



29 AUGUST 2019

NOTICE OF MEETING

You are advised of the following meeting:

THURSDAY 12 SEPTEMBER 2019.

City of Ryde Local Planning Panel Meeting No. 7/19

Council Chambers, Level 1A, 1 Pope Street, Ryde - 5.00pm

English

If you do not understand this letter, please come to the 1 Pope Street, Ryde (within Top Ryde Shopping Centre), Ryde, to discuss it with Council Staff who will arrange an interpreter service. Or you may ring the Translating & Interpreting Service on 131 450 to ask an interpreter to contact you. Council's phone number is 9952 8222. Council office hours are 8:30am to 5:00pm, Monday to Friday.

Arabic

إذا لم تفهم محتوى هذه الرسالة، يرجى الحضور إلى 1 Pope Street، Ryde (في Top Ryde Shopping Centre)، Ryde، لمناقشتها مع موظفي المجلس الذين سوف يرتبون للاستعانة بمترجم شفهي. أو قد يمكنك الاتصال بخدمة الترجمة التحريرية والشفهية على الرقم 131 450 لتتطلب من المترجم الاتصال بك. رقم هاتف المجلس هو 9952 8222. ساعات عمل المجلس هي 8:30 صباحاً حتى 5:00 مساءً، من الاثنين إلى الجمعة.

Armenian

Եթե դուք չեք հասկանում սույն նամակի բովանդակությունը, խնդրում ենք այցելել 1 Pope Street, Ryde (որը գտնվում է Top Ryde Shopping Centre-ի մեջ), Ryde, քննարկելու այն Քաղաքային Խորհրդի անձնակազմի հետ, ովքեր ձեզ համար կապահովեն թարգմանչական ծառայություն: Կամ կարող եք զանգահարել Թարգմանչական Ծառայություն 131 450 հեռախոսահամարով և խնդրել, որ թարգմանիչը ձեզ զանգահարի: Խորհրդի հեռախոսահամարն է 9952 8222: Խորհրդի աշխատանքային ժամերն են առավոտյան ժամը 8:30-ից մինչև երեկոյան ժամը 5:00, երկուշաբթիից մինչև ուրբաթ:

Chinese

如果你不明白这封信的内容，敬请前往1 Pope Street, Ryde（位于Top Ryde Shopping Centre内），向市政府工作人员咨询，他们会为您安排口译服务。此外，您也可以拨打131 450联络翻译和口译服务，要求口译员与您联系。市政府电话号码为9952 8222。市政府办公时间为周一至周五上午8:30至下午5:00。

Farsi

لطفاً اگر نمی توانید مندرجات این نامه را درک کنید، به نشانی 1 Pope Street، Ryde (در Top Ryde Shopping Centre) مراجعه کنید تا با استفاده از یک مترجم در این باره با یکی از کارکنان شورای شهر گفتگو کنید. یا آنکه می توانید با خدمات ترجمه کتبی و شفاهی به شماره 131 450 تماس گرفته و بخواهید که به یک مترجم ارتباط داده شوید. شماره تماس شورای شهر 9952 8222 و ساعات کاری آن از 8:30 صبح تا 5:00 بعد از ظهر روزهای دوشنبه تا جمعه است.

Italian

Se avete difficoltà a comprendere questa lettera, venite in 1 Pope Street, Ryde (dentro al Top Ryde Shopping Centre), Ryde, per discutere con il personale del Comune che organizzerà un servizio di interpretariato. Potete anche contattare il Servizio di Traduzione e Interpretariato al 131 450 per chiedere a un interprete di contattarvi. Il numero di telefono del Comune è il 9952 8222. Gli orari di ufficio del Comune sono dalle 8.30 alle 17 dal lunedì al venerdì.

Korean

이 서신을 이해할 수 없을 경우, 1 Pope Street, Ryde (Top Ryde Shopping Centre 내)에 오셔서 통역사 서비스를 주선할 시의회 직원과 논의하십시오. 혹은 통번역서비스에 131 450으로 전화하셔서 통역사가 여러분에게 연락하도록 요청하십시오. 시의회의 전화번호는 9952 8222입니다. 시의회 사무실 업무시간은 월요일에서 금요일, 오전 8시 30분에서 오후 5시까지입니다.

Meeting Date: Thursday 12 September 2019
Location: Council Chambers, Level 1A, 1 Pope Street, Ryde
Time: 5.00pm

City of Ryde Local Planning Panel Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. City of Ryde Local Planning Panel Meetings will also be webcast.

NOTICE OF BUSINESS

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There are no LPP Planning Proposals

DEVELOPMENT APPLICATIONS

- 1 8 GROVE LANE, EASTWOOD - NEW MULTI-DWELLING HOUSING DEVELOPMENT COMPRISING 3 X TWO STOREY 3 BEDROOM DWELLINGS, 1.0M HIGH FRONT FENCE, ASSOCIATED CAR PARKING AND TREE REMOVAL - LDA2018/0385**

Report prepared by: Assessment Officer- Town Planner

Report approved by: Senior Coordinator - Assessment; Manager - Development Assessment; Director - City Planning and Environment

Report dated: 28/08/2019

City of Ryde Local Planning Panel Report

DA Number	LDA2018/0385
Site Address & Ward	8 Grove Lane, Eastwood West Ward
Zoning	R2 Low Density Residential
Proposal	New multi-dwelling housing development comprising 3 x two storey 3 bedroom dwