






INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201700205.01
Address	73 Mary Street, St Peters
Proposal	Review request under Section 96AB of the Environmental Planning and Assessment Act to review Determination No. 201700205, dated 2 August 2017, being a refusal of a Section 96 application to remove condition 2 under Determination No. 12268, dated 4 May 1989, that requires the car park to be paved and to reduce the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones.
Date of Lodgement	30 August 2017
Applicant	Jvmc Pty Ltd & Chalak Holdings Pty Ltd
Owner	JVM Holdings Pty Ltd & Chalak Holdings Pty Ltd
Number of Submissions	2 (including 1 in support of the application)
Value of works	Nil.
Reason for determination at Planning Panel	A request made under Section 96AB of the <i>Environmental Planning & Assessment Act 1979</i> and there is no substantial change in recommendation on the matters subject of the Review.
Main Issues	<ul style="list-style-type: none"> • Shortfall in car parking from what was required in original determination • Car park surface is unsuitable for the public as it does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians.
Recommendation	Refusal



Subject Site: 	Objectors: 
Notified Area: 	
Note: One submission was received from outside of the map area	

1. Executive Summary

This report concerns a review request under Section 96AB of the Environmental Planning and Assessment Act to review Determination No. 201700205, dated 2 August 2017, being a refusal of a Section 96 application to remove condition 2 under Determination No. 12268, dated 4 May 1989, that requires the car park to be paved and to reduce the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones.

The review request was notified in accordance with Council's Notification Policy and 2 submissions (including 1 in support) were received.

The proposal does not satisfy the Car Parking objectives and controls under Part 2.10 of Marrickville Development Control Plan 2011 (MDCP 2011) as the car park surface is unsuitable for the public in that it does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians. The reduction in car parking and retention of the gravel car park in situ is not in the public interest due to the intensified use of the site for commercial and light industrial activities.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

2. Review Request

The applicant has requested that Council review Determination No. 201700205, dated 2 August 2017, being a refusal of a Section 96 application that sought to remove condition 2 under Determination No. 12268, dated 4 May 1989, that requires the car park be paved and to reduce the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones.

3. Site Description

The site is known as 73 Mary Street and is located on the north-eastern side of Mary Street near the intersection with Unwins Bridge Road, St Peters. The site also adjoins Edith Street at the south west boundary of the property. The site is legally described as Lot 1 in Deposited Plan 556914 and is approximately 13,355 square meters in area.

The property is located within a complex known as 'Precinct 75' which contains twelve (12) buildings accommodating light industrial and creative industry uses. The site is primarily surrounded by low density residential development.

The land to the east and south of the site is characterised by low density residential development, which is generally zoned 'R2- Low Density Residential' under MLEP 2011.

4. Background

4(a) Site history

Approval was granted by Determination No. 12268, dated 4 May 1989, to use the existing factory complex at 73 - 83 Mary Street, St Peters, for fifty-seven (57) industrial units. Condition 2 of that Determination required the following:

- “2. One hundred and thirty six (136) off-street car parking spaces being provided, paved, linemarked and maintained at all times to Council’s satisfaction and in accordance with Councils standards prior to commencement of the use.”

On 3 August 2016, an application under Section 96 of the Environmental Planning and Assessment Act was lodged with Council that sought to remove the requirement to pave the car park, with the existing gravel surface to be maintained. The application also sought to modify Condition 2 by reducing the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones. That application was determined by way of refusal on 16 January 2017 as part of Determination No. 201600389.

On 2 May 2017, a second application under Section 96 of the Environmental Planning and Assessment Act was lodged with Council that sought to remove the requirement to pave the car park, with the existing gravel surface to be maintained. That application also sought to modify Condition 2 by reducing the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones. That application was determined by way of refusal on 2 August 2017 as part of Determination No. 201700205.

5. Assessment

The applicant has requested that Council review Determination No. 201700205 under Section 96AB of the Environmental Planning and Assessment Act, 1979.

It is noted that the plans submitted with the Section 96AB review request have not been amended from the original plans determined under DA201700205.

Below is an assessment of the additional information provided by the applicant as part of the Section 96AB review request having regard to the grounds of refusal of the original application.

- 1. The current carpark surface is unsuitable as public and does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians.**

Condition 2 of Determination No. 12268 required the surface of all car parking spaces to be paved to Council’s satisfaction. The car park on the south eastern portion of the site, which accommodates 59 on-site car parking spaces is currently not sealed. It is noted that other paved sections of the car park are cracked. The images below illustrate the current condition of the car park:



Image 3: Car parking facing north east



Image 4: Main car parking facing north west

In the Section 96AB review statement, the applicant made the following statements in support of leaving the car park in situ:

a) Planning Proposal and Imminent Development Application

The applicant does not want to commit to sealing the car park given a planning proposal to rezone the site for future redevelopment is currently being considered by Council.

