

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2013SYE099
DA Number	MOD2013/0173
Local Government Area	City of Ryde
Proposed Development	Section 96 (2) application to an approved mixed use development comprising residential and retail uses and a maximum of 4 buildings, nominated as A, B, C and D.
Street Address	125 -135 Church Street, Meadowbank
Applicant/Owner	Karimbla Constructions Services (NSW) Pty Ltd
Number of Submissions	Six (6) submissions received
Recommendation	Approval
Report by	Michael Tully - Town Planner

Assessment Report and Recommendation

1. EXECUTIVE SUMMARY

The following report is an assessment of a Section 96(2) application to amend development consent LDA2012/0097 for the demolition of all existing buildings and construction of a mixed use development, comprising residential and retail uses and a maximum of four buildings, nominated as A, B, C and D at 125 -135 Church Street, Ryde.

The Section 96(2) application includes:

- Conversion of the ground floor retail in Building D to a child care centre for 84 children.
- Conversion of the retail area in Building B & C to 8 x 1bed Dual Use home-office units.
- Realignment of the levels of the through-site link (Church to Porter Street thoroughfare) with the surrounding streets.
- Internal and external alterations to the ground floor of the buildings.
- Provision of a gym and swimming pool within the ground floor parking area for use by the residents (within the development).
- Provision of a total of four (4) additional car parking spaces.

- Changes to landscaped areas and deep soil planting within the upper and lower plaza levels and within the street frontages of Church, Well and Porter Street.

As a result of this Section 96 application, the applicant has requested that several conditions be either amended or deleted.

The proposal also includes an amendment to the Voluntary Planning Agreement and a subsequent increase to the cash contribution paid to Council.

A comparison of the numerical differences and the qualitative differences between the development as originally approved and the proposed modified development demonstrates that the amended development is substantially the same as originally approved. The amended application satisfies all of the provisions of Section 96 of the *Environmental Planning and Assessment Act, 1979*.

The amended development does not raise any additional issues in respect of the relevant planning instruments with the exception of the child care centre. The child care centre proposes a total of 84 children. As proposed the child care centre will not comply with Council's DCP requirements for indoor and outdoor play areas. Despite this breach, both requirements exceed the Education and Care Services National Regulation and the variations can be supported.

The amended development was publicly exhibited between 13 November 2013 and 11 December 2013. During this time, six (6) submissions were received.

The amended development is recommended for approval.

2. SITE DESCRIPTION

The subject site is known as 125 -135 Church Street, Ryde and the legal description of the land is Lot 1 in Deposited Plan 746089. The site has an area of 1.076ha (10,760m²) and is located at the southern gateway to the City of Ryde. The subject site has three street frontages - it is bounded by Church Street to the south-east, Well Street to the south-west and Porter Street to the north-west. The frontage to Porter Street is 155.01m, the frontage to Well Street is 45.61m and 83.17m to Church Street with a splayed corner of 66.76m at the corner of Well and Church Street.

The site is located in a region of undulating topography however the site is relatively flat. The site slopes down from the north-east corner to the south-western corner at the intersection of Porter and Well Streets, towards Parramatta River.

A small parcel of Council owned land adjoins the south-east corner of Well and Church Street. The location of the site is demonstrated in Figure 1.



Figure 1: The subject site is highlighted in red and Council's owned land highlighted in yellow. This diagram demonstrates the variety of land uses such as high density residential, industrial and dwelling houses currently in the immediate area.

The character of Meadowbank is evolving from an industrial area to a predominantly residential area. The subject site and the immediate adjoining northern properties contain low rise industrial buildings. Opposite on 2-4 Porter Street is a recently approved two x six storey mixed use residential and commercial buildings. Another development in Porter Street, known as 82-84 Belmore Street, is a mixed residential/commercial complex containing six separate buildings ranging in height from six to seven storeys. To the south of the site 155–157 Church Street currently contains two to three storey industrial buildings. This site is part of a Part 3A Concept Approval (approved on 6 March 2013) for mixed use residential, commercial/retail development ranging in height from 2 to 15 storeys. Opposite the site on Church Street are one to two storey dwelling houses.

Medium density residential buildings which include retail and commercial components are now a significant land use within the area. The built forms of the newer surrounding buildings vary in height from four to seven storeys.

3. PROPOSAL

In summary, the proposed Section 96(2) amendments include the following:

- Conversion of the ground floor retail in Building D to a child care centre for 84 children.
- Conversion of the retail area in Building B & C to 8 x 1 bedroom dual use home-office units.

- Realignment of the levels of the through-site link (Church to Porter Street thoroughfare) with the surrounding streets.
- Internal and external alterations to the ground floor of the buildings.
- Provision of a gym and swimming pool within the ground floor parking area for use by the residents (within the development).
- Provision of a total of four (4) additional car parking spaces.
- Changes to landscaped areas and deep soil planting within the upper and lower plaza levels and within the street frontages of Church, Well and Porter Street

As a result of the Section 96 application the retail component of the approved development will be reduced from 1080sqm to 155sqm. This space will be located within the ground floor of Building A. The development proposes a child care centre within approved retail space within Building D (470sqm) and the remaining retail space within Buildings B and C will be converted to eight (8) home/office style housing comprising a combined floor space of 455sqm. The total number of apartments will be increased from 269 to 277 apartments and car parking will be increased from 380 to 384. The following table demonstrates key numeracies in respect of the approved and the amended development.

Key Development Parameters	Approved	Amended
Land Use Mix	Retail and residential	Child care centre, retail and residential
Retail floor area	Building A: 155sqm Building B: 240sqm Building C: 215sqm Building D: 470sqm Total retail:1080sqm	Building A: 155sqm Building B: Home/office Building C: Home/office Building D: Child care centre Total retail:155sqm Total home/office: 455sqm Total child care centre: 470sqm
Car Parking	380 spaces	384 spaces
Unit Mix	1 x Studio apartment 204 x One bedroom 51 x Two bedroom 13 x Three bedroom Total 269 units	1 x Studio apartment 204 x One bedroom 51 x Two bedroom 13 x Three bedroom 8 x Home/office Total 277 units
Height of buildings (storeys)	Building A: 6 -7 storeys B: 7 C: 5-6 D: 6	No change
Deep soil area		

	(1137.5m ²) 24.3%	(1271 m ²) 26.2%
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In greater detail, the development includes the following changes:

Building A:

- The outdoor dining /seating area outside the retail space has been reduced from RL 9.6 to RL 9.15 and minor landscaping changes.

Building B:

- Three (3) retail units (totalling 240 m²) on the ground floor have been converted to four (4) home/office units with courtyard areas. The floor level of the ground floor units will be raised to RL 13.00 to correspond with the proposed lower plaza level of RL 12.85.

Building C:

- Four (4) retail units (totalling 215 m²) on the ground floor have been converted to four (4) home/office units with courtyard areas. The floor level of the ground floor units will be raised to RL 13.00 to correspond with the proposed lower plaza level of RL 12.85.
- A swimming pool, gym and amenities have been proposed in the basement. This has resulted in the deletion of five (5) parking spaces.
- The facade along Church Street has been modified by the inclusion of windows to the swimming pool and egress door from the fire stair as well as access to the plant and equipment room.
- Part of the deep soil area along the Church Street facade has been replaced with an access pathway to the swimming pool and gymnasium area.
- Basement Level 1 has been amended by the lowering of the floor level from RL10.00 to RL9.40 to achieve the minimum clearance of 2.3 metres above the pool structure.

Building D:

- Two (2) retail units (totalling 470m²) on the ground floor are proposed to be converted to form a child care centre with a capacity of up to 84 children, aged between 6 weeks and 5 years. The floor plan of the childcare centre is demonstrated in figure 2. The child care centre will accommodate:-
 - 30 children aged 3 to 5 years;
 - 30 children aged 2 to 3 years;

- 24 children aged 0 to 2 years
- A part of the plaza area has been converted to form the outdoor play area, totalling 589 m² for the child care centre.
- The proposed hours of operation of the child care centre are 6am to 8pm Mondays to Fridays.
- The floor level of the proposed ground floor child care centre has been raised to RL12.90 to address the new Plaza Level.

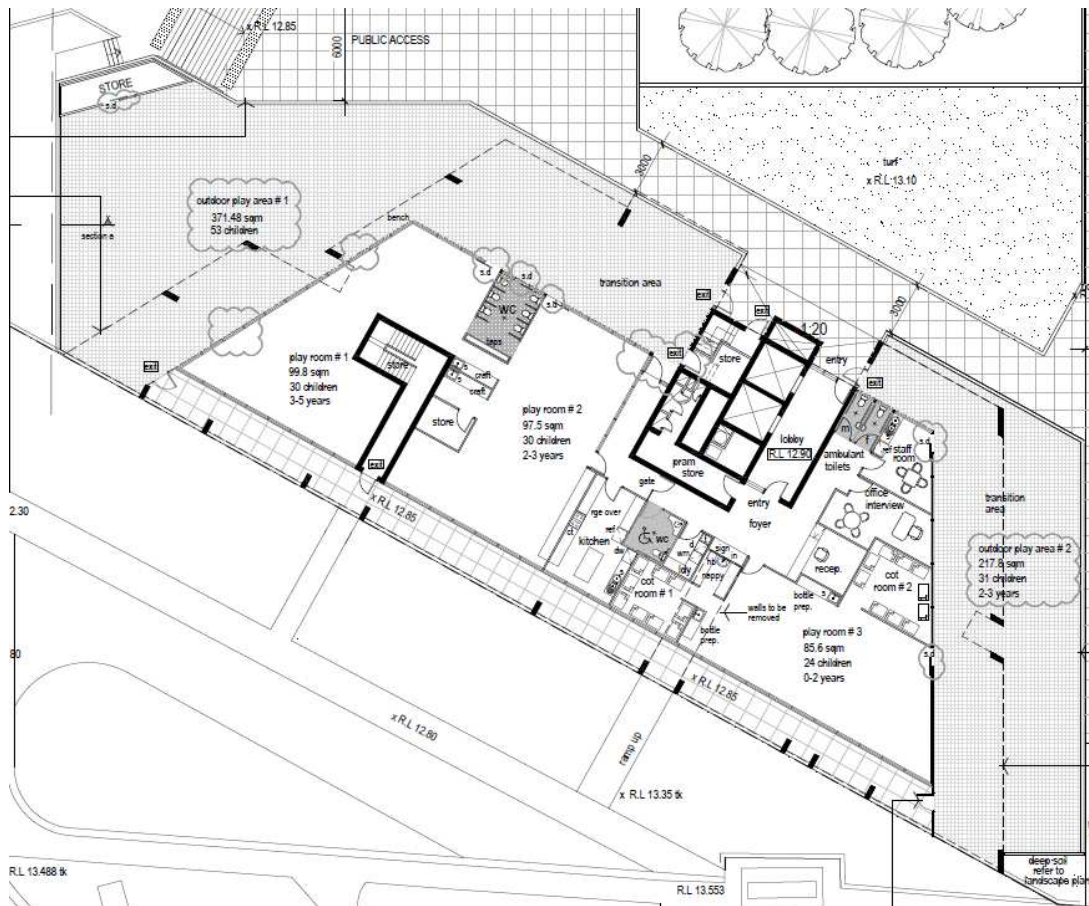


Figure 2. Layout of the child care centre on the ground floor of Building D

Lower Plaza (located between the ground floor of Buildings B, C and D)

- The entrance stairs have been amended to address the new Plaza Level along Well, Porter and Church Streets.
- The Plaza Level has been raised from RL12.00 to RL12.85 to address the existing street levels along Church Street.

The approved plaza was predominately paved. The Section 96 proposes to reduce the paving and increase the green open space. The green open space will be increased from 392m² to 527m².

- Reconfigure the layout to accommodate the outdoor play area for proposed child care centre.

The above changes are demonstrated in the following two (2) figures.

