

*Canberra plan not yet public
should address issue from now on*

DA approval notes re Mitchell hearing

DA approval for amendment to allow child care as a use for a site in Mitchell was refused. Environment Planning & Sustainable Development Directorate (EPSD) had a number of concerns including the potential for development in currently vacant sites, the limitation of future industrial activities if ed and care centre was in place.

It went to a mediation hearing which did not go well – basically the developer position is that it is an allowed use and EPSD were arguing on the basis of noise and air pollution effect on children’s health, which developer maintained could be mitigated – so it is going to a hearing set for 9 January.

I attended a preparation meeting for the hearing.

Chief Minister, Treasury and Economic Directorate(CMTEDD) maintain that it is useless to put forward the argument based on noise and air as present use does not predict future use. They believe sterilisation is the main issue and the only useful approach is to do a desktop assessment (an assessment of all the factors related to the development of an ed and care centre in an industrial area. Robin had some documents which resulted from that kind of approach used my a number of City Councils on which decisions not to allow ed and care in industrial areas have been based.

Also research re effect on childrens learning

So a decision was made to engage a consultant to prepare a desktop assessment. EPSD are engaging the consultant and have asked other Directorates to submit issues for consideration by COB today.

In considering our functions the areas I think we could possibly raise at this or when asked to comment on other development applications might be:

- S167 The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and any hazard likely to cause injury.
- Quality Area 3
 - 3.1.3 and 3.2.1 may be relevant

We should raise

Susan has ~~start~~ implemented meetings to consider response to DA Apps.

Scope

- Please provide a desktop review of existing literature/material in relation to any policy of having childcare centres in industrial zones. The review should focus on the national jurisdiction, but include international references if relevant.
- Provide a review of the planning and land authority's assessment of the development application, including the reconsideration.
- Outline the benefits and constraints of permitting child care centres in IZ1 and IZ2 under the ACT Territory plan.
- Examine the capability of these zones to accommodate child care centres.
- Consider comparative practice in other states/jurisdictions.
- Provide an environmental impact assessment including noise, air quality and traffic, of having a child care centre in these zones, with emphasis on young children.
- Provide a view about what would happen to a child care centre (and its occupants) if a Mitchell fire type scenario was to occur. Include a comparison with a similar child care centre that might be in Harrison or Dickson.

Donohoe, Brigid

To: Warden, Jacqui
Cc: McDuff, Wendy; Moysey, Sean
Subject: Development applications


I am preparing letters approving in principle the design of the following education and care centres



1 – 9 Heffeman St, Mitchell (Block 18, Section 11)

Max 109 places (An application for reconsideration in relation environment protection issues I think. We already provided a letter approving the design in principle)



And the noise report for Mitchell states that the measured noise level was 8dBA higher than desirable for a play area. They  also decided to do the testing between 1 & 2 pm because they believed that is the time children are outside. I believe that is probably the time of lowest noise in the area (lunch time for workers) and is also the time children are most likely to be inside.

I found these issues in a quick scan of the documents, there may well be other concerning things
Do we have a responsibility to point out these factors in relation to the wellbeing of children? And if so how do we do that? I think the first recommendations are unreasonable for a centre and that the recommendations to abate the noise in the 2nd case are unlikely to be carried out.
I have emailed and asked someone from Access Canberra Customer Services to call me - they send the plans to us.

Best Regards

Brigid

Brigid Donohoe | Team Leader Quality Assurance | Email:brigid.donohoe@act.gov.au
Phone + 61 2 6205 4648 | Fax 02 6207 1128 |
Children's Education and Care Assurance | Education | ACT Government
Hedley Beare Centre for Teaching and Learning, 51 Freemantle Drive, Stirling | GPO Box 158 Canberra ACT 2601
www.det.act.gov.au | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

Deb Barnes

From: Pitt, Leesha <Leesha.Pitt@act.gov.au>
Sent: Monday, May 30, 2016 4:39 PM
To: [REDACTED]
Cc: Finch, Stuart; Heckenberg, Mark
Subject: BRU Approval No 201621 - Block 18 Section 11 Mitchell [SEC=UNCLASSIFIED]

Dear [REDACTED]

The Environment Protection Authority (EPA) has reviewed the report titled "Block 18 Section 11 Mitchell ACT Material Classification Report" dated 24 May 2016 by [REDACTED] and supports the beneficial reuse of up to 30m³ of stockpiled material, as identified in the above report, from Block 18 Section 11 Mitchell within the West Belconnen Resource Management Centre (Block 1586 Belconnen) subject to the following conditions:

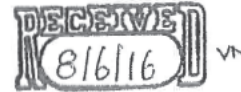
1. This approval only applies to the stockpiled material identified in the above report. No other material from the site is to be removed under this approval (**BRU Approval No 201621**);
2. Separate approval must be sought if the material is to be reused or disposed to any other site;
3. The placement of material within the West Belconnen Resource Management Centre at Block 1586 Belconnen must be in accordance with the requirements of the conditions of the Environmental Authorisation (No. 0374) issued to **ACT NOW**Waste for the site;

Regards

Leesha Pitt
Delegate, Environment Protection Authority

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This e-mail has been scanned for viruses by Symantec.Cloud.



File Ref: 2015/27987



Dear

**ENDORSEMENT OF CONTAMINATION ASSESSMENT REPORT -
BLOCK 18 SECTION 11 MITCHELL GUNGAHLIN**

The Environment Protection Authority (EPA) has reviewed the report titled "Block 18 Section 11 Mitchell ACT Lead Paint Assessment" dated 30 May 2016 by

The EPA has assessed the report and supports the consultant's findings that the soils assessed "do not pose a risk to human receptors" from a contamination perspective and the results of analysis indicate that the paint on the shipping container is considered 'lead free'. The EPA would therefore support the use of the site as a childcare facility.

The works have been generally undertaken to the satisfaction of the EPA in accordance with the Contaminated Sites Environment Protection Policy November 2009 and associated guidelines.

This letter of endorsement must be read in conjunction with the above report.

This should not be taken as a warranty by the Environment Protection Authority or the Territory that the land is fit for any particular purpose.

Yours sincerely



Leesha Pitt
Delegate, Environment Protection Authority

2 June 2016

Donohoe, Brigid

From: Warden, Jacqui
Sent: Tuesday, 19 July 2016 5:37 PM
To: Donohoe, Brigid
Subject: FW: REFERRAL-DET-CHILDCARE-SOCIAL INFRASTRUCTURE PLANNING-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

FYI. Same plans but an update I think. The email says to disregard the previous email!!

Kind Regards

Jacqui Warden | School Leader C | Email: jacqui.warden@act.gov.au
 Phone: 6207 7838 | Fax: 6207 1128
 Children's Education and Care Assurance | Education | ACT Government
 Hedley Beare Centre for Teaching and Learning 51 Fremantle Drive Stirling ACT 2611
 GPO Box 158 Canberra ACT 2601 | www.det.act.gov.au

From: Hastir, Chris
Sent: Monday, 18 July 2016 3:13 PM
To: Warden, Jacqui
Subject: FW: REFERRAL-DET-CHILDCARE-SOCIAL INFRASTRUCTURE PLANNING-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

From: EPD, Customer Services
Sent: Monday, 18 July 2016 3:03 PM
To: CECA; Edwards, Sarah (School Planning); Chadwick, Graham; EPD Strategic Planning Referrals
Subject: REFERRAL-DET-CHILDCARE-SOCIAL INFRASTRUCTURE PLANNING-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

PLEASE DISREGARD PREVIOUS EMAIL

PLANS TO COME ON DISC VIA THE POST

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

Block: 18 Section: 11 Suburb: MITCHELL
Development Application Number: 201

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at epdcustomerservices@act.gov.au
 If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

Phone 02 6207 1923

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

Access Canberra brings together customer and regulatory services

www.planning.act.gov.au | EPDcustomerservices@act.gov.au



Section 3 - Assessment and Recommendations

In response to both Criteria C3 and Criteria C33 of the Industrial Zones Development Code, observations of adjoining industry and noise measurements were undertaken at the site. From these observations and measurements, an assessment of noise intrusion into the site was undertaken.

3.1 Noise Measurements

Noise measurements were undertaken at the site on Wednesday 8 June 2016 during the lunchtime period, from 1:00 pm to 2:00 pm at the north-eastern corner of the block, at the corner of Heffernan and Darling Streets. This time period is relevant to the child care centre because it is at or around the same time as the lunch time break, where doors to the centre will typically be open and children will be playing outside. Noise measurements include the following noise sources:

1. Local road traffic, including light and heavy vehicles
2. Construction noise from Block 70 Section 6 (An excavator jackhammering near the southern boundary of the site.)
3. Industrial noise (Grinder) from Block 19, Section 11. This was only occasional and occurred for less than 30 seconds in the 1 hour period.

The primary noise that occurred for most of the time was road traffic and construction noise (which is likely to be temporary). As the streets are narrow, with cars parked down both sides, and a 50 km/hr speed limit, most traffic was travelling reasonably slowly, hence a relatively low road traffic noise level. There were occasional louder vehicles and noise from trucks unloading fill onto Block 70 Section 6.

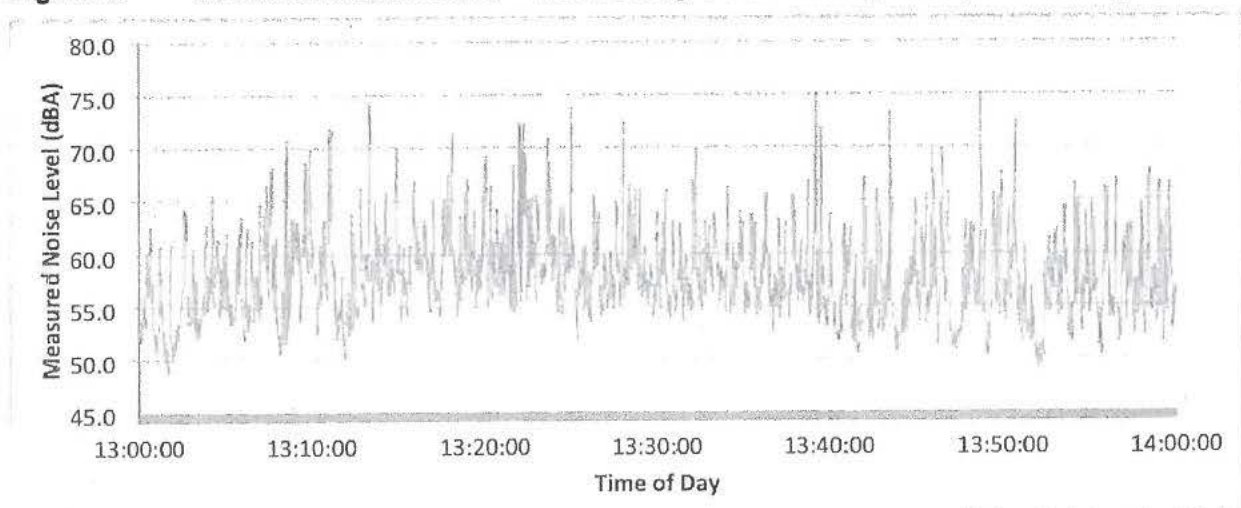
Observations made at the time of measurement indicate that there are no large pieces of mechanical plant, such as chillers, cooling towers or the like, close to the site. The primary industrial noise source is expected to be from the industrial building behind the proposed child care centre, on block 19, Section 11.

