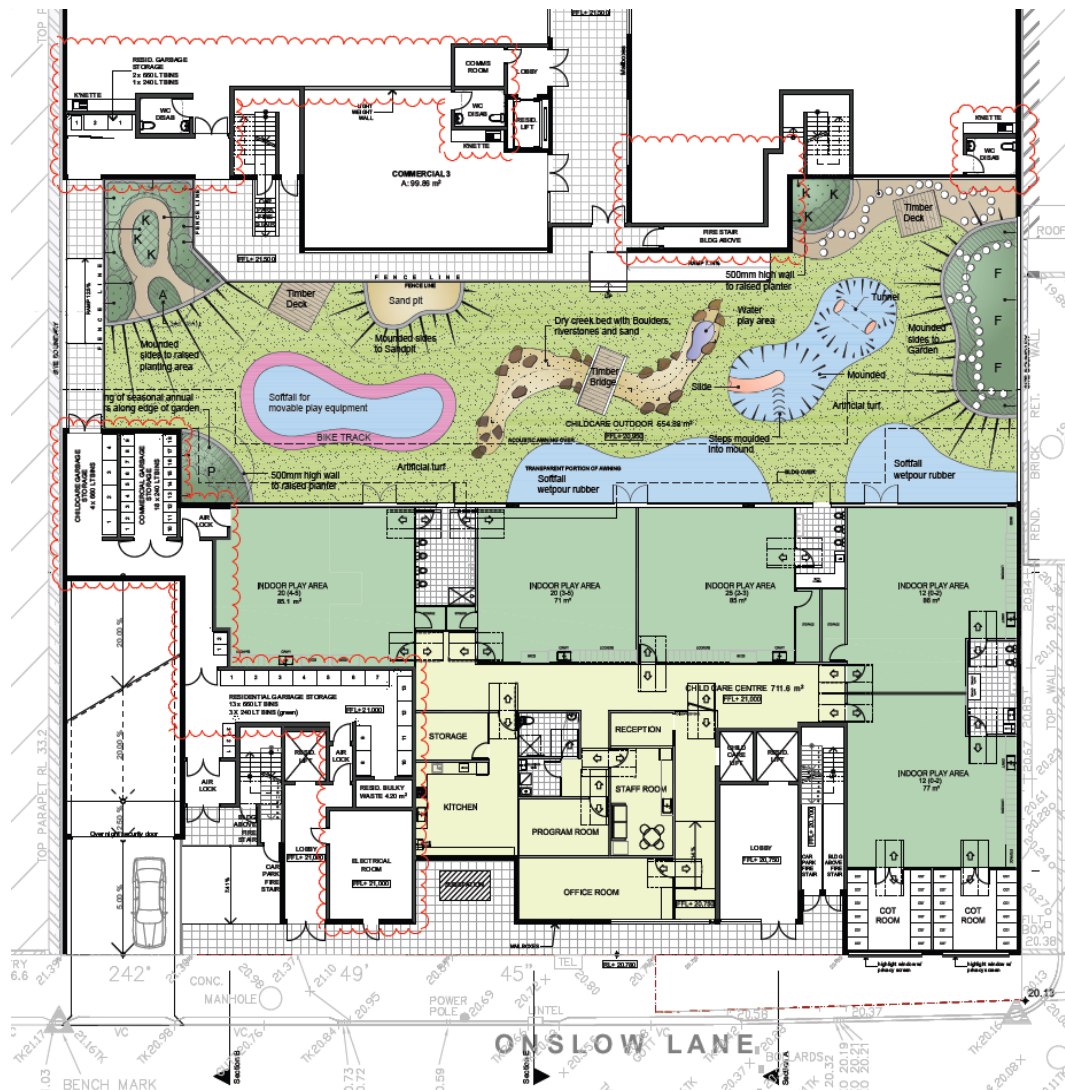
Proposal

The early childhood education and care centre is proposed to occupy a significant proportion of the Onslow building's ground floor and the adjacent outdoor space between this building and the Canterbury building. The plans of the proposal are shown below.

Key features of the development are:

- Play and learning areas (in green);
- A playground, proposed to be landscaped and fitted-out with play equipment;
- Administrative areas, reception and kitchen (in pale green);
- Cot rooms (shown in bottom-right corner in white);
- Bathrooms (in white), for separate use by children and staff, accessible from play rooms and the playground;
- Separate entry from Onslow Lane and the basement level via a lift for the sole use of the centre;
- An awning is to be installed above the doors and windows facing the outdoor play area with a central glazed section for natural lighting during mid-winter (dotted line over play area);
- To left of the centre are bin storage rooms for the complex and the ramp to the basement off Onslow Street; and
- Signage on the side façades of the building, visible from Canterbury Road, and another sign on the façade facing Onslow Lane, advertising the proposed centre.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)



Plan of proposed early childhood education and playground

A number of documents were submitted in support of the application to address requirements of CDCP 2012. This part of the DCP is used later in this report, to assess the application and to ensure the proposal safely and adequately provides for the care of children and minimises its environmental impacts. Based on these documents, proposed use of the above-described premises is described:

- Operating hours will be 7.00am to 6.00pm, Monday to Friday (except Public Holidays), with staff arriving at 6.45am each day.
- Up to 89 children will be accommodated, in age groups from babies (0-2 years), to toddlers (2-3 years) to preschoolers (4-5 years).
- 20 staff will operate the centre, in accordance with Education and Care Services National Regulations 2011, observing requirements for staff to child ratios for children of each age group.
- Staff will be obliged to uphold a code of conduct and will be selected based on appropriate qualifications and to reflect the cultural and lingual diversity of the local community.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- Parents and carers are expected to arrive to drop-off children between 7.00am and 9.00am and pick-up their children between 3.00pm and 6.00pm.
- Access to the centre will be via the carpark, which is accessible by keypad to open the boom-gate on the basement access-ramp. The lift dedicated to exclusive use of the centre will transport people between the car park and the centre's reception area.
- Access via other doors, including the main pedestrian entry off Onslow Lane, in addition to the lift and car park will be security-controlled. Only those authorised to enter various parts of the centre will be provided access codes.
- Basement level 1 is to accommodate the centre's car park, with 27 spaces, ten for staff and 17 for parents/caregivers picking-up and dropping-off children. Racks for ten bikes are available, as is a loading bay for exclusive use of the centre.
- Children are to be offered a range of indoor and outdoor activities, with snacks and lunch provided according to a daily timetable. Separate areas will be available for each age-group to ensure appropriate supervision, safety and suitable activities.
- A full-time chef is to be employed to cater to the children's nutritional needs.
- All indoor and outdoor activities will be suitably supervised and no more than 52 children will be allowed to play in the outdoor area at any time (for noise control).

Statutory Considerations

When determining this application, matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments and plans are relevant:

- State Environmental Planning Policy 64 – Advertising & Signage (SEPP 64)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013
- **State Environmental Planning Policy 64 – Advertising & Signage (SEPP 64)**
Clause 17 of this policy requires the applicant to submit a statement to assess the impact of the business identification signage proposed on the eastern and western façades of the Canterbury building, because the signs are over 8m above the ground. The signs, one on each façade, will identify the presence of the ECECC in the complex. They are flush, non-illuminated, wall signs at the topmost part of the wall, at the edge of each wall closest to Canterbury Road and measure 6m x 3m, with an area of 18m². The bottom of each sign is 15m above the Canterbury Road footpath level. An additional sign is proposed on the elevation to Onslow Lane.

The application was referred to the RMS as signage would be visible from a main road. No objection was raised.

Having regard to the provisions contained within Schedule 1 of SEPP 64 concerns are raised in respect to the following:

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

The size of the signs

The signs each measure 6m x 3m and are proposed along both side elevations of the building. These signs are excessive, dominate these elevations and provide for an inappropriate relationship between the size of the signs and the scale of the building to which they are proposed to be attached. The signs are not compatible with the scale, proportion and built form of the building.

Nature of the signs

Having regard to the size of the signs they more resemble 'advertising structures' as opposed to business identification signage. Signs measuring 6m x 3m are more commonly found with developments in which advertising structures are proposed as opposed to signage where business identification signage is sought.

Nature / use of the building

The development comprises a 6 storey development in which the dominant use is residential. That is, commercial or business uses are confined to the ground floor while five residential floors containing 95 residential apartments are provided above. Having regard to the size of the signs and their dominance to both the side elevations, it will have the effect of introducing and promoting a commercial character to the building which the approved land uses suggest otherwise.

Character of the area

The signage is unsightly and diminishes the visual quality of the building. Approval of the signage would be detrimental to the built form qualities of the development and the overall character of the area.

For the above reasons it is considered that the proposed signage along the side elevations of the building fail to satisfy the following specific assessment criteria as contained in Schedule 1 of SEPP 64:

- Character of the area
- Streetscape, setting or landscape
- Site and building

For those same reasons as listed above, the additional signage proposed along the Onslow Lane elevation is similarly not supported.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

This site is zoned B5 Business Development and the proposal is permissible with consent in this zone, as defined in the LEP's Dictionary, as a "child care centre".

None of the LEP standards apply as no building work is proposed, apart from internal fit-out for the centre and landscaping of the central, ground-level open space.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

No other LEP provisions apply to the development except for clause 6.6 Essential Services, which requires the following services to be available or for them to be made available:

- Water
- Sewage
- Electricity
- Stormwater drainage
- Vehicular access

These services are available to the site.

- **Canterbury Development Control Plan 2012 (CDCP 2012)**

Part 5.3 – Children’s Centres

This table details an evaluation of the proposed Early Childhood Education & Care Centre, having considered Part 5 Specific Development Types – 5.3 Children’s Centres and 5.1 – Advertising and Signage.

Standard	Requirement	Proposed	Compliance
Objectives for Children’s Centres			
Accommodate increasing demand for childcare in areas where there is a need	Objectives have no specific requirements.	<p>A demand study has been submitted with the application. The study concludes there is demand for the centre as it will provide specific services to fulfil a gap in the local market for certain types of child care, especially places for 0-2 year olds. It will also provide quality care and fees (recommended by the study) set at rates affordable for the local community.</p> <p>Opening a children’s centre is a business enterprise, matters of supply and demand are matters for the market to determine. Population growth is expected to increase demand for child care in the area. In Canterbury (suburb) there is presently a gap of 126 spaces which will increase to 156 in another 15 years, according to the demand study.</p>	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Standard	Requirement	Proposed	Compliance
Provide a safe and quality standard of education and care of all children, including those with special needs	Objectives have no specific requirements.	The proposal meets regulatory requirements for operating early childhood education and care, as detailed in the submitted management plan.	Yes
Compatible with urban context, especially residential areas	Objectives have no specific requirements.	The centre is removed from adjacent residential development by the building's architecture. However, being in the ground floor of a mixed use building, units above the ground level open space, proposed to be used as a playground, may be affected by the proposal. These impacts are assessed in detail later and are able to be acceptably ameliorated, in accordance with relevant guidelines.	Yes
		Access to the centre is suitably controlled to prevent entry by people not associated with, or without business with the centre, to maintain the safety and security of children and the centre's staff.	Yes
Protect neighbours' amenity	Objectives have no specific requirements.	Residential amenity, including within the approved mixed use complex will be reasonably protected, provided the submitted plan of management is applied consistently. Noise has the greatest potential to affect resident-amenity, especially within the complex. A noise report has been submitted and its details and recommendations are discussed later in the table.	Yes
Parking and drop-off and pick-up areas area safe and do not impact the neighbourhood	Objectives have no specific requirements.	The site relies on access from Onslow Street which connects with Allen Street and Canterbury Road. Proposed access and parking arrangements satisfactory, and are examined in detail below.	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
Statement of compliance with licensing requirements		
Submission with the development application, a statement demonstrating compliance with NSW and Commonwealth licensing requirements.	<p>A plan of management has been submitted and prepared to be consistent with relevant State and Commonwealth requirements.</p> <p>The plan addresses matters comprehensively including emergency responsibilities, procedures, planning, training and awareness (including playing games with the children to familiarize them with emergency drills) are detailed in the revised management plan.</p> <p>A recommended condition requires implementation of this Plan of Management, and compliance with relevant regulations.</p>	Yes
Location and demand analysis		
Location Analysis: Map showing existing centres, their capacity, schools, parks and community facilities within a 750m radius of site.	A map has been submitted. There are two children's centres within 800 metres of the site. There are 16 centres within 2km of the site, which the demand study implies is the relevant catchment for such facilities.	Yes
Demand analysis, supported by demographic analysis, is required.	<p>A demand study has been submitted, prepared by a suitably qualified and experienced consultancy.</p> <p>As noted, there is demand for quality, affordable places in the catchment (2km, implied), especially places for infants aged 0-2 years. In other age-groups however, existing centres have capacity to or meet local demand.</p> <p>To a degree, the centre's operation at full capacity will rely on population growth and filling potential gaps in the local market.</p> <p>Demand analysis is further discussed following the table.</p>	Yes
Minimum Dimensions		
Frontage: 20m min.	53 metres to Onslow Street and Onslow Lane.	Yes
<p>On-street or long-stay off-street parking is sufficient:</p> <ul style="list-style-type: none"> - One space per two staff - Six drop-off and pick up spaces - 16 car spaces and five bicycle spaces. <p>(12 spaces with 25% discount for providing places of 0-2 year olds).</p>	<p>27 spaces proposed in basement car park, design for exclusive use of the centre.</p> <p>Includes ten staff spaces, 17 drop-off and pick-up spaces and ten bicycle spaces.</p>	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
Frontage accommodates adequate drop-off and pick-up space.	All vehicle requirements are proposed to be catered for in the building's basement, which is satisfactory, as outlined below.	Yes
Centre has minimal effect on adjoining residential properties.	Measures proposed to manage potential impacts are addressed below.	Yes
Centre prohibited in two storey buildings (must be on one level, at ground level).	The proposed centre is at ground level, on a single level.	Yes
Residential Zones		
<ul style="list-style-type: none"> Children's centres must not have a residential component. Centres must have a residential appearance when in a residential zone. The number of children is limited to 40. 	<p>Site is zoned B5 Business Development.</p> <p>Despite the site not being in a residential zone, the proposal is on land where residential accommodation is approved as part of mixed use development, by virtue of being a Key Site under the LEP.</p>	No – See Comment [1] below
Location		
<p>A centre must not be located within 400m of another centre. When proposed within 400m of another centre, these conditions apply:</p> <ul style="list-style-type: none"> The concentration will not cause adverse amenity impacts A new centre must not adjoin an existing centre. 	Two existing centres are within 400m of the site and several other childcare facilities area within 2km of the site.	No – See Comment [2] below
A new centre must not be next to an existing centre.	The centre is 290m from the closest existing childcare facility.	Yes
Demographic and statistical analysis must demonstrate demand for the centre.	The demand study shows there is a demand for the type of centre proposed.	Yes
Corner sites are preferred.	The site is not on a corner.	NA
Cul-de-sac and dead-end streets are unsuitable.	<p>Onslow Street and Onslow Lane are blocked at their intersection, which may cause additional traffic onto mainly residential streets south of the site, unless travelling to and from Canterbury Road. To reach the building's basement from the main road, access is via Allen Road and Onslow Street.</p> <p>A traffic study has been submitted and finds the proposed access/egress's impact on the local road network to be satisfactory.</p>	Yes
Locate near schools, neighbourhood centres, parks, sports grounds, or other community focal points.	The site is close to several schools, parks and commercial premises. A small supermarket is in the building next door.	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
Centres in or adjoining industrial land may require additional environmental analysis regarding land use conflict.	The site is not in and nor does it adjoin an industrial area.	NA
Centres are not permitted within 30 metres of a major road. The purpose of this standards is twofold: i. To provide adequate protection from road pollution (air, noise and vibration) ii. To limit opportunity for children to inadvertently access a dangerous environment.	The centre's outdoor play area is 25m from Canterbury Road.	No – See Comment [3] below
Car Parking		
<ul style="list-style-type: none"> One car space per two staff One bicycle space per four staff Six spaces for pick-up and drop-off. <p>Staff parking may be reduced when 25% of places are for 0-2 year olds.</p> <p>Variations must be justified by a traffic and parking analysis.</p> <p>Twelve spaces required including 25 % discount.</p>	<p>27 parking spaces are proposed, ten for staff and 17 for parents and carers.</p> <p>This exceeds the number required, which allows additional time likely required to access and egress the centre from the car park via the lift.</p> <p>10 bike racks are provided for the centre.</p> <p>A separate loading bay is also provided for the centre.</p>	Yes
Parking must be sign-posted, lined and sealed.	<p>Spaces are designated on plans for exclusive centre use and bollards prevent access to the centre's parking area by residents or people parking to work in or visit other commercial premises in the complex.</p> <p>Site-vehicular entry is approved via Onslow Street adjacent to the motor showroom. Onslow Lane is blocked off, so the only vehicular access is via Onslow Street and Allen Street.</p> <p>Access to and egress from the centre is proposed via the basement. Access codes/swipe cards will be provided to authorise entry to the basement for parents and carers when dropping-off and</p>	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
	picking-up children by vehicle. A condition is recommended to ensure this occurs, to minimise impacts on local amenity.	
On-street pick-up and drop-off areas are to be suitably sign posted: 10 minute limit from 7am – 9am and 4pm – 6pm, or to suit when centre is open.	On-street drop-off and pick-up are not proposed with these activities occurring in the basement car park.	NA
Facilities and Layout		
Compliance with National Quality Framework and NSW licensing requirements.	A condition is recommended to ensure compliance with the framework and NSW Government requirements. This will adequately address matters such as hygienic preparation and serving of food, waste disposal (including soiled nappies, only disposable nappies will be used) and availability of toilets, noting no minimum number of toilets is prescribed by relevant regulations. Baby-change tables fitted with sinks are suitably located for changing infants and toddlers.	Yes
Open Space & Landscape Plan Requirements		
Non-climbable 1.8m boundary fencing.	Fencing is suitably provided and a condition is recommended to ensure non-climbable 1.8m high fencing is provide where fencing is shown on the Ground-level Plan.	Yes
Covered verandah and at least 50% of outdoor area shaded.	No shade structures are shown apart from the awning which runs the length of the playground along the Onslow building, extending 3m out from the façade. Unshaded parts of the playground are more than 50% of its area. A condition is recommended to provide adequate, permanent, removable or contracting shade structures (as circumstances warrant) for the playground, to enable year-round climate control.	Yes
Fully accessible toilets from outdoor play areas.	Toilets are directly accessible from the playground. As noted, a condition is recommended that all facilities are provided in compliance with relevant standards.	Yes
Outdoor area for babies, separate from older children.	Indoor and outdoor areas are able to be occupied separately by different age groups. There is sufficient area in the playground for the number of children, noting that only 52 children will be permitted on the playground at any single time.	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE,
WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
Conceptual delineation of spaces into activity zones.	The playground is divided into areas offering different activities, including sandy areas, a 'rainforest walk' and garden beds, which appear to offer a reasonable range of experiences for children in an urban setting.	Yes
Sandpit with shade structure and access for maintenance vehicles.	A sand pit is provided and a condition is recommended to ensure it is suitably shaded. Sand pit maintenance by vehicle is impractical and will have to be performed using a wheel barrow and hand tools.	Yes
Suitable outdoor storage areas, sheds, waste management facilities.	None is provided. A condition is recommended to provide details of suitable outdoor storage.	Yes
Garden layout with planting, surface materials, soft fall areas.	The outdoor play area is a combination of natural and artificial services. Accepting the constraint of building the playground on a concrete slab, planting areas have been provided to a depth of 500mm to allow planting of annuals, shrubs and small trees. The proposed outdoor play area seems a reasonable solution to providing a variety of learning and playing experiences for pre-school children. Planted areas offer children different experiences, affording them an opportunity to 'get dirty'. In view of the centre being in an urban building in a planned, highly urbanised setting, the detailing of the landscaped area is a reasonable balance between safety and allowing children to explore experience and learn.	Yes
Water-play areas and a tap.	A small water-play area is proposed, as part of a "dry creek bed". No tap for the play area is shown on the plans. A condition is recommended to provide a tap(s), with suitable drainage, in the outdoor play area.	Yes
Staffing		
The staff to children ratio is to comply with the National Quality Framework.	The application details staff to child ratios, which are stated to be compliant with the NSW Children (Education and Care Services) Supplementary Provisions 2012 A condition is recommended to ensure compliance with relevant government standards for staff to children ratios.	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
Provide staff details, to show that the needs of children, including those with special needs and from culturally and linguistically diverse backgrounds will be met.	<p>The centre's plan of management states:</p> <p><i>"The Centre prioritises recruiting staff who reflect the diverse cultural and linguistic background of society."</i></p> <p>A condition is recommended to require adoption of the plan of management and code of conduct with periodic review and adjustment, as seen fit by centre management.</p> <p>Another condition is also recommended to ensure National Quality Framework or NSW Regulations are met with regard to staff qualifications.</p>	Yes
Accessibility		
Access throughout the centre must comply with AS1428.1 and Part D of the National Construction Code.	<p>A "Statement of compliance – access for people with a disability" was submitted with the application, which states the proposal can achieve compliance with the access provisions of the NCC and Access to Premises Standard.</p> <p>A condition is recommended to ensure compliance is demonstrated by a report submitted with the Construction Certificate.</p>	Yes
Operating Hours		
When in a residential zone operating hours are restricted to 7am – 7pm, Monday to Friday (Public Holidays excluded).	<p>Being outside a residential zone and in a site approved for residential use, in addition to commercial use, the hours of operation proposed are 7am – 6.00pm. Staff will arrive at 6.45am each day to prepare for childrens' arrival at 7am.</p> <p>A condition is recommended to enforce operational hours, from 7.00am to 6.30pm Monday – Friday only, with staff able to enter the premise at 6.45am. A later time for closing allows for late pick-ups. The centre is not to operate on Public Holidays.</p>	Yes
Visual & Acoustic Privacy		
Sleep rooms and play areas are located away from noise sources.	<p>Two cot-rooms for infants (0-2 years) are located in the premise's south eastern corner, away from Canterbury Road, on the Onslow Lane frontage. Highlight windows are provided to them, which will allow some light into them without exposing sleeping infants to high-level noise from Onslow Lane.</p> <p>As is standard practice in early childhood centres, play rooms for older children are used for</p>	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Requirement	Proposed	Compliance
	afternoon rest periods, setting-up portable bedding, following lunch during the early afternoon each day.	
Solid barriers and double-glazing may be used to attenuate noise.	<p>A noise assessment was submitted with the application, which recommends installation of a sound-insulating awning and 6mm float glazing in all external windows to reduce noise generated from the within the ECECC and from being unduly affected by traffic noise from Canterbury Road.</p> <p>A condition is recommended to ensure compliance with the recommendations of the report prepared by Acoustic Logic, dated 24 May 2016.</p>	Yes
Provide an acoustic report that provides means of minimising noise impacts on neighbouring properties.	<p>In addition to structural recommendations, the report also recommends management measures (limiting the number of children playing outdoors at any time, to 52, monitoring noise and having a system in place to manage complaints) to prevent unreasonable noise levels effecting residents of the complex and those nearby, south of Onslow Street/Lane.</p> <p>Subject to adoption of its recommendations, the report notes the centre will comply with AS 2107:200 and the Australian Acoustical Consultants "Technical Guidelines Child Care Centre Noise Assessment", dated May 2008.</p> <p>In the event the centre is approved, prospective purchasers of residential units in the complex should be made aware of the planned-presence of the ECECC. A condition is recommended to this effect. It remains open to the applicant to determine the best means of compliance with the condition.</p>	Yes