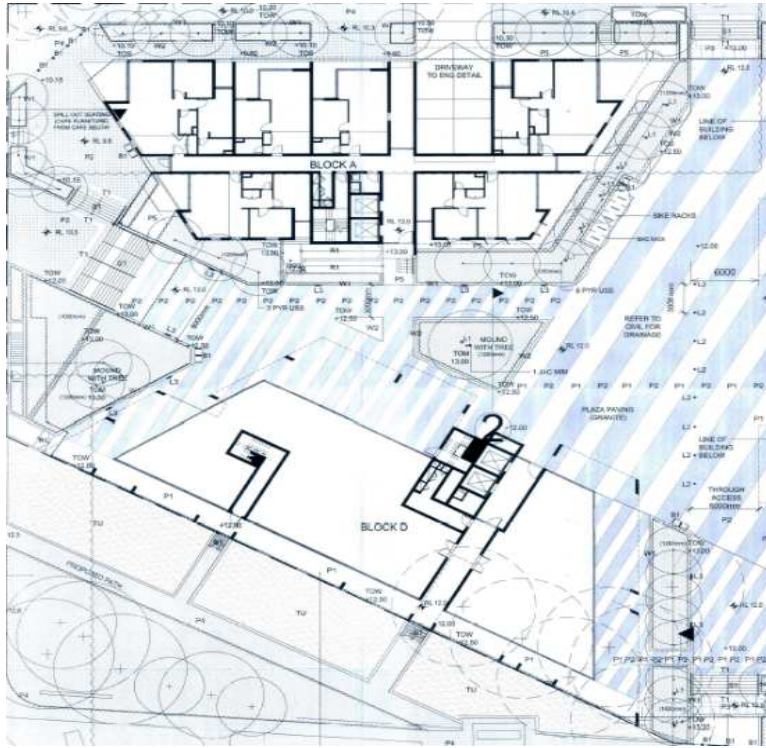


Figure 3. Approved plaza area, the figure to the left demonstrates that the majority of the plaza will be paved.



Green landscaping



Paving

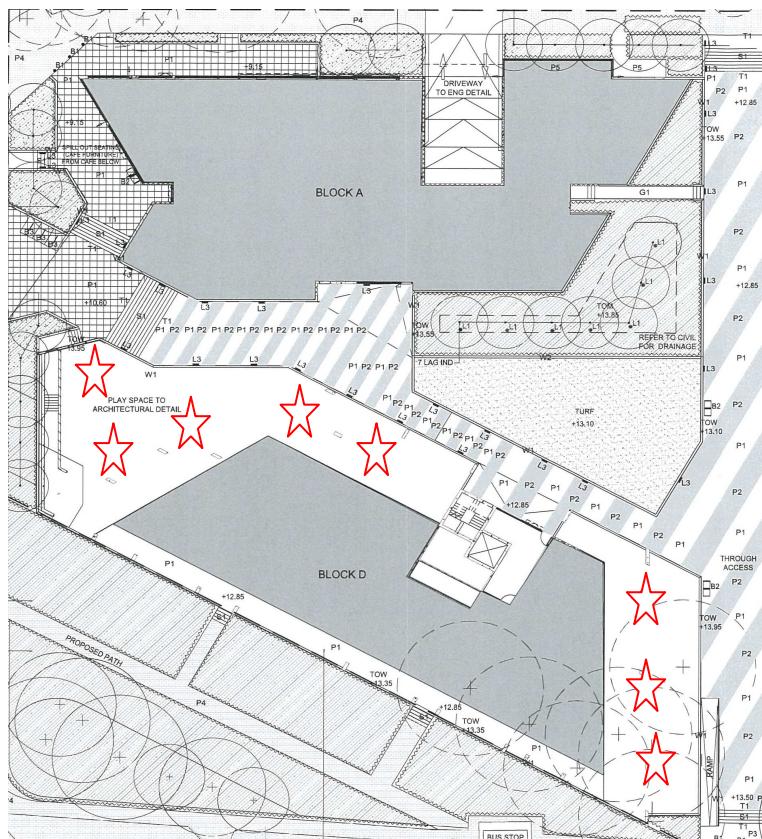


Figure 4. Section 96 plaza area demonstrating the location of the outdoor play area for the child care centre, the re-adjusted stairs and landscaped area



Green landscaping



Turf



Paving



Outdoor play area for the child care

Podium Courtyard (located between Buildings B and C)

- The deep soil zone has been replaced with raised planter boxes and turf area.
- Replacement of BBQ area with green space/planting area.

Voluntary Planning Agreement

The proposal also includes an amendment to the Voluntary Planning Agreement. As part of the approved development, the Voluntary Planning Agreement included the following:

- Land dedication to Council to allow for the widening of Porter Street in accordance with Development Control Plan 2011:
 - 295m² along Porter Street at northern boundary of property
 - 42m² to allow for splay corner at intersection of Porter and Well Street.
- Construction works for the widening of Porter Street and splay corner at intersection of Porter and Well Street including public domain upgrades, new kerb alignment, road sub-base and surfacing, line marking, street signage, stormwater diversion, tree planting, multi-function poles, granite paving and turfing.
- Provision of Through-Site-Link (50% of these costs are offset against Section 94).
- Construction of raised pedestrian threshold connecting through site link to adjacent development (Bay 1 Development) across Porter Street. This includes speed humps, raised painted walkway, street signage, lighting at walkway and landscaped kerb blisters at each end of the walkway.
- Embellishment of the Civic Gateway open space area located at the corner of Church Street and Well Street.
- A monetary contribution of \$113, 000.00 to Council for traffic upgrade within the Meadowbank Employment Area.
- A monetary contribution of \$877,152.96 to Council with no allocated use.
- Exclusion of the provision of Section 94.

The approved VPA proposed a monetary and works contribution that was 20% above Councils Section 94 contribution. As a consequence of the section 96 application, the applicant has proposed to increase the total monetary contribution from \$1,032,582.37 to \$1,137,781.53. The amended VPA still maintained 20% above what would have been required by Councils Section 94 contribution.

This has been considered by Council's General Counsel and has been accepted.

Changes to the conditions

In addition to the above design changes, the applicant has requested changes or deletion to the following conditions of consent. The changes to the conditions, as requested by the applicant are shown in either strikethrough or italics in the table below:

Condition Number	Proposed wording of the condition
1 To be amended.	Approved Plans. This condition is to be amended to reflect the current plans.
1b To be deleted.	To suit the narrow space, the tree planting located on the southern side of Block A shown as Pyrus Usseriensis is to be substituted for Pyrus Calleryana Fastigate Cultivar.
8. To be deleted.	Retails facing Church Street - To ensure that the retail facing Church Street does not become back of house for shops, the retail wall facing Church Street be glass with transparency through. Signage is not allowed to cover more than 25% of the glass wall.
21. To be amended.	<p>Submission of Development Applications - A separate Development Application is to be submitted to Council for the use of each of the retail areas.</p> <p>- A separate Development Application is to be submitted to Council for the use of each of the retail areas <i>and home-office units as required by under relevant Environmental Planning Instruments.</i></p>
56. This condition is to be deleted.	Contaminated Land - A detailed site investigation assessment, including soil and groundwater must be carried out and a report complying with the Guidelines for Consultants Reporting on Contaminated Sites (EPA, 1997) be prepared, following the demolition of the existing structures on the site, demonstrating whether the site is suitable for the proposed use, or that the site can be remediated to the extent necessary for the proposed use.

	<p>If required by the detailed site investigation assessment, the land must be remediated to the extent necessary for the proposed use and a copy of the site validation report must be submitted to Council for consideration. The site validation report must comply with the Guidelines for Consultants Reporting on Contaminated Sites (EPA, 1997) and demonstrate that the site is suitable for the proposed use.</p> <p>No Construction Certificate is to be issued for any building work on the land until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use, without the need for further remediation.</p> <p>If requested by Council, a site audit statement and a site audit summary report from an accredited site auditor under the Contaminated Land Management Act 1997 must be submitted to Council verifying the information contained in the site validation report.</p>
143. To be amended.	<p>Allocation of Car Parking - Car parking is to be provided in accordance with the following:</p> <ul style="list-style-type: none"> • 43 x Retail spaces • 283 x Residential spaces • 54 x Visitors' spaces • Residential – 285 spaces • Visitor – 54 spaces • Childcare - 18 spaces • Home-Office - 8 spaces • Retail/Cafe - 19 spaces

Table 1. List of conditions to be either amended or deleted as requested by the applicant.

4. BACKGROUND

Development Consent LDA2012/0097 was granted by the Joint Regional Planning Panel on 26 June 2013 for the construction of a mixed use development comprising residential and retail uses and a maximum of four (4) buildings, nominated as A, B, C and D.

The current Section 96 application was submitted to Council on 18 October 2013. Following a preliminary assessment of this application, the applicant was requested to provide additional information as follows:

- Further details were requested in respect to the child care centre in respect to the size, configuration, fencing and landscaping.

- Further details were requested regarding the landscaping of the public access way between Church and Porter Street.
- Concerns were raised regarding the width and presentation of Well Street relative to the revised landscaping and child care centre and landscaping within the lower plaza. The applicant was requested to amend the plans to address these issues.

A meeting occurred with the applicant in early January 2014. At this meeting it was agreed that amended plans and additional supporting information would be submitted to address the areas of concern raised by Council officers. The amended plans and additional information were submitted to Council on 20 January 2014. The amended plans were not required to be re-advertised or re-notified as they were primarily internal changes to the lower plaza and minor landscaping changes to the Well, Church and Porter Street frontages. The amendments to the plans and the additional information included the following:

- Revised child care centre design, including the fencing design and materials.
- Provision of a 2.5m wide deep soil planting area within the Well Street frontage, adjacent to outdoor play space of child care centre.
- Revised landscaping design within the lower plaza.
- Provision of planter box adjacent to Church Street entrance of through link.
- Provision of planter boxes adjacent to two (2) of the dual use home office units within the Church Street to Porter Street through link.

This report including the description of the proposal addresses the amended plans.

5. PLANNING ASSESSMENT

Section 96(2) of the Environmental Planning and Assessment Act 1979

The provisions of Section 96(2) of the *Environmental Planning and Assessment Act 1979* allow a consent authority to modify the consent where the application meets the following criteria:

- (a) The development to which the consent as modified relates is substantially the same development.
- (b) Any concurrence authority has been consulted and has not objected.
- (c) The application has been notified in accordance with the regulations.
- (d) Submissions made during the prescribed notification period have been considered.

These issues are discussed below.

- (a) The development to which the consent as modified relates is substantially the same development.

Under Section 96(2)(a) Council must be satisfied that the development as modified is substantially the same as was approved in the original consent. In arriving at this determination there should be no consideration of the merits of the proposal but rather a straight before and after comparison. If it is determined to be substantially the same then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant council planning controls.

There have been a number of decisions in the Land and Environment Court that have addressed the issue of whether a development is substantially the same development as previously approved. In Vacik Pty Limited v Penrith City Council (1992 NSWLEC 8 (24 February 1992) Stein J said:

“In my opinion ‘substantially’ when used in this section means essentially or materially or having the same essence.”

In Moto Projects (No 2) Pty Limited v North Sydney Council (1999) 106 LGERA 298, Bignold J made the following observations:

“The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is ‘essentially or materially’ the same as the approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).....because the requirements of s96(2)(a) calls for an ultimate factual finding on the primary facts of the case, only illustrative assistance is to be gained from consideration of other cases involving their own factual findings on relevant satisfaction required by s96(2)(a). References to those cases indicates that environmental impacts of proposed modifications to approved developments are relevant to the ultimate factual finding.”

In determining if a development application is substantially the same as the approved development, the question is whether such changes result in it being able to be said that the modified development is essentially or materially

the same as the approved development. The Land and Environment Court has also found that the more substantial or complex the original development, the more likely it is that a larger degree of change will be permitted.

The current application predominantly involves conversion of the approved ground floor retail space within Building D to a child care centre and conversion of the retail space within Buildings B and C to eight (8) home/office units. Other minor changes are proposed to the plaza.

The use of Buildings B, C and D remains as 'mixed use', consisting of residential and commercial (child care centre and dual use home/office) and no changes are proposed to the use within Building A.

Although there is a change in the mix of apartments and a decrease in the amount of retail floor space, these changes are restricted to the ground floor of Buildings B, C and D. The proposal does not result in any changes to the overall floor space within the development, building heights or setbacks.

A comparison of the resulting elevations by reference to the approved and proposed plans indicates a substantial degree of similarity. This is based on the overall design, scale and form of the development not being substantially altered by the proposed amendments. The critical elements of the proposed development such as the overall massing, bulk and scale of the four (4) buildings, the building's footprints, the location of pedestrian and vehicle ingress and egress points, the provision of open space and the development still providing a mix of residential and commercial uses will remain essentially or materially the same as the original development.