The applicant's contention reads as follows:

"Within the context of this application, we bring Council's attention to the redevelopment plans for the site. In particular, we refer to the concept plan submitted as part of the Planning Proposal to rezone the site, which is currently proceeding to Gateway. This concept plan shows that the subject car park is proposed to be redeveloped, with associated car parking to be moved underground.

As per Division 4B of the EP&A Act, a concurrent development application is being prepared to be submitted and assessed prior to the amendment to the LEP. The Development Application is in accordance with the concept proposal presented in the Planning Proposal, with lodgement of this package imminent.

*In practice, the requirement to repave the carpark will provide very limited return on investment due to the proposed redevelopment of the site in the near future, pending planning approval. This issue is considered separately to the assessment of the reasons for refusal as demonstrated in **Section 2** below, which provide justification for a Section 96AB review in their own right."*

Planning Comment:

On 30 September 2015, the former Marrickville Council received a planning proposal for the land known as Precinct 75 (being the former Taubmans Paint Factory site) comprising 67-73 Mary Street, 50-52 Edith Street and 43 Roberts Street.

The planning proposal seeks to rezone the land from IN2 Light Industrial and R2 Low Density Residential to B4 Mixed Use (for commercial and residential uses) and RE1 Public Recreation to facilitate a creative industry precinct with residential uses, community facilities and car parking.

The planning proposal seeks to facilitate the redevelopment of the site with the selective demolition and adaptive reuse of the existing warehouse/industrial buildings as well as the construction of new buildings. The planning proposal proposes a graduated Height of Building control ranging from 9.5 metres to 26 metres (i.e. 2 to 8 storeys) across the site and an increase in the Floor Space Ratio (FSR) from the current 0.95:1 to 2.2:1.

Indicative plans propose 180 new residential apartments in buildings up to 8 storeys, over 15,000sqm of commercial floor space, a neighbourhood centre and public domain enhancements with car parking for 340 vehicles provided across two basement levels.

The planning proposal was not supported by the former Marrickville Council and the applicant sought a Pre-Gateway Review. The Sydney Central Planning Panel considered the Pre-Gateway Review and recommended that the proposal be submitted for a Gateway Determination.

The Department of Planning and Environment issued a Gateway Determination on 10 October 2017. The Gateway Determination stipulates a 12 month timeframe for completing the LEP.

While a Gateway Determination has been issued for the above described planning proposal, the rezoning and potential redevelopment of the site is not considered to be certain or imminent. Community consultation of the planning proposal is yet to commence and there is no certainty that the planning proposal will be supported and the LEP made.

Even if the planning proposal progresses, the proponent is yet to lodge a development application for the redevelopment of the site, and even if such an application was supported, the proponent would have up to 5 years to act on any future development consent.

The current carpark surface is unsuitable for a public car park and does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians. The substandard finish of the existing car park cannot be supported on the basis of a potential 'redevelopment' proposal that has no foreseeable or guaranteed basis.

Accordingly, it is recommended that the Section 96AB review request be refused.

b) Suitability of the Car park surface

The applicant contends that the current car park surface is suitable for users in that:

- The current Australian Standards for Parking Facilities – Off Street Parking (AS2890.2-2004) does not specify the type of surface required for an off-street car park; and
- A permeable surface has measurable ESD benefits in that it allows for a significant portion of rainfall to soak into the subsoil rather than discharging into the Council stormwater system.

The applicant's contention reads as follows:

"Whilst the discrepancy between the development consent and the operation of the car park is recognised by the Applicant, the Applicant questions Council's determination that the carpark surface is unsuitable as a smooth riding surface for vehicles and safe walking surface for Pedestrians. This is demonstrated by the successful operation of the car park over many years and the lack of complaints received regarding its operation by users of the car park.

We ask for further clarification as to what Council refers to when stating that 'the current carpark surface is unsuitable as public'. The car park is private property and operates to serve the parking requirements of the existing businesses on site. Whilst it can be accessed by the public at times, it is not intended to operate as a public carpark.

Furthermore, the carpark is not intended to be a pedestrian thoroughfare. The carpark is fenced, preventing pedestrians from accessing the site for the majority of Edith Street. Only the primary vehicle access points are opened during operating hours, however these entrances are gated and closed at times. Pedestrian use of the car park is primarily associated with drivers who park within the carpark and then use the facilities or attend businesses on the site. No issues regarding pedestrian safety have been raised during the ongoing operation of the car park."

Planning Comment:

Part 2.10.1 of MDCP 2011 contains the following objectives relating to car parking:

- To ensure parking provision and design is compatible with the particular development proposed; and
- To ensure all parking facilities are safe, functional and accessible to all through compliance with design standards.