Identified in the assessment table are three proposed departures from our DCP's Part 5.3, which are discussed below:

- The number of children proposed to be accommodated being 89, not 40;
- Proximity of another centre, within 400m of the site;
- The premise proposed for use as a children's centre being within 30m of a main road.

[1] Number of Children to be Accommodated

89 children is the capacity of the proposed centre, which accommodates children from 6 weeks to 5 years of age. In residential zones the number of children is to be limited to 40 (cl. 5.3.4). The 40 child limit is required to ensure the number of children do not

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

disrupt residential amenity, in areas zoned residential. A maximum number for centres in other zones is not prescribed.

The Education and Childcare Services National Regulations requires at least 3.25m² of indoor area per child and 7m² of outdoor area per child. The standards aim to ensure adequate indoor and outdoor space for children. This a suitable means of determining the number of children accommodated in a premise of a particular size, as our DCP does not control the number of children for premises in a non-residential zone. The proposal complies with the national standards, with 4.5m² of indoor space (only measuring the play/learning rooms) available per child and 7.3m² of outdoor space per child.

With regard to the national standard, the proposed number of children complies and is considered reasonable, when design and management measures proposed to manage 89 children are taken in to account. Further, noting that inclusion of additional storage and subtracting floor area for doorways and other functional areas not available for children's play and learning, then the amount of reduced floor space may result in centre's capacity being reduced.

This is reasonable as it is the licensing system which best regulates the capacity of the centre and not the planning system. Notwithstanding, the application demonstrates the premises is able to be acceptably used as a child care centre, subject to compliance with licensing requirements and amenity related controls for noise and amenity, as discussed.

[2] Proximity to Canterbury Road

As the opening into the Canterbury building is only 4.2m wide and some 20m deep, the majority of road-related noise and pollution will not enter the playground at unsafe levels. The Canterbury building effectively shields the centre and it's playground from noise and other emissions from vehicles on the arterial road. There is also a wall with a door installed at the end of walkway from Canterbury Road towards the playground, to further prevent noise affecting the centre and residences on upper levels.

The building providing an effective shield is confirmed by noise and air quality reports submitted with the application.

All points of the centre's access and egress are security controlled. This measure and close supervision of children acceptably minimise the risk of children gaining access to Canterbury Road. All access to the centre is only available from Onslow Lane or the complex's basement.

In these circumstances, also noting childcare facilities being a permitted use in the B5 zone and that the proposal is consistent with relevant zone objectives, the departure from the 30m control is justified.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE,
WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

[3] Proximity of Site to another Children's Centre

The site is within 400m of two existing centres, with 16 others within 2km of the site.

Each of the DCP's requirements is addressed below:

1. The concentration of facilities will not adversely impact noise, loss of privacy, traffic generation and on-street parking.

Comment

With regard to each matter:

1. Noise is effectively addressed, as recommended by the submitted acoustic report,
 2. Being on the ground floor, the centre is unlikely to cause unreasonable loss of privacy for the complex's residents,
 3. The amount of traffic generated is acceptable, according to our Traffic Team and RMS, and
 4. Off-street parking is provided as an alternative to on-street parking.
2. A children's centre must not adjoin another children's centre.

Comment

The site does not adjoin another centre.

3. There is a need for the centre, supported by demographic analysis.

Comment

The submitted demand study is based on demographic analysis and finds that there is sufficient supply in the locality, except for infants and for centres which achieve a "high" rating under the 'National Quality Framework' for early childhood education and care.

The study submits that:

- There are vacancies in a number of centres in the area.
- This could be due to existing centres not meeting the needs of local families.
- Those centres within 2km of the centre that exceed national quality standards have no vacancies.
- There are insufficient places available for 0-2 year olds.
- There are no dedicated pre-schools within 2km of the site.
- 60% of households speak a language other than English at home, reflecting the cultural diversity of the local population.
- There is a lack of high-quality centres in the suburb of Canterbury. While there is one in Canterbury, other high-quality centres are located in other suburbs, namely Clemton Park, Earlwood and Hurlstone Park.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- Based on these factors, the centre should aim to meet the needs of the community not being met collectively by centres in the area, by providing:
 - A high standard of care according the National Quality Framework, as required by our DCP,
 - Affordable rates, given the lower median household income in Canterbury,
 - Catering for diverse cultural and linguistic needs of the community,
 - Offering a pre-school education program, and
 - Providing additional places for infants (0-2 years)

The proposed centre satisfies our DCP's locational requirements and the demand study demonstrates demand for the services proposed, while respecting market forces, which are not relevant to an application's assessment under section 79C of the Environmental Planning and Assessment Act. 1979.

Part 6.3 – Crime Prevention through Environmental Design

An assessment against Crime Prevention Through Environmental Design (CPTED) principles was submitted with the application, summarised below.

CPTED Principle	Applicant's Assessment	Comment	Complies
Surveillance	CCTV will be installed to monitor all entrances to the centre. There are no blind corners to the entrance from Onslow Lane that allow concealment. Parking, the lobby and other entries and exists will have motion-sensitive lighting for adequate visibility.	These measures will provide adequate surveillance.	Yes
Access Control	Way-finding signage will assist navigation to, from and within the centre. All access points are controlled. Security codes will be allocated to parents/carers and staff to access the centre, including the basement car park and the pedestrian entry off Onslow Lane. Access to the centre from the Canterbury Road side of the complex is only permitted via an intercom system.	The design and security measures proposed reasonably ensure a safe environment for the children under the centre's care and its staff.	Yes

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

CPTED Principle	Applicant's Assessment	Comment	Complies
Territorial Reinforcement	All parts of the centre and its parking area/lift will be clearly marked for use of or as part of the centre. Way-finding signage will assist navigation.	The design and way-finding signage make it clear those parts of the complex designated for use of the proposed centre.	Yes
Space Management	The Onslow Street façade and entries are well-articulated and CCTV-monitored, to reduce risk of vandalism and graffiti.	Entries dedicated to exclusive use of the centre, from the basement and Onslow Lane, with fencing of the outdoor play area and security measures effectively manage the centre and surrounds.	Yes

Subject to recommended conditions to address signage and protection of surfaces against graffiti, the assessment demonstrates satisfaction of CPTED principles.

- **Canterbury Development Contribution Plan 2013**

The development application was accompanied by a quantity surveyor's detailed cost report, which calculated the total cost of the proposed works, in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, to be \$664,930.00. Pursuant to s94A of the Environmental Planning and Assessment Act 1979, with the cost of the proposal exceeding \$200,000, a levy of \$6,649.30 is payable, being 1% of the development's value.

A condition is recommended to require payment of this sum.

Other Considerations

- **Solar Access and Climate Control**

Initial assessment of the application indicated the proposed playground will receive limited sunlight in winter. Upon our request, the applicant submitted a solar access study of the proposal, prepared by Steve King, an architect expert in the fields of building ventilation and solar access performance.

Mr King's report references a case in which he was involved (Kids Club v Leichhardt Council LEC 107121 of 2014), noting there are no mandated minimum requirements for indoor and outdoor solar access for children's centres. That our DCP has no controls for children's centres (or other forms of non-residential development) is also noted.

However the Education and Care Services National Regulations (NSW) requires centres to be well-ventilated have some access to natural lighting and be maintained at a temperature that provides for the safety and well-being of children. Outdoor

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

areas must be adequately shaded to prevent childrens' exposure to ultraviolet radiation.

The report concluded that shading during summer is more important than solar access during winter, noting the proposed centre provides adequate climate control and safe conditions for children, subject to these measures being implemented:

- *The glazed section of the awning should support operable shading, underneath the glazing, and*
- *Shade structures in addition to the awning are required in the playground from the September Equinox until the March Equinox.*

Noting our DCP has no standards for solar access for children's centres, the measures proposed for climate control are acceptable. Having regard to the report submitted with the application and its conclusions, the availability of natural light in winter and provision of adequate shade in summer, noting the urban setting of the proposal, will be satisfactory.

Conditions are recommended to give effect to the report's conclusions, to ensure adequate climate controls for the indoor and outdoor areas to be used by children for play and learning.

- **Children's Services**

Our Manager Children's Services has raised the following matters in relation to the proposal:

- The submitted demand analysis indicates future demand for the centre, noting that 12 of 16 centres in the site's locality having vacancies,
- The study maintains that the proposed centre will provide a high standard of education and care, a "perceived gap" in the market. The operators of the proposed centre, it was noted, do not attain the highest standards of the National Quality Framework in their other centres.
- Regulations require 50% of staff to have diploma or degree qualifications. The proposal's management plan nominates a lower standard of education for the staff. A condition is recommended to ensure staff qualifications meet relevant NSW and Commonwealth standards.
- With 89 children (aged 6 weeks to 5 years) proposed to be accommodated in the centre, noise abatement including closing windows and doors (denying natural ventilation) and limiting the number of children being outside at any one time to 52 and encouraging them to be quiet when in the playground and not conducting musical activities outdoors, does not allow for the "normal exuberance and noise of children".
- A high quality centre should have natural outdoor spaces and the proposed playground is mainly covered in artificial turf and soft-fall (wet-pour rubber).
- No outdoor storage is included for play and maintenance equipment.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- The requirements for baby-care in the cot room are lacking, with details such as bottle preparation and access for emergency evacuation of cots (and infants) are not shown.
- Two year olds require nappy-changing and there is a change table with a tap and sink in the bathroom directly accessible from the room set aside for 2-3 year olds.
- Only four toilets are provided for 40, 3-5 year olds which seems inadequate.
- No laundry is provided and a laundry service would be required.
- The proposal does not satisfy our DCP in terms of the permitted maximum number of children and requiring them to be in stand-alone, single level buildings.

Information and plans submitted with the application, as addressed above, reasonably address the matters raised by our Children's Services Manager, subject to conditions being included in the recommended consent, as detailed in relation to the DCP. With regard to the information submitted with the application, potential amenity impacts and the quality of the centre have been adequately addressed in accordance with relevant Australian Standards and guidelines and national standards for children's centres.

- **Development Engineering**

Our Development Engineer raised no objection to the proposal and specified no conditions of consent.

- **Landscape Architecture**

Our Landscape Architect has reviewed the application and raises no objections, subject to recommended conditions of consent.

- **Traffic and Transportation**

Our Traffic and Transportation team assessed the traffic report and did not object to the proposal, noting the proposed childcare centre would cause additional traffic on the local road network. The provision of access to the centre via the basement for dropping-off and picking-up children was supported.