For the above reasons, it is considered that the proposed development is substantially the same as that which was originally approved.

(b) Concurrence Authority

The Section 96 application was not required to be referred to the Roads and Maritime Authority (RMS) as the proposed changes did not alter the access to the site or significantly increase the local traffic movements. In addition, the applicant has not requested any changes to the wording of any conditions that were imposed by RMS.

(c) Advertising and Submissions

The Section 96 application was advertised in accordance with Council's notification policy between 13 November 2013 and 11 December 2013. During this time, Council received six (6) submissions. The issues raised in the submissions are discussed below:

- *The proposed child care centre will result in a loss of public green space and reduction in retail space – which would provide local /shops services such as cafe, newsagent, post office etc.*

Comment: The space referred to in the submission is privately owned land rather than public land. Much of this space was paved and contained raised

planter boxes. As a result of the Section 96, part of the plaza area will be used as the outdoor play area for the child care centre. Despite this the development still provides pedestrian links throughout the plaza. The applicant has also increased the amount of green landscaping into this space. It is now intended to provide a large turfed area in the centre of the plaza which will improve the attractiveness and use of the plaza from the approved development.

The loss of retail space to accommodate the child care centre is a result of insufficient demand for small scale retail in the immediate vicinity. This has been demonstrated in the adjoining Bay 1 retail and residential development which has recently had approval to convert retail space to residential uses. It should be noted that the Section 96 maintains the retail space within Building A (fronting Well Street) which could accommodate a convenience store or café. In terms of the planning controls, Ryde DCP does not strictly require the provision of any retail uses within mixed use development.

- *The conversion of retail space into dual use home/office units does not consider the need for local services and should not be supported.*

Comment: The dual use home/office units reflect social changes in work places and an increasing demand for work from home arrangements. Further, the dual use units could accommodate small retail and commercial uses, subject to a separate development application being lodged for their use.

- *The proposed development does not take into account the lack of green space available for the number of people residing and visiting the area given the development.*

Comment: The approved development provided adequate communal open space to cater for the future residents within the development. This consisted of the plaza space as well as a podium courtyard between Building B and C. Although the child care centre will result in a reduction in the overall plaza size, the modifications will provide a larger green space/planting area in the lower plaza. In addition, the gym and swimming pool will provide additional recreational facilities for future residents.

- *A greater number of people will increase traffic in the area.*

Comment: The proposed modification will not generate additional local traffic issues, as was demonstrated in the traffic report submitted with the Section 96 application. The conversion of the retail space to a child care centre and home/office units will result in less vehicle trips than the approved development.

- *Consideration should be given to noise and the appearance on the Church Street frontage, particularly when it is such a busy road.*

Comment: The appearance of the Church Street elevation will remain relatively unchanged as part of the proposed Section 96 application with the

exception of the ground floor which will compromise a child care centre instead of retail space. Additional glazing (1.8m in height) to encompass the outdoor play areas associated with the child care centre will be visible from the street, however this is considered to be of a high quality finish which is consistent with the glazing materials used within the development and is unlikely to impact on the streetscape.

The landscaping within Church Street remains relatively unchanged as per the approved plans.

With regard to noise, an acoustic report was submitted with the original application and the amended application. These reports detailed acoustic measures to be implemented into the design and construction of the building. The acoustic measures highlighted in the report will be required to be incorporated into the construction of the development and will ensure acceptable noise levels for the future residents.

- *The proposed buildings will result in sound rebounding, deflecting noise up to Riverside Avenue.*

Comment: The Section 96 application will not result in any changes to the overall bulk and scale or height of the building. This application will not result in any changes to any noise that may rebound from the approved development.

- *The increase in the number of people in the area requires improved pedestrian safety such as decreasing the Church Street speed limit, incorporating a speed camera within Church Street and pedestrian barricades to prevent people crossing the street at dangerous points.*

Comment: Church Street is a classified road and under the control of the Roads & Maritime Services (RMS). Any concerns or suggestions for improvements with regard to pedestrian safety should be directed to the RMS. The Section 96 will not result in any increase in the number of people on the site as to warrant any additional requirements for Church Street.

- *There is ample child care centres within the vicinity of the site. The proposed child care centre is not needed.*

Comment: No evidence has been provided that there are ample child care centres within the vicinity of the site. There is a high demand for child care centres throughout the City of Ryde and the proposal will help reduce this demand by providing a local service which future tenants within the building and the local area can readily utilise.

- *It is concerning that the amendment to the Voluntary Planning Agreement' will involve an additional cash contribution to be paid to Council.*

Comment: As part of the VPA, Council cannot impose any Section 94 Contributions. However in determining the original VPA, consideration was

given to what contribution would have been required under Council's Section 94 Contribution Plan. As a result of the Section 96, the required Section 94 Contribution has increased. The applicant has subsequently increased the monetary contribution in the VPA to reflect this increase. The money is intended towards the provision and maintenance of public infrastructure and services. The VPA has been amended in accordance with the Environmental Planning & Assessment Regulation 2008.

Conclusion

The proposed development satisfies all of the requirements of Section 96(2).

In addition to the above consideration, Section 96(3) requires the consent authority to take into consideration matters referred to in Section 79C of the *Environmental Planning and Assessment Act 1979* that are relevant to the proposed development. These matters are discussed below:

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

SEPP 65 relates to the design quality of residential flat developments.

The SEPP includes 10 design quality principles that are applicable to residential flat buildings. Due to the nature of the proposed amended development some of these design quality principles are not applicable. The relevant principles are discussed in the following table.

Planning Principle	Comment	Comply
Built Form Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	The Section 96 maintains the modulation and articulation of the approved building design and the public domain improvements.	Yes
Amenity Good design provides amenity through the physical, spatial and environmental quality of a development.	The Section 96 will ensure that the residential units and the home/office units will provide sufficient levels of amenity for the future occupants. The residential units	Yes


Planning Principle	Comment	Comply
<p>Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.</p>	<p>and the home/office units will not be affected in terms of solar access, natural ventilation, private open space, storage areas, noise impacts or overlooking.</p>	
<p>Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</p> <p>Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.</p> <p>Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term</p>	<p>The amended development generally maintains the approved deep soil planting in the setback zones to Porter and Church Street and adjacent to the eastern boundary.</p> <p>The landscaping of the communal open space on the upper courtyard area is generally as per the approved plans.</p> <p>The approved development proposed a large plaza area between Buildings A, B and D. As part of the Section 96, the size of the plaza will be reduced due to the provision of the outdoor play areas for the child care centre. Despite this, the applicant has proposed to increase the amount of soft planting in the area. This will contribute positively to the amenity of the area as well as increasing the useability of the space.</p>	<p>Yes</p>

Planning Principle	Comment	Comply
management.		
Aesthetics Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.	The amended development is consistent with the approved development, incorporating similar materials and finishes to assist in the massing of the buildings as well as providing differentiation between the uses and various elements within the development.	Yes

Residential Flat Design Code

The SEPP also requires the Consent Authority to take into consideration the requirements of the Residential Flat Design Code. The matters that are relevant to the proposed Section 96 have been raised in the following table.

Primary Development Control and Guidelines	Comments	Compliance
Part 02 – Site Design		
Deep Soil Zones A minimum of 25% of the open space area of a site should be deep soil zone. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration.	Approved DSZ area (1137.5m ²) 24.3% Amended development DSZ area (1271 m ²) 26.2% The applicant has increased the amount of deep soil by 134 m ² .	Yes
Fences and Walls Fences and walls are to respond to the identified architectural character for the street and area. They are also to delineate the private and public domain without compromising safety and	The applicant has proposed three (3) glazed fence options that could be used around the outdoor play area for the child care centre. The most suitable option is a multi coloured glass panel fence. This is demonstrated in the photograph below. This option will	Yes

security.	<p>provide visual interest when viewed from Church and Well Street and within the development as well as complementing the existing glazing within the development. A condition of consent will be imposed to ensure that this option is used (see condition number 65b).</p>  <p>Photograph 1. Details of the preferred fencing option for the child care centre.</p>	
<p>Landscape Design Landscaping is to improve the amenity of open spaces as well as contribute to the streetscape character.</p>	<p>The approved development incorporated communal open space in the podium courtyard (between Building B and C) with a BBQ and seating provided. The amended development provides additional open garden areas within the podium courtyard and lower plaza area, however deleted the BBQ/seating area within the podium courtyard. The removal of this BBQ and seating area is not supported. Such facilities allow for communal interaction and provide an area to congregate outside of an individual unit. Therefore, it is recommended a condition be imposed requiring a BBQ and seating area be provided within the podium courtyard (see condition number 1g).</p>	Yes, subject to condition.
<p>Parking Determine the appropriate car parking numbers. Where possible underground car parking should be provided.</p>	<p>The amended development proposal will comply with the required number of parking spaces. This is discussed further in the report.</p>	Yes
<p>Pedestrian Access Provide high quality accessible routes to public and semi-</p>	<p>The approved development incorporated accessible routes to the</p>	Yes, subject to condition.

public areas of the building and the site. Maximise the number of accessible, visitable and adaptable apartments in the building.	<p>public areas via Porter, Church and Well Streets.</p> <p>The amended development maintains accessible routes to the public areas via Porter and Church Street, however the accessible route from Well Street has been consumed by the outdoor play space associated with the child care centre, within Building D. In order to promote an accessible route, it is recommended a chair lift be provided at the base of the stairs associated with the Well Street plaza entrance (see condition number 53).</p> <p>The approved development provides 27 adaptable apartments. This was based on Councils Access DCP which requires 10% of all apartments to be accessible. As the numbers will be increased from 269 – 277, the development is required to provide 28 adaptable apartments. A condition of consent is recommended to require the additional adaptable apartment (see condition number 51a).</p>	
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Part 03 – Building Design

<p>Ceiling Heights</p> <p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level FCL).</p> <ul style="list-style-type: none"> • In residential flat building in mixed use areas: 3.3m minimum for ground floor to promote future flexibility of use. • In general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non-habitable rooms, however 2.25m is 	<p>The approved ground floor retail areas in Building B, C and D had a ceiling height of 5m. The amended development has reduced the ground floor ceiling height to 4.1m within Building D and 4m within Building C and D. This change occurs due to the changes in the plaza level. The amended development complies with this requirement.</p> <p>A floor to floor height of 3.1m is proposed for all other levels. The</p>	Yes
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permitted.	amended development complies with this requirement.	
Mixed Use The development is to choose a mix of uses that complement and reinforce the character, economics and function of the local area. The development must also have legible circulation systems.	The amended development includes retail, dual use home/office units and a child care centre at the ground floor levels, with residential located above.	Yes
Acoustic Privacy Apartments within a development are to be arranged to minimize noise transitions.	An Acoustic Assessment approved as part of the original development recommended acoustic treatments such as glazing for each of the buildings. Condition 49 was imposed requiring compliance with the recommendations contained in the report (now 49a). As part of the amended development an additional acoustic report has been provided to address the acoustic impacts of the proposed child care centre. Council's Environmental Health Officer has raised no issues with the report and recommendations. This report recommended specific glazing requirements for the play rooms/cots and restricting the use of the outdoor play areas to not before 8am and ceasing at 6.30pm, as well as a complaints register being established. As part of the Section 96, it is proposed to include a further condition to ensure compliance with the recommendations of the report. See condition number 49b.	Yes
Facades Facades are to be of appropriate scale, rhythm and proportion which respond to the building's use and the desired contextual character.	The amended development proposes very minor changes to the ground floor façade to accommodate the child care centre and landscaping changes. The provision of fencing to the child care is considered to be consistent with the	Yes

	scale and form of the approved building (a sample of the fence has been shown previously).	
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State Environmental Planning Policy No 55 – Remediation of Land

A Preliminary Environmental Site Assessment Report (ESA) was submitted with the original development application. The preliminary contamination report found elevated contaminants around the existing buildings and identified that a detailed report and remediation plan would need to be carried out after the demolition of the existing buildings takes place. Conditions 56 and 57 of the consent required a detailed site investigation demonstrating that the site is suitable for the proposed use and if not how the site is to be remediated to ensure its suitability for the use.

