

Our Reference: MCUI/2017/4863
Contact Officer: Nadia McLeod
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**Development Application Decision Notice
REFUSAL**

Planning Act 2016 Section 63

Australian Childcare Solutions
C/- HCC Planning
18 Thirteenth Avenue
KEDRON QLD 4031

Email: hazel@hccplanning.com

15 February 2018

Dear Madam

Location: 24A-28 James Street, RANGEVILLE QLD 4350
Property Description: Lots 1 & 2 RP77100 and Lot 3 RP838211
Relevant Planning Scheme: Toowoomba Regional Planning Scheme 2012

The Development Application for Development Permit for a Material Change of Use for Child Care Centre at the abovementioned property has been refused. The decision was made on 7 February 2018 at the Special Meeting of Council. The following provides all the relevant details:

Details of Refusal

The assessment manager was not directed to refuse the application by a referral agency.

Reasons for refusal

1. The development would adversely impact upon the amenity of adjoining residential development.
2. The proximity of the development to James Street would create an unacceptable amenity impact on occupants of the Child Care Centre.
3. The proximity of the development to James Street would pose an unacceptable public safety risk due to the potential for traffic incidents which may impact upon occupants of the Child Care Centre.
4. The proposed development has not demonstrated that it has met Performance Outcome No. 9 of the Low-Medium Density Residential Zone Code.

Referral Agencies

Concurrence Agencies Name & Address: Department of State Development, Manufacturing,
Infrastructure and Planning
PO Box 825
TOOWOOMBA QLD 4350

Advice Agencies Name & Address: N/A

Submissions

Number of properly made submissions: 2 (see attached list of names and addresses).

Rights of Appeal

Attached is an extract from the *Planning Act 2016* which details your appeal rights regarding this decision.

The *Planning Act 2016* is available on the Department of State Development, Manufacturing, Infrastructure and Planning via:

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PlanningA16.pdf>.

Yours faithfully



Rodney O'Brien
Senior Planner, Development Services

List of Submitters:-

Jane Horton
C/- JFP Urban Consultants Pty Ltd
On Behalf of Future Leaders Early Learning Pty Ltd
76 Ernest Street
SOUTH BRISBANE QLD 4101

RD Smythe Architect
4a Ipswich Street
TOOWOOMBA QLD 4350

Chapter 6, Part 1 of the Planning Act 2016 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- (a) matters that may be appealed to—
- either a tribunal or the P&E Court; or
 - only a tribunal; or
 - only the P&E Court; and
- (b) the person—
- who may appeal a matter (the appellant); and
 - who is a respondent in an appeal of the matter; and
 - who is a co-respondent in an appeal of the matter; and
 - who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The appeal period is—
- for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.
- Note— See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
- the adopted charge itself; or
 - for a decision about an offset or refund—
 - the establishment cost of trunk infrastructure identified in a LGIP; or
 - the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
- is in the approved form; and
 - succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
- the respondent for the appeal; and
 - each co-respondent for the appeal; and
 - for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - for an appeal to the P&E Court—the chief executive; and
 - for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The service period is—

- if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section— decision includes—
- conduct engaged in for the purpose of making a decision; and
 - other conduct that relates to the making of a decision; and
 - the making of a decision or the failure to make a decision; and
 - a purported decision; and
 - a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- is final and conclusive; and
- may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on a ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.