- **Waste Management**

Our Waste Management Team has assessed the proposed centre and advise that the proposed design of bin storage and management is satisfactory, having regard to Part 6.9 of our DCP. The matter of waste management was addressed in relation to the aforementioned s96 application (DA-505/2014/A), with conditions of the original consent already addressing waste management for the complex. A bin room is dedicated to use of the centre, accessible via air locks to control odours.

A separate Waste Management Plan was submitted for the fit-out and operation of the ECECC, which was assessed as satisfactory.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- **Draft & Exhibited Planning Instruments**

No draft and exhibited planning instruments affect the site or the proposed development.

- **Environmental Impacts**

The proposed development, principally involving works internal to the building, the use of the subject premise for early childhood education and care is not expected to have any impact on the environment, apart from those already identified and addressed by this report.

- **Suitability of Site for the Development**

The proposed use is permissible with consent in the B5 zone and the development is consistent with that zone's objectives, in that it will promote employment on a site in the Canterbury Road corridor and provide a service that broadly supports urban renewal in Canterbury.

The site is suitable for the proposed development, provided proposed and recommended measures are carried out:

- to ensure reasonable impacts on other, mainly residential occupants of the building, especially by ameliorating noise,
- to assure the safety and security of children as designed and proposed to be managed in the centre's operations, and
- to provide natural light in mid-winter and shade in summer.

- **The Public Interest**

Reasonable measures are proposed to protect the amenity of the development's occupants and that of nearby residents. Noting there were no submissions regarding the proposal, the development is deemed to be in the public interest.

Notification

The development application was notified and exhibited as required by Part 7 of our DCP. No submissions were received.

Conclusion

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 and all relevant environmental planning instruments and plans.

This assessment concludes that the proposal is satisfactory, as it complies with the standards and performance criteria of applicable policies and plans.

Approval of the application is recommended, subject to conditions, as set out in the recommendation.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

RECOMMENDATION:

THAT Development Application DA-629/2015 be **APPROVED** subject to the following conditions:

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

1. The following must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate:
 - 1.1. Details of:
 - Protection from termites
 - Structural Engineering Plan
 - Building Specifications
 - Fire Safety Schedule
 - Landscape Plan
 - Hydraulic Plan
 - Firewall Separation
 - Soil and Waste Management Plan
 - BASIX Certification
 - Mechanical ventilation
 - Waste Management Plan
 - 1.2. Evidence of an Owner Builder Permit (Class 1 & 10 buildings only); or Evidence of a Home Building (Private) Insurance Certificate.
 - 1.3. Payment of the Long Service Leave Levy to the Long Service Leave Corporation or to Council.
 - 1.4. Payment to Council of:

Kerb and Gutter Damage Deposit	\$3,395.00
Certificate Registration Fee	\$36.00
Long Service Levy	\$2,327.15
Section 94A Development Levy	\$6,649.30
 - 1.5. If you appoint Council as your Principal Certifying Authority, the following fees are payable:

Construction Certificate Application Fee	\$3,197.00
Inspection Fee	\$1,255.00
Occupation Certificate Fee	\$258.00

Note 1: Long Service Leave Levy payment(Long Service Leave is payable where the value is \$25,000 or more under Part 5 Section 36 of the Building and Construction Industry Long Service Payments Act 1986).

Note 2: If you appoint a Principal Certifying Authority other than Council, the fees shown in the fee quote attachment do not apply, however other fees will apply.

Note 3: When the items in this condition are provided and have been assessed as satisfactory, your Construction Certificate will be posted to you.

Note 4: Section 94A contribution payments are payable by cash, bank cheque, or EFTPOS.

Note 5: All Council fees referred to above are subject to change. Please refer to our website or contact our Customer Service Centre for a current schedule of fees prior to payment.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

BEFORE COMMENCING THE DEVELOPMENT

2. Before the erection of any building in accordance with this Development Consent:
 - 2.1. detailed plans and specifications of the building must be endorsed with a Construction Certificate by the Council or an Accredited Certifier, and
 - 2.2. you must appoint a Principal Certifying Authority (either Council, or an Accredited Certifier) and notify the Council of the appointment (see Attachment – Notice of Commencement copy), and
 - 2.3. you must give the Council at least 2 days notice of your intention to commence erection of the building (see Attachment – Notice of Commencement copy).

INSURANCE

3. If it is intended to engage a builder or licensed contractor to do the work where it is valued over \$20,000 and is not a multi storey building then this person must take out home building insurance with a private insurer. The builder or person doing the work must also satisfy Council that they have taken out an insurance policy by producing evidence of the insurance certificate or other documentation. Further information on insurance requirements is available from the Department of Fair Trading (NSW Consumer Protection Agency) on 1800 802 055.

SITE SIGNAGE

4. A sign shall be erected at all times on your building site in a prominent position stating the following:
 - 4.1. The name, address and telephone number(s) of the principal certifying authority for the work, and
 - 4.2. The name of the person in charge of the work site and a telephone number at which that person may be contacted during and outside working hours, and
 - 4.3. That unauthorised entry to the work site is prohibited.

GENERAL

5. The development being carried out in accordance with the plans and other details submitted with the development application, except where amended by other conditions of this consent:

Drawing Number/Issue	Drawing Title	Prepared by	Dated Received by Council
A 101/H	Plans – Basement 01	Mackenzie Architects International	21/06/2016
A 102/J2	Plans – Ground	Mackenzie Architects International	31/08/2016
A103/H	Plans – First & Second	Mackenzie Architects International	21/06/2016
A200/H	Sections – Section 1	Mackenzie Architects International	21/06/2016
A201/H	Sections – Sections 2	Mackenzie Architects International	21/06/2016
A202/H	Sections – Section 3	Mackenzie Architects International	21/06/2016
A300/H	Elevations – Elevations 01	Mackenzie Architects International	21/06/2016

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

A301/J2	Elevations – Elevations 02	Mackenzie Architects International	08/09/2016
A302/H	Elevations – Elevations 03	Mackenzie Architects International	26/08/2016
L-01/B	Landscape Plan	RFA Landscape Architects	21/06/2016

6. All materials must be stored wholly within the property boundaries and must not be placed on the footway or roadway.
7. All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00a.m.-5.00p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.
8. All building construction work must comply with the National Construction Code.
9. No approval is granted for signage. Any signage, not otherwise permissible under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, is to be subject of a separate application.
10. Details of way-finding and other signage required for the centre shall be submitted with the Construction Certificate.
11. All masonry surfaces on Onslow Lane are to be finished in a protective finish, to prevent graffiti.
12. The document submitted with the development application entitled “Young Academics Early Learning Centre Plan of Management”, undated, is to be applied and observed in the management and conduct of the premise’s use as an early childhood education and care centre, in compliance with the NSW and Commonwealth legislation and guidelines identified on page 12 of this document. The Plan of Management is to be periodically reviewed and updated as seen fit by centre management, particularly with regard to legislative amendments, alteration or introduction of new standards or guidelines, Workplace Health and Safety, Emergency Procedures and the Code of Conduct.
13. Parents and carers dropping-off and picking-up children by vehicle must do so only via the basement, as proposed. Parents and carers must be given secure access to the basement car park and to the lift from the basement to the centre’s reception area. An agreement or contract made between the centre and any parent or carer, whether or not the agreement or contract addresses other matters, must include the parent’s or carer’s agreement to use these facilities and to not park on nearby residential streets, unless access to the basement is prevented.
14. The centre’s plan of management being amended to observe requirements of relevant NSW or Commonwealth legislation, regarding the hygienic preparation of food and disposal of waste materials, including soiled nappies and other disposable items.
15. Provision of adequate toilet, washing and baby changing facilities for the centre, in accordance with relevant NSW or Commonwealth legislation or guidelines.
16. Fences and gates must be installed around the playground, which must be designed and installed to prevent children climbing the fences and climbing or opening the gates.
17. Shade structures (permanent, removable or retractable) are to be installed or positioned in parts of the playground not covered by the awning/canopy structure

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- cantilevered off the building above the windows into the play rooms. As a minimum, the parts of the playground to be shaded are the 'features' of the playground, including the "Dry Creek Bed", the "Sandpit" and the Timber Decks.
18. Including the area covered by the awning/canopy structure, 50% of the playground must be shaded or made capable of being shaded, between the Spring and Autumn Equinoxes.
 19. The glazed section of the canopy/awning structure must be fitted with operable shading, underneath the glazing.
 20. Adequate outdoor storage for play, gardening and other equipment is to be discreetly located in the playground.
 21. A tap or taps with suitable drainage is/are to be provided in the playground, for general cleaning and irrigation purposes.
 22. Child to staff ratios and minimum qualifications of staff, of relevant NSW or Commonwealth legislation or guidelines are to be observed in the operation of the centre and the appointment of staff.
 23. A report demonstrating compliance with the report "Statement of Compliance – Access for People with a Disability" by Accessible Building Solutions and dated 24 November 2015, shall be submitted with a Construction Certificate.
 24. Hours of operation shall be limited to between 6.45am and 6.30pm, Monday to Friday only. The centre must remain closed on Public Holidays.
 25. Recommendations of the report entitled "Childcare Centre, Environmental Noise Impact Assessment", by Acoustic Logic, dated 24 May 2016, shall be implemented in the design, construction and conduct of the early childhood education and care centre. Operational requirements of this report must be incorporated into the centre's Plan of Management. In this regard the centre's construction and operations must comply with AS 2107:200 and the Australian Acoustical Consultants "Technical Guidelines Child Care Centre Noise Assessment", May 2008.
 26. Prospective purchasers of residential units in the approved development at 364-374 Canterbury Road, Canterbury, must be made aware of the plans to use the premise and outdoor area the subject of this development consent, as an early childhood education and care centre. In doing so, prospective purchasers must be provided sufficient information to ascertain the nature, scale and likely impacts of the proposed centre and methods proposed to ameliorate those impacts.

DEVELOPMENT CONTRIBUTION

27. Council has identified an additional demand for public amenities and services as a consequence of this development. Pursuant to Section 94A of the Environmental Planning and Assessment Act 1979 and Canterbury Development Contributions Plan 2013, a levy of \$6,649.30 must be paid to the Council to meet the cost of providing , extending or augmenting various public amenities and services. The levy amount is based on the estimate of the proposed cost of development being \$664,930.00.

2013 Plan – Section 94A	
• Section 94 A Contributions	\$6,649.30

Note: The contributions payable may be adjusted, at the time of payment, to reflect Consumer Price Index increases (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

The contribution is to be paid to Council in full prior to the release of the Construction Certificate, (or for a development not involving building work, the contribution is to be paid to Council in full before the commencement of the activity on the site) in accordance with the requirements of the Contributions Plan.

Payment will only be accepted in the form of cash, bank cheque or EFTPOS. Personal cheque and credit card payments will not be accepted.

BARRICADE PERMIT

28. Where construction/building works require the use of a public place, including a road or footpath, approval under Section 138 of the *Roads Act 1993* for a Barricade Permit is to be obtained from Council prior to the commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
29. Council's warning sign for Soil and Water Management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction.

LANDSCAPE

30. The landscaping must be completed according to the submitted landscape plan (drawn by RFA Landscape Architect, drawing no. 3910b L01 issue B, submitted to Council on 28 June 2016) except where amended by the conditions of consent. The landscaping is to be maintained to the Council's satisfaction at all times.
31. All the tree supply stocks shall comply with the guidance given in the publication "Specifying Trees: a guide to assessment of tree quality" by Ross Clark (NATSPEC, 2003).
32. All scheduled plant stock shall be pre-ordered, prior to issue of Construction Certificate or 3 months prior to the commence of landscape construction works, whichever occurs sooner, for the supply to the site on time for installation. Written confirmation of the order shall be provided to Council's Landscape Architect (Contact no: 9789 9438), prior to issue of any Construction Certificate. The order confirmation shall include the name, address and contact details of supplier; and expected supply date.
33. An automatic watering system is to be installed in planting areas at the applicant's cost. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or certifier prior to the issue of the Construction Certificate. The system is to be installed in accordance with the manufacturer's specification and current Sydney Water guidelines.
34. An amended landscape plan to address the issues outlined below is to be submitted to Council or certifier prior to the issue of the Construction Certificate.
 - a) Construction Details including:
 - i. Standard constructions and details drawings (e.g. Sections through mass planting beds, tree planting and mulching details, paths, steps and retaining walls and on-podium Planter Beds/Boxes,
 - ii. Detailing of edge treatments (e.g. Concrete, brick, timber), and
 - iii. The maintenance schedule period shall be a minimum of 12 months.
 - b) The proposed planting to all podium levels shall comply with the following as required in the CDCP 2012 Part 6.6: Landscape:
Raised planters:

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

- Use masonry or concrete construction;
- Provide drainage for each planter box, and coordinate drainage details with hydraulics plan; and
- Provide waterproofing to each planter box.

Minimum soil depth:

- 100-300mm for turf;
- 300-450mm for groundcovers;
- 500-600mm for small shrubs;
- 600-750mm for medium shrubs;
- 750-900mm for small trees with approximate soil area of 3.5m x 3.5m;
- 1000mm for medium trees with approximate soil area of 6m x 6m; and
- 1300mm depth for large trees with approximate soil area of 10m x 10m.

- c) The landscape plan is to include adequate soil depths to all on podium beds and raised planter boxes and provide this information on the plan.

SYDNEY WATER REQUIREMENTS

35. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Co-ordinator. For help either visit Sydney Water's web site at www.sydneywater.com.au/SW/plumbing-building-developing, Water Servicing Coordinators, or telephone 13 20 92. Following application, a "Notice of Requirements" will be forwarded detailing water and sewage extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
- The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the final plan of subdivision.

CRITICAL INSPECTIONS

36. Class 1 and 10 Buildings

The following critical stage inspections **must be** carried out by the Principal Certifying Authority (either Council or the Accredited Certifier):

- 36.1. at the commencement of the building work, and
- 36.2. after excavation for, and prior to the placement of any footings, and
- 36.3. prior to paving any in-situ reinforced concrete building element, and
- 36.4. prior to covering of the framework for any floor, wall, roof or other building element, and
- 36.5. prior to covering waterproofing in any wet areas, and
- 36.6. prior to covering any stormwater drainage connections, and
- 36.7. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Class 2, 3 or 4 Buildings

- 36.8. at the commencement of the building work, and
- 36.9. prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within the building, and
- 36.10. prior to covering any stormwater drainage connections, and
- 36.11. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Class 5, 6, 7, 8 or 9 Buildings

- 36.12. at the commencement of the building work, and
 - 36.13. prior to covering any stormwater drainage connections, and
 - 36.14. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
37. Section 81(A) of the EP&A Act 1979 requires that a person having the benefit of a development consent, if not carrying out the work as an owner-builder, must notify the principal contractor for the building work of any critical stage inspections and other inspections that are to be carried out in respect of the building work, as nominated in this development consent.
- To arrange an inspection by Council please phone 9789-9300 during normal office hours.

COMPLETION OF DEVELOPMENT

38. Obtain an Occupation Certificate/Interim Occupation Certificate from the Principal Certifying Authority before partial/entire occupation of the development.

WE ALSO ADVISE

- 39. This application has been assessed in accordance with the National Construction Code.
- 40. You should contact Sydney Water prior to carrying out any work to ascertain if infrastructure works need to be carried out as part of your development.
- 41. Where Council is appointed as the Principal Certifying Authority, you will be required to submit Compliance Certificates in respect of the following:
 - a) Structural engineering work
 - b) Air handling systems
 - c) Protection from termites
 - d) Smoke alarms
 - e) BASIX completion
 - f) Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
- 42. Before you dig, call "Dial before you Dig" on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no./name, side of street and distance from the nearest cross street) for underground utility services information for any excavation areas.
- 43. In granting this approval, we have considered the statutory requirements, design, materials and architectural features of the building. No variation to the approved design and external appearance of the building (including colour of materials) will be permitted without our approval.
- 44. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
- 45. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
- 46. If you are not satisfied with this determination, you may:
 - 46.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of

364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE,
WITH ASSOCIATED LANDSCAPING AND PARKING (CONT.)

Determination.; or

- 46.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 or Section 97AA of the Environmental Planning and Assessment Act 1979.

ROSELANDS WARD**2 42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB****FILE NO:** 10/44D PT3 & 4**REPORT BY:** CITY DEVELOPMENT**WARD:** ROSELANDS

D/A No:	DA-396/2015
Applicant:	C Havas
Owner:	Lemnian Association of NSW
Zoning:	R3 Medium Density Residential under Canterbury Local Environmental Plan 2012
Application Date:	1 September 2015

Summary:

- Council has received a Development Application (DA-396/2015), seeking consent to make alterations and additions to an existing registered club. The alterations and additions consist of works to the lower ground floor to provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's ground floor.
- Council engaged the services of an independent town planning consultant (Willana Associates Pty Ltd) to assess and prepare a report in respect of the application. The contents of this report have been prepared by the independent consultant.
- The site is known as 42-44 Albert Street Belmore and is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012 (CLEP 2012). While a registered club is prohibited within the zone, Council has previously determined the premises retain Existing Use Rights in accordance with Part 3, Division 10 of the Environmental Planning and Assessment Act 1979. Those rights however do not transfer across to the use of the premises for other purposes, including those of a Function Centre.
- This Development Application (DA) has been assessed against the provisions contained in CLEP 2012 and Canterbury Development Control Plan 2012 (CDCP 2012). Despite the documentation supplied by the applicant, Council is concerned that the premises are not being used for the purposes of a registered club. The site has been subject to a number of complaints in the past regarding the use of the premises and the impacts to adjoining residential properties. Investigations by Council Officers indicate that the site has been used as a function centre and accordingly, the proposed works do not demonstrate that the legitimate use of the premises as a registered club would continue as the dominant use.