The applicant has requested that condition 56 be deleted as part of this Section 96 application. This condition required the submission of a detailed site investigation assessment. The applicant has requested that this condition is deleted for the following two reasons:

- Adequate investigation has been carried out to characterise the site and further detailed investigations are not required.
- Most of the site will be excavated to below 3 metres for basement car parking and no remediation program is required for the proposed development.

Councils Environmental Health Officer has raised the following concerns in respect of the deletion of the above condition:

- The preliminary investigation assessment report prepared by Environmental Investigation Services identified asbestos in fill sample BH3 (0.3m - 0.7m) and a number of potential contamination issues and recommended a detailed site investigation following the demolition of the buildings on the site.
- Not all of the site will be excavated for the basement car park - Some areas of soil/fill will remain.
- There are two (2) underground fuel storage tanks (USTs) on the site that need to be removed and validated.
- Groundwater monitoring found elevated TPH concentrations that were believed to be associated with leakages and spillages from the USTs on the site.
- The sample location plans submitted with the preliminary investigation assessment report indicate that little or no sampling was carried out in the areas where the soil/fill will remain.
- The letter from Consulting Earth Scientists includes some inconsistencies. On one hand they say that no remediation is required while on the other they say that some remediation work may be required in the vicinity of the USTs. Also, in their concluding remarks they imply that all of the fill will be removed but earlier they state that almost all of the fill will be removed.

- The proposed development now includes a child care centre, which is a more sensitive use than the original mixed residential and commercial development proposed.
- A new NEPM came into effect on 15 May 2013 which introduces new investigation levels and requirements.
- None of the documents submitted clearly state that the site is suitable for the proposed use without the need for further remediation.

While it may not be necessary to carry out a detailed site investigation, the proponent is effectively using the bulk excavation of the site as their remediation process and the site still needs to be validated. In particular, those areas where soil/fill is to remain.

In addition, all excavated spoil must be classified in accordance with the Waste Classification Guidelines (DECCW 2009) prior to disposal.

Due to the above issues, the deletion of condition 56 can only be supported if the following additional conditions are imposed:

1. **Remediation of land** - The land must be remediated to the extent necessary for the proposed use and be validated by an experienced environmental consultant. Following validation of the land, a copy of the validation report must be submitted to Council for review. The validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA 1997) and demonstrate that the land is suitable for the proposed use. **No building work, other than bulk excavation work, is to be carried out until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use without the need for further remediation.**
2. **Site audit** - A site audit must be carried out by an accredited site auditor under the *Contaminated Land Management Act 1997* if requested by Council.
3. **Excavated spoil** - All excavated spoil must be classified in accordance with the Waste Classification Guidelines (DECCW 2009) prior to removal from the site and be transported to a facility or place where the material can be lawfully disposed of or re-used.

These conditions have been incorporated into the recommendations in this report. See condition numbers 56A, 56B and 56C.

State Environmental Planning Policy (Infrastructure) 2007

The local traffic impacts were considered as part of the original development and deemed satisfactory subject to the imposition of conditions. The changes associated with the amended development do not require further discussion or concurrence from the Road and Maritime Services (RMS).

State Environmental Planning Policy (Building Sustainability Index: BASIX)

A new BASIX certificate has been submitted to reflect the proposed works.

Existing conditions 5, 6 & 124 were imposed requiring compliance with the BASIX commitments detailed within the Certificate. It is proposed to amend condition 5 to ensure compliance with the new BASIX Certificate.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Clause 13 of the SEPP sets out the planning principles for land within the Sydney Harbour Catchment. The approved development adequately addressed these principles. The amended development proposes minor changes to the building and landscaping works, confined predominately within the building envelope. Therefore, an additional assessment against the planning principles is not warranted.

Ryde Local Environmental Plan 2010

The following is an assessment of the proposed development against the applicable provisions from the Ryde Local Environmental Plan 2010.

Clause 2.2 - Zoning

The site is zoned B4 Mixed Use under the provisions of the LEP 2010. The development is permitted in this zoning.

Clause 2.3 – Zone Objectives

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives for the B4 Mixed Use are as follows:

- To provide a mixture of compatible uses.
- To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.
- To create vibrant, active and safe communities and economically sound employment centres.
- To create safe and attractive environments for pedestrians.
- To recognise topography, landscape setting and unique location in design and land use.

The amended development complies with the above objectives. It will be consistent with the desired future character for the precinct by introducing a mixed use building consisting of residential, retail, child care centre and dual use home/office apartments. The amended development will not change any of the public domain conditions imposed on the original approval so the

development will still maintain a safe and attractive environment for pedestrians. As the bulk, scale and massing of the development remains as approved, the topography and landscaped setting of the development will be retained.

Clause 4.3 - Heights of Buildings

The proposed Section 96 will not change the approved heights of any of the buildings.

Clause 5.10 - Heritage Conservation

The site is in the vicinity of two Heritage Items - "Crowle Home" at 8 Junction Street and Ryde Bridge Church Street. The proposed Section 96 does not alter the height or building footprint and incorporates minor changes to the external fabric of the building. Accordingly, the amended development will not affect the heritage significance of the heritage items.

Clause 6.1 - Acid Sulphate Soils

The Section 96 will not result in any changes to the issue of Acid Sulphate Soils.

Draft Ryde Local Environmental Plan 2013

Draft Ryde LEP 2013 was adopted by Council on 12 March 2013 and is awaiting gazettal by the Department of Planning and Infrastructure. As such draft Ryde LEP 2013 can be considered certain and imminent.

The Section 96 will not change any of the provisions of draft Ryde LEP 2013.

Ryde Development Control Plan 2010

Council adopted City of Ryde DCP 2010 on 16 June 2009 and its provisions became effective on 30 June 2010. The following sections of DCP 2010 are relevant to the proposed development:

Part 4.2 Meadowbank Employment Area – Master Plan

The original development was assessed under the provisions of this part of the DCP. It should be noted that upon the gazettal of draft RLEP 2013, this part of the DCP will be replaced with Part 4.2 – Shepherd's Bay Meadowbank. For this reason the original development was also assessed under the controls in the draft plan. Given that the Draft LEP is certain and imminent, it is appropriate to assess the Section 96 application under the provisions of the draft DCP as this reflects the Council's future direction.

Part 4.2 Shepherd's Bay Meadowbank

Many of the requirements of this DCP are not applicable to the proposed Section 96 application. Only those matters that are relevant to the Section 96 are discussed below.

General Development Controls

Control	Comments	Comply
4.1 – The Public Domain Interface		
<i>Mixed Use Development</i>		
Mixed-use development will comprise a combination of medium and high density residential development with compatible employment related activity. Compatible employment related activities include: <ul style="list-style-type: none"> ▪ restaurants and cafés ▪ small scale retail establishments such as convenience stores ▪ small commercial offices and studios ▪ professional suites ▪ home offices. 	The amended development incorporates high density residential housing with compatible employment related activity. The compatible employment related activity includes the provision of eight (8) dual use home/office units and a child care centre within the ground floor of Buildings B, C and D. The development also retains some of the retail floor space approved in the original development, located within Building A.	Yes
Home office accommodation is allowed throughout the area.	All of the home/offices have been located on the ground floor. The design takes advantage of having access directly from the lower plaza.	Yes
Ground floor apartments are to be of flexible design to facilitate change of use and ensure privacy for occupants.	The amended development provides eight (8) dual use home/offices on the ground floor within Buildings B and C. The layout of these apartments would allow for multiple uses, including small scale commercial/retail.	Yes
Private living spaces and communal or public spaces should be clearly identified and defined.	As part of the amended development, the applicant has provided adequate details to demonstrate that the communal space is clearly identified as well as being useable. Private living areas on the ground floor are delineated by the use of plantings and fencing (including some of the dual home/office units adjacent to the entrance to the Church Street through link).	Yes
<i>Public Domain, Access and Pedestrian & Cyclist Amenity</i>		
The achievement of	This was addressed when the original	Yes

Control	Comments	Comply
maximum heights and density is contingent on meeting the public domain provisions of this plan and all public domain items being provided by the proponent.	application was approved and included widening of Porter Street and a section of Well Street.	
Publicly accessible pedestrian and cycle ways must be provided through large sites (even if not envisioned by this plan).	Figure 4.2.03 refers to the Public Domain upgrades required. This plan does not identify this site as being required to provide any publicly accessible pedestrian or cycle ways. Despite this, the approved development provides a pedestrian through link from Church Street to Porter Street. The amended development maintains this link.	Yes
The ground floor of all development is to be flush with the street footpath for the predominant level of the street frontage and at the main entry to the building.	The amended development proposes an increase in the plaza level from RL 12 to RL 12.85 to better address the existing street levels within Church Street than the approved development.	Yes
<i>Views & Vistas</i>		
Panoramic views of Parramatta River are to be maintained from Faraday Park, Settlers Park, Anderson Park, and Helene Park.	The amended application does not alter the approved building heights or envelopes and will not further impact neighbouring property views or vistas.	Yes
<i>Landscaping & Open Space</i>		
All development proposals are to be accompanied by a Landscape Plan prepared by a qualified and suitably experienced landscape architect. This is to include an Arborist report in respect of trees.	The amended development includes a detailed landscape plan by a qualified and experienced landscape architect. As there were no significant trees on the site, it was not necessary to provide an Arborist report.	Yes
Provide at ground floor level, where possible, open space for dwelling units and contiguous open garden areas to create common large landscaped space.	The approved development incorporated communal open space on the podium courtyard (between Buildings B and C) with a BBQ and seating provided. Ground floor courtyards were provided for apartments on the ground floor. The amended development provides additional open garden areas within the podium courtyard and lower plaza area, however deleted the BBQ/seating area within the podium courtyard. The removal	Yes

Control	Comments	Comply
	of this BBQ and seating area is not supported as it would not encourage communal interaction and subsequently fails to provide an area to congregate outside of an individual unit. It is recommended that a condition be imposed requiring a BBQ and seating area be provided within the podium courtyard. See condition number 1G.	
Safety		
Public spaces need to be designed to meet Crime Prevention Through Environmental Design (CPTED) Principles.	The Section 96 application proposes a revised green space/planting area within the public domain (lower plaza) which will encourage greater pedestrian traffic and usage, while allowing active and passive surveillance of the space from outside the development and within.	Yes
Open sightlines and landscaping needs to be provided that allows for high levels of public surveillance by residents and visitors.	The landscaping along the street frontages will not obscure sight lines from or towards the development.	Yes
4.2 – Architectural Characteristics		
Height		
The maximum building height is to comply with the heights shown in draft Ryde LEP 2013. Buildings must comply with the maximum number of stories shown in Figure 4.2.10.	The proposed Section 96 maintains the approved building heights.	Yes
The ground floor height shall be 4m floor to floor regardless of use.	The approved ground floor retail areas had a ceiling height of 5m. The amended development has a reduced ground floor ceiling height of 4.1m within Building D and 4m within Building C and D. The amended development complies with the requirements of this clause.	Yes
Setbacks		
Setbacks must be consistent with the setback map. New development to have 4m setbacks.	The amended development maintains the approved setbacks from Church, Porter and Well Street.	N/A
Building Articulation		
Building facades should be	No change to the approved development.	Yes

Control	Comments	Comply
articulated within a 3-metre zone to provide entries, external balconies, porches, glazed balcony enclosures, terraces, verandahs, sun shading elements etc.	The amended development complies with the requirement of this clause.	
Articulate buildings vertically and horizontally: materials and building setbacks on the upper storeys are to be used to reduce the perceived bulk of buildings.	No change to the approved development. The works proposed as part of the Section 96 are restricted to the ground floor of the development	Yes
<i>Private and Communal Open Space</i>		
No more than 50% of communal open space provided at ground level shall be paved or of other non-permeable materials.	The approved and amended development complies with this requirement.	Yes
<i>Energy Efficient Design</i>		
Residential development must be designed in accordance with principle outlined in the Building Sustainability Index (BASIX).	The applicant has submitted a BASIX Certificate (as part of the section 96 application) which demonstrates that the development complies with the BASIX requirements.	Yes
<i>Noise and Vibration Attenuation</i>		
New residential developments, including those within a mixed-use building, are required to consider noise attenuation and acoustic treatment in their design.	As part of the Section 96 application, the applicant submitted an additional acoustic report with regard to the impacts of the proposed child care centre. Councils Environmental Health Officer raised no issue with the report and recommendations. It is proposed to amend condition 49 to require compliance with the recommendations of the report as well as the original report. See conditions numbered 49a and 49b.	Yes

Precinct Specific Development Controls

The Meadowbank Employment Area consists of eight precincts that are differentiated by land-use, urban form and district character. Each precinct has additional and specific planning principles and planning and urban design controls that are to be applied to the precinct. The site is located within Precinct 4: Church Street. The planning principles and controls are contained in the following table.