Figure 2 shows the measured free-field noise levels in 1 second intervals over the measurement period. A summary of the measured noise levels is as follows:

1. LA1 70 dBA
2. LA10 63 dBA
3. LAeq 60 dBA
4. LA90 53 dBA

For a better understanding of the descriptors used, please refer to the Summary of Acoustic Terminology at the end of this report.

Figure 2 Measurement Results – Wednesday 8 June 2016, 1:00 pm to 2:00 pm



Section 3 - Assessment and Recommendations

Therefore, the noise level expected to occur at the site boundary is Leq 63 dBA when a 2.5 dBA façade reflection is added to the measured noise level. This is expected to be a relatively consistent noise level for the site, which is on minor roads with a 50 km/hr speed limit with no major roads in the immediate vicinity to elevate noise levels during peak periods. In accordance with AS 3671, the building needs to be constructed to Category 3 requirements, meaning special construction, chosen in accordance with Clause 3.4 of AS 3671. Windows, doors and other openings must be closed. Traffic noise reduction between 25 and 35 dB(A) is to be expected.

3.2 Site Assessment

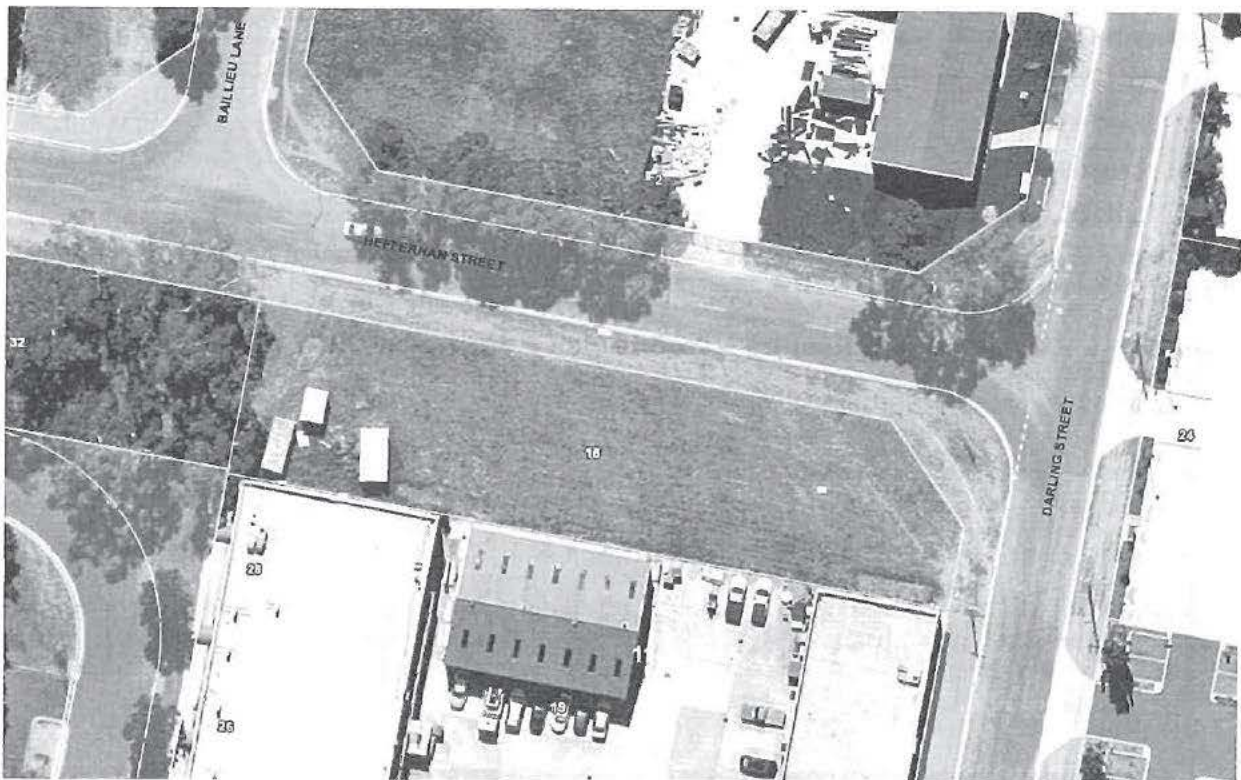
This is a preliminary assessment of the proposal. There is a proposed building design, but this is still under development. This being the case, [REDACTED] will provide advice on the best methods of construction and building orientation to enable the centre to control noise emissions to the children.

Figure 3 shows the site on the south-western corner of the Heffernan and Darling street intersection. The nearest industrial noise sources are directly to the south, with any other industrial noise sources being more than 20 metres from the northern and eastern site boundaries across the road. Therefore, [REDACTED] recommends orienting the building in such a way as to shield all play areas from the nearest industrial buildings, especially the car parking and movement areas between the buildings, where large open roller doors allow noise to spill onto the subject block. The block to the west is not currently developed, but may be developed in the future. What will occur on this block is unknown, so care should be taken if there are any noise sensitive areas to the west of the block.

If the building is to be built toward the southern boundary of the block, windows on this façade should be minimised as much as is practical.