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

- The DA was publicly exhibited and adjoining land owners notified in accordance with Part 7 of the CDCP 2012. We received six submissions and a petition containing 16 signatures objecting to the plans. Issues raised in the submissions and our responses are provided in the body of this report.
- The development application is recommended for refusal on the basis that the proposal does not demonstrate the use of the premises will be undertaken in a manner that is within the bounds of the Existing Use Rights and is therefore prohibited.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports our Community Strategic Plan long term goal of Balanced Development.

Report:

Site Details

The subject site is located at 42-44 Albert Street, Belmore, which is legally identified as Lot 1 DP 774899 and Lot 5 DP 549655 and has a total site area of 6,134m². The irregular shaped land holding has a frontage to Albert Street of 22m to the north-west. The site adjoins a railway line to the east.

The site currently contains an existing single storey brick building with an iron roof, operating as a registered club under the ownership of the Lemnos Group, with associated car parking comprising of 101 at-grade parking spaces.

With the exception of the railway line which runs along the northeastern boundary of the subject site, the surrounding land uses consist of a mix of single storey residential dwellings and a residential flat building. Two heritage listed items are also located at 52 Albert Street and 2-18 Lakemba Street.



Subject site

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

Background

Development Application DA-518/2013 sought approval for alterations and additions to the existing registered club. The proposed works included changes to the existing façades, addition of 122.15m² of floor area, upgrading of the fire and disabled facilities, internal reconfiguration of the building, upgraded landscaping and improvements to the existing car parking. The DA was approved by Council under delegated authority on 14 May 2014, subject to conditions.

DA-518/2013/A

A Section 96 (1A) application was lodged with Council, seeking to modify the consent by the deletion of Condition 23, which states:

“The building shall be constructed in type A construction under BCA Specification C1.1, inclusive of fire resistance levels required for walls, beams, columns, floors, roofs and lintels or the like.”

This modification was approved under delegated authority on 19 June 2014.

DA-518/2013/B

A second Section 96 application was lodged with Council on 2 November 2014, seeking to amend the design and layout of the premises. This application was subsequently withdrawn on 26 May 2015 following a request for additional information.

DA-518/2013/C

A third Section 96 application was lodged with Council on 1 June 2015 seeking consent for modifications to the internal layout and design of the existing premises. The application was subsequently withdrawn on 19 October 2015 following advice from Council that the proposed works were not within the scope of Section 96 of the Environmental Planning and Assessment Act 1979 (EPA Act 1979) and the lodgment of the current DA on 1 September 2015.

A Building Certificate Application (BC-64/2015) was lodged with Council on 10 September 2015 in an attempt to legitimise the unlawful works that have taken place at the premises. The unlawful works include certain unauthorised internal changes to the layout and a minor extension to the rear of the existing building, as follows:

- Large scale internal alterations and additions include the removal of internal walls and partitions that define a service provider’s room, new cloak room, male, female and disabled access toilet facilities. The board room, new chair storage, existing storage area, existing kitchen and adjacent storage have all been removed from the associated plans in the proposed modification. A rear access doorway has also been omitted from the plans and replaced with a fire exit door.
- A 36.8 square metre extension to the South Western portion of the building, termed as a kitchen/back of house area of the building has also been added without consent.

Determination of this application has been held in abeyance pending the determination of the subject DA.

Proposal

A Development Application (DA-396/2015) has been received that seeks consent to make alterations and additions to an existing registered club. The alterations and additions consist of works to the lower ground floor to provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's ground floor.

Upon consideration of the proposal and having due regard to the relevant statutory matters, it is clear that the proposal is not seeking to retain a bona fide registered club on the subject site, that operates within the confines of its Existing Use Rights. As will be discussed below, the current proposal merely aims to facilitate the separate and dominant use of the premises as a Function Centre, without undergoing the necessary statutory processes.

Statutory Considerations

When determining this application, the relevant matters listed in Section 79C of the EPA Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

Also relevant to the consideration of this application are the provisions relating to Existing Use Rights. The relevant statutory provisions relating to Existing Use Rights are contained within the Sections 106 to 109B of the Environmental Planning and Assessment Act (EPA Act) 1979 and Sections 39 to 46 of the Environmental Planning and Assessment Regulation 2000 (the Regulations). Further discussion of this element of the application is provided below.

Assessment

The development application has been assessed under Section 79C of the EPA Act 1979 and the following key issues emerge:

- **Environmental Planning and Assessment Regulation 2000 (The Regulation)**
Although the Existing Use Rights for the use of the premises as a registered club were established under DA-518/2013, clauses 41, 42, 43 and 44 of the Regulation are of particular relevance to the assessment of the subject DA. These Clauses, with a response on the planning issues, are outlined as follows:

"41 Certain development allowed

- (1) *An existing use may, subject to this Division:*
- (a) *be enlarged, expanded or intensified, or*
 - (b) *be altered or extended, or*
 - (c) *be rebuilt, or*
 - (d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) *if it is a commercial use...*
 - (f) *if it is a light industrial use...*

- (2) *However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:*
- (a) *involves only alterations or additions that are minor in nature, and*
 - (b) *does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
 - (c) *does not involve the rebuilding of the premises associated with the existing use, and*
 - (d) *does not involve a significant intensification of that existing use.*

42 Development consent required for enlargement, expansion and intensification of existing uses

- (1) *Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) *The enlargement, expansion or intensification:*
- (a) *must be for the existing use and for no other use, and*
 - (b) *must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

43 Development consent required for alteration or extension of buildings and works

- (1) *Development consent is required for any alteration or extension of a building or work used for an existing use.*
- (2) *The alteration or extension:*
- (a) *must be for the existing use of the building or work and for no other use, and*
 - (b) *must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

44 Development consent required for rebuilding of buildings and works

- (1) *Development consent is required for any rebuilding of a building or work used for an existing use.*
- (2) *The rebuilding:*
- (a) *must be for the existing use of the building or work and for no other use, and*
 - (b) *must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date."*

While clause 41(1) allows the proposed building works, the effect of the proposal would be to facilitate a *function centre*. A *function centre* is not permitted within the R3 – Medium Density Residential zone and accordingly, the application would fail on this aspect. Clause 41(2) does not apply as the proposal is not for either a commercial or light industrial use.

Having regard to this, the alleged unauthorised works are subject to separate proceedings by Council and this application seeks the necessary development consent, albeit in retrospect. What has not been sought however is the use of the

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

premises for the purposes of a function centre in accordance with clauses 45 and 46. Investigations by Council in response to complaints from surrounding residents indicate that the site has been used without consent for the purposes of a function centre.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

The subject site is zoned R3 - Medium Density Residential under CLEP 2012. The proposed development is defined as a *registered club*. A registered club is prohibited within R3 Medium Residential Zone, however in the assessment and approval of DA-518/2013, Council was satisfied that the premises retained existing use rights as a registered club.

Notwithstanding this, it is Council's contention that the current proposal does not maintain the existing use rights and will, in fact, facilitate the use of the premises for the purposes of a *function centre*. Such a use is also prohibited within a R3 Medium Residential Zone and would not satisfy the relevant provisions around existing use rights.

The Dictionary to the CLEP 2012 defines a registered club as "... a club that holds a club licence under the Liquor Act 2007." It also defines a function centre as "...a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility."

The Liquor Act 2007 accordingly defines a registered club as "...a club that holds a club licence under (the Act)." The different types of licences are defined in Section 10 of the Liquor Act 2007, with a Club Licence and On-premises Licence (Caterer's Licence) being relevant.

Clause 19 (1)(a) of the Liquor Act states that a Club Licence may only be granted to a club that meets the requirements specified in section 10 of the *Registered Clubs Act 1976*. The applicable provisions of section 10 state:

10 Requirements to be met by clubs

(1) The following requirements apply in relation to a club:

(a) The club shall be conducted in good faith as a club.

...

(e) The club shall be established:

- (i) for social, literary, political, sporting or athletic purposes or for any other lawful purposes, and
- (ii) for the purpose of providing accommodation for its members and their guests.

...

(f) The club shall have premises of which it is the bona fide occupier for the purposes of the club and which are provided and maintained from the funds of the club.

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

- (g) *The premises of the club shall contain accommodation appropriate for the purposes of the club.*
- ...
- (n) *The business conducted on the premises of the club must not be managed or controlled by any person or body other than:*
 - (i) *the governing body of the club, or*
 - (ii) *the secretary of the club, or*
 - (iii) *the manager (within the meaning of the Liquor Act 2007) of the club premises, or*
 - (iv) *a person acting in a capacity referred to in section 41 (1) in respect of the club, or*
 - (v) *a person appointed under section 41A in respect of the club, or*
 - (vi) *a person who is exercising functions relating to the management of the business or affairs of the club under a management contract within the meaning of section 41O.*
- (2) *For the purposes of determining whether a club is being conducted in good faith as a club, as required by subsection (1) (a), regard is to be had to the following:*
 - (a) *the nature of the premises of the club,*
 - (b) *...*
 - (c) *whether any arrangements relating to the club have resulted in another person or body assuming the effective control of the club and its business,*
 - (d) *such other matters as may be prescribed by the regulations ...*

The letter prepared by Daintry Associates dated 11 August 2015 in support of the DA, states that the proposed works are a consequence of another party who removed Club facilities without authorisation:

"The contracted manager responsible for the building works and provision of catering and bar services had no authority to remove facilities to service the needs of the Club's members and guest shown DA-518/2013."

The letter from Daintry Associates goes on to state the proposal will *"... provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's Ground Floor."*

Further, the letter prepared by Daintry Associates dated 11 December 2015, states *"...that the management, catering and bar services of the Club facilities are subject to a commercial agreement."* Despite being referred to by Daintry Associates, a copy of this agreement has not been provided by the applicant to Council. This agreement, which would provide some clarity around the extent of the management of the club facilities vested in the other party and confirm whether the premises and its use would satisfy the provisions of Section 10(2) of the *Registered Clubs Act 1976*, in particular, subsection 10(2(c)).

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

The statements made by Daintry Associates in the two letters are also in direct contradiction to information obtained during internet searches, which infer, if not clearly demonstrate, an intention and/ or actual use of the premises for the purposes of a function centre. The “Lemnos Club” at the time of writing this report, advertised on the website of Clarence House Weddings (www.clarencehouseweddings.com.au/venues) as being a 300-600 seat wedding reception venue, located at 44 Albert Street Belmore, which “...has arrived and has opened it’s (sic) doors, ready to take bookings today.” The website implies that the premises are open to the general public and there is no indication that its use is restricted to members of the Club.

Accordingly, it cannot be stated that the proposed works to the lower ground floor level either in isolation or in the context of the whole building, would facilitate the on-going use of the premises as a registered club. The proposed works and resultant use of the premises will not:

- Facilitate the use of the premises in good faith as a club, given that a commercial contract facilitates significant operational functions that may not be fully or effectively controlled by the Club (i.e. The management, catering and bar service activities).
- The premises, operating as a wedding reception centre for the general public (and not exclusively for genuine existing members of the Club) would no longer be for the social, literary, political, sporting or athletic purposes or for any other lawful purposes of the Club’s members, as a function centre is prohibited within the zone and consent for such a use does not presently exist.

The applicant has not adequately demonstrated that the proposal is consistent with or will maintain the existing use rights provisions in the EPA Act 1979.

Pursuant to Section 108(3) of the EPA Act 1979, there are no other applicable provisions contained within the CLEP 2012.

- **Canterbury Development Control Plan 2012 (CDCP 2012)**

The provisions of Section 108(3) of the EPA Act 1979 also apply to the controls contained in the CDCP 2012. Using the relevant provisions as a guide for a merit assessment of the proposal, the following comments are provided in below.

Part 2 – Residential Zones

The requirements of Part 2 – Residential Zones of CDCP 2012 are generally directed toward new residential developments and do not specifically relate to the proposed development. Having regard to the minor nature of the external modifications to the existing doors on the building’s southern side and the existing site context, the proposed works are satisfactory.

In this regard, the proposed development remains in accordance with the aims and objectives of Part 2 of CDCP 2012. Given this compliance, this aspect of the proposal is deemed to be appropriate.

Part 6 – General Controls**Part 6.1 – Access and Mobility**

Part 6.1 requires certain premises to provide appropriate access for people with a disability. For existing buildings, this involves upgrading access to communal areas where possible and a Compliance Report is required to demonstrate how a premise satisfies the provisions of the Disability (Access to Premises – Buildings) Standards 2010. Other requirements are also specified in Table 6.1.5 of this Part of CDCP 2012. Such a report has not been supplied by the applicant and accordingly, compliance has not been demonstrated.

Part 6.3 – Crime Prevention Through Environmental Design (CPTED)

The development has been assessed against the provisions of this Part of the CDCP 2012. The proposal involves alterations and additions to an existing club premises which, in themselves, are unlikely to create any opportunities for additional criminal activity or adversely impact on patron or community safety. In terms of the events detailed in the 2015 Calendar supplied by the applicant, there is no indication that these specific activities cannot be managed in an appropriate way and in accordance with the relevant management plans.

Nonetheless, the issue of the unauthorised use of the premises as a function centre and its separation and concurrent operation with the activities of the registered club remains. This is evident in the existence of a commercial contract that, on the advice of Daintry Associates in their letter dated 11 December 2015, indicates a separate entity has effective control over the management of the premises. Aside from the permissibility issues, there is no indication that size, nature and frequency of the social functions contemplated by the Club (as opposed to commercial weddings) would not be able to achieve a suitable level of patron and community safety and amenity.

Part 6.8 – Parking and Vehicle Access

The subject site currently contains 101 off-street parking spaces, as a requirement of DA-518/2013. The application is supported by a Traffic and Parking Study which infers the proposed works will actually reduce the total assessable floor area within the building, resulting in a lower demand for on-site parking. The Traffic and Parking Study also states that in the between the period of 10 January 2015 and 19 April 2015, nine weddings and an ANZAC Day function were held at the premises with patron numbers ranging between 272 and 500 people. The Study, however states *“...it is more appropriate to permit functions in line with the provided on-site car parking.”*

The Study also states that while the overall number of required parking spaces will reduce as a consequence of the proposal from 171 spaces to 118 spaces, a total of 131 parking spaces will be provided. The Study also goes on to state that:

“based on car driver percentages and car occupancy considerations, the recommended patron level ranges from 280 to 340 persons. Given the

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

appropriate patronage range, it is recommended that functions be limited to 340 patrons."

The calculations and conclusions drawn on the reduction of assessable floor space cannot be supported. This is due to the following reasons:

- The areas identified in the Study were largely included in the alterations and additions approved under DA-518/2013;
- The submitted plans show 135 existing parking spaces (as opposed to 131 spaces); and
- If the claims of the applicant that the new facilities proposed are as a consequence of unauthorised works by other parties which removed these facilities in other parts of the building without their consent, then the additional facilities do in fact generate additional assessable floor area. Consequently, additional parking would be required under the CDCP 2012.

Accordingly, the applicant's Traffic and Parking Assessment is not supported and the proposal does not adequately demonstrate that the facilities and use therein will not adversely affect the surrounding area.

Other Considerations

- **Canterbury Development Contributions Plan 2013**
The proposal does not trigger a contribution under the Canterbury Development Contributions Plan 2013 as it has a cost below \$100,000.
- **Acoustics**
Despite adjoining a railway line, the Club is located within a residential area. Council's records indicate that complaints have been received in the past to noise being generated from events at the premises. While not specifically requested by Council, the applicant has submitted a Mechanical Plant Noise Impact Assessment Report, prepared by Rodney Stevens Acoustics Pty Ltd dated 28 May 2015. This report does not contain any assessment of the potential noise generated by events at the premises, only noise generated by mechanical plant. It does not demonstrate that the noise generated by the existing and likely future events do not have an adverse impact on resident amenity.
- **Fire Safety**
The development application was referred to our Fire Safety Officer. No objections were raised to the application, however reference was made to the status of the current enforcement actions against the land owner in relation to allegations of the premises being used as a wedding reception centre (Function Centre) without approval. Conditions were included in the response from our Fire Safety Officer.
- **Traffic Management**
The development application was referred to our Team Leader Traffic and Transportation who has raised a number of concerns, as follows:
 - i) Car parking is inadequate:

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

- a. The eight angled parking spaces located near the entry to the car park, along eastern fence line and along the western fence line near the front of the property do not comply with AS2890.1, which will impact on the width of the access road past these spaces.
- b. The accessible parking spaces do not comply with AS2890.6.
- c. A loading /service bay has not been provided.
- ii) There is no clear pedestrian path from the street to the club entry.