Control	Comments	Compliant
New development in this precinct is to respond to, and consider views from, the	The approved development has been broken into four (4) separate buildings. This, combined with the road network	Yes

Parramatta River.	will ensure that the development is not viewed as a continuous line of building. The development will not adversely impact on any views from Parramatta River	
Retain all existing mature trees that add to the high quality of the area.	The Section 96 will not result in the removal of any additional trees.	Yes
For retail ground floor areas larger footprints are allowable. Retail development is to be limited to showrooms. Supermarkets are not permitted.	No details were submitted with regards to the use of the ground floor retail area when the original development was approved. However, retail space within Building D has been replaced with a child care centre and retail space within Buildings B and C is replaced with dual use home/office units. The retail space within Building A fronting Well Street remains as per the original approval. Condition 21 was imposed requiring a separate DA to be submitted for the use of the retail space. The amended application proposes to modify part of condition 21 to include use of the home/office units.	Yes
Due to the traffic volume on Church Street, vehicular access will be from Porter Street for buildings fronting Church Street	Vehicular access is provided from Porter Street. The will not be changed as a result of the Section 96 application.	Yes
Council seeks contributions from developers along Church Street for the upgrade of the public domain on the opposite side of the street.	The proponent has not been requested to upgrade the public domain on the opposite side of Church Street. The development application was submitted in early 2012 when draft Ryde LEP 2013 & draft DCP 2013 had not been adopted by Council. Given that this is a Section 96 application, the applicant will not be requested to provide any contributions, however as part of the VPA works are proposed to the public domain surrounding the development.	Yes
Residential development must be setback at least 12m from Church Street.	The residential component is setback 12m from Church Street. This will not change as a result of the Section 96	Yes

	application.	
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Child Care Centres (CCC)

The applicable controls for child care centres are discussed below:

Requirements	Proposed	Compliance
SITE, LOCATION & SITE SELECTION		
Min. lot width = 20m, corner lot 17m.	The premises will be located at ground level within a large mixed use development. Width at frontage exceeds 20m.	Yes
Not recommended on arterial, sub-arterial road or busy intersection.	The site is located on Church Street which is an arterial road, however an acoustic report and air pollution report were submitted with the application and supported the location of the child care centre (CCC) subject to the imposition of conditions with regards to glazing and insulation. Pollution generated from passing traffic was deemed to be within acceptable limits.	Yes
Site not to be battle axe shaped	Large, regular shaped allotment with mixed use development.	Yes
Cul-de-sacs not preferred (if located - see special requirements).	N/A	N/A
Not near brothel.	There are no approved brothels in the vicinity of the development.	Yes
Site to be flat, gently sloping, well drained and easily accessible.	Generally flat and accessible.	Yes
Aspect to maximise solar access.	The proposed CCC is within an approved mixed use development. The outdoor play areas provided will receive adequate sunlight.	Yes
Site not to be affected by overshadowing.	The proposed CCC is within an approved mixed use development and will receive adequate sunlight to the outdoor play spaces.	Yes
Site should not be subject to overlooking.	Overlooking from the balconies of units above may occur, however this is not considered to detrimental. Provision of external fencing to the	Yes

Requirements	Proposed	Compliance
	childcare centre should mitigate any overlooking from people using the public thoroughway from Church to Porter Street.	
Large scale centres (50 - 90 places) in residential areas to be on corner lots & not share common boundaries with more than 3 residential properties.	The site is bound by three streets and satisfies the intent of this clause.	Yes
Not on land affected by overland flow.	A portion of the site is affected by flooding, however the CCC is not located within the flood affected portion of the site.	Yes
Not on Bushfire prone land (Integrated development).	The site is not identified as bushfire prone land.	Yes
Not affected by environmental hazard such as contaminated land, vehicle fumes, asbestos, and electromagnetic fields etc.	The site is affected by contamination however this was addressed under the original DA. Further, Council's Environmental Health Officer has raised no objections to establishing a child care centre on the site.	Yes
If within 125m of arterial roads, toxicity levels of air and soil to be tested.	As the site is located on Church Street, an air quality assessment has been submitted. This report was reviewed by Council's Environmental Health Officer who deemed the report satisfactory.	Yes
Number of child care places, age group and number and role of staff to be identified.	84 places for children & 10-12 staff. <u>Groups:</u> 0-2 years: 24 children 2-3 years: 30 children 3-6 years: 30 children	Yes
Justification of proposed number of children in each age group (refer DCP).	The justification given by the applicant for this mix is that is based on current demand.	Yes
DESIGN & CHARACTER		
All Child Care Centres		
Must comply with CPTED (Safer by Design).	The CCC is located in an approved building. The layout and design of the CCC will ensure that there is an appropriate level of safety and security.	Yes
Avoid proximity to UV reflecting surfaces.	There is no large span of reflective surface nearby.	Yes

Requirements	Proposed	Compliance
Comply with Energy Efficiency and sustainability requirement – Part 7.1 of DCP.	Conditions were imposed on the original approval to ensure that the water and hot water systems are energy efficient (see condition 68). This condition is proposed to be amended to include reference to the child care centre. This will ensure appropriate energy efficient devices are provided.	Yes
Building to be consistent with desired future character of the area.	The CCC is proposed within an approved mixed use development. The bulk and scale of the building will not be changed and is consistent with the desired future character of the area.	Yes
Frontages and entries to be readily apparent from street.	Entries to the plaza where the child care centre can be accessed are clearly visible.	Yes
SEE demonstrate how proposed design responds to site analysis.	The applicant submitted justification why a child care centre is a more appropriate use than the previously approved retail space.	Yes
If fill, only clean filled to be brought on site.	The development does not involve any fill to be brought to the site	Yes
Centres in Mixed Use Developments and in Non-residential areas		
Separate main entrance, separate pedestrian and vehicular access including drop off/pickup area in proximity to the entrance & readily accessible to the general public.	A separate entrance to the CCC is provided from within the plaza. A dedicated drop off/pickup in Basement 1 is provided with 11 marked spaces.	Yes
CCC to be located to benefit from a north/north-east aspect.	The proposed CCC is within an approved mixed use development. The outdoor play areas provided will receive adequate northerly sunlight.	Yes
Outdoor play areas to be away from driveways / roads.	The proposed outdoor play areas are located away from driveways (which are located on the opposite side of the site, along Porter Street) and parking areas.	Yes
Air-conditioning system to be separate for the child care centre.	The proposed CCC will have an independent air conditioning system.	Yes
Child Care Centre preferably located on ground floor level.	The proposed CCC is located on the ground floor of Building D.	Yes
Fence Design		
Appropriate materials &	The applicant has proposed three (3)	

Requirements	Proposed	Compliance
finishes to be used to complement the streetscape.	<p>glazed fence options. The most suitable option is a multi coloured glass panel fence. This is demonstrated below. This option will provide visual interest when viewed from Church and Well Street and complement the existing glazing within the development. A condition of consent will be imposed to ensure that this option is used (see condition number 65b).</p> 	Yes
Outdoor play area must be fenced on all sides.	The development complies with this requirement.	Yes
Child proof locks to be used on gates.	A child proof locking system will be conditioned. See condition number 89c.	To be conditioned.
Safety provision to prevent access to other parts of building.	The proposed CCC is adequately fenced and designed (internally) to prevent access to other parts of the development.	Yes
Ensure adequate sight lines for vehicles.	Parking for the child care centre is located within Basement 1 adjacent to a lift well which will provide direct access to the lobby within the child care centre. Further, it is expected that many of the children attending the CCC will be residents within the development and will access the CCC directly from the plaza entrance rather than via Basement 1.	Yes
PRIVACY		
Privacy - Acoustic		
Locate sleep rooms & play areas away from noise source eg. heavy traffic road.	An acoustic assessment has been undertaken in regard to the impact of noise on the CCC. Noise levels heard on the premises from traffic is satisfactory, however specific glazing requirements are specified for the	Yes

Requirements	Proposed	Compliance
	play rooms/cots. A condition of consent has been imposed regarding compliance with this acoustic report (see condition number 49b). This will ensure the development is satisfactory.	
<p>Noise impact on adjacent property to be minimised through design measures:</p> <ul style="list-style-type: none"> • Orient play areas etc away from living areas, bedrooms of affected property. • Use laminate or double glaze, sound proof. • Design fence to minimise noise transmission- lapped timber etc. • Sound insulated roof & walls. • Other measures. 	<p>As the proposal is in a mixed use environment and residential development is located on the first floor and above, noise generated from the CCC may impact the amenity of residential properties within the development. Therefore, the acoustic report recommended restricting the use of the outdoor play areas to not before 8am and ceasing at 6.30pm, as well as a complaints register being available for residents to fill out. These measures are considered appropriate. Despite these measures, concerns are raised that the proposed hours of operation for the CCC being 6am to 8pm, Monday to Friday could affect the amenity of nearby residents. The operator of the child care centre is not known so there is no evidence that the centre can operate satisfactorily with no amenity impacts to adjoining residential units. It is recommended that the hours of operation be restricted to 7am to 6.30pm Monday to Friday to ensure that there will be no amenity impacts.</p>	Yes
Details regarding group management in the outdoor play area and time spent, group sizes, rotation, staff numbers etc to be provided.	This information has not been provided. A condition of consent will be imposed to ensure this is provided prior to the operation of the CCC (see condition number 143c).	Yes
Privacy – Visual		
Direct overlooking of indoor amenities & outdoor play areas from public spaces to be avoided.	Views to indoor and outdoor play areas will be mitigated by the 1.8m coloured glass panels/fence. While this will not prevent complete overlooking from public spaces within	Yes

Requirements	Proposed	Compliance
	the development, it will provide for appropriate separation.	
Windows & doors located to maximise security of children & minimise loss of privacy of adjoining residents.	Security of children within the CCC is maximised by locating the entrance next to office/ admin and staff room.	Yes
CAR PARKING, TRAFFIC & ACCESS		
Car Parking - All Child Cares		
Parking to comply with AS2890.1 & AS2890.2.	The parking spaces to be allocated were approved as part of the original DA and comply with the Australian standards.	Yes
Provide parking at a rate of 1 per 8 children and 1 space per 2 staff (stack parking staff only).	The development is required to provide eleven (11) spaces for children and six (6) for staff. A total of 18 parking spaces are proposed which complies with Councils requirements.	Yes
One disabled parking 3.6m wide to be provided – height clearance of 2.5m.	An accessible car space is provided within Basement 1.	Yes
New centres to comply with access requirements as per Part 9.2 Access of DCP 2006.	The building was designed to be accessible. Accordingly, the child care centre will be fully accessible.	Yes
Car parking– Work based/mixed use centres		
Drop off pick up areas provided in close proximity (max of 30m) to the main entrance preferably same floor level to assist with accessibility & safety.	Parking for the child care centre is located within Basement 1 adjacent to a lift well which will provide direct access to the lobby within the child care centre. Further, it is expected that many of the children attending the CCC will be residents within the development and will access the CCC directly from the plaza entrance rather than via the basement 1.	Yes
Drop off/pick up areas to be exclusively available for use in conjunction with the Child Care Centre throughout the opening hours of the centre.	Exclusive use possible and condition will be imposed (see condition 143).	Yes
Driveway access, manoeuvring areas and parking are not to be shared	This is difficult to achieve as all parking will be within a car park shared with other occupants.	Yes