Being an industrial area, noise levels are likely to change on a regular basis, and maximum noise events will vary considerably. For this reason, any rooms designed for cots or sleeping should not be on the building façade. They should be protected by using other rooms and corridors as a buffer.

Figure 3 Site Aerial Photograph



Source :www.actmapi.act.gov.au

3.3 Preliminary Façade Assessment

The following are only preliminary recommendations based upon the measured noise levels. As a building design has not yet been determined, these preliminary recommendations must be confirmed by a full and accurate assessment of the proposed building, taking into account the extent of glazing, location and number of openings, etc.

The noise levels indicate that 6.38 mm thick laminated glass in a commercial glazing suite is likely to be a suitable solution for indoor play areas and the like. The rest of the façade and roof of the building should be designed so as to achieve a weighted sound reduction index of not less than Rw 45. Standard insulated (blanket or batts) brick veneer construction will typically achieve this rating for the facade.

recommends that reverberation control treatment be provided to all rooms (play areas, toddler rooms and preschool rooms) to control reverberation so that the 0.5 second maximum reverberation time recommended in AS/NZS 2107:2000 be achieved. This can occur through a variety of ceiling and wall treatments, as deemed appropriate. Such treatment is also advantageous in reducing reverberant noise from the children themselves. This makes the overall classroom environment more comfortable for both the children and the carers.

also recommends that the glazing system and door framing system be designed to minimise sound leakage. All doors must provide a positive seal when closed so that the frame system does not degrade the performance of the glazing. If sliding doors are to be used, the doors must be able to provide a positive, airtight seal when closed. If this is not possible, the doors must be changed to sealed, hinged swing doors.

3.4 Outdoor Play Areas

It will be important to minimise noise intrusion from adjacent industrial sites. This is to both protect the children and staff, and to allow adjacent industrial sites to be able to operate in a manner consistent with an industrial area.

The measured noise level on the nearest boundary to the road was Leq(1 hour) 63 dBA, including a 2.5 dBA façade reflection. This is 8 dBA higher than desirable for a play area, which should be designed to achieve closer to Leq 55 dBA (equivalent to the now repealed Draft Noise Management Guidelines requirement of L10 58 dBA for a private open space). Therefore, recommends that all play areas be protected from noise from both the road and adjacent sites by the incorporation of suitable noise barriers and by using the buildings themselves as acoustic shielding.

3.5 Indicative Plans

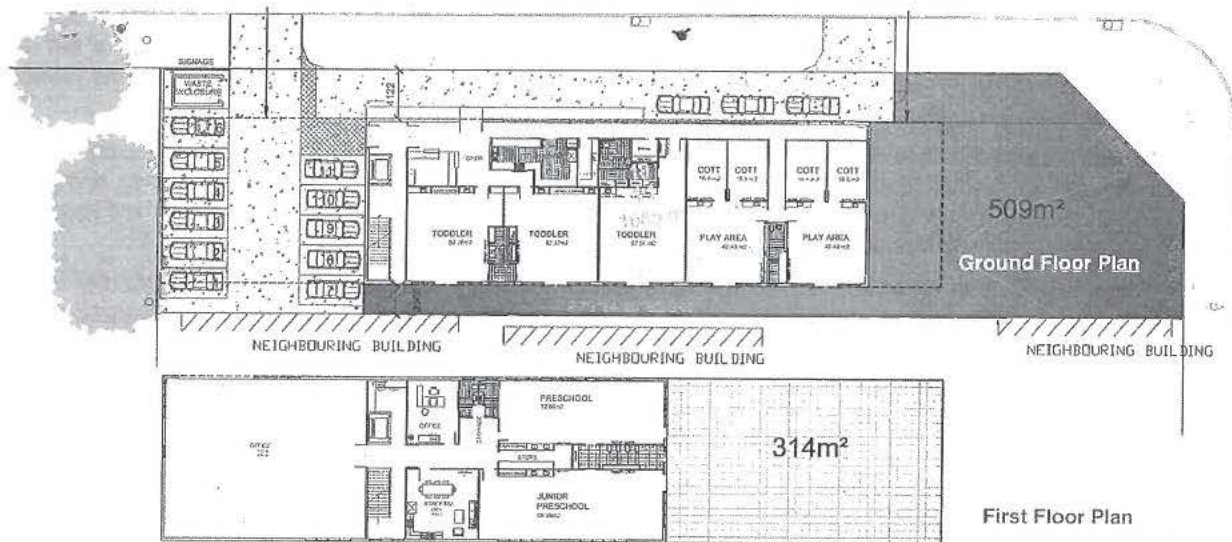
While final site design has not been determined at this stage, has provided indicative plans for a two storey building on the site. The plans, shown in Figure 4, show three toddler rooms beside two play rooms and a cot area. These rooms open onto the southern side of the site with access to a courtyard at the eastern end of the site.

The second storey consists of office and staff areas and two pre-school rooms, opening onto a raised outdoor area.

If this site design is chosen, recommends the following:

1. That the courtyard area and southern boundary be fully fenced with a solid fence to act as a noise barrier. A colorbond fence with a minimum height of 1.8 metres is sufficient.
2. That the doors opening from the toddler rooms and the play rooms on the ground floor be hinged swing doors with acoustic seals and an acoustic rating not less than Rw 30.
3. That the screening around the upper floor outdoor area be a solid barrier that can act as a sound barrier. Glass is acceptable if this is chosen as long as there are no gaps underneath and no gaps between panels.