It is noted that a site inspection was carried out on 6 January 2017 during a period of light to moderate rain. Puddles can be seen throughout the site, including on the gravel car park as shown in Images 3 and 4 of this report. The matter was referred to Council's Development Engineer who advised the following:

- The current car park surface is unsuitable as public parking;
- The surface of a car park must be suitably paved to ensure a smooth riding surface for vehicles and safe walking surface for pedestrians, in particular the elderly and for people with disabilities. A gravel car park does not meet these criteria in particular over the longer term. After periods of heavy rain the base can become saturated and tend to deform under load versus a sealed pavement;
- It is recommended that the requirement for paving the car park surface should remain a condition of consent. Suitable paving materials for a car park include concrete, asphalt, pavers (including porous pavers), or a bitumen chip seal over compacted road base;
- With regarding to the drainage of the car park and ESD benefits nominated by the applicant, the use of porous pavers over the car park would be an adequate paved surface and will achieve the same ESD principals (of a gravel surface) while maintaining a suitable paved surface for the car park; and
- It should be noted that Standard Engineering Condition 2(a) of the original consent requires the site to be adequately drained.

As such, the retention of the gravel car park in situ is not a suitable outcome for the site and does not comply with the car parking objectives under Part 2.10.1 of Marrickville Development Control Plan 2011.

Accordingly, it is recommended that the Section 96AB review request be refused.

2. The reduction in car parking and retention of the gravel car park in situ is not in the public interest.

Determination No. 12268 required the provision of 136 off-street car parking spaces. The applicant submitted a site layout that demonstrates that 119 car parking spaces are currently accommodated on the site, which is a shortfall of 17 car parking spaces required under the relevant consent applying to the development. However, the site plan does not confirm that the car parking layout complies with AS2890.1:2004 and therefore it is difficult to stipulate how many car parking spaces can be realistically accommodated on the site in accordance with Australian Standards.

Notwithstanding the above, a Survey Plan of the car park on the south eastern half of the site was submitted to Council under DA201600389 on 28 September 2016, which indicated that the site currently accommodates 87 car parking spaces in accordance with AS2890.1:2004. However, the Survey Plan omitted any car parking plan for the remainder of the site, making it difficult to determine exactly how many car parking spaces can be readily accommodated on the entire site.

In the Section 96AB statement, the applicant states:

“The S96 Application did not propose to reduce the area available for use as a car park, rather, proposed to modify the configuration of the car park to provide for alternative modes of transport including motorcycles, bicycles and loading zones. This is considered to be of greater public interest than under the original consent arrangements, as it formally provides for a greater variety of transport modes that are more aligned with current Development Control Plan arrangements. Access to loading zones is required to adequately support the emerging businesses on site currently. This responds to the changes in demand for the site over the years and is not reflective of any physical changes in the built form encroaching on the car parking area.

Whilst the specific number of car parking spaces is proposed to be reduced to reflect these changes outlined above, the site is located in an area well served by public transport. This includes being within 600m of Sydenham train station and 1km from St Peters Station.”

Planning Comment:

The site is located in an area identified as Parking Area 3 under Part 2.10 of Marrickville Development Control Plan 2011. Parking area 3 is characterised as being located more than 400 metres from a railway station, not within a business centre and where parking is least constrained within the LGA. Whilst parking in the area is not constrained by timed or ticketed parking, there is considered to be a high demand for parking in the locality due to the nature of the residential typology and the mix of light industrial and commercial uses in Precinct 75. This is also reiterated in the public submission received in opposition to the proposal.

Council's records indicate that approved uses on the site currently utilise approximately 13,000sqm of gross floor area within 12 buildings. Details provided by the applicant indicate that a large portion of the GFA is occupied by light industrial uses, with a small portion of the sites GFA being used by creative industries. The parking provisions table under Control C1 of Part 2.10.5 of MDCP 2011 specifies that light industrial uses attract a parking rate of 1 car parking space per 200sqm and business premises attract a parking rate of 1 car parking space per 50sqm. As such, the existing approved uses on the site would require the provision of approximately 130 car parking spaces for the existing approved uses, 7 motorcycle parking spaces and a conservative estimate of 80 bicycle parking spaces based on the majority of land use being light industrial.

A site plan submitted with the Section 96AB indicates that 119 car parking spaces can be accommodated on the site, however as noted previously, these spaces are not in accordance with Australian Standard AS2890.1:2004. Based on the above information, it can be extrapolated that the existing provision of parking on the site is insufficient when considering the provision rates prescribed by MDCP 2011.

An indicative layout was not included in the records accompanying the 1989 application and it is difficult to say whether the paving and removal of other services in the car park such as the bin store, bicycle parking and external loading docks may provide additional parking to meet the required number of spaces.

It is noted that the Condition 2 of Determination No. 12268 did not specify the provision of any bicycle or motorcycle parking. Whilst a reduction in the overall number of car parking spaces may be supported subject to the provision of additional bicycle or motorcycle

parking, that option has not been explored as part of this application due to inadequate information regarding the car parking layout plan in accordance with Australian Standards.