Requirements	Proposed	Compliance
with access, parking, manoeuvring areas used by other uses or truck movements.	However, designated parking is shown within Basement 1.	
Manoeuvrability		
Separate entry and exit driveway at minimum safe distance.	The existing approved entry/exit points are considered satisfactory.	Yes
Vehicles to leave the site in forward gear.	Vehicles will enter and exit the Porter Street entrance in a forward direction.	Yes
Vehicles must not encroach on pedestrian access ways.	Vehicles will not encroach on any pedestrian access way.	Yes
Driveway use variation in pavement to distinguish car parking & driveways and reduce visual impact.	This was addressed when the original development was approved. The development complies with this requirement.	Yes
Traffic & Pedestrian Safety		
Pick up/drop off as separate area to that used for manoeuvring.	Eighteen (18) dedicated car spaces are to be provided (including one (1) accessible space) within Basement 1. The development complies with this requirement.	Yes
Provide information on the impact of traffic on the local streets – Traffic Impact Assessment.	Traffic Impact Assessment provided and concluded that the occupation of the approved retail spaces by the CCC (within Building D) and dual use home/office (Buildings B and C) will result in less vehicle movements than the previously approved retail space.	Yes
Road Safety Audit may be required if development along major roads.	A Road Safety Audit is not required. Although the CCC is located on a major road, access is via Porter Street. The development will not affect the operation of Church Street.	Yes
Pedestrian access segregated from vehicular access – paths clearly defined.	Pedestrian access is separated and clearly delineated from vehicle access.	Yes
Accessibility		
New Development must comply with: <ul style="list-style-type: none"> AS 1428.1 Design for Access & Mobility. BCA Part D Part 9.2 of DCP 	The development can comply with the requirements in the various documents. A condition of consent will be imposed to ensure compliance (see condition 51C).	Yes
LANDSCAPING & PLAY		

Requirements	Proposed	Compliance
SPACES		
Play Spaces - Size and Functionality		
Outdoor play area in the front yard should be avoided.	Outdoor play areas primarily located within the building envelope abutting Church and Well Street.	Yes
Play areas to be of regular shape rather than segmented and provide opportunities for easy supervision by staff.	The play area has been divided into two separate areas. This will allow for the younger children to have their own play area. These spaces are regular shaped and will allow for supervision of the children.	Yes
Provide unencumbered indoor play area at a rate of 4.5m ² per licenced child care place, exclusive of transitional areas. Education & Care Services National Regulation require 3.25m ² per child.	The development provides a total of 288.09m ² or 3.42m ² per child. 0-2 yrs play room (83.78 m ²) 2-3 yrs play room (107.37m ²) 3-6 yrs play room (96.94 m ²) The development does not comply with Councils requirement. Council's requirement is based on a green field site and aims to provide a better quality child care. This site is not a green field site and compliance becomes more difficult. The development has however exceeded the requirements of the Education & Care Services National Regulation. Such variations have been previously supported.	No. Variation acceptable.
Indoor spaces designed to achieve passive surveillance from all rooms	The design is satisfactory.	Yes
Outdoor Play Spaces - All child care centres		
Provide unencumbered Outdoor play area at rate of 10m ² per child care place inclusive of transition areas. <u>NOTE:</u> Education & Care Services National Regulation require 7m ² per child.	Total area provided is 589m ² which equates to 7.01m ² per child The development does not comply with Councils requirement. Council's requirement is based on a green field site and aims to provide a better quality childcare centre. The DCP does allow variations to this requirement where the outdoor play areas offers an inviting space for the	No. Variation acceptable.

Requirements	Proposed	Compliance
	children. In this case the outdoor play area can comply with the Education & Care Services National Regulation. In this instance the play area provided is soft fall and is of a clever design which incorporates multiple functions and uses, allowing for a variety and diversity in play experiences. Therefore, this variation is consistent with the DCP.	
Shape of space to maximise supervision and usability of space.	Adequate levels supervision can be achieved.	Yes
Design of outdoor play area to aim for: <ul style="list-style-type: none"> 30% natural planting with 30% turfed area. 40% hard surfaces (sand, timber, pav). 	The development cannot comply with this requirement as the CCC is located over a basement car park. However, the outdoor play area provides interesting play features and does utilise different materials. The application is considered acceptable.	No. Variation acceptable.
Distinct areas in outdoor play area to include: <ul style="list-style-type: none"> An open grassed area for gross motor skills (run, games etc). Formal quiet areas, for focussed play – with sandpit). An active area (eg. Climbing, digging). A transition area. Storage area. 	<p>A mixture of open areas to allow running and use of bicycle is provided.</p> <p>Sandpits, vegetable patches and seating areas are provided to allow for quite time.</p> <p>Active areas such as pipe tunnel, varied embankments and surfaces will allow for active play time.</p> <p>A storage and transition area is provided.</p>	Yes
Include suitable species to achieve canopy cover of 50-60% of outdoor play area within 5 years of planting	Canopy cover is provided in the form of shade sails and existing awnings as the CCC is located above a basement.	Yes
Outdoor play area must be adequately shaded from establishment as per <i>Shade for Child Care Services</i> (NSW Cancer Council).	Adequate shading has been provided.	Yes

Requirements	Proposed	Compliance
Outdoor play space should relate directly to the Indoor play space for relevant age groups. Separate play areas are encouraged for 0-2 year olds.	The outdoor play areas do relate to the indoor play space. In addition the spaces for the 0-2 year olds have been separated.	Yes
Appropriate access to be provided to the outdoor play area for maintenance.	Access is provided, however should be minimal as the outdoor area will be covered in various artificial soft fall surfaces.	Yes
Vehicles not to be parked in the outdoor play areas.	No vehicular access or parking possible in the play area.	Yes
Work based/ in mixed use child care		
Storage be provided to 0.5m ² of space per child and not impede supervision of play areas.	0.5 x 84 = 42m ² Proposed = 31m ² The non-compliance is considered satisfactory as the storage spaces are well located to allow for convenient access and the shortfall can be accommodated in volume within the nominated storage spaces.	No. variation acceptable.
Transition Areas		
Transition area to be located between indoor and outdoor areas. Designed to allow indoor & outdoor activities to be conducted undercover. Designed to offer protection from unfavourable weather conditions. Can incorporate facilities for educational experiences & storage areas.	The controls for 'transition areas' are primarily aimed at ensuring the provision of additional space to allow 'outdoor' activities to be conducted during inclement weather. Given that the location of the outdoor space partially under the building overhang is not affected by inclement weather conditions, it is considered that this will allow for adequate transition areas.	Yes
GENERAL CONTROLS		
Centre Facilities		
Provide rooms for administration/office and staff respite.	Staff room with kitchenette, office interview room and reception is provided.	Yes
Locate office adjacent to entry area (security).	The reception is located adjacent to the lobby entrance.	Yes
Staff room to include a minimum 20m ² floor space.	The staff room on the ground floor is 13.5m ² , however the office/interview room is significantly large enough to account for the shortfall.	No. Variation acceptable.

Requirements	Proposed	Compliance
<p>If children below under 2 years are to be cared for then these be provided:</p> <ul style="list-style-type: none"> a sleeping room with 2.5m² of floor space per cot and maximum of 10 cots per room a nappy change area adj. to the cot room to be provided 	<p>1 x cot rooms: Room 1 (9 cots)=1.27m² Room 2 (10 cots)=1.65m²</p> <p>Provided for room 1 but not for 2.</p> <p>Reducing the number of cots per room to achieve compliance with this requirement would affect the overall number of children which could be cared for at the centre. As the proposal satisfies state and national regulations for the size of indoor and outdoor play spaces for children, it is not necessary to penalise the overall number of children based on a non-compliance with this control.</p> <p>The intent of this control is to prevent overcrowding of cots in spaces. It does not appear that overcrowding occurs and therefore reducing the number of cots in each room to ensure compliance is not required.</p>	No. Variation acceptable.
Provide laundry facilities.	Laundry facilities are provided.	Yes
Provide pram storage area.	A combined pram storage and general storage area has been provided.	Yes
Signage		
Must comply with Part 9.1 of DCP.	No signage is proposed. Condition 16 on the original consent requires development consent for any signage. This condition will not be changes as a result of the Section 96.	N/A
Exterior Lighting		
Provide lighting at main entrance and within the site as necessary. Spot light is discouraged.	To be conditioned (see condition 66).	Yes
Street number to be clearly visible.	Condition imposed as part of approved development.	Yes
Waste Storage and Management		
Waste Management Plan to be submitted and must comply with Part 7.2 of DCP.	Operational waste will be disposed of daily into the basement. This will then be collected privately. No objection	Yes

Requirements	Proposed	Compliance
	has been raised by Councils Environmental Health Officer to the location of the waste areas or the disposal methods.	
Waste facilities are not to be sited within the areas required for car parking, driveway, access or landscaping areas.	The waste storage facilities are within previously approved areas which will not impact car parking or the landscaping areas.	Yes
Emergency Evacuation		
A 'Fire Safety and Evacuation Plan' complying with AS3745 is to be submitted to PCA prior to Occupation Certificate: <ul style="list-style-type: none"> • Address mobility of children during evacuation • Safe congregation area • Procedure and supervision of children during evacuation. 	Details not required at this stage. A condition of consent will be imposed to ensure compliance (see condition 134A).	Yes

Part 7.2 - Waste Minimisation and Management

Appropriate conditions of consent were imposed when the development was originally approved. The Section 96 does not warrant the need to change any of these conditions.

Part 9.2 - Access for People with Disabilities

This DCP requires that for residential development it is necessary to provide an accessible path of travel from the street to and through the front door to all units on each level of the building. Also 10% of the units are to be adaptable units in terms of AS4299. The retail and child care centre component of the development is required to comply with all of the applicable provisions of the DCP.

The approved development provides 269 units, therefore twenty seven (27) adaptable units (10%) are required to be provided. The amended application proposes eight (8) additional home/office units and a total of 277 units as a result. Therefore, twenty eight (28) adaptable units (10%) are required. A condition of consent is recommended to be imposed requiring the provision of twenty eight (28) adaptable units (see condition 53). As a result, it will also be necessary to amend condition 74 to ensure that a minimum of 28 accessible car spaces are provided.

Part 9.3 – Car Parking

Part 9.3 specifies car parking to be provided in accordance with the following requirements:

Residential Development - High Density (Residential Flat Buildings)

- 0.6 to 1 space / one bedroom dwelling
- 0.9 to 1.2 spaces / two bedroom dwelling
- 1.4 to 1.6 spaces / three bedroom dwelling
- 1 visitor space / 5 dwellings

Retail Premises and Industrial Retail Outlet

- 1 space / 25 m² GFA

Child care

- 1 per 8 children and 1 space per 2 staff (stack parking staff only).

The Section 96 application requires off street car parking to be provided at the following rates:

	Lower Limit	Upper Limit
One bedroom units/ Studio Apartments x 205	123	205
Two bedroom units x 51	46	62
Three bedroom units x 13	19	21
Visitors' spaces 1 / 5 units	56	56
Child care x 18	43	43
Home/office units x 8 (one bed)	4.8	8
Retail 1 / 25m ²	7	7
	299	400

The amended development proposes the provision of up to 384 car parking spaces: The break up is as follows:

283	x	Residential spaces
56	x	Visitors' spaces
18	x	Child care
8	x	Home/Office units
19	x	Retail

Thirty eight (38) bicycle spaces were required to be provided as part of the approved development and no further spaces are required as part of the Section 96 application.

The proposal complies with Council's car parking and bicycle requirements

LIKELY IMPACTS OF THE DEVELOPMENT

Many of the impacts associated with the amended development have already been addressed in the report. The other relevant matters include:

Hours of Operation

The applicant did not propose hours of operation for the retail uses as part of the original approval. Therefore, the hours of operation were restricted to be 8.00am to 8.00pm seven days a week (see condition 145a).

As part of the amended development, the retail space within Building B and C has been replaced with dual use home/office units and will be subject to separate development applications where the appropriate hours can be determined based on the use.

The retail space within Building D has been replaced with a child care centre with proposed operating hours of 6am to 8pm – Monday to Friday, closed Saturday and Sunday. In addition, it is proposed the outdoor play areas are not used before 8am and after 6pm. An acoustic report accompanied the application and has recommended a number of acoustic measures to ensure the use of the child care centre does not impact upon residents within the Building D and the surrounding buildings within the development. The acoustic report recommended restricting the use of the outdoor play areas to not before 8am and ceasing at 6.30pm, as well as a complaints register being available for residents to fill out.