The cot rooms are well located between an indoor play area and a corridor on the front of the building. The one wall that the cot room shares with the outside should be constructed to achieve a minimum Rw 50 acoustic rating. Typical brick veneer construction with acoustic insulation in the cavity will generally satisfy this requirement.

Figure 4 Indicative Child Care Centre Plans

3.6 Other Industrial Noise

The introduction of a noise sensitive receiver into an active industrial area will need to be carefully considered in the context of Criteria C3 of the Industrial Zones Development Code. It is important to understand that local businesses will undertake noisy activities when necessary as part of their daily operations. Under the current situation, there are no noise sensitive receivers nearby, so whether the commercial premises are complying with the ACT Zone Noise Standards is immaterial, because they are surrounded by like businesses, most of whom will make similar noise to varying degrees. It is unlikely that the neighbouring businesses will be affected to such a point that they make complaints to the EPA. Showrooms, retail areas and the like are typically indoors, so outdoor areas are typically only used for parking and storage. Indoor areas, therefore, are shielded from outdoor noise by the buildings themselves.

The building envelope will certainly be able to be designed and constructed to ensure acceptable noise levels within the building. This means quiet activities and sleep times can occur as would be the case for such facilities in other areas. Acoustic shielding to outdoor areas is also recommended to minimise the likelihood of disturbance when outdoor areas are used. There is, however, a limit to the amount of acoustic shielding that can be provided to outdoor play areas. This said, [REDACTED] is aware of other such facilities in Canberra built near major roads, or within commercial areas (near shopping centres and the like) that are currently operating, or have been planned to operate. The noise levels measured at this site were not considered by [REDACTED] to be excessive, and were not anywhere near a level that is likely to cause hearing damage to individuals (Exposure to noise at a level of 85 dBA over an 8 hour period is one of the work health and safety limits for noise exposure, and noise levels at this site were measured at LAeq 60 dBA, far below the limit).

The nature of children playing outside should also be considered. Children playing generate a significant amount of noise themselves and most children are not overly concerned about background noise unless they want quiet time, in which case they can retreat indoors. It is very common for recreational buildings for children (and adults) to be situated in industrial zones because such recreation generates noise that is more likely to be acceptable in an industrial zone than a residential zone. Such examples are common in Mitchell and Hume, and there are also many children's play areas within busy shopping centres.

It is impossible for [REDACTED] to provide a qualitative assessment as to whether adjoining businesses will be affected by a lease variation to include community facilities in the form of a child care centre, but if the building is constructed to minimise noise intrusion from these adjoining businesses, and the management understand the situation and location in which they are operating, then it should be possible for industrial uses and a child care centre to co-exist beside each other.

Section 4 - Conclusion

has undertaken an assessment of road traffic and industry noise intrusion into the childcare centre proposed for Block 18 Section 11 Kambah ACT, at the corner of Heffernan and Darling Streets, Mitchell ACT. As the site is within an industrial area, a noise assessment is required for the Development Application with ACTPLA to assess the level of road traffic and industry noise intrusion and the appropriate measures to be undertaken to ensure the likelihood of sleep disturbance during nap times is minimised.

undertaken this assessment with reference to the appropriate Australian Standards and ACT Codes, including:

1. The ACT Territory Plan
2. The ACT Environment Protection Regulation (2005)
3. The Industrial Zones Development Code
4. AS/NZS 3671 Acoustics - Road Traffic Noise Intrusion Building Siting and Construction.
5. AS/NZS 2107:2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors.

The proposal is to apply for a lease variation to allow community uses (limited to child care centre or the like) on Block 18 Section 11 Mitchell ACT, at the corner of Heffernan and Darling Streets. The current community

finds that with suitable building design to minimise noise intrusion from adjoining commercial uses and from road traffic noise, and the incorporation of shielding to play areas that achieves a minimum 8 dBA reduction, the proposal to apply for a lease variation to allow community uses (limited to child care centre or the like) on Block 18 Section 11 Mitchell ACT, at the corner of Heffernan and Darling Streets is possible. The short-term measurements and observations made on-site indicate that the site can be designed to be used as a child care centre. The proposed indicative design will be suitable with the recommendations in Section 3.5 of this report implemented.

We trust this information meets your current requirements. If you have any questions I can be contacted on

Sincerely,

7. Conclusion and Recommendations

Based on the Site fieldwork and the reported laboratory results for the ambient air quality, [REDACTED] concludes the following:

- The concentration of benzene was reported above the WHO assessment criteria limit in the first round of sampling. In the sampling event, conducted on 29th June 2016, benzene was below the adopted assessment criteria at both sampling sites.
- The measured concentration of VOCs were low to below the adopted assessment criteria in both sampling locations.

Based on the results from this second round of sampling, the measured concentrations are not considered to represent a significant health risk for the proposed land use. The most probable source for both the previous measured benzene is considered to be vehicular traffic in the vicinity of the site. The Site is therefore considered to be suitable for the proposed end use.

It is concluded that as part of the detailed design phase, measures such as restricting car parking close to the Site, placing barriers on the ground and around the Site and other similar mechanisms are investigated to minimise potential risk.

From: developmentapplications@iconwater.com.au
Sent: Thursday, 21 July 2016 8:29 AM
To: EPD, Customer Services
Subject: Icon Water Application Decision. Application - 156309, Mitchell - 18/11 (Email 1 of 5)
Attachments: Conditional Acceptance156309.pdf; APP-201528763-RECONSIDERATION-01#2.pdf; ENTITYADVICE-201528763-RECONSIDERATION-EPA-01#2.pdf; ENTITYADVICE-201528763-RECONSIDERATION-EPA-02#2.pdf

Icon Water

Approval ID : 156309, Mitchell 18 /11

Your application has been assessed against Icon Water's water and sewerage network access and asset protection requirements.