The car parking issue as discussed above cannot be resolved as part of this review request, as the application omits a car parking layout plan for the entire site demonstrating compliance with Australian Standards. Further, insufficient justification and rationale has been provided for the net loss of car parking spaces from the requirement under Determination No. 12268. In addition, based on the current parking rates of Part 2.10 of MDCP 2011, the development provides a significant shortfall of car parking spaces.

Accordingly, it is recommended that the Section 96AB review request be refused.

3. Other Issues to Note

Site Contamination

The site is occupied by a number of factory buildings and has previously been used as a paint factory and the land is known to be contaminated. Under the provisions of State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55), Council must not consent to the carrying out of any development on land unless:

- “(a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

Whilst the land is known to be contaminated, the application seeks consent to maintain the existing paved areas and gravel car park on the south eastern side of the site in situ. The current uses on the site approved as part of the determinations issued by Council did not involve any ground penetration and the Interim Environmental Management Plan (completed by JBS&G, dated 23 September 2016) for the site indicates that subject to the existing hardstand areas being maintained, the site is suitable for its current commercial/industrial uses. Should any development of the car park occur, likely impacts in respect of contamination should be considered as part of that process.

6. Community Consultation

The Section 96AB review request was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 2 submissions were received (including 1 in support of the application).

The following issues raised in submissions have been discussed in this report:

- Validity of the argument that the applicant can circumvent Council parking requirements pending future approval of a Planning Proposal over the site (see arguments in Reason Refusal 1(a);
- The use of the site has intensified over the years and there is insufficient car parking to cope with the demand of visitors (see arguments in Reason for Refusal 2);

- The unsealed car parking surface is not practical for mobility (see arguments in Reason for Refusal 1);
- Site Contamination issues; including asbestos and contaminated soil (see section 3 of this report); and
- Drainage of the car park (see arguments in reason for refusal 1(b) of this report).

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: DA201700205.01 is a reference to modify DA 12268 that was lodged prior to 28 February 2011. This application is invalid as it is outside the time limits specified in the EPA Act - Clause 123H/I

Comment: There is no time limit under the Act to modify a development consent under Section 96 of the Act once the consent has been legally acted upon. The Section 96AB review request was lodged within the prescribed timeframe (28 days) stipulated under Clause 123I of the Environmental Planning and Assessment Regulations.

Issue: *"There was no objection to the original DA 12268 so the time limit expired in 1989."*

Comment: The nature of this objection is unclear in relation to the 'time limit'.

Issue: Section 96(AB) is for minor variations, not sealing this car park is a major issue.

Comment: Under the previous determination (DA201700205), it was determined that the application constituted 'substantially the same development' as the original development approved under Determination No. 12268, pursuant to Section 96 of the Act. It was considered that the amended car parking layout and change of use of materials for the car park does not substantially modify the development from its original approval. Therefore, the matters being considered under this application is within the ambit of a Section 96 application pursuant to the Act.

Issue: *"Where is the Statement of Environmental Effects attached to this DA that is required by Council?"*

Comment: The applicant submitted a statement addressing the reasons for refusal of a Section 96 application. The above information is considered sufficient for the nature of the application (i.e. review request).

Issue: *"DA201700205.01 is not a modification of a determination as this is a development application to overturn a condition of the original DA."*

Comment: Pursuant to Section 96 of the Act, conditions of consent may be requested to be modified and/or deleted.

Issue: There is no provision for disabled parking as per Australian Standard 2890.1

Comment: Determination No. 12268, dated 4 May 1989, did not require the provision of accessible parking on the site as a condition of consent. Given that the Section 96 application lodged under DA201700205 requested the modification to Condition 2, which makes no requirement for accessible car parking, it is beyond the ambit of this application, and unreasonable, to impose an additional requirement for accessible parking.

Issue: There are no marked pedestrian areas as per Australian Standard 2890.1

Comment: The application is a review of a refusal for a Section 96 application. The reasons of refusal relate to the paving the car park and car parking spaces provided on the site and not related to pedestrian areas. Pursuant to Section 96AB of the Act, any consideration of marked pedestrian areas is outside the scope of this review.

Issue: *“Development Consent 12268 - this has been a breach since 1989, 27 years, what is the impact on residents?”*

Comment: The treatment of the car parking area is an ongoing issue and the applicant has attempted to address and justify the issues stated in this report with numerous Section 96 applications. Pending the decision of the Inner West Planning Panel, the matter will be re-referred to Council’s Monitoring Services Section for investigation and action.

Issue: *“All of the development applications for **73 to 85 Mary Street** have been based on tenants, staff, and customers could be accommodated with the on-site parking. If these car parks don’t exist will these DA’s be reviewed? Customer capacity reduced?”*

Comment: The application is not seeking to remove the car park and as such, the above objection is not relevant to the review request.

7. Referrals

7(a) Internal

The application was referred to Council’s Development Engineer and the issues raised in that referral have been discussed in section 5 above.

8. Conclusion

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application.