Despite these measures, concerns are raised that the child care centre may impact on the amenity of future occupants of the residential apartments if allowed to open at 6am and close at 8pm. At this stage the operator of the child care centre has not been able to demonstrate that the centre can operate satisfactorily with no adverse impacts to the amenity of the residential units above. The child care centres that currently operate in the bay one development have hours restricted to between 7am to 6.30pm, Monday to Friday. These hours are considered more appropriate for the mixed use developments and will be imposed as a condition on the consent (see condition number 145a).

Traffic generation:

Council's Traffic Engineer advised the Section 96 application would not increase the number of vehicle movements compared to the approved development.

COMMENTS FROM COUNCIL DEPARTMENTS:

Urban Design

Council's Urban Designer has provided the following comments in respect of the Section 96. Where necessary a comment has been provided by the Assessment Officer.

1. *The conversion of the retail area in Building C on the plaza level to home office units is supported. However, to ensure the public access way between Church and Porter Streets has good surveillance and is not flanked by blank and/or high walls, the fencing adjacent to it is to be treated as follows:*
 - *any fencing of the courtyards of the home-office units adjacent to the access way should be semi-transparent above 600mm height and a max height of 1500mm, and*

Comment: The applicant provided amended plans to reflect these comments.

- *the proposed 1200mm high fencing of the playground on the eastern side of the child care centre should be located above the child care side of the planter rather than along the side that is immediately adjacent to the access way.*

Comment: The applicant provided amended plans which incorporated a 1.8m high multi-coloured glass panel fence surrounding the outdoor play areas of the child care centre. The applicant deleted the planter boxes from within the outdoor play areas and relocated them adjacent to the outside wall of the courtyards associated with the dual use home/office units. This will allow for adequate surveillance as well as increasing the perceived width of the walkway through the plaza.

2. *The proposed direct ramp from Church Street to the access way in lieu of the switch back ramp is supported.*
3. *Whilst the conversion of the ground floor retail in Building D to a child care centre can be supported, the proposed extent of the outdoor play area compromises the function and character of the plaza and the development's presentation to Well Street. The plaza level and Well Street frontage is to be redesigned and a revised Landscape Plan and Sections provided so that:*
 - *The width of the stairs from Well Street to the plaza is to be no less than the steps in the approved DA.*

Comment: The applicant initially increased the width of the stairs to 7m from 6m (original approval was 8m). However, in order to accommodate a 2.5m easement within the Well Street frontage, the area of the outdoor play space was reduced and subsequently the plaza width was returned to 6m to maintain the minimum outdoor space requirements for a child care centre. This results in the width being 2m less than what was approved in the original application. While this is an undesirable situation, the 6m width can be supported. There are no controls in the DCP which specifies any requirement for public access and the public access between Church Street and Porter Street is also 6m wide.

- *The lower level planting area adjacent to the fire escape on Well Street is to be retained.*

Comment: A 2.5m wide strip of deep soil planting is provided within the Well Street frontage in front of the outdoor play space associated with the child care centre. While this is not as large as the approved planting area, it is deemed adequate as it provides an inviting landscaped area at the entrance to the plaza.

- *Circulation within the plaza is to be as per the approved DA including the provision of an area that is suitable for the planting of tree (s) that will attain a min size of 8 metres. It is noted that to achieve a satisfactory layout, the size of the outdoor play area will need to be reduced and this may reduce the number of children that can be accommodated within the child care centre.*

Comment: The circulation space within the plaza will be reduced as part of the section 96. This is considered to be an adverse consequence of the Section 96, however as detailed above, it can be supported. A benefit of the Section 96 is the reduction in paved area and increased amount of green space. The size of the outdoor play area for the child care centre has been reduced from an area to accommodate 90 children to an area that will accommodate 84 children.

- *Fencing of the child care centre should be transparent – steel palisade or similar.*

Comment: The applicant provided amended plans which incorporated a 1.8m high multi coloured glass panel fence surrounding the outdoor play areas of the child care centre.

- *Bike racks are to be provided within the plaza.*

Comment: The applicant provided additional bike racks within the plaza and the Well Street frontage.

- *Consider inclusion of seating within plaza.*

Comment: The revised landscape plan included a low level grass area which can act as seating around the edge. Given that the plaza is privately owned and Council does not have any requirement for such a space within its planning controls, this is considered appropriate.

Public Works :Traffic

No objection was raised by Council's Traffic Engineer

Public works – Public Domain/Open Space:

No objection was raised by Council's Open space officer.

Environmental Health Officer

No objections have been raised to the proposed development subject to additional conditions of consent in respect to remediation and conditions for the child care centre (see conditions 56a, 56b and 56c).

Upon a detailed review of the proposed changes within the section 96 application, Councils Environmental Health Officer has some concerns and has recommended additional conditions with regards to remediation and site auditing. No objection was raised to locating a child care centre within the previously approved retail space subject to conditions and compliance with recommendations contained within the acoustic report submitted and the reduced hours of operation (discussed earlier under *Likely Impacts*).

PROPOSED AMENDMENTS TO THE CONDITIONS OF CONSENT

As part of the Section 96(2) application the applicant has requested variations or the deletion of certain conditions on the consent. In addition, as a result of the Section 96 certain other conditions are required to be amended. These conditions are discussed below:

Condition 1 Approved Plans

It is proposed to amend this condition to reflect the current plans. This amendment is supported.

1b – Change in species type for section of planting

It proposed to delete this condition as the revised landscape plan addresses this concern via the provision of a suitable species. No objection is raised.

2 – Voluntary Planning Agreement. The approved development application included the condition that the VPA be incorporated onto the title of the site. As part of the Section 96 the applicant has amended this VPA via a Deed to increase the monetary contribution to be paid to Council. It will be necessary to include an additional condition to ensure that this Deed is also incorporated on the title. This condition will be condition number 2a.

5 – Compliance with BASIX – The Basix Certificate will be required to be amended to reflect the additional 8 home/office units proposed.

8 - Retail glass wall facing Church Street – partial transparent glazing and signage

It proposed to delete this condition as the retail space and rear glazed walls facing Church Street have been replaced with a child care centre. The glazing associated with the child care centre within Building D, will be obscured glazing up to a height of 1.8m. The fencing associated with the outdoor play

areas (of the child care centre) also presents to Church and Well Street, and is proposed to be multi coloured glass panels up to 1.8m in height. Therefore, no objection is raised to the deletion of this condition as no signage is proposed and complete glazing up to 1.8m in height is needed to provide privacy for the children attending the child care centre.

21. Submission of Development Applications - For the retail spaces.

It is proposed to modify this condition as the previously approved retail space has been consumed by the proposed child care centre and dual use home/office units. It is proposed to amend the condition as follows:

A separate Development Application is to be submitted to Council for the use of each of the retail area and home-office units as required by any relevant Environmental Planning Instruments.

49 – Acoustic Report. The approved development application included the condition that the development is to incorporate all of the recommendations contained in the Acoustic Report with regard to glazing construction, external walls, roof/ceiling construction, external doors and mechanical ventilation. As part of the Section 96 the applicant submitted an amended acoustic report in respect of the proposed child care centre. It will be necessary to include an additional condition to ensure that the recommendations contained in the amended Acoustic report are implemented. This condition will be condition number 49a.

51 - Accessibility & DDA Report. The approved development was to incorporate all of the recommendations contained in the Accessibility and DDA Report. The amended application includes the provision of child care centre and changes to the Well Street plaza entrance, removing an accessible entry. Therefore, it will necessary to include additional conditions (51b and 51c) concerning the provision of a chairlift at the Well Street plaza entrance and the provision of an accessibility report concerning the child care centre. Therefore, this condition will be condition number 51a.

53 - Adaptable Units. The approved development included 269 units and required 27 adaptable units to be provided. The amended application proposes eight (8) additional home/office units and a total of 277 units. Therefore, twenty eight (28) adaptable units (10%) are required. It will be necessary to amend the condition to include a minimum of twenty eight (28) adaptable units.

56 – Contamination. Detailed report required prior to the issue of the CC

It is proposed to delete this condition. This is acceptable subject to the addition of the following conditions to address any contamination issues:

56a. Remediation of land - The land must be remediated to the extent necessary for the proposed use and be validated by an experienced environmental consultant. Following validation of the land, a copy of the

validation report must be submitted to Council for review. The validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA 1997) and demonstrate that the land is suitable for the proposed use. **No building work, other than bulk excavation work, is to be carried out until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use without the need for further remediation.**

56b. Site audit - A site audit must be carried out by an accredited site auditor under the *Contaminated Land Management Act 1997* if requested by Council.

56c. Excavated spoil - All excavated spoil must be classified in accordance with the Waste Classification Guidelines (DECCW 2009) prior to removal from the site and be transported to a facility or place where the material can be lawfully disposed of or re-used.

65 - Fencing – The Section 96 application includes a child care centre and requires the provision of fencing to the outdoor play areas which. The fencing will be visible from Church and Well Street and needs to complement the streetscape. Therefore, it will be necessary to include an additional condition relating to the type and height of fencing. This condition will be condition number 65a.

66- Lighting of common areas (driveways etc.). This condition requires lighting to be provided for internal driveways, visitor parking areas, within the central plaza and the communal open space and under awning lighting (including the lighting along Church Street awning and the central plaza awning) prior to issue of the Construction Certificate. The section 96 application includes a child care centre which will require the provision of lighting at the entry and the surrounds. Therefore, it will be necessary to amend the condition to include details of the lighting for the child care centre.

68 - Energy Efficiency. The condition requires retail components of the building to be in accordance with the City of Ryde's DCP in terms of energy efficiency. The condition will be amended to include the retail and the child care centre to be in accordance with the requirements of the energy efficiency DCP.

74 - Disabled Car Parking – It is proposed to amend this condition to provide one (1) additional accessible car parking space. Therefore, a total of twenty eight (28) accessible car parking spaces will be required. This will reflect the number of adaptable apartments.

143 - Allocation of Car Parking

It is proposed to amend this condition to reflect the different uses and additional car parking spaces required. The condition will require parking to be allocated as follows:

283 x Residential spaces

56 x Visitors' spaces

18	x	Child care
8	x	Home/Office units
19	x	Retail

145 - Hours of Operation for the Commercial uses. This condition restricts commercial uses to operating between the hours of 8.00am and 8.00pm Monday to Sunday. The Section 96 application includes a child care centre with operating hours between 7am to 6.30pm Monday to Friday. Therefore, it will be necessary to include an additional condition relating to child care centre hours of operation. This condition will be condition number 145a.

Additional conditions to be imposed:

As a result of the section 96, it is also necessary to impose additional conditions. These conditions relate mostly to the provision of a child care centre, gym and swimming pool within the development (See condition number 1f, 1g, 49b, 65b, 66, 68, 89a, 89b, 122a, 122b, 134a, 142a, 142b, 145b, 158 - 162). Additional conditions have also been imposed to require the BBQ and seating area to be retained and accessibility issues to be resolved.

CONCLUSION

The application satisfies the requirements of Section 96(2) of the *Environmental Planning and Assessment Act 1979* and does not raise any additional matters referred to in Section 79C of the above act. The application is recommended for approval.