Please find attached an Icon Water DECISION STATEMENT together with your stamped plans.

A failure to comply with decision statement conditions will invalidate the approval and will expose the land-holder to prosecution under the Utilities Act 2000.

Non-compliant submissions must be rectified and resubmitted to Icon Water for approval prior to construction commencing. A decision to proceed with construction using unapproved drawings will expose the land-holder to prosecution under the Utilities Act 2000.

Please note: Separate decision statements are required from other utilities (eg: electricity, gas, stormwater and communications)

Future applications

Icon Water has introduced an online planning application process for obtaining utility clearances prior to submitting a development application or seeking building approval.

This revised application process consists of an electronic form available [here](#). By using the online form applicants will no longer need to complete the respective Water/Sewerage and Electricity/Gas application forms.

When an application is submitted it will be assessed against the water, sewerage, electricity and gas networks.

Icon Water requests that organisations register their details if they regularly submit applications. Registration will reduce the time it takes to lodge an application. To register, send a return email including the organisation's name, a contact name, phone number and email address.

Regards

[REDACTED]
Building Approvals and Network Protection
Icon Water

Telephone [REDACTED]
Facsimile [REDACTED]



Re: Development of an education and care centre at Block 18 Section 11, Mitchell, ACT.

To whom It may concern

This letter is to advise that Children's Education and Care Assurance has reviewed the sketch design proposal for the development of an education and care centre at Block 18 Section 11, Mitchell, ACT.

The planning design provided is considered to meet the current regulatory requirements under the Education and Care Services National Law (ACT) Act 2011 and the proposed design is endorsed in principle.

This endorsement is provided for the design as documented on the plans provided and does not remove the requirement for the facility to undergo a formal review of completed works prior to approval and operation.

If you require any additional information please contact me on 6207 7838.

Yours sincerely



Jacqui Warden
Manager
Children's Education and Care Assurance
ACT Education Directorate

28 July 2016

Donohoe, Brigid

From: Donohoe, Brigid
Sent: Thursday, 28 July 2016 1:30 PM
To: EPD, Customer Services
Subject: FW: CECA review of proposed education and care services development applications. [SEC=UNCLASSIFIED]
Attachments: Letter re Block 18 Section 11 Mitchell ACT.doc.pdf [REDACTED]

Apologies that I had not attached the letters to the previous email.

Regards

Brigid

From: Donohoe, Brigid
Sent: Thursday, 28 July 2016 1:28 PM
To: EPD, Customer Services
Subject: CECA review of proposed education and care services development applications. [SEC=UNCLASSIFIED]

Please find letters attached confirming that Children's Education and Care Assurance (CECA) has reviewed the following Development Applications

- [REDACTED]
- 201528763 for Block 18 Section 11 Mitchell.

The letters confirm that, as far as we can tell from the attached documentation, the proposed design of the education and care centres meet the requirements of the Education and Care Services National Law (ACT) Act 2011. (National Law).

However I am concerned about aspects of the assessment and recommendations made in the noise assessment reports in respect of the [REDACTED] Mitchell buildings and not sure how to address this as it does not come under the National Law.

Best Regards

Brigid

Brigid Donohoe | Team Leader Quality Assurance | Email:brigid.donohoe@act.gov.au
Phone + 61 2 6205 4648 | Fax 02 6207 1128 |
Children's Education and Care Assurance | Education | ACT Government
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EPDcustomerservices@act.gov.au

Referral-Health-Development Application – Reconsideration - 201528763-18-11-Mitchell-01

Dear Sir/Madam,

Thank you for the documentation received on 18 July 2016 regarding reconsideration of the development application for the proposed Lease Variation of Block 18 Section 11 Mitchell.

The Health Protection Service (HPS) notes that the application seeks to add 'Community Use LIMITED to child care centre' to the lease.

The HPS has reviewed the following documents submitted as part of the reconsideration application:

- Material Classification Report - [REDACTED]
- Air Quality Monitoring Reports [REDACTED]
- Road and Industry Noise Assessment - [REDACTED]
- Planning Report - [REDACTED]

The HPS primary concerns with the proposal to alter the lease to allow a child care centre within an I22 mixed use industrial zone still exist. The HPS has assessed the documentation supplied in the reconsideration application and notes that this documentation considers only the current and not the future incompatible industries that could be established within close proximity to a child care centre. The HPS does not support the proposed lease variation as such industries within close proximity to a future child care centre may pose health risks to vulnerable populations, including developing children.

Please contact Keith Rogers on (02) 6205 1716 if you require any further information.

Yours Sincerely,

[REDACTED]
 Conrad Barr
 Executive Director
 Health Protection Service

[Signature]
 August 2016

From: Chowdhury, Abu Sayem
Sent: Friday, 5 August 2016 11:16 AM
To: EPD, Customer Services
Cc: TAMS CIS ASG DA COORD; Bell, Jeff; Pankhurst, Owen
Subject: COMM-TCCS-RECONSIDERATION-201528763-18/11 MITCHELL-01
 [SEC=UNCLASSIFIED]

Dear App Sec,

DEVELOPMENT APPLICATION NO: 201528763

Project Description:

Reconsideration LEASE VARIATION – to add “Community Use Limited to Childcare Centre”

BLOCK: 18	SECTION: 11	SUBURB: Mitchell
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This DA has been assessed in regards to the following:

Traffic		Driveways	
On Street / Public Parking Facility	X	LMPP/Street Trees	
Public Transport		Street Lighting	
Waste Management	X	Pedestrian Footpath	X
Stormwater	X	Service / Access Easement	
Demolition		Estate Development Plan (EDP)	
Further Information		Amendments/Additions/Alterations	
Lease Variation	X	Capital Works	

X = Areas Assessed.