- **Suitability of Site for the Development**

The issue of suitability in the context of a prohibited use enjoying existing use rights is essentially defined by the compliance with the EPA Act 1979 and the Regulations and the level of impact on the surrounding built and/ or natural environment.

The relevant matters relating to existing use rights have already been discussed at length in the preceding sections of this report. The failure of the proposal to satisfy the requirement of the EPA Act 1979 and the Regulations demonstrates that the site is not suitable for a de facto Function Centre.

Council's records indicate noise and traffic-related issues prior to and during the assessment of this application. While the nature of the proposed works themselves would appear at face value to reflect an innocuous proposal, the real effect of an approval would be to facilitate a prohibited use without the benefit of being able to quantify the impact on the surrounding residents or provide accurate information on the true nature of the proposal. Accordingly, it could hardly be held that such a use would be suitable in the context of the surrounding residential buildings.

- **The Public Interest**

The public interest was taken into consideration whilst assessing this development application. It is considered that application is inadequate and does not demonstrate a genuine intention to continue a registered club operating at the level purported, or that fulfils its statutory obligations to its members and the wider community. Accordingly, the approval of the application would not be in the wider public interest.

Notification

The development application was advertised in the local newspaper and notified to adjoining and nearby property owners in accordance with Part 7 – Notification of Development Applications of CDCP 2012. We received six submissions and a petition containing 16 signatures objecting to the proposal. The submissions raised issues of concern, which are discussed below:

- **The premises are being operated as a function centre as opposed to a registered club, disrupting the peaceful enjoyment of residents.**

Comment

It is Council's view that the premises have been used without consent for a function centre and that the proposal would not result in a bona fide registered club operating at the site. Council's records indicate several instances where adjoining neighbours

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

have been affected by noise at wedding functions held at the premises, despite there being no valid Occupation Certificate. Inspections by Council staff have also confirmed the operation of the premises despite there being no development consent or Occupation Certificate.

The Statement of Environmental Effects prepared by Daintry Associates and dated 11 August 2015 states that noise attenuation works to the plant and equipment, the adoption of an updated Operational Management Plan, improved on-site parking facilities and further fire safety/ Building Code of Australia upgrades will lessen any environmental harm. While these measures are welcome, they are understood to form part of the conditions imposed on DA-518/2013.

- **Any works should include an acoustic assessment/noise abatement measures**

Comment

An Acoustic Assessment dated 25 January 2016 was supplied in response to a complaint made to the NSW Office of Liquor, Gaming and Racing (OLGR) about noise caused by the PA system during a function at the premises. The acoustic report, prepared by Rodney Stevens Acoustics, notes that during the monitoring undertaken at the premises, the noise criteria were exceeded by up to 6dB. Two measures have been proposed by the acoustic consultant to mitigate the noise impacts. These include keeping external doors shut at all times and installing an electronic frequency dependent limiting device to control the emissions from the PA system.

The assessment does not address noise from patrons entering or exiting the premises, traffic noise or noise from any existing plant. In the context of up to 600 guests, 7 days per week, as purported by Clarence House's website (<http://clarencehouseweddings.com.au/venues/georgian/>) advertising the venue as "The Lemnos Club" wedding reception centre, this will have an unacceptable impact on the surrounding residences.

In addition, functions such as the ANZAC Day Commemorations have in the past attracted up to 500 people. Table 3 of the letter dated 28 May 2015 prepared by McLaren Traffic Engineers notes that between 10 January 2015 and 19 April 2015, there were nine weddings at the subject site, with between 272 and 425 guests. This is quite significant in the context of the 300-600 wedding patrons stated by Clarence House's website that can be "neatly appointed" at a wedding reception in the building and the lack of any holistic assessment by the applicant to demonstrate the proposal will not adversely impact on adjoining properties.

- **The club is rarely open for the enjoyment of members**

Comment

This is purely subjective and has not been quantified.

- **The premises are being operated as a function centre with people hiring the venue joining the Club as “members of convenience” to circumvent planning issues**

Comment

This too is subjective and lacking any reasonable proof on the objector’s part. However, based on the evidence available and the submitted Calendar of Events, it is Council’s view that events which promote the use of the building for social, literary, political, sporting or athletic purposes or any other lawful purposes by members of the Club are infrequent when compared to the number of weddings to be held.

- **The premises have not complied with a number of conditions on DA-518/2013, specifically, the unauthorised change of use to a function centre; occupation and use of the premises without an Occupation Certificate being issued by the Private Certifier; noise impacts from the kitchen exhaust plant.**

Comment

These matters are not relevant in terms of the matters that Council is required to consider pursuant to Section 79C of the EPA Act 1979. They are however relevant to the current enforcement and compliance matters under consideration by Council. Enforcement proceedings do not prevent Council from determining this development application.

- **The use of the building has changed from a registered club to a Function Centre and is contrary to Clauses 41, 42 and 43 of the Environmental Planning and Assessment Regulations 2000**

Comment

Generally, Council agrees with the objections. Compliance with these Clauses has been addressed above.

Conclusion

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies. The proposal has failed to demonstrate that the proposed works would result in the on-going use of the premises as a registered club that would retain its existing use rights. Investigations by Council have identified the premises has been and is intended to be used for the purposes of a function centre, which is prohibited in the zone and accordingly, it is recommended that the development application be refused for the reasons listed below.

Independent Hearing and Assessment Panel Minutes

The Independent Hearing and Assessment Panel considered the application on 15 August 2016, and the minutes from that meeting are provided below.

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

Panel Assessment

Council has received a development application DA-396/2015 seeking consent to make alterations and additions to an existing registered club. The alterations and additions consist of works to the lower ground floor to provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's ground floor.

The planning report outlines a concern that the premises are not being used for the purposes of a registered club. This is a question amongst others that the Panel needs clarified.

The Panel is also aware of a number of complaints that have been made in the past, and which were confirmed at the meeting by Mr G Fotis and Mrs L Bridge, regarding the use of the premises and the impacts to adjoining residential properties. Investigations by Council officers indicate that the site is being used as a function centre, and that the proposed works do not demonstrate that the legitimate use of the premises as a registered club would continue as the dominant use.

In order to investigate this and other claims fully, and having regard to statements made by Mr Latouf for the applicant that a representative from the Board of the Club was unable to be present at the meeting, the IHAP believes that, in the interests of procedural fairness, the Board be given the opportunity to respond to the Council report and its recommendations for refusal of development application DA-396/2015 at the IHAP meeting on 19 September 2016.

As part of its further deliberations the Panel will seek advice from the Board of the Club on the 19 September 2016 addressing at least the following:

- (1) Evidence that the Club continues to hold a club licence under the Liquor Act 2007.*
- (2) A detailed explanation of the Club's activities during a normal week Monday to Sunday (closed Mondays and Tuesdays, serving of meals and alcohol on other days, activities, etc).*
- (3) Any changes in the current Club's activities (as per (2) above) over the past two years.*
- (4) The purposes of and use of alterations (already completed) on the lower ground floor and now the subject of DA-396/2015.*
- (5) An explanation of the use of the premises as a 'function centre' as advertised on the Club's website in terms of frequency and availability to the general public or to Club members only.*
- (6) A comparison between the normal activities of the registered Club and the 'function centre' in order for the Panel to be satisfied whether or not the 'function centre' is reasonably ancillary to the registered club or whether it is an independent use. The Court of Appeal in Foodbarn Pty Ltd v Solicitor-General 32 LGRA 157 said "Where part of premises is used for a purpose subordinate to the purpose inspiring the use of another part it is legitimate to disregard the former and treat the dominant purpose as that for which the whole is being used. However where the whole of the premises is used for two or more purposes, none of which subserves the other, it is irrelevant to inquire which is dominant. If any one purpose operates in an independent way it is immaterial that it may be over-shadowed by others in terms of income generated, space occupied or ratio of staff engaged."*
- (7) An explanation as to how the Club deals with resident complaints over noise, etc, having regard to the intent of dealing with such matters as outlined in its Operational Plan received by Council on the 11 December 2015.*
- (8) Any proposed improvement to the clubs operation or complaint handling procedure to reduce the impact of the club to its neighbours.*

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

(9) *Such other matters that the Club wishes to draw to the attention of the Panel.*

Public Addresses

<p><i>Mr George Fotis (objector)</i></p>	<ul style="list-style-type: none"> • <i>His property adjoins the subject property and he represents neighbours in the wider area.</i> • <i>Does not dispute the building benefits from existing use rights. Is of the view the proposed development has failed to demonstrate the use of the premises as a registered club. Believes the use of the property for the past 2.5 years as a function centre is unlawful; notes in accordance with regulations, an existing use cannot be changed from one non-conforming use to another.</i> • <i>Notes the proposed development is surrounded by a number of residential properties, which have been impacted by noise from the subject site.</i> • <i>Suggests the Panel adopt the officer's recommendation, with an amendment that the Building Certificate application is also refused and the matter is referred to compliance to immediately cease operation of the function centre and revert back to a club.</i> • <i>Answered questions from the Panel in relation to changes to existing use, operation hours and access, previous activities at the club, Office of Liquor, Gaming and Racing investigations and when he had last been inside the premises.</i>
<p><i>Mrs Lori Bridge (objector)</i></p>	<ul style="list-style-type: none"> • <i>Her property adjoins the subject property.</i> • <i>Agrees with the officer's recommendation.</i> • <i>Advised her family's quality of life has been affected since the use of the club has changed.</i> • <i>Advised principal impacts to her family relate to sound:-</i> <ul style="list-style-type: none"> - <i>Persistent and invasive thumping noise/loud base noise from premises;</i> - <i>Consistent noise from exhaust kitchen at the back of the premises;</i> - <i>Traffic noise resulting from the carpark;</i> - <i>Offensive language by staff members prior to their shift.</i> • <i>Notes occasionally patrons park on Adelaide Street.</i> • <i>Believes there has been a failure of the club to adequately address complaints.</i> • <i>Answered questions from the Panel in relation to invitations to the premises extended from the club to neighbours, operation and hours and access, activities conducted of a club nature and membership.</i>
<p><i>Mr Andy Latouf (for applicant)</i></p>	<ul style="list-style-type: none"> • <i>Requested the matter be deferred by the Panel, advised notice of the meeting was not received as a number of board members are overseas.</i> • <i>Advised works at the club concluded in December 2014; the first function was in January 2015. The Office of Liquor, Gaming and Racing has attended an event at the Club as part of their investigations.</i> • <i>Is of the view every effort has been made to communicate with neighbouring properties regarding the operation of the club.</i> • <i>Answered questions raised by the Panel in relation to club</i>

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

	<i>activities, access to the club for members, noise impacts on neighbouring properties, management plan and club management structure.</i>
--	---

IHAP Decision

THAT Development Application DA-396/2015 be **DEFERRED** to allow further representations to be made by the applicant in this matter on 19 September 2016.

Vote: 5 – 0 in favour

Supplementary Information

Comment

The item was presented before IHAP 15 August 2016 where the matter was deferred pending further information. This information was detailed in correspondence dated 22 August 2016 to the applicant. The application was to be then re-considered at the IHAP meeting of 19 September 2016. Information as requested of the applicant has not been provided to Council. The item is presented to the Panel for consideration.

RECOMMENDATION:

THAT Development Application DA-396/2015 for alterations to the lower ground floor of an existing registered club be **REFUSED** for the following reasons:

1. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, as it does not demonstrate the premises will remain as a registered club and retain the benefit of its Existing Use Rights.
2. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, due to the likely adverse environmental impacts on the amenity of the surrounding residential neighbourhood. The adverse impacts would occur due to the unacceptable noise levels generated by patrons attending events at the premises and inadequate on-site car parking provided to cater for the size of the intended events, leading to vehicles parking in local streets, obstructing vehicular access for residents.
3. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of Clause 6.8.3, Part 6 of Canterbury Development Control Plan 2012 (CDCP 2012), as the application has not adequately demonstrated the site can cater for the expected and actual demand for car parking.
4. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, as the site is not suitable for the development.
5. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, as the proposed development is not in the public interest.

WE ALSO ADVISE:

6. Our decision was made after consideration of the matters listed under Section 79C of

42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB (CONT.)

the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.

7. If you are not satisfied with this determination, you may:
 - 7.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of receipt of this Notice of Determination; or
 - 7.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.

3 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS

FILE NO: 539/37D PT11 & 12

REPORT BY: CITY DEVELOPMENT

WARD: ROSELANDS

D/A No:	DA-486/2008/C
Applicant:	Roselands Mosque Association
Owner:	As above
Zoning:	R3 Medium Density Residential under Canterbury Local Environmental Plan 2012
Application Date:	13 November 2015

Summary:

- This Section 96 application has been prepared by an external consultant (DFP) who also assessed the original development application.
- This application is seeking approval to modify a temporary place of worship to a permanent place of worship by modifying Condition 6 of the consent to remove reference to a '6 month trial period', noise attenuation and provision of a customer hotline; modifying Condition 8 by amending the times of prayer during daylight savings time at night from 7pm - 8pm to 8:30pm - 9:30pm and permit midday prayer on Fridays to occur from 12noon - 1pm and 1pm - 2pm during daylight saving time.
- This application has been referred to the Independent Hearing and Assessment Panel due as it involves significant development and seeks permission for the permanent use of the site as a place of worship.
- The subject site is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012. The existing and continued use of the site is consistent with the definition of 'places of public worship' which is a permissible use within the R3 Medium Density Residential zone.
- In accordance with our notification policy, all owners and occupiers of adjoining properties were notified of the proposed development. It was first notified between 15 December 2015 and 29 February 2016. We received nine submissions. It was notified a second time between 30 May 2016 and 22 June 2016 where the concerns raised include policy/traffic, noise, etc. We received one formal submission objecting to the proposed modifications.
- The application has been assessed against the relevant environmental planning instruments and development control plan.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- DFP Planning recommended that the development application be approved, subject to conditions.
- The application is recommended for approval.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports the Council's Community Strategic Plan long term goal of Balanced Development.

Report:

Background

Pre-2014 application history

The subject premises has a history of use as a place of public worship since 1960, when Canterbury Council approved an application for the construction of a meeting room to be used privately for religious church services. Council approved a further application for additions to the meeting room building to include a single bedroom caretaker's residence, before allowing an addition to the existing church building and conversion of the rear building for use as a Sunday School. The existing rear outbuilding was attached to the church building with the provision of a new entrance and storeroom and conversion of the rear building to create a Sunday School Hall and four classrooms.

On 6 August 2008, Council received complaints that demolition works were being carried out at the subject site. Inspections carried out by staff at that time confirmed that the entire roof of the building had been demolished together with sections of the internal walls in the rear part of the building. Following this Council site inspection and the issue of a "stop work" notice, all works on the site ceased.

This resulted in the submission by the Roselands Mosque Association of a development application, namely DA-486/2008 lodged with Council on 26 August 2008. This development application sought approval for the completion of the demolition works to the existing building, the removal of internal walls and the reconstruction of the roof of the building and its continued use as a place of public worship.

This application was considered by the Independent Hearing and Assessment Panel (IHAP) at its meeting of 5 May 2009 where it was recommended for approval subject to conditions, including the following:

"8. All activities shall be carried out in accordance with the following details:

Day	Time	Activity	Maximum No. of Persons
Monday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Tuesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Wednesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Thursday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15
Friday	12 noon to 2.00pm	Prayer	40
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Saturday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Sunday	12 noon to 1.00pm	Prayer	15
	4.00pm to 5.30pm	Prayer	10
	7.00pm to 7.30pm	Prayer	15

In addition to the above hours, the facility may also be used for one meeting a month attended by 20 persons on a weekday between 5.00pm and 7.00pm."

The IHAP deferred making a recommendation to the City Development Committee pending the submission of additional information by the applicant including traffic and acoustic reports and a Plan of Management.

Following receipt of additional information from the applicant, the IHAP reconsidered the application on 28 September 2009 and recommended that the application be approved subject to certain amendments to the conditions including the following:

- "6. This approval being for a limited period of twelve (12) months only from the date of occupation of the building after which time any use of the premises whatsoever will require a section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 9 months of the date of the occupation of the building.
8. The approved hours of operation and the approved activities on the site are to be confined as follows:

(a)

Day	Time	Activity	Maximum No. of Persons
Wednesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15
Thursday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

(a)	Day	Time	Activity	Maximum No. of Persons
	Friday	12 noon to 1.00pm	Prayer	20
		4.00pm to 5.30pm	Prayer	15
		7.00pm to 7.30pm	Prayer	25
		5.00pm to 7.00pm	Education	15

- (b) There may also be one meeting a month attended by 20 persons on a weekday between 5.00pm and 7.00pm (instead of an education session)."