The proposal does not satisfy the objectives and controls in Marrickville Development Control Plan 2011 (MDCP 2011) in that the car park surface is unsuitable for a public car park and does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians. The reduction in car parking and retention of the gravel car park in situ is not in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. THAT** the review request under Section 96AB of the Environmental Planning and Assessment Act to review Determination No. 201700205, dated 2 August 2017, being a refusal of a Section 96 application to remove condition 2 under Determination No. 12268, dated 4 May 1989, that requires the car park to be paved and to reduce the number of car parking spaces from 136 to 119 spaces and to provide 2 motorcycle spaces, 30 bicycle spaces and 2 loading zones be **REFUSED** for the following reasons:

1. The current car park surface is unsuitable for a public car park and does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians.
2. The reduction in car parking and retention of the gravel car park in situ is not in the public interest.

B. THAT those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.

C. THAT Council's Monitoring Services Section be advised of the determination of the Section 96AB Review request.

Attachment A - Conditions in the circumstance the application is approved

THAT Determination No. 12268, dated 4 May 1989, be amended in the following manner:

(i) That Condition 1 be amended to read:

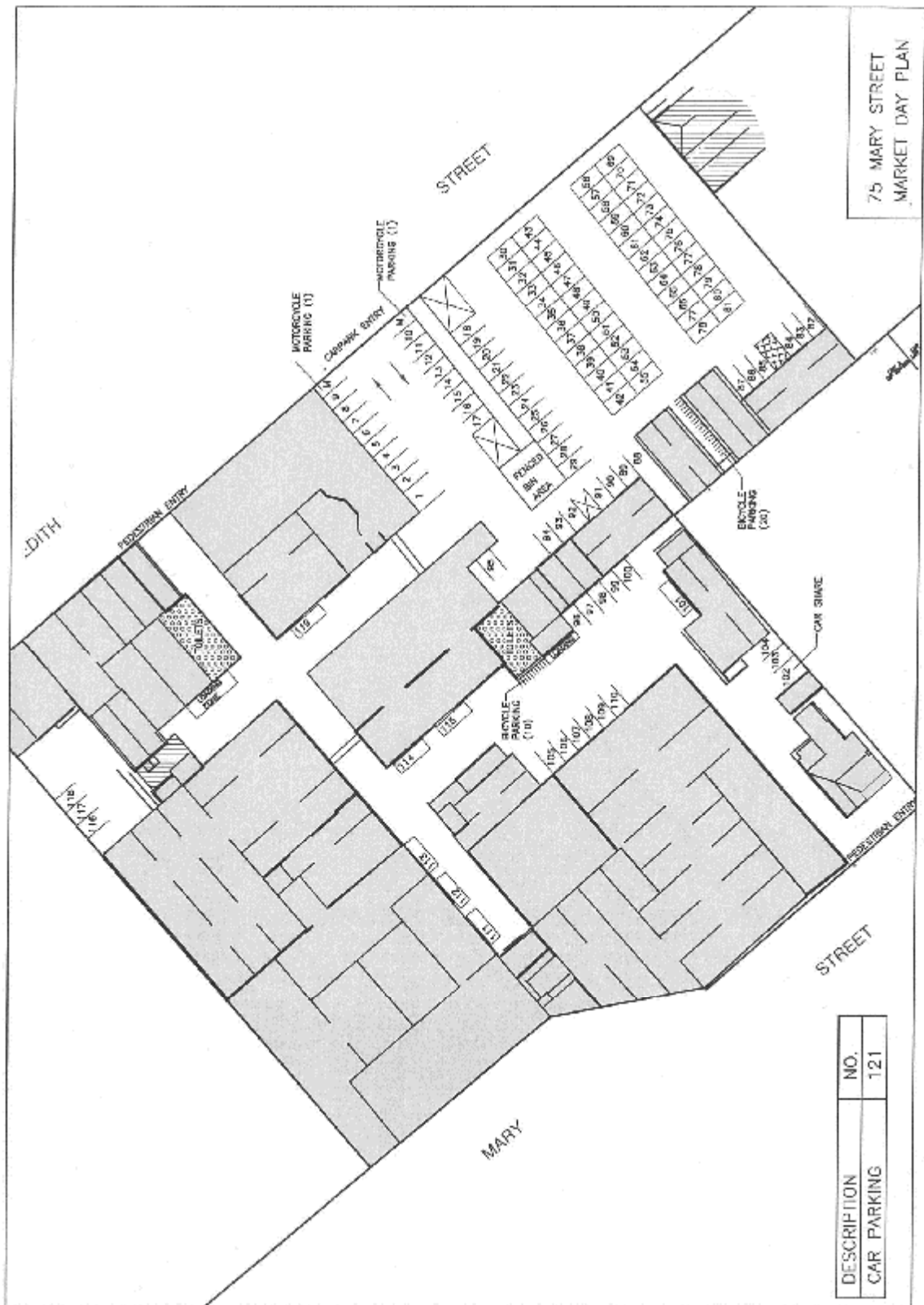
1. The development must be carried out substantially in accordance with the plans and details submitted to Council on 20 December, 1988 with the application for development approval and as amended by the plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
No.121	Car Parking	-	-	30 August 2017
164458.01FA	Design Certificate of Industrial Car Park at 75 Mary Street, St Peters	28 September 2016	McLaren Traffic Engineering	28 September 2016

and details submitted to the Council on 30 August 2017 with the Section 96AB review request and as amended by the following conditions.