And our position is:

That It Is Supported	
That It Is Supported With Conditions	X
That It Is Not Supported	
That Further Information Is Required	

Conditions

Childcare centre on this subject site (18/11 Mitchell) can only be supported subject to following conditions:

1. All pick up and drop off parking facility must be either within the block boundary or potential indented parking adjacent to the site along Heffernan Street. In the later case the proponent must be responsible for design and construction of indented parking and footpath (around the site) to the TCCS requirements.
2. The proponent must be responsible for onsite waste collection in accordance with the Development Control Code for Best Practice Waste Management in the ACT (Waste Code) 2014. This will be checked during actual design and construction development application.

Comments/Advice (as advice to EPD only, and not to be included in the Notice of Decision)

1. On street pick up and drop off on Heffernan Street is not suitable from a traffic management and safety perspective.

Regards

Sullivan, Susan

From: Stawski, Leszek
Sent: Tuesday, 22 November 2016 5:41 PM
To: Sullivan, Susan; McDuff, Wendy
Cc: Moysey, Sean; Griffin, Verity; Teasdale, Jonathan
Subject: Mitchell - childcare lease variation - request for assistance [SEC=UNCLASSIFIED, DLM=Sensitive: Legal]
Attachments: Mitchell NOD; [REDACTED]

Dear Susan,

I spoke with Sean Moysey this afternoon briefly in relation to the above matter.

My office acts for ACTPLA, who refused a development application to add childcare use to the crown lease over Block 18 Section 11 Mitchell – cnr Heffernan Street and Darling Street.

I have attached a copy of the Notice of Decision of ACTPLA, [REDACTED]

This matter has been listed for preliminary conference (akin to Mediation) this Friday, 25 November 2016; at which the parties will discuss the proposal and the decision to see if there is any way forward. We are arranging to meet with the various entities who provided advice relating to this proposal, in order to better understand their position so that we can communicate this more fully to the Applicant. To that end, we were hoping to meet with you this Thursday, if you are available, to discuss Education's position.

Please note that I will be out of the office tomorrow, however, please feel free to either contact Ms Verity Griffin, Solicitor with daily carriage of this matter on 62053713; or send both Verity and I an email in reply.

We would be happy to provide you further information if you require it/if it would assist you in further considering this matter.

We look forward to hearing from you as to your availability.

PS. Sean; thank you for your time this afternoon to briefly discuss this matter.

Regards

Leszek Stawski | Senior Solicitor - | ACT Government Solicitor
☎ 02 620 77588 | 📠 02 620 70650 | 📍 DX 5602 Canberra | 📧 PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Matter Ref:631359

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Notice of decision on Reconsideration

Division 7.3.10 of the *Planning and Development Act 2007*

DA NO: 201528763	DATE RECONSIDERATION LODGED: 15 July 2016	
DATE OF DECISION: 19 September 2016		
BLOCK: 18	SECTION: 11	SUBURB: MITCHELL
STREET NO AND NAME: Cnr. Heffernan and Darling Streets		
APPLICANT: [REDACTED]		
Lessee [REDACTED]		

THE APPLICATION

This application seeks reconsideration of the decision by the planning and land authority of 8 March 2016 to refuse the application.

THE DECISION

I, Maggie Chapman, delegate of the planning and land authority, pursuant to section 193 of the *Planning and Development Act 2007* (Act), hereby confirm the original decision of the planning and land authority dated 8 March 2016.

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the original application was publicly notified from 13 January 2016 to 4 February 2016. One written representation was received during public notification.

The application for reconsideration was sent to the original representor. No further written representations were received in regard to the application for reconsideration.

REASONS FOR THE DECISION

The original decision was confirmed because:

- a) A review of the information available when the original decision was made disclosed no grounds that would support an approval of the proposal;
- b) The information provided by the applicant in the application for reconsideration provided no grounds for the approval of the proposal;
- c) The proposed use of child care centre was not demonstrated as being suitable for the subject site, in accordance with Section 120 of the Act. In particular, the application did not demonstrate that a child care centre would be compatible with other industrial uses permitted in the zone. The application for reconsideration provided information regarding the level of impact that the current operation/activities being carried out in the area may have on a child care centre. However, the application did not address the likelihood that the lessees of the blocks in the area may expand their existing industrial activities, or that they may apply to use them for other industrial uses permitted in this area. If a child care centre were permitted on this block, future industrial development in the area may be prevented or constrained due to the likely detrimental impacts to the child care centre use. In a worse case scenario, if industrial uses were activated without requirement for further statutory approval of the land use, the children and staff of the child care centre may be detrimentally affected or endangered by those uses. This is further exemplified in consideration of the objectives of the zone, and relevant rules and criteria of the Territory Plan below.

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- d) The application did not demonstrate consistency with the Territory Plan 2008 in accordance with Section 120 of the Act as set out below.
- e) The potential for exclusion of further industrial uses in the area was considered inconsistent with the objectives of the IZ2 - Industrial Mixed Use Zone, particularly:
- a) *Support the diversification and expansion of the ACT's Industrial base and employment growth*
 - g) *Accommodate industry-associated retailing, services and other commercial uses without jeopardising an adequate supply of industrial land*
 - l) *Meet the need for a mix of lower rent bulky goods retailing, specialised industrial, commercial and service activities alongside general industry*
 - j) *Preserve and promote viable industries that can coexist with more commercially oriented uses*
 - k) *Make provision for small-scale services that support surrounding industrial activities, or which meet the needs of the local workforce*

As noted above, a child care centre on this block would most likely constrain or prevent other industrial development and employment growth in the area, and so detrimentally impact the supply and demand of industrial land. The proposal did not demonstrate that a child care centre was required to service the local workforce, and/or that it could be co-located with existing and potential industrial use in the area, consistent with objectives l), j), and k).