The Council's planning assessment report and the recommendations of the IHAP were considered by Council's City Development Committee on 15 October 2009, when it was resolved to approve the application in accordance with the recommendations of the IHAP (including Conditions 6 and 8 above). However, Council's City Development Committee also recommended that Condition 5 be amended to read as follows:

- "5. The development being carried out in accordance with the plans, specifications and details prepared by the Terranian Building Group, marked Drawing Plan No. 01 (Existing Ground Floor and Site Plan) and 02 (Proposed Elevations and Section) as received by Council on 28 October 2008, except where modified by the following specific conditions:
- 5.1 The existing windows servicing the proposed function room in the southern elevation of the building shall be replaced with glass blockwork. Such details shall be provided with the application for the Construction Certificate.
 - 5.2 Six (6) off-street car parking spaces shall be provided on site as shown on the plan marked 'A' attached to this development consent. Details shall be provided with the application for the Construction Certificate.
 - 5.3 An amended landscape plan shall be provided with the application for the Construction Certificate which reflects the plan referred to in Condition No. 5.2 above. In this regard, details of landscape screen planting along the southern and western boundaries of the site shall be provided to minimise potential overlooking opportunities in neighbouring residential properties."

Condition No. 38 (advice) of Development Consent DA-486/2008 states the following:

- "38. Condition 6 of this consent has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of the consent. At the end of the time period, Council will assess the desirability of issuing a further limited approval and the length of time of any such approval."

On 16 August 2010, Council refused DA-456/2010 which sought to alter the operations of the approved place of worship to include prayer and education activities over seven days per week and specifically to include a pre-dawn and nightly prayer period.

On 1 December 2012, Council modified the consent (DA-486/2008/A) to amend the internal layout and external building design of the approved place of public worship.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Post 2014 Application History

A second modifying application (DA-486/2008/B) for the place of public worship was lodged on 28 July 2014 seeking approval for the modification of Condition 8 (hours of operation and capacity); deletion of Condition 6 (12 month trial period of consent) and Condition 11 (restriction on location of prayer in the building). On 14 May 2015 the City Development Committee modified the consent DA-486/2008 by deleting conditions 11, 14 and 21 and amending conditions 6, 7, 8, 22 and 38. The amendment of Condition 6 included a 6 month trial period that reads as follows:

6. (a) This approval being for a limited period of a six (6) month trial period from the date of the modified determination of DA-486/08/B. After which time any use of the premises whatsoever will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 6 months of the date of the modified determination of DA-486/08/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this Section 96(2) Application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the 6-month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

On 13 November 2015, (DA-486/2008/C) was lodged seeking approval to modify the approved place of worship by modifying Condition 6 to remove reference to a '6 month trial period' and modifying Condition 8 by amending the times of prayer during daylight saving time at night from 7pm-8pm to 8:30pm-9:30pm. This application is the subject of this report.

DA-486/2008/C submitted documentation in order to satisfy Condition 6(b) and (c). DFP Planning was engaged by Council February 2016 to independently assess this application on its behalf.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

This application was publicly notified between 15 December 2015 and 29 February 2016 to local residents and advertisements were placed in local newspapers. Nine submissions were received.

On 17 March 2016 Council forwarded the submissions to DFP responding to the public notification process, the Acoustic Compliance Assessment report, a summary of the complaints received, advice from our Compliance Officer and a summary of the surveillance of Friday Prayer undertaken by Council compliance officers.

On 24 March 2016, following assessment of the material provided on 17 March 2016, an additional information letter was sent to the applicant regarding the non-compliance with the conditions of consent, in particular the maximum capacity for Friday Prayer, and further clarification and information regarding potential acoustic impacts.

On 15 April 2016 the applicant provided a response to the additional information letter dated 24 March 2016.

On 30 May 2016, Council re-notified the application from 31 May – 22 July 2016 as a consequence of a typographical error identified for the duration of Friday Prayer stipulated in Condition 8 of DA-486/2008/B. This second public notification period generated one formal submission objecting to the proposal.

Site Analysis

The site is located on the south-western corner of Ludgate and Ridgewell Streets at Roselands. The site is Lot 31 DP 730851 at 37 Ludgate Street, Roselands. The subject site is relatively flat with a slight fall towards the Ludgate Street frontage of the allotment and has a frontage of 19.9 metres to Ludgate Street, 45.7 metres to Ridgewell Street and a total site area of 921.3m²

The site contains a single storey place of public worship (mosque) with a six space car parking area in stacked configuration accessed from Ridgewell Street.

The immediate locality forms part of an established low density residential environment predominately consisting of single and two storey dwelling houses of varying age and styles. There are also some examples of a medium density residential development, such as dual occupancy, town house and villa developments in the locality.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Aerial view of site



View of Roselands Mosque from corner of Ludgate Street and Ridgewell Street

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Sign at front entrance to Roselands Mosque



Ludgate Street midday on Thursday 3 March 2016 (prayer)

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Ludgate Street Reserve with Roselands Mosque in background

Proposal

An application to modify DA-486/2008 by removing Conditions 6 (a) from the previously modified consent (DA-486/2008/B) to allow the now temporary place of public worship to operate permanently and to modify Condition 8 to alter the operating/prayer hours of the place of public worship by additional hours, has been received by Council.

Condition 6 currently reads as follows:

6. (a) This approval being for a limited period of a six (6) month trial period from the date of the modified determination of DA-486/08/B. After which time any use of the premises whatsoever will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 6 months of the date of the modified determination of DA-486/2008/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this Section 96(2) Application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the 6-month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
 - (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

The applicant seeks approval to modify the above condition to delete subsection (a), (b) and (c). This would enable the use of the existing building and site as a place of public worship in permanently.

Condition 8 (DA-486/2008/B) relates to the hours of operation and capacity, and reads as follows:

8. The approved hours of operation and the approved activities on the site are to be confined as follows:

(a)

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 12.30pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

(a)

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Friday	1.00pm to 1.30pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40

Proposed modification to Condition 8

The subject application proposes to modify the above condition as follows:

8. The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 1.00pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Friday	1.00pm to 2.00pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40

It is noted that prayer times align with Australian Eastern Standard Time (AEST). Therefore as an example the noon prayer each day commences at 1.00pm during daylight saving time.

Statutory Controls

When determining this Section 96(1A) Application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act, 1979 must be considered. In this regard, the following environmental planning instruments and development control plan are relevant:

- Section 96(1A) of the Environmental Planning and Assessment Act
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

Assessment

This application has been assessed under Sections 96(1A) and 79C of the Environmental Planning and Assessment Act 1979 and the following key issues emerge:

- **Section 96(1A) of the Environmental Planning and Assessment Act**
Section 96(1A) of the Environmental Planning and Assessment Act 1979 allows Council to modify development consent if:
 - (a) it is satisfied that the proposed modification is of minimal environmental impact

Comment

The modifications proposed are considered of minor environmental impact. This is on account of the following:

- I. The modification to Condition 6 to delete reference to the 6 month trial period was a modification necessary to ensure the development consent remains lawful following the 6 month trial period and required by Condition 6(a). Indeed this proposed modification was intended as per Condition 38 of DA-486/2008/B that reads:
“Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of this consent. At the end of the time period upon lodgement of an application, Council will assess the desirability of issuing a permanent development consent on the site. Failure to comply with

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- the necessary requirements of the 6 month trial period and all of the conditions of development consent could result in Condition 6 not being complied with to the satisfaction of Council and the development consent lapsing.”
- II. The proposed change in duration from 30 minutes to one hour for Friday Prayer (noon) is the result of a typographical error on the development consent of DA-486/2008/B. Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour session for Friday Prayer is typical for this prayer and in isolation is not considered to have a significant environmental impact. While the additional 30min prayer times does not represent an increased level of noise and traffic to the area, as this is restricted to noon on a Friday the impact on local residents (who would mostly be at work or school) is not considered to be unreasonable.
- III. The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session, but rather moves it to a later time. As discussed further in this report, the 9.30pm finishing time is close to the 10pm start of the sleep disturbance period. Accordingly, appropriate conditions of consent are recommended that grants approval to a 9pm finish and a trial period to 9:30pm (with Council surveillance) during daylight saving which aims to ensure the proposal is of minimal environmental impact.

Accordingly, given that lodgement of this application at the end of the 6 month trial was required by the development consent, consideration of the application under Section 96(1A) is considered reasonable.

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)

Comment

The proposed modifications are considered to be substantially the same development as the development for which the consent was originally granted.

The NSW Land and Environment Court has made several judgments that provide guidance to determining whether a proposed modification is substantially the same as the consent originally granted. In *Sydney City Council v Ilenace Pty Ltd* [1984] the Court Judgment found that a proposal can only be regarded as a modification if it involves “alteration without radical transformation”. In *Vacik Pty Ltd v Penrith City Council* [1992] the Court judgment found that “substantially the same” meant essentially of “having the same essence”. Furthermore, in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] the Court judgment found that when undertaking the “substantially the same” test a comparison is required to be made between the consent as originally granted and the proposed modification and a consideration of

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

the quantitative and qualitative elements of the proposal must be made with an appreciation of the elements proper context.

The modifications sought represent substantially the same development as that originally granted Development Consent DA-486/2008 (as modified) for the following reasons:

- I. The proposal does not alter the use of the site as a place of public worship, nor does it alter the type of place of public worship (i.e. a mosque) that has been operating on the site since February 2014;
- II. The proposal does not alter the external building envelope of the place of public worship, the existing car parking area and the vehicular and pedestrian access arrangements at the subject site;
- III. The proposed modifications sought are not anticipated to give rise to a significant adverse impact upon traffic and on-street car parking in the locality subject to proposed conditions of the modified development consent;
- IV. The proposed modifications sought are not anticipated to give rise to a substantial increase in noise in the locality, subject to proposed conditions of the modified development consent that limits the term of the consent and condition regarding limiting the use of the rear car park; and
- V. The cumulative amenity impacts of the proposed modifications on residents and other stakeholders in the locality is considered to be satisfactory given the outcome of the acoustic assessment and the minor modifications sought.

Accordingly, the proposed modifications are considered not to be a radical transformation to what was originally approved. The already modified consent has the same essence of elements as what was originally granted consent by Council.

Furthermore, consideration of the quantitative and qualitative elements of the proposal has been made with an appreciation of the elements proper context and is considered to satisfy the “substantially the same” test of Section 96(1A)(b) of the EP&A Act. As such, the modifications sought as part of this application are considered to be consistent with the provisions of Section 96(1A)(b) of the Act. The development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

- (c) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent

Comment

The Section 96(1A) Application has been notified in accordance with Part 7 – Notification of Applications of Canterbury DCP 2012.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment

On 15 December 2015 the application was publicly notified to surrounding and nearby properties for a period of 76 days to 29 February 2016. Advertisements were also placed in local newspapers.

Council received nine submissions objecting to the proposed modifications (including three from the one submitter), and the resubmission of an earlier submission that was originally submitted for DA-486/2008/B.

On 30 May 2016, we re-notified the application until 22 June 2016 as a consequence of a typographical error identified for the duration of the proposed of Friday Prayer times. Advertisements were also placed in local newspapers. Council received one formal submission objecting to the proposed modification.

The matters raised in the submissions and petitions have been considered and addressed within this report.

Section 96(3) of the Environmental Planning and Assessment Act 1979 provides that the following is applicable to the subject Section 96(1A) Application:

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Comment

These matters are addressed below in this report.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

The subject site is zoned R3 Medium Density Residential under CLEP 2012. The proposed use is defined as a 'place of public worship' which is permissible in the R3 zone.

An objective of the R3 is to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed modification to certain conditions of the development consent is not considered to change the consistency of the current use of the site as a place of public worship with the objectives of the R3 zone. Namely, enabling a non-residential use (a place of public worship) that meets the day to day religious needs of Muslim residents in the local community.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- **Canterbury Development Control Plan 2012 (CDCP 2012)**

The Development Control Plans (DCPs) in force at the time of the determination of DA-486/2008 were superseded on 1 January 2013. The current application has been assessed in accordance with the current applicable controls for the site, outlined in CDCP 2012 as follows:

Part 5.8 – Non-residential Development in Residential Zones

The objective is as follows:

To reduce unreasonable amenity impacts on surrounding residents caused by non-residential uses.

The controls are as follows:

- i. Non-residential development in a residential zone will be assessed for its impact on residential amenity.
- ii. Non-residential development in a residential zone will only be acceptable where adverse impacts on the amenity of residences in the immediate area (for example through traffic generation, parking demand, noise or any other form of pollution that is incompatible with residential uses) are avoided or minimised.
- ii. Council may impose conditions of consent to minimise any impact on residential amenity including limiting the scale of the development, restricting hours of operation or the like.

The potential for adverse amenity impacts of the place of public worship upon the surrounding residential neighbourhood as a consequence of the modifications to the conditions of the development consent sought by the applicant is key to the assessment of the subject application.

Indeed, the two key matters for consideration of the proposed modifications to the conditions of the development consent for the mosque at the site on the residential amenity of the locality are as follows:

1. Are the proposed modifications as sought in this application likely to give rise to any significant adverse acoustic impacts upon the residential amenity of the surrounding area?
2. Are the proposed modifications as sought in this application likely to give rise to any significant adverse traffic and on-street parking impacts on the local street network?

The assessment of these key issues are detailed within Section 79C (1)(b) of this report. It has been found that, provided the applicant complies with the terms of the modified conditions of the development consent and Council appropriately take enforcement action should the operators breach any of the conditions of the development consent, then potential impacts upon the amenity of the locality are mitigated and, accordingly are satisfactory. This is based on the modification of the 9:30pm finish during daylight saving time to a 6 month trial period. The proposed modification to the duration of Friday Prayer from 30 minutes to one hour is typical

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

for Friday Prayer and is correcting a typographical error contained within the development consent of DA-486/2008/B. This modification is not expected to give rise to increased amenity impacts from unreasonable noise or parking availability upon the surrounding locality.

Part 6.8 – Vehicular Access and Car Parking

The aims of this Part are to ensure that development provides for adequate off-street car parking and access arrangements. The DCP provides specific parking rates for a range of development types and provides that for places of public worship, car parking will be considered following an assessment of similar developments.

Car parking issues with the place of public worship (mosque) attracted significant attention during the assessment of the original development application and subsequent monitoring applications. CDCP 2012 adopts the same car parking generation control for places of public worship as the now superseded DCP 20 in force at the time of the assessment of the original development application. CDCP 2012 states that as a 'guide', one space shall be provided per five people (accommodation capacity) for the first 100 people. Based on the 'guide' car parking requirement, and having regard to the maximum number of people approved to use the place of public worship for Friday Prayer during the trial period (60) the mosque generates the need for twelve off-street car parking spaces and three bicycle spaces. The maximum number of people approved to be attending the place of public worship is not proposed to be changed as part of this application. However, it is noted that surveillance undertaken by our compliance officers between June 2015 and November 2015 of Friday Prayer has revealed that the 60 person maximum is regularly and significantly exceeded, thereby resulting in weekly adverse impacts upon on-street parking and local traffic conditions prior to, during and following the Friday Prayer session.

Six car parking spaces in a stacked configuration are provided at the rear of the site and accessed off Ridgewell Street. No changes are proposed to the approved off-street car parking area located at the rear of the site.

A Traffic and Parking Assessment report has not been submitted by the applicant to support the subject application. This is because no increase in maximum capacity or the number of weekly prayer sessions is proposed by this subject application.

It is noted that the previous application (DA-486/2008/B) that proposed seven day operation and an increased Friday Prayer capacity (amongst other modifications) submitted a Traffic and Parking Assessment Report prepared by Bitzios Consulting that was subsequently peer reviewed by our Traffic and Transportation team who advised that there is no objection to the proposal on traffic and parking grounds.

There has been no indication that the six month trial period or seven day operation of the mosque have given rise to significant adverse on-street parking and traffic impacts upon the local street network outside of Friday prayer. However, there is

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

evidence to suggest that the regular non-compliance with the 60 persons maximum capacity for Friday Prayer, and in particular its magnitude (up to 157 persons observed by Council on 10 July 2015), does result in adverse on-street parking and local traffic impacts for the midday period each Friday.

Parking and traffic considerations for the proposed permanent place of worship will be further discussed in a later section of this report.

Part 6.3 – Crime Prevention Through Environmental Design (CPTED)

The proposal does not involve any changes to the design, maximum capacity, number of weekly prayer sessions or physical appearance of the building.

Other Considerations

- **The Likely Impacts of the Development**

The potential adverse impacts of the proposed modifications on the surrounding residential locality are discussed as follows:

Modification of Condition 8 – Approved Hours:

Traffic Generation and Parking

Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour prayer session for Friday Prayer (rather than 30 minutes for the other prayer sessions) is typical for this prayer and the proposed one hour duration in itself is not considered to give rise to significant adverse traffic and on-street parking impacts for the local street network. Rather the number of people attending the mosque for Friday Prayer that is consistently and significantly above the maximum capacity of 60 people is considered the factor generating adverse impacts upon the local street network in terms of parking and traffic.