(ii) That condition 2 be deleted.

Attachment B – Car Park Plan



Attachment C – Section 96(AB) Review Statement



30 August 2017

15869

Daniel East
Acting Team Leader Development Assessment
Inner West Council
2-14 Fisher Street
Petersham NSW 2049

ATTN: Ashor Richardson

Dear Daniel,

73-85 Mary Street, St Peters – Section 96AB Application

This letter has been prepared on behalf of UVMC Pty Ltd (the Applicant) to review the Council resolution to refuse Section 96(1A) Modification Application No. 201700205 under the provisions of Section 96AB of the *Environmental Planning and Assessment Act 1979* (the Act).

Section 96(1A) Modification Application No. 201700205 sought to modify Condition 2 of Development Consent 12268 relating to the number of car parking spaces and treatment of a car park located at 73-85 Mary Street, St Peters. Two reasons for refusal were provided in Council's determination notice, relating to the suitability of car park surface and the public interest regarding the reduction in car parking spaces proposed and the retention of the gravel car park in situ. Both of the reasons for refusal have been addressed in detail in this report, with further justification for the proposal presented.

1.0 Background

1.1 Approval History

Development consent 12268 was issued on 4 May 1989 and approved the use of the site for the purpose of the 57 industrial units. Condition 2 of that consent is as follows:

- 2. One hundred and thirty six (136) off-street car parking spaces being provided, paved, line-marked and maintained at all times to Council's satisfaction and in accordance with Council's standards prior to the commencement of the use.

AJN:
ash.017/191

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Smart people,
People smart.

ETHOS URBAN

Reason: to ensure practical off-street car parking is available for the use of the premises.

The car park, whilst operating successfully for many years, is currently partly paved and partly gravel. Once the discrepancy between the conditions of consent and the current operation of the car park was brought to the attention of Council by way of a comment from a nearby resident, the Applicant lodged a Section 96(1A) Modification Application in August 2016. This application proposed to reduce Condition 2 with a revised condition that reflected the existing, suitable parking arrangements on the site, as follows:

2. Off-street parking is to be provided as follows:

Car parking:	119 spaces
Motorcycle parking:	2 spaces
Bicycle parking:	50 spaces
Loading zones:	2 spaces

A Council resolution to refuse the above modification application was determined on 2 August 2017 for the following reasons:

1. *The current carpark surface is unsuitable as public and does not provide a suitably smooth riding surface for vehicles and safe walking surface for pedestrians.*
2. *The reduction in car parking and retention of the gravel car park in situ is not in the public interest.*

1.2 Planning Proposal and Imminent Development Application

Development consent 12268 is currently the only applicable approval applying to the operation of the carpark. However, within the context of this application, we bring Council's attention to the redevelopment plans for the site. In particular, we refer to the concept plan submitted as part of the Planning Proposal to rezone the site, which is currently proceeding to Gateway. This concept plan shows that the subject car park is proposed to be redeveloped, with associated car parking to be moved underground.

As per Division 4B of the EP&A Act, a concurrent development application is being prepared to be submitted and assessed prior to the amendment to the LEP. The Development Application is in accordance with the concept proposal presented in the Planning Proposal, with lodgement of this package imminent.

In practice, the requirement to repave the carpark will provide very limited return on investment due to the proposed redevelopment of the site in the near future, pending planning approval. This issue is considered separately to the assessment of the reasons for refusal as demonstrated in **Section 2** below, which provide justification for a Section 96AB review in their own right.

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2.0 Assessment of the Reasons for Refusal

A detailed response to Council's reasons for refusing consent to Section 96(1A) Modification Application No. 2017/00209 is provided below.

2.1 Suitability of carpark surface

The justification provided below is in addition to the justification provided in the Section 96(1A) Modification Application, which states that:

- the current Australian Standards for Parking Facilities – Off-Street Parking (AS2890.2:2004) does not specify the type of surface required for an off-street car park; and that
- a permeable surface has measurable ESD benefits in that it allows for a significant portion of rainfall to soak into the subsoil rather than discharging into the Council stormwater system.

Whilst the discrepancy between the development consent and the operation of the car park is recognised by the Applicant, the Applicant questions Council's determination that the carpark surface is unsuitable as a smooth riding surface for vehicles and safe walking surface for pedestrians. This is demonstrated by the successful operation of the car park over many years and the lack of complaints received regarding its operation by users of the car park.