- f) The application did not demonstrate that the proposed community use is wholly consistent with the *Industrial Zones Development Code*. Particularly, it was not demonstrated that a child care centre on the land will not jeopardise the use of surrounding land for industrial purposes, in accordance with Criterion C3 of the Code.

The following Industrial purposes are assessable development in IZ2 Zone:

- bulk landscape supplies
- municipal depot
- plant and equipment hire establishment
- public transport facility
- craft workshop
- recyclable materials collection
- recycling facility
- scientific research establishment
- service station
- emergency services facility
- freight transport facility
- store
- general industry
- transport depot
- industrial trades
- light industry
- liquid fuel depot
- warehouse
- major utility installation
- waste transfer station

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Except for light industry, the industrial purposes listed above, are characterised as having potential impact on their surrounds in terms of traffic and parking generation, noise and air pollution, and visual impact. With few exceptions, the Crown leases of blocks in this part of Mitchell currently permit industrial trades; general industry; light industry; plant and equipment hire establishment; and warehouse.

The potential for the proposed use to jeopardise the future industrial development in the area was not fully addressed in the application. Currently, the lessees of surrounding blocks may apply to vary their leases to permit one or more of those industrial uses listed above or apply for development for one of those permitted uses, subject to consideration of Section 120 of the Act.

If a child care centre is approved in the lease of the block, future consideration of the suitability of any industrial use/development for this area, (against Section 120 of the Act) would need to address the likely impacts the particular use would have on a child care centre on this block. Where such industrial development was required to limit any adverse impact to the child care centre through additional measures or by curbing their proposed activities, the cost or physical limits this might include may jeopardise the operational and/or financial viability of that proposed industrial use. The child care centre would, thereby be limiting the ability of those lessees to carry out the industrial uses currently permitted in their leases, and affect the future assessment of other industrial uses not currently activated on the land or otherwise not yet permitted by their leases.

- g) It was also not absolutely demonstrated that there was sufficient demand for a child care centre to justify that the centre is required to service the needs of the local workforce in accordance with Criterion C4.
- h) The application did not demonstrate that the proposal meets Criteria C23A of the above Code by meeting the requirements of the *Community and Recreation Facilities Location Guidelines General Code*. Particularly, by failing to demonstrate that a child care centre on the block could be buffered from sight, smell, fumes and noise of industrial uses and from roads with high traffic volumes and separated from safety hazards.

The ACT Health Protection Services (HPS) commented on documentation submitted with the application for reconsideration. HPS noted that the *documentation considers only the current and not the future incompatible industries that could be established within close proximity to a child care centre. The HPS does not support the proposed lease variation as such industries within close proximity to a future child care centre may pose health risks to vulnerable populations, including developing children.*

The indicative design for a child care centre on the land did not demonstrate that the proposed use could be protected from noise intrusion from the adjacent industrial sites in accordance with the recommendations of the Noise Management Plan submitted with the application. Particularly, the outdoor play areas required to meet the Territory Plan and other Territory licensing requirements, were not shown to be protected from noise from both the road and adjacent sites. Furthermore it is not demonstrated that noise barriers could be installed and the buildings designed to provide acoustic shielding whilst accommodating the play areas on the site with a northerly aspect, maintaining reasonable access to direct sunlight for the outdoor play areas.

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- i) The proposal is inconsistent with the advice of entities to which the application was referred pursuant to Section 148 of the Act. The application for reconsideration was referred to the entities that gave advice on the original application. ACT Health Protection Services and the Environment Protection Authority did not support the proposal.

The application did not provide sufficient justification for a departure from the advice of these entities. The application did not contain information to allow consideration of the following provisions of S119(2) with regard to such a departure:

- (i) any applicable guidelines; and
- (ii) any realistic alternative to the proposed development, or relevant aspects of it.

The proposed use was considered to be inconsistent with the objects of the Territory Plan. Particularly, the objectives of the IZ2 Mixed Use Industrial Zone, as set out above.

EVIDENCE

Application No. 201528763

File No. 1-2015/28734

The Territory Plan zone – IZ2 Mixed Use Industrial Zone

The Development Codes – Industrial Zones Development Code

The Precinct Codes – Mitchell Precinct Map and Code

The General Codes – Lease Variation General Code

Current Crown Lease – Volume 1929 Folio 31

Entity advice

Representation- one (1) from original application

DELEGATE


Maggie Chapman
Delegate of the planning and land authority
Environment and Planning Directorate

19 September 2016

CONTACT OFFICER

Owen Pankhurst

Phone: (02) 6207 9055

Email: owen.pankhurst@act.gov.au

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INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Planning Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulations 2008* – Matters exempt from third-party ACAT review.

APPENDIX 1

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2008*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of decision for information about its relevance to this development application.

CONTACT DETAILS

The review authority is the ACT Civil and Administrative Appeals Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street (the Health building) CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601 Document exchange: DX 6691

POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from receiving this Notice of decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

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FEEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$178 (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777; and
- Welfare Rights and Legal Centre, telephone (02) 6247 2177.

AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of Information requests is available on the planning and land authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.