RECOMMENDATIONS

1) That the Sydney East Region Joint Regional Planning Panel as the consent authority modifies its development consent LDA2012/0097 dated 26 June 2013 in respect of a mixed use development at 125-135 Church Street, Ryde under the provisions of Section 96 of the *Environmental Planning and Assessment Act 1979* subject to the following amendments:

- A. That condition 1B and 8 be deleted from the consent.
 - B. That conditions 1, 2, 5, 21, 49, 51, 53, 56, 65, 66, 68, 74, 143 and 145 be amended to read as follows:
1. **Approved Plans** - Development is to be carried out in accordance with the following plans and supporting documentation as submitted to Council, except where amended by these conditions of consent:

Document	Author	No. and Revision
Site Plan – Site	Architex	S96- 01 Issue B

Analysis		
Site Plan - Demolition	Architectus	DA0010 Issue C
Demolition Work Plan	Architectus	DA0011 Issue B
Building Heights	Architectus	DA0021 Issue C
Basement 2	Architex	S96 – 02 Issue B
Basement 1 Part A – parking allocation	Architex	S96 – 03 Issue C
Basement 1 Part B	Architex	S96 – 04 Issue B
Ground Floor - Part A	Architex	S96 – 05 Issue E
Ground Floor - Part B	Architex	S96 – 06 Issue B
Ground Floor Child Care Layout	Architex	S96 – 13 Issue B
Level 1 – Part A	Architex	S96 – 07 Issue B
Level 1 – Part B	Architex	S96 – 08 Issue B
Level 2	Architectus	DA1004 Issue B
Level 3	Architectus	DA1005 Issue B
Level 4	Architectus	DA1006 Issue B
Level 5	Architectus	DA1007 Issue B
Level 6	Architectus	DA1008 Issue B
Level 7	Architectus	DA1009 Issue B
Level 8 Roof	Architectus	DA1010 Issue B
Sections Sheet 1	Architectus	DA0040 Issue A
Sections Sheet 2	Architectus	DA0041 Issue B
Sections Sheet 1	Architectus	DA3000 Issue B
Sections Sheet 2	Architectus	DA3001 Issue B
Pool sections	Architex	S96 09 Issue B
Elevations Part A	Architex	S96 10 Issue B
Elevations Part B	Architex	S96 11 Issue B
Elevations Part C	Architex	S96 12 Issue B
Schedule Area	Architectus	DA6000 Issue B
Landscape Plan	Scott Carver	001 Rev F
Landscape Plan	Scott Carver	002 Rev C
Landscape Plan Sections	Scott Carver	003 Rev C
Landscape Specifications	Scott Carver	004 Rev B
Acoustic Report	Acoustic Logic	15 November 2011
Acoustic Report	Acoustic Logic	Rev 1, 15 November 2011
Geotechnical Investigation	Jeffery and Katauskas Pty Ltd	30 November 2011

- 2a. **Voluntary Planning Agreement** - Pursuant to Section 80A (1) of the *Environmental Planning and Assessment Act 1979*, the Voluntary Planning Agreement between the City of Ryde and Motive Properties Pty Limited that relates to the development application the subject of this consent, must be registered on the title of the property prior to the lodgement of any application for a certificate under section 109C of the *Environmental Planning and Assessment Act 1979*.
- 2b. **Deed**. Pursuant to Section 80A(1) of the *Environmental Planning and Assessment Act 1979*, the Deed between the Council of the City of Ryde and Karimbla Properties (No.38) Pty Ltd that relates to the section 96 application MOD2013/173 must be registered on the title of the property prior to the lodgement of any application for a certificate under Section 109C of the *Environmental Planning and Assessment Act 1979*.
5. **Compliance with BASIX** - The development is to be carried out in compliance with BASIX Certificate No. 508296M_03 dated 4th February 2014.
21. **A separate Development Application** is to be submitted to Council for the use of each of the retail areas and home-office units as required by under relevant Environmental Planning Instruments.
- 49a. **Acoustical Assessment Report** - The development is to incorporate all of the recommendations contained in Section 4.3 of the Acoustic Report prepared by Acoustic Logic dated 15 November 2011 with regards to glazing construction, external walls, roof/ceiling construction, external doors and mechanical ventilation. To ensure acceptable acoustic amenity within the development, the development is to be constructed in accordance with AS3674-1989 and AS3671-1987. The development must be acoustically designed and constructed to meet the relevant provisions of Australian Standard AS 2107:2000 *Recommended design sound levels and reverberation times for building interiors*, when the windows and doors are closed. Details of the measures to be undertaken as recommended in the Acoustic report are to be submitted to the Principal Certifying Authority prior to release of the Construction Certificate. Copy of the report by Acoustic Logic P/L is attached as Attachment 1 of the consent.
- 49b. **Acoustic report for Child care Centre** – The recommendation contained in the Acoustic Logic report titled *125 -135 Church Street Meadowbank: Acoustic Assessment for Section 96 Application* (Document Ref:20130983.1/1003/R1/TT) must be implemented. Details of the measures to be undertaken as recommended in the acoustic report are to be submitted to the Principle Certifying Authority prior to the release of the Construction Certificate.

- 51a. **Accessibility & DDA Report** - The development is to incorporate all of the recommendations on pages 4 through to 8 contained in the Accessibility and DDC Report prepared by OneGroup ID dated 11 September 2012. A copy of the Accessibility and DDA Report is attached as Attachment 4 of the consent. A suitably qualified access consultant is to verify that the Construction Certificate drawings fully comply with Development Control Plan 2006 Part 9.2 Access for People with Disabilities.
- 51b. **Accessibility.** A chair lift is to be provided from Well Street to the plaza and is to comply with the Building Code of Australia and AS4299. Details demonstrating compliance is to be provided on the Construction Certificate plans. Prior to the issue of the Construction Certificate, a suitably qualified access consultant is to certify that the chair lift complies with A4299.
- 51c. **Access report.** A report is to be obtained from a suitable qualified access consultant confirming that doorways, entrances, circulation paths and the like within the child care centre are suitable for use by persons with a disability as set out in Part 9.2- Access of DCP 2010. The report shall be submitted with the Construction Certificate plans.
53. **Adaptable Units.** A minimum of 28 adaptable units are to be provided. These apartments are to comply with all of the spatial requirements as outlined in DCP 2010 Part 9.2 and AS4299. Details demonstrating compliance is to be provided on the Construction Certificate plans. Prior to the issue of the Construction Certificate, a suitably qualified access consultant is to certify that the development achieves the spatial requirements of DCP 2010 Part 9.2 and A54299.
- 56a. **Remediation of land** - The land must be remediated to the extent necessary for the proposed use and be validated by an experienced environmental consultant. Following validation of the land, a copy of the validation report must be submitted to Council for review. The validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA 1997) and demonstrate that the land is suitable for the proposed use. No building work, other than bulk excavation work, is to be carried out until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use without the need for further remediation.
- 56b. **Site audit** - A site audit must be carried out by an accredited site auditor under the *Contaminated Land Management Act 1997* if requested by Council.
- 56c. **Excavated spoil** - All excavated spoil must be classified in accordance with the Waste Classification Guidelines (DECCW 2009) prior to removal from the site and be transported to a facility or place where the material can be lawfully disposed of or re-used.

- 65a. **Fencing** - Fencing is to be in accordance with Council's Development Control Plan and details of compliance are to be provided in the plans for the **Construction Certificate**.
- 65b. **Child Care Centre Fence**
The 1.8m fence enclosing the outdoor play areas of the child care centre must be constructed entirely of multi coloured glass panels, indicated as option no. 2 on landscape plan 001, Rev F as annotated in red on the approved plans. Details demonstrating compliance is to be provided to Council prior to the release of the Construction Certificate.
66. **Lighting of common areas (driveways etc.)** - Details of lighting for internal driveways, visitor parking areas, within the central plaza and the communal open space, child care centre (entry area) and under awning lighting (including the lighting along Church Street awning and the central plaza awning) shall be submitted for approval prior to issue of the Construction Certificate. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
68. **Energy Efficiency** - The retail and child care centre component of the building must be in accordance with the City of Ryde's DCP in terms of energy efficiency and the following:
- (a) The total anticipated energy consumption for the base building is no greater than 450 Mega Joules / annum / metre square for commercial uses and 900MJ/am² for retail uses.
 - (b) The use of electrical appliances such as dishwashers, refrigerators, freezers and washing machines are to be provided with a minimum star of 3.5.
 - (c) The development is to incorporate energy-efficient lighting, motion detectors and dimmers.
 - (d) AAA or AAAA rated fittings and fixtures are to be used to ensure high levels of water efficiency. Where fittings cannot be AAA or AAAA, self-regulating flow restrictors will be provided on the supplies to limit the discharges to levels equivalent to AAA ratings.

The Construction Certificate plans are to demonstrate compliance with the above.

74. **Accessible parking spaces.** A minimum of 28 parking spaces in both the commercial parking area and the residential parking area are to be wide-bay spaces for people with a disability. The width of these spaces is to be a minimum of 3.6 metres and a vertical clearance of 2.55 metres.

143. **Allocation of Car Parking** - Car parking is to be provided in accordance with the following:

283	x	Residential spaces
56	x	Visitors' spaces
18	x	Child care
8	x	Home/Office units
19	x	Retail

The child care centre parking spaces shall be provided in accordance with the following:

- The 7 staff parking spaces and 11 visitor (parent/carer) shall be clearly signposted.
- The 11 visitor (parent/carer) parking spaces shall be clearly designated as short term (drop off and pick up) parking.
- All parking spaces must be marked and sign posted

- 145a. **Hours of Operation for the Commercial uses** - To ensure that the residential amenity of the nearby residential apartments are not adversely impacted on, the hours of operation for the commercial uses are to be restricted between the hours of 8am and 8pm Monday to Sunday. Any extension beyond these hours would require the approval of Council.

- 145b. **Operating hours** - child care centre:

Monday to Friday: 7am to 6.30pm

Closed Saturday and Sunday

Outdoor play areas must not be used before 8am.

- C. That the following conditions be included in the consent: 1f, 1g, 89a, 89b, 89c, 122a, 122b, 134a, 142a, 142b, 143a, 158-162 be inserted:

- 1f. **Pool fencing.** The pool fence is to conform with the provisions of the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2008*. Details of compliance are to be reflected on the plans submitted with the Construction Certificate.
- 1g. **BBQ and seating area within podium courtyard.** A BBQ and seating area is to be provided within the podium courtyard between Building B and C. Details are to be submitted on the Construction Certificate drawings.
- 89a. **Pool filter – noise.** The pool/spa pump/filter must be enclosed in a suitable ventilated acoustic enclosure to ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level

when measured at any affected residence. Details are to be provided on the Construction Certificate drawings.

- 89b. **Construction and fit-out of childcare centre kitchen** - The design, construction and fit-out of the childcare centre kitchen must comply with:
- (a) Food Safety Standard 3.2.3 – *Food premises and equipment*, and
 - (b) Australian Standard AS 4674-2004 *Design, construction and fit-out of food premises*.

Full details of the child care centre kitchen must be submitted with the Construction Certificate. This detail is to include

- details of the proposed floor, wall and ceiling finishes
- details of all proposed fittings and equipment, including the method of installation
- drainage details, including the location of all proposed floor wastes
- lighting and ventilation details, including any proposed exhaust hoods.

- 89c. **Child proof locks.** Entry and exit doors connected to the child care centre are to be in accordance with *Swimming Pools Regulation 2008*. Details shall be submitted with the Construction Certificate.

- 122a. **Depth markers.** Water depth markers are to be displayed at a prominent position within and at each end of the swimming pool.

- 122b. **Resuscitation Chart.** A resuscitation chart containing warning “YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL” must be provided in the immediate vicinity of the pool area so as to be visible from all areas of the pool.

- 134a. A ‘**Fire Safety and Evacuation Plan**’ complying with AS3745 is to be prepared by a suitably qualified person and submitted to the PCA prior to issue of the **Occupation Certificate**. The plan must take into account the emergency evacuation procedures from the child care centre and shall address the following controls in Section 7.5 of Part3.2 Child Care centres of DCP 2010:

- The mobility of children during evacuation
- The location of a safe congregation area
- The supervision of children during evacuation & at the congregation centre.

- 142a. **Inspection of childcare centre kitchen** - Council's Environmental Health Officer must inspect the childcare centre kitchen prior to occupation.

- 142b. **Notification of business details to Food Authority** - The operator of the childcare centre kitchen must notify their business details to the NSW Food Authority prior to occupation. Notifications may be submitted on-line at www.foodnotify.nsw.gov.au.
- 143a. **Operational plan of management.** The operator of the childcare centre must provide an operational plan of management in accordance with the DCP prior to the commencement of the use.
158. **Maintenance of swimming pool and spa pool** - The swimming pool and spa pool must be maintained in a condition suitable for bathing at all times that the pool area is open for use. A person must be employed to clean the pools and test the water at least daily to ensure that the chlorine and pH levels are satisfactory.
159. **Pool plant** - The swimming pool and spa pool must be equipped with an effective water circulation system, filter and continuous disinfection dosing control system.
160. **Disposal of wastewater from pools** - All wastewater from the swimming pool and spa pool must be discharged to the sewerage system in accordance with the requirements of Sydney Water Corporation.
161. **Ventilation of pool area** - The pool area must be provided with adequate ventilation to dilute volatile air contaminants and prevent condensation from collecting on the walls and ceiling.
162. **Child Care Centre numbers.** The maximum number of children permitted at any one time is eighty four (84). A Section 96 application will be required if the number of children is to increase.

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