We ask for further clarification as to what Council refers to when stating that 'the current carpark surface is unsuitable as public'. The car park is private property and operates to serve the parking requirements of the existing businesses on site. Whilst it can be accessed by the public at times, it is not intended to operate as a public carpark.

Furthermore, the carpark is not intended to be a pedestrian thoroughfare. The carpark is fenced, preventing pedestrians from accessing the site for the majority of Edith Street. Only the primary vehicle access points are opened during operating hours, however these entrances are gated and closed at times. Pedestrian use of the car park is primarily associated with drivers who park within the carpark and then use the facilities or attend businesses on the site. No issues regarding pedestrian safety have been raised during the ongoing operation of the car park.

2.2 The Public Interest

Council has stated that the reduction in car parking is not in the public interest. The S96 Application did not propose to reduce the area available for use as a carpark, rather, proposed to modify the configuration of the car park to provide for alternative modes of transport including motorcycles, bicycles and loading zones. This is considered to be of greater public interest than under the original consent arrangements, as it formally provides for a greater variety of transport modes that are more aligned with current Development Control Plan arrangements. Access to loading zones is required to adequately support the emerging businesses on site currently. This responds to the changes in demand for the site over the years and is not reflective of any physical changes in the built form encroaching on the car parking area.

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Whilst the specific number of car parking spaces is proposed to be reduced to reflect these changes outlined above, the site is located in an area well served by public transport. This includes being within 500m of Sydenham train station and 1km from St Peters Station.

Council's further retention of the gravel car park not being in the public interest is further contested for the reasons outlined above regarding the suitability of the car park surface.

3.0 Conclusion

Section 96(1A) Modification Application No. 201700235 was refused by Council on 2 August 2017. This review application is lodged under Section 96AB of the EP&A Act and seeks a review of that decision. It responds to the reasons for refusal of the DA and provides additional justification in relation to the modification application.

We consider that the proposed modifications to the car park reflect an updated operational use of the Product since that of which the original consent was issued in 1989. This review is considered necessary for the following reasons:

- the current Australian Standards for Parking Facilities – Off Street Parking (AS2890.2-2004) does not specify the type of surface required for an off-street car park;
- a permeable surface has measurable FSD benefits in that it allows for a significant portion of rainfall to soak into the subsoil rather than discharging into the Council stormwater system;
- the carpark has been operating successfully for many years, with no issues of safety raised or complaints made by the users of the car park;
- the carpark is private property and is not intended to operate as a public carpark;
- the carpark is not intended to be a pedestrian thoroughfare; and
- the S96 Application did not propose to reduce the area available for use as a carpark, rather, proposed to modify the configuration of the car park to provide for alternative modes of transport including motorcycles, bicycles and loading zones.

We appreciate Council's consideration of this matter. If further information is required, please contact either Chris Patfield or Andrew Duggan at the contact details below.

Yours sincerely,



Chris Patfield
Urbanist
9956 6962
CPatfield@ethosurban.com



Andrew Duggan
Director
9956 6962
ADuggan@ethosurban.com

Attachment D – Design Certification of Car Park (South Eastern Half of the Site)



28th September 2016

Reference: 16458.01FA

DESIGN CERTIFICATION

**OF LIGHT INDUSTRIAL CAR PARK
AT 75 MARY STREET, ST PETERS**

1 Drawings/Plans Assessed

A reduced copy of the assessed plans is attached in **Annexure A** for reference.

Drawing Name	Amendment	Date	Author
Parking Layout	2018-45801B	27/09/2015	MTE

2 Standards Used

- AS2890.1:2004 Incorporating Amendment No. 1 - Off-street Car Parking

3 Variance from Standards

Modifications required for compliance, if any, are summarised below. Any departures from the standards which are acceptable are also listed below.

- The small internal ramp shown has a gradient of 15-16%. Whilst this exceeds the typical 12.5% (1:8) transition, the ramp length of approximately 5m allows successful vertical clearance for a B85/B99 vehicle as per AS2890.1:2004. AS2890.1:2004 permits grade changes of up to 18% as per Clause 2.5.3 of AS2890.1:2004.
- Car parking spaces marked 26, 39, 52 & 65 on the cited plans are designated as "small car" parking spaces only to accommodate the minor reduction in the blind aisle provision (total end space width of 3.2m, below the 3.5m indicated on the cited plans).

4 Exclusions

As per AS2890.1:2004, the design template is a B85 car, representative of a Ford Falcon or the like. Vehicles outside of this classification, particularly European imports or vehicles with modifications or enhanced body kits and skirtings that reduce undercarriage clearance or other base dimensions outside of the B85 template, are not covered under the B85 template and as such, this certification does not cover vehicles outside of the AS2890.1:2004 B85 template. If required, certification of



European imports can be undertaken however this is vehicle specific and relies heavily on the relevant country standards and assumptions of correct tyre pressures and loads.

Pavement surface is not part of this certification, nor any parking locations beyond that shown in Annexure A.