The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session or the maximum capacity, but rather moves the session to a later time. As such, on-street parking situation surrounding the mosque is not expected to significantly change from the existing situation. Indeed during daylight saving time, weekday on-street parking surrounding the mosque could be modestly improved in the early evening (ie 6:15pm to 8:15pm) given the greater time period between the late afternoon prayer session and the evening prayer/education session. The early evening during the week is the period where on-street parking demand is typically the greatest on account of residents returning home from work/school and other daily activities.

It is noted that a small number of illegal parking complaints from local residents have been received by Council and subsequently investigated. However, there has been minimal evidence provided to Council or residents of on-going and significant adverse on-street parking and traffic impacts upon the local street network, outside of the Friday prayer session.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Accordingly, the proposed modifications to Condition 8 is not considered to give rise to significant adverse traffic and on-street parking impacts upon the local street network, and therefore the modification is supported on traffic and parking grounds.

Acoustic/Noise

Given the time of the prayer (noon Friday) adverse acoustic impacts upon the surrounding locality as a consequence of a one hour Friday Prayer instead of a 30 minute Friday Prayer is considered minimal. Indeed, acoustic impacts that have been identified by the Wilkinson Murray acoustic peer review report dated 14 March 2016 relate to the rear car park operation, rather than noise emanating from within the mosque. Accordingly, a 30 minute or a one hour Friday Prayer session generates the same noise from the rear car park.

The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session, but rather moves it to a later time. The 9.30pm finishing time extends the operation of Roselands Mosque including worshipers leaving the premises and the locality near to the sleep disturbance period commencing at 10:00pm.

This proposed change in operating hours has not been addressed in the Acoustic Compliance Assessment report prepared by Renzo Tonin & Associates dated 3 September 2015. As such, on 24 March 2016 additional information correspondence was sent to the applicant requesting that further information be provided by the applicant's acoustic consultant assessing the potential for sleep disturbance as a consequence of the proposed operation of the premises until 9:30pm during the daylight saving time period.

Furthermore, the letter requested clarification whether the daily night-time (or Isha) prayer will be practiced at the premises during the months of December and January. This was requested as the night-time prayer/Isha prayer commences near astronomical twilight which in the months of December and January occurs predominately after 9:30pm. Accordingly, should Roselands Mosque conduct the daily night-time prayer during the months of December and January then worshipers and management possibly could be leaving the premises and locality near to and after 10:00pm. This would potentially give rise to adverse impacts upon the acoustic amenity of the locality, particularly through the operation of the rear car park and worshipers leaving by car from the surrounding local streets after 10:00pm and during the sleep disturbance period.

Willana Associates on behalf of the applicant responded to these requests via correspondence dated 11 April 2015 as follows:

"Council's letter requests clarification regarding the proposed prayer time for the daily night-time/ Isha prayer, particularly in the months of December and January. Willana have been informed by the client that prayer will be held in accordance with the requested hours of operation and therefore will be

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

completed by 9:30pm at the very latest. It is therefore considered unreasonable to request additional information from an acoustic consultant regarding impacts after 10:00pm given the premises would be operating outside of the conditions of consent. It is unreasonable to consider it would take half an hour to get from the place of public worship to a vehicle to leave. In line with the Plan of Management, prayers are either totally silent or held in a quiet fashion and patrons are directed to leave the premises in a quiet orderly fashion."

Given the history of the mosque breaching its conditions of consent, in particular the approved maximum capacity during Friday Prayer, but also less regularly the operating hours for the evening prayer/education session, a 9:30pm finishing time, is considered too close to the start of the sleep disturbance period to reasonably allow for all persons to have left the locality to warrant unrestricted approval at this time.

Furthermore, the response by Willana Associates has not sufficiently answered the question regarding Isha prayer during the months of December and January. The applicant has provided little rationale for the proposed change in time for the education/prayer session during daylight saving time, apart from a "clerical oversight" detailed in the Statement of Environmental Effects. Therefore without the benefit of the requested clarification regarding this prayer, we are left to reasonably conclude that the proposed change in session time is related to the desire for the mosque to operate in accordance with the Isha prayer time during the entire or partial daylight saving time period. Which in the months of December and January commences at 9:30pm or later.

Accordingly, it is recommended that approval is granted to changing the evening prayer/education session during daylight saving time from 7:00pm - 8:00pm to 8:00pm - 9:00pm to allow sufficient time for all persons to leave the mosque and locality prior to 10pm. However, it is further recommended to provide a trial period for the requested 8:30pm to 9:30pm evening prayer/education session during the 2016/17 daylight saving time period commencing on 2 October 2016 and finishing on 1 April 2017. During this time period compliance with 9:30pm finish time is recommended to be monitored by Council to record whether compliance is achieved. Monitoring is recommended to take the form of recording any resident complaints and regular observational monitoring of the premises by Council compliance officers, particularly during the months of December and January.

At the end of the 2016/17 daylight saving time period the applicant can choose to lodge a further application (ie another application to modify the consent) to make the 8:30pm to 9:30pm prayer/education session permanent for the daylight saving time period.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Deletion of parts (a), (b) and (c) of Condition 6:

This condition (as modified) limited the approval to a trial period of 6 months from determination of DA-486/2008/B on 14 May 2015. The amendment of Condition 6 included a six month trial period that reads as follows:

- 6 (a) This approval being for a limited period of a six month trial period from the date of the modified determination of DA-486/2008/B. After which time any use of the premises whatsoever will require the prior written consent of the Council via a new DA or modified consent). In this regard an appropriate application shall be made to Council for consideration within six months of the date of the modified determination of DA-486/08/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the six month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

The applicant seeks modification of Condition 6 to delete parts (a), (b) and (c) that relate to the trial period and tasks required to be undertaken during the trial period, whilst retaining parts (d) and (e), and relabelling them parts (a) and (b).

In terms of part (a) of Condition 6, the subject application was lodged on 13 November 2015, which is within the six month time period of determination of DA-486/2008/B on 14 May 2015 as stipulated, and can be removed.

In terms of part (b), the application was supported by an acoustic report submitted by Renzo Tonin & Associates dated 3 September 2015. This acoustic report was peer reviewed by Wilkinson Murray on Council’s behalf. The Wilkinson Murray report dated 14 March 2016 made the following findings:

- The compliance measurements were carried out correctly and in accordance with the Conditions of Consent;

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- Prayer and education activity were found to be inaudible at nearby residential receiver locations;
- Noise levels from the rear carpark, as measured at 33 Ridgewell Street, were found to exceed the 40dBA noise goal set in the original Renzo Tonin & Associates acoustic report;
- No call to prayer was observed.

The Wilkinson Murray report then concluded the following:

“The small change in hours proposed would be of minor significance in regard to noise impact. Any noise impact associated with the rear carpark would remain unchanged, other than a small change in the time during which any impact would occur. This would mean that the potential for disturbance, identified in the acoustic compliance report, would remain. Since, as reported, no complaints have been received, it is recommended that this application be approved. However, there would be merit in adding an additional Condition in regard to the rear carpark:

Should complaints of noise be received from the occupants or owners of nearby properties, the applicant shall offer to provide air-conditioning and ventilation to all rooms of the affected building with windows facing north-east. If the offer is accepted, the applicant shall install the air-conditioning and ventilation at a time and in a way convenient to the occupants at his expense.”

The inclusion of the above suggested condition on the modified development consent is not supported for the following reasons:

- Reliant on a noise complaint being made from the adjoining property (over an indefinite time period) for the condition to become activated and without determining the merit of the noise complaint;
- Uncertainty as to whether the complainant would accept such an offer, and the reasonableness of the offer; and
- The type of air conditioning system offered could result in conflict between the parties and the offer ultimately being rejected by the complainant due to unsatisfactory quality or type of system offered, yet the applicant still satisfying the condition.

Notwithstanding this, the intention of the suggested condition that aims to mitigate the potential acoustic impact upon 33 Ridgewell Street is supported.

However, the erection of an acoustic barrier along the property boundary was suggested by the Renzo Tonin & Associates report dated 7 November 2014 (submitted in support of DA-486/2008/B) but would have needed to be 4m-4.5m in height to protect the first floor windows of the adjoining property. This solution is not supported as a 4m-4.5m high acoustic wall would be inconsistent with the low scale residential character of the locality.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

As an alternative, it is recommended that the rear car park is limited in its usage in order to mitigate the cumulative acoustic impacts of the mosque. Limiting the usage of the rear car park to Friday, Saturday and Sunday and the evening prayer/education sessions seven days a week. These times correspond with the highest demand for on-street car parking (weekends and evening periods) and the highest mosque attendance day of Friday. This results the rear carpark not being used Monday to Thursday (inclusive), except for the evening prayer/education session.

This would allow an appropriate weekly reprieve in noise generation from the seven day operation of the mosque's rear car park. The times recommended that restrict the use of the rear car park deliberately coincide with the lowest on-street parking demand from local residents and the worshippers of the mosque, thereby minimising adverse impacts upon the surrounding local street network.

In terms of part (c), the Statement of Environmental Effects prepared by Willana Associates provides the following statement:

"As required under condition 6(c), a Complaints Hotlines was set up with each of the complaints recorded and investigated. No complaints were received. The Complaints Hotline will continue to operate as a method of recourse for the surrounding residents. In this way all matters of concern will be recorded and addressed.

It is noted that a complaint was received by Council in relation to a breach in the hours of operation relating to the evening daylight saving prayer session. Once made aware of the complaint, the premises ceased to operate outside of the consent. This application seeks to rectify the daylight saving variations to the hours as previously detailed.

The proposed amendment to the provisions of Condition 6 will not result in any additional likely impacts to that of the approved use."

The above statement confirms that a Complaints Hotline was set up by the proponent during the six month trial period satisfying the condition, however no complaints from the public were received. It is noted that numerous complaints from local residents were received directly by Council during the six month trial period that typically related to the mosque not complying with its maximum capacity during Friday Prayer and operating later than the approved hours of operation. Also, resident complaints in regard to illegal street parking were received by Council.

Given that no complaints were received by the Complaints Hotline yet numerous complaints were received directly to Council suggests that either local residents were not aware of the Complaints Hotline or believed complaints directly to Council were the most appropriate course of action. Accordingly, it is considered that this component of Condition 6 be deleted as it has shown to be of little or no purpose.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Intention of Condition 6

The intention of Condition 6 is described in Condition 38 of DA-486/2008/B that reads:

38. Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of this consent. At the end of the time period upon lodgement of an application, Council will assess the desirability of issuing a permanent development consent on the site. Failure to comply with the necessary requirements of the 6 month trial period and all of the conditions of development consent could result in Condition 6 not being complied with to the satisfaction of Council and the development consent lapsing."

Council's compliance officers conducted surveillance of the operation of the mosque for Friday Prayer, which is the weekly prayer session that overwhelmingly generated the most complaints from local residents during the six month trial period, and is the primary focus of most of the objections received by local residents responding to the public notification period for the subject application.

The table below details the observations of surveillance that was undertaken by Council between June 2015 and November 2015:

Council Surveillance of Friday Prayer (60 person maximum capacity)			
Date	Time	Attendance	Other notes
12 June 2015	11:45am-1pm	135 people	-
19 June 2015	11:46am-12:40pm	133 people	Illegal parking observed
26 June 2015	11:50pm-12:30pm	114 people	-
3 July 2015	11:46am-12:40pm	150 people	-
10 July 2015	11:36am-12:40pm	157 people	Double parking and traffic congestion observed
31 July 2015	11:40am-12:40pm	66 people	-
7 August 2015	11:40am-12:42pm	105 people	Illegal parking and traffic congestion observed
21 August 2015	11:45am-12:35pm	114 people	Illegal parking and traffic congestion observed
28 August 2015	11:50am-12:35pm	91 people	Illegal parking and traffic congestion observed
4 September 2015	11:50am-12:30pm	127 people	-
18 September 2015	11:42am-12:35pm	103 people	-
30 October 2015	1pm-1:30pm	105 people	-
13 November 2015	12:56pm-1:30pm	123 people	Illegal parking and traffic congestion observed

Third party surveillance on two occasions as detailed in the table below:

Date	Time	Attendance	Other notes
3 March 2016 (Thursday)	12:55pm-1:30pm	9	Maximum capacity for Thursday midday prayer is 15 people

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Date	Time	Attendance	Other notes
4 March 2016 (Friday)	12:45pm-1:45pm	115 people	Illegal parking observed

There has clearly been significant and ongoing breaching of the maximum capacity of 60 persons for Friday Prayer. Indeed, the average attendance for Friday Prayer over the 13 weeks of Council surveillance was 117 people.

The local residents submissions received in respect to public notification of the subject application convey various aspects of the place of public worship's operations that has not complied with conditions of development consent and given rise to adverse amenity impacts upon local residents. These include (but are not limited to) operating past 7.30pm and breaching the stipulated maximum capacity. Furthermore, photographs have been provided by local residents of at least one occasion where worshipers (seven men) have been praying externally to the building during Friday Prayer, presumably due to capacity issues within the building. This is a breach of Condition 23 of DA-486/2008 (as modified).

The outcome of the surveillance undertaken for Friday Prayer was raised with the applicant in correspondence dated 24 March 2016 and a response was requested as to why the mosque had not been operating in accordance with Condition 8 of DA-486/2008/B and the measures to be put in place to ensure compliance. Willana Associates on behalf of the client responded as follows in respect of compliance with maximum capacity:

"Council's letter details non-compliance with the maximum capacity of 60 persons approved for Friday Prayer. The client has acknowledged the challenge of managing the attendance of worshippers for this particular prayer session. In preparing the original Development Application and subsequent Section 96 Applications, the proposed patron capacity for each prayer session was based on an estimate of the demand in the area for the place of public worship's services. These estimates formed Council's maximum capacity in the conditions of consent.

The additional demand not considered within previous applications can be attributed to:

- New residents that have moved to the area that regularly attend the premises;*
- A greater number of patrons that already lived in the area than previously thought;*
- Workers within the area, particularly casual employees on nearby building sites.*

While this does not permit a greater number of patrons to attend than approved, it is acknowledged that it is largely outside the control of the place of public worship management to determine how many wish to attend. Nevertheless, we are informed by the client that the following management

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

strategies are being implemented to ensure that capacity for Friday Prayer can be complied with and to discourage additional attendees arriving:

- *Capacity is counted by management of the place of public worship. Worshippers arriving after capacity has been reached are informed that the maximum capacity has been reached and will be turned away.*
- *Casual employees in the area are aware of the capacity issue and are anecdotally not returning.*
- *Informing attendees of other places of public worship in the area.*
- *In line with the current Plan of Management, a local volunteer is stationed outside to ensure nearby vehicles are parked legally. They now also inform patrons when capacity is reached.*

It is noted that the existing Plan of Management did not adopt direct management procedures to address the issue of patrons attending above the maximum capacity. This demonstrates that the current demand was not originally identified as a key management issue. The abovementioned strategies have all been discussed and implemented following the trial period and highlight the management of the place of public worship's intention to comply with the conditions of consent. The client has informed us that the adopted measures are having the desired effect."

It is not accepted that the number of patrons attending Friday Prayer is largely outside the control of the management of the mosque. Particularly when on average almost double the maximum permitted by Condition 8 are attending. The large numbers of people attending Friday Prayer at the site is giving rise to adverse traffic and on-street parking impacts on the surrounding local street network. Indeed, it was observed on 4 March 2016 at 1:30pm that there were no on-street parking spaces within 100m to 150m of the mosque.

The remainder of the prayer and prayer/education services have largely been complied with the times and the maximum capacities as stipulated in Condition 8. This has been confirmed by third party observations of the Thursday midday prayer session, Wednesday evening prayer/education session and the fewer number of resident complaints and objections regarding the mosque operations outside of Friday Prayer. Council's compliance officers have confirmed that there was a period when the mosque operated outside of its approved hours for the evening/education prayer session. This occurred at the transition to daylight saving time and once informed of the breach the issue was rectified by the management of the mosque.

Accordingly, the deletion of Condition 6 as sought by the applicant is not considered appropriate or warranted at this time.

It is however considered reasonable that the management of the mosque be permitted to implement the strategies put forth to discourage additional attendees arriving for Friday Prayer. Therefore it is considered appropriate to modify Condition 6 to provide a further trial period for Friday Prayer only. Condition 6 therefore is

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

recommended to be modified accordingly and include a requirement for management of the mosque to detail the strategies found to be most effective in controlling Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the trial period. This documentation could then be provided to Council at the end of the trial period as part of an application requesting Friday Prayer be unencumbered by a trial period.

Social Impacts

The positive social impacts for local Muslim residents to have a local community based mosque that services their religious needs is acknowledged and supported. There appears to be however a divide between the experience of some local residents to the operation of the mosque as expressed in the submissions received.

On review of the submissions objecting to the proposal that many of the negative experiences of local residents regarding Roselands Mosque relate to it not complying with the terms of its development consent. Full compliance with the conditions of development consent, particularly in matters of capacity and hours of operation is expected to reduce negative amenity and social impacts upon local residents.