5 Certification Statement

I (Craig McLaren) hereby certify that the car parking layout, as shown in the listed plans and subject to the listed variations and exclusions, complies with the relevant clauses of those standards listed.

M McLaren Traffic Engineering

A handwritten signature in black ink, appearing to read 'Craig McLaren', written over a horizontal line.

Craig M McLaren

Director

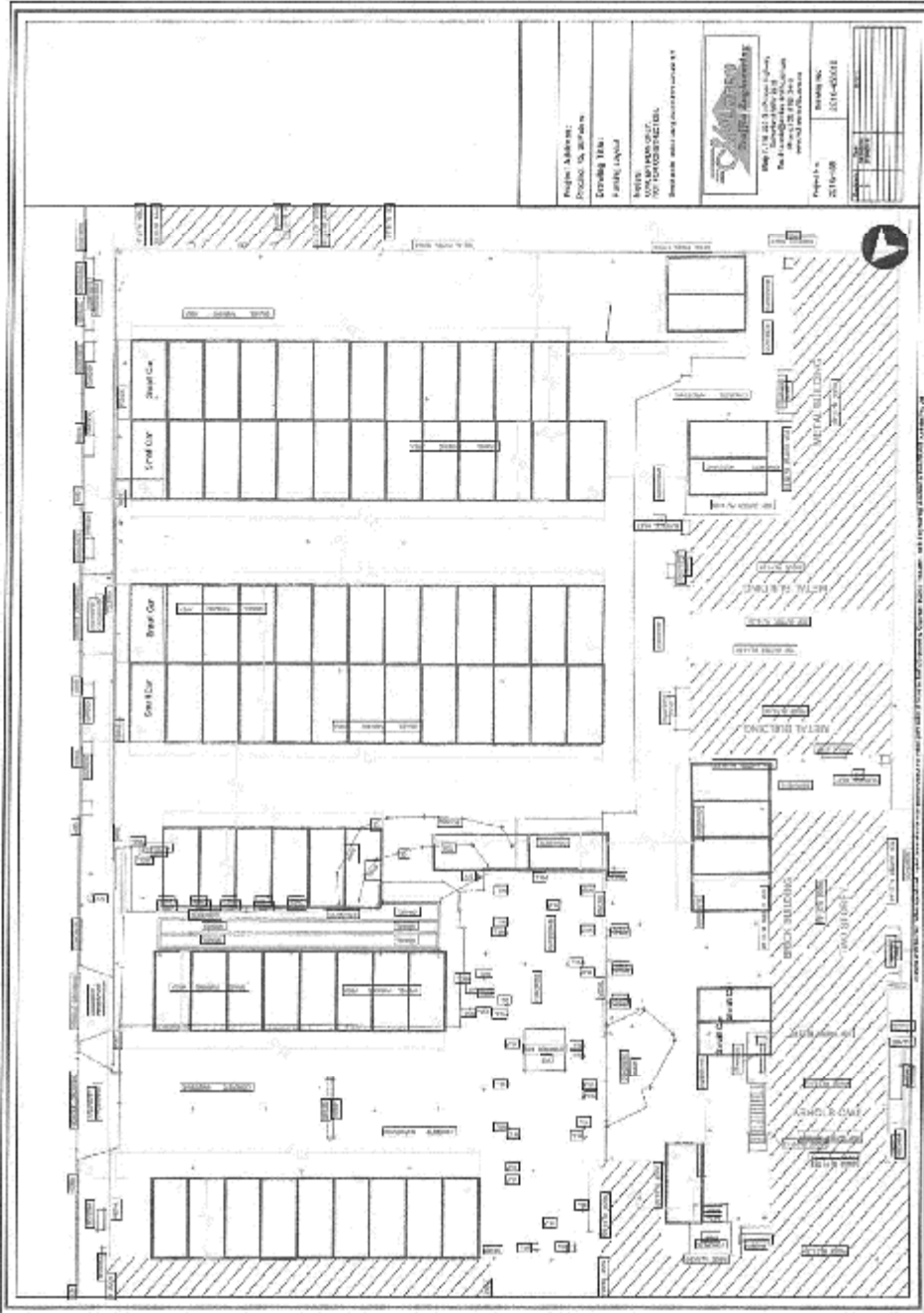
BE Civil, Graduate Diploma (Transport Eng) (M/ATPM MITE [1985])

RMS Accredited Level 3 Road Safety Auditor

RMS Accredited Traffic Control Planner, Auditor & Certifier (Orange Cars)



ANNEXURE A: PLANS



Project Address:
Project No:
Drawing Title:
Drawing Layout:
Scale:
Client:
Drawing No:
Drawing Date:
Drawing Status:
Drawing Author:
Drawing Checker:
Drawing Approver:
Drawing Date:
Drawing Status:
Drawing Author:
Drawing Checker:
Drawing Approver:

Light Industrial Car Park
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