Should the conditions of development consent continue to be breached, then this would be a compliance issue for Council and enforcement action is recommended.

- **The Suitability of the Site for the Development**

On the basis of the assessment contained within this report, it is considered that the modifications sought in the subject application would not make the place of public worship unsuitable for the site. However, this is based upon all conditions of the modified development consent being complied with.

- **The Public Interest**

On the basis of the assessment contained within this report, it is considered that the modifications sought in the subject application would be in the public interest provided all conditions of the modified development consent being fully complied with by the applicant.

Notification

On 15 December 2015 the application was publicly notified to surrounding and nearby properties for a period of 76 days to 29 February 2016. Advertisements were also placed in local newspapers.

Council received ten submissions objecting to the proposed modifications (inc. three from the one submitter), and the resubmission of an earlier submission that was originally submitted for DA-486/2008/B.

On 30 May 2016, we re-notified the application until 22 June 2016 as a consequence of a typographical error identified for the duration of the proposed of Friday Prayer times.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Advertisements were also placed in local newspapers. Council received one formal submission objecting to the proposed modification.

The matters raised in the submissions of objection regarding the initial public notification and their consideration are as follows:

Matters Raised	Consideration
Council compulsorily acquire the site at market value for public open space, thereby expanding the adjoining park and making it more attractive to use for the local community; and Council assist the proponent to identify and secure a more suitable site for the mosque in a commercial area.	<ul style="list-style-type: none"> • Council has no intention to acquire the site for public open space or any other purpose. • As such, compulsory acquisition of the site and other assistance to the proponent to find an alternative site is not appropriate.
Failure of the mosque to comply with all conditions of consent. Council not responding to resident complaints.	<ul style="list-style-type: none"> • The Roselands Mosque has failed to comply with Condition 8 of the development consent relating to hours of operation and maximum capacity. This is an enforcement issue for Council. The principal and on-going observed breaching of Condition 8 by the mosque is related to Friday Prayer and the maximum approved capacity being breached by an average of nearly double the approved maximum of 60 people. • Accordingly, it is not desirable to delete Condition 6 relating to the trial period in its entirety, but narrow the scope for the trial period to relate to Friday Prayer only with the applicant providing to Council a record of weekly attendee numbers at the close of the trial period. It is recommended Council also undertake surveillance to confirm the number of attendees. • In regard to the operation of the mosque outside of Friday Prayer, Council has advised that during the transition to daylight saving time in October 2015 the mosque began operating beyond its approved closing time of 8pm. At least one resident complaint received by Council indicated that the mosque was operating beyond 9pm. The management of the mosque were contacted by Council and the matter was rectified, with the management of the mosque citing an oversight as to the closure time during daylight saving time believing it to be 9pm. • A total of 25 resident complaints were received by Council during the 6 month trial period. These related to the breaching of Condition 8 and illegal street parking. Council responded to each resident complaint and undertook surveillance of the mosque. Apart from issues related to Friday Prayer and the breach in closing time during October 2015, there were a low number of sporadic resident complaints received by Council concerning illegal street parking and mosque operation.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
	<ul style="list-style-type: none"> Accordingly it is considered that the remainder of the mosque operating hours (apart from Friday Prayer and closing time during daylight saving time) be unencumbered by a trial period.
Operations dragging out longer than the Council imposed trial period.	<ul style="list-style-type: none"> Condition 7 in DA-486/2008/B (as modified) allows for the continued operation of the mosque until determination of a modifying application following the six month trial period provided the application was received within the six month trial period. The application was received by Council on 13 November 2015, within the six month trial period.
Residents were not provided with an independent Complaints Hotline. The Complaints Hotline set up by the proponent was not communicated to the residents, nor should it have been a condition given the inherent bias.	<ul style="list-style-type: none"> The applicant has stated that a Complaints Hotline was set up during the six month trial period thereby satisfying the condition. No complaints from the public were received. It is noted that numerous complaints from local residents were received directly by Council during the six month trial period that typically related to the mosque not complying with its maximum capacity during Friday Prayer, illegal parking and operating later than the approved hours of operation. Given that no complaints were received by the Complaints Hotline but numerous complaints were received directly by Council confirms that either local residents were not made aware of the Complaints Hotline (as claimed by residents) or alternatively residents believed complaints directly to Council were the most appropriate course of action. In any event this component of Condition 6 should be deleted as it has shown to be of little or no purpose and inherently prone to a conflict of interest.
Doors of the mosque being left open and people are now worshipping outside due to excessive numbers attending.	<ul style="list-style-type: none"> The doors of the mosque being left open is a breach of Condition 17 of DA-486/2008/B (as modified). This alleged breach is a matter of enforcement for Council's compliance team. In any event, acoustic monitoring of the mosque (Renzo Tonin & Associates report dated 3 September 2015) required as part of the Condition 6 has revealed that noise emission from internal prayer and education sessions was inaudible at the measuring location. We did not observe any doors or windows being left open during prayer sessions. The issue of the worshippers praying outside the mosque is related to the issue of excessive attendance at Friday Prayer that is addressed within this report. It is noted that people praying outside the mosque has been documented by a photograph taken by a resident on one occasion (seven men praying in the front yard of the mosque). Surveillance of Friday Prayer did not note this event occurring whilst in attendance.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
Noise levels are in breach of conditions.	<ul style="list-style-type: none"> • There are no conditions of consent that relate to noise levels associated with the operation of the mosque. Only Condition 18 relates to mechanical ventilation noise levels, which there is no evidence of the applicant breaching. • It is presumed that the objection relates to noise generated by the rear car park, on-street parking and internal noise associated with the operating of the mosque. • In this regard, the Renzo Tonin & Associates report dated 3 September 2015 found that the noise of the rear car park exceeded the noise goal by 7 dB at the location near the boundary. Accordingly, a condition as recommended in the acoustic report has been recommended to restrict access to the rear car park from Monday to Thursday (excluding the evening session) in order to reduce the cumulative acoustic impact upon 33 Ridgewell Street. • In terms of on-street parking noise, there is no noise criteria for street car parking between 7am and 10pm. Furthermore, the acoustic monitoring of the mosque (Renzo Tonin & Associates report dated 3 September 2015) required as part of the Condition 6 has revealed that noise emission from internal prayer and education sessions was inaudible at the measuring location. • As such, provided the recommended condition is implemented and complied with, acoustic impacts generated from the mosque are considered acceptable.
People arrive prior to and staying after the session times, which will be exacerbated by the proposed changes to Condition 8.	<ul style="list-style-type: none"> • People arriving to the mosque prior to and leaving after the designated session times is anticipated provided it is within a reasonable time period (ie 5-10 minutes on either side of session time). Beyond this, is a matter of enforcement by Council's compliance officers. • The proposed 9:30pm finishing time during daylight saving time is subject to a trial period in order to monitor whether compliance is achieved and if there is any adverse impact upon the surrounding neighbourhood and the sleep disturbance period starting at 10pm.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
<p>On-street car parking demand is high during peak operation times of the mosque. The mosque is one of the most trip intensive generating activities that could be in this location.</p>	<ul style="list-style-type: none"> On-street car parking supply at peak times and traffic has been addressed as part of the DA/486/08/B. The current application does not propose to increase the maximum capacity of any prayer session times or increase the number of weekly prayer session times. As such, no change is anticipated as part of the current application. It was found after assessment from our traffic section in DA-486/2008/B that there was sufficient on-street parking available during the weekday evening peak period. It is noted that Friday Prayer is the primary traffic generating and on-street parking demand session of the week. This is largely as a consequence of the significant breach in the approved maximum capacity of 60 persons attending each week. Compliance with the maximum capacity of 60 persons is considered to significantly reduce the adverse impacts upon the local street network during the Friday midday period. As such, a trial period is recommended for Friday Prayer to allow for the mosque's management to implement strategies to discourage over-attendance for Friday Prayer.
<p>Patrons are not locals who walk to the mosque as claimed by the applicant.</p>	<ul style="list-style-type: none"> Our observations of Friday Prayer is that a majority of worshippers drive to the mosque. With approximately 15%-20% of worshippers appearing to arrive at the mosque by foot. Whilst this is contrary to information provided by the applicant as part of the previous application, it is considered that compliance with the maximum capacity of 60 persons for Friday Prayer will mitigate adverse impacts upon the surrounding streets.
<p>The social amenity of the area has been adversely impacted and residents feel unsafe as a consequence of the mosque operation.</p>	<ul style="list-style-type: none"> No evidence of anti-social or criminal activity as a consequence of the operation of the mosque has been demonstrated.
<p>The location of the mosque hinders the ability of local residents to use the adjoining reserve. CPTED principles have not been considered. The owner of 39 Ludgate Street was driven out of the area by the location of the mosque, and the property converted into the expanded reserve.</p>	<ul style="list-style-type: none"> The adjacent reserve has been recently expanded by more than double its previous size. As such, it is considered more usable and attractive for the local community. The perception that the position of the mosque adjacent to the reserve makes the reserve less attractive to use by the local community is not supported. Public reserves and parks are commonly located next to places of public worship without land use interface conflict. There is no evidence to the contrary in this instance. CPTED principles were considered as part of the previous application. No changes in the current application are considered to change the crime prevention profile of the mosque.
<p>With the trial period ending and the breaches noted, the development consent should be revoked.</p>	<p>The trial period is considered warranted to be extended for Friday Prayer and the proposed evening session during daylight saving time. The remainder of the operating hours of the mosque are considered to be reasonable and recommended to be unencumbered by a trial period due the reasons contained within this assessment.</p>

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
The proposed change to Condition 8 for the later evening session is actually seeking an additional 2 hours of operating time daily, which will adversely impact the amenity of areas and result in sleep disturbance.	<ul style="list-style-type: none"> • The proposed change in the daily evening session time during daylight saving time is from 7pm-8pm to 8:30pm to 9:30pm. This is proposed by the applicant as a shift in session time rather than an expansion in session time. Should the mosque be operating outside of its session times this would be a matter of enforcement for Council's compliance officers. • As detailed within this report, approval is given to an 8pm-9pm evening session time during daylight saving time, with the 8:30pm-9:30pm evening session time requested by the applicant subject to a trial period to ensure compliance and that the sleep disturbance period is not impacted.
Illegal parking across driveways	<ul style="list-style-type: none"> • This is a parking enforcement issue for Council's rangers. It is noted that, illegal parking has typically occurred as a consequence the significant over-attendance at Friday Prayer (almost double on average than the maximum 60 persons approved). Given the large numbers of people attending the mosque for Friday Prayer and limited on-street parking spaces being available within approximately 100m-150m of the mosque, some late arrivals illegally park (ie too close to intersections, partially across driveways, etc) near to the mosque. • this is a consequence of the maximum capacity for Friday Prayer being exceeded. Accordingly, a trial period is extended for Friday Prayer to allow the management strategies put forth by the applicant to be implemented to discourage over-attendance.
Traffic issues associated with the mosque blocking seniors access to services and the safety of children.	The traffic issues with Friday Prayer are contained to the midday Friday period when children are typically at school.
Other nearby mosques in the area can accommodate the worshippers.	This is not a relevant matter for consideration in this application.
The site is not suitable for the place of public worship	The modifications sought will not make the place of public worship unsuitable for the site. However, this is based upon all proposed modified conditions of the development consent being complied with.
Adverse effect on land values	Given that a valuation has not been provided, it is undetermined whether the proposed modification to the development consent for the mosque would affect land values in the surrounding area. In any event, compliance with the terms of the development consent and appropriate Council enforcement should any condition be breached are anticipated to minimise amenity impacts on the surrounding locality.
The mosque has been able to breach its conditions of consent without consequence from Council.	Council has undertaken surveillance of the mosque and been in contact with the management of the mosque at certain times when there have been breaches in operating times and maximum capacity.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
Proposed modification not consistent with objectives of R3 Medium Density Residential zone	The proposed modification to the conditions of the development consent are not considered to change the consistency of the current use of the site as a place of public worship with the objectives of the R3 zone. Namely, enabling a non-residential use (a place of public worship) that meets the day to day Muslim religious needs of residents in the local community.
Non-compliance with Part 5.8 of CDCP 2012.	Part 5.8 of CDCP 2012 has been assessed in this report. It has been found that on account of the findings of the peer review of the acoustic consultant reports provided by the applicant, the proposed modifications are generally compliant with the provisions of Part 5.8 of CDCP 2012, provided the recommended conditions of the acoustic report are complied with.

On 30 May 2016 the application was publicly re-notified until 22 June 2016. This was due to a typographical error for the approved hours of operation for Friday Prayer (midday) on the DA-486/2008/B Notice of Modification. Council received one formal submission of objection and two email enquiries regarding the process following amalgamation of the City of Canterbury and Bankstown City Council to form the new City of Canterbury Bankstown Council. Council has appropriately responded to the two enquiries regarding application process. As such, below is the consideration the additional matters raised in the formal submission of objection regarding the public re-notification:

Matters Raised	Consideration
Object to any increase to the hours of operation, no matter what time of day, no matter what time of year. (Note: Other matters raised in the submission have been considered as part of the initial public notification.)	The re-notification of the application was as a consequence of a typographical error for the approved hours of operation for Friday Prayer (midday) on the DA-486/2008/B Notice of Modification. Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour prayer session for Friday Prayer (rather than 30 min for the other prayer sessions) is typical for this prayer and in itself is not considered to give rise to adverse impacts on the local area.

Conclusion

The proposed modification is substantially the same development that was originally considered and approved by Council. The proposed modification is considered acceptable having regard to the provision of Sections 79C and 96 of the Environmental Planning and Assessment Act, 1979.

The recommended amendments have the following affect and are summarised below:

1. Allows the Mosque to operate in accordance with its conditions of consent without a trial period on Mondays, Tuesdays, Wednesdays, Thursdays, Saturdays and Sundays.
2. The Mosque shall operate on a trial basis on Fridays to ensure the Mosque operates in accordance with its conditions of consent prior to a permanent consent being considered.
3. The midday Friday prayer may operate for a one hour period.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

4. The evening prayer in daylight savings shall operate from 8:00pm – 9:00pm permanently notwithstanding the Friday trial period.
5. A 6 month trial period for evening prayer in daylight savings shall operate from 8:30pm – 9:30pm
6. Ongoing monitoring of the Mosque by Council and reporting by the Mosque during the trial periods.

Approval of this application is recommended subject to the proposed modified conditions of the development consent set out below.

RECOMMENDATION:

THAT Development Consent DA-486/2008 be further **MODIFIED** as follows:

- A. Modify Conditions under 6 as follows:
 - 6.1.1 A limited trial period for an 8:30pm to 9:30pm evening prayer and education session seven days a week during daylight saving time is approved until the end of daylight saving time on 1 April 2017. After which time any continuation of the above hours for the following daylight saving time period (commencing on 1 October 2017) will require a section 96 modification or further consent of the Council. In this regard an appropriate application shall be made to Council for consideration prior to 1 April 2017. **Note: During this time period compliance with 9:30pm finish time is to be monitored by Council to record whether compliance is achieved. Monitoring is recommended to take the form of regular observational monitoring of the premises by Council compliance officers during the trial period, particularly during the months of December and January. A register of resident complaints is also to be prepared during the trial period**
 - 6.1.2 At the end of the 2016/17 daylight saving period the applicant can choose to lodge a further application to make the 8:30pm to 9:30pm prayer/education session permanent for the daylight saving period.
 - 6.2.1 The approval for the Friday Prayer session (midday Friday) is for a limited time period until the end of daylight saving time on 1 April 2017. After which time any use of the premises for Friday Prayer will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration prior to 1 April 2017.
 - 6.2.2 During the trial period, the management of the mosque is to detail the strategies found to be most effective in controlling Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the trial period. This documentation can then be provided to Council at the end of the trial period as part of an application requesting Friday Prayer be unencumbered by a trial period.
 - 6.3 The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used.
 - 6.4 The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- 6.5 A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site.

B. Modify Condition 8 as follows:

8. The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Wednesday	6.00am to 6.30am	Prayer	15
	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	6.00am to 6.30am	Prayer	15
	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	6.00am to 6.30am	Prayer	15
	12 noon to 1.00pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Wednesday	5.30am to 6.00am	Prayer	15
	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Thursday	5.30am to 6.00am	Prayer	15
	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Friday	5.30am to 6.00am	Prayer	15
	1.00pm to 2.00pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40

C. Modify Condition 38 as follows:

38. Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of this consent. At the end of the time period upon lodgement of an application, Council will assess the desirability of issuing an unencumbered development consent on the site. Failure to comply with the necessary requirements of the trial period and all of the conditions of development consent could result in Condition 6 not being complied with to the satisfaction of Council and the aspects of the development consent subject to the trial period lapsing.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

WE ALSO ADVISE:

- Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
- If you are not satisfied with this determination, you may:
 - Apply for a review of an Application to Modify a Development Consent which may be sought under Section 96AB of the Environmental Planning and Assessment Act 1979 but only within 28 days of the modification determination; or
 - Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97AA of the Environmental Planning and Assessment Act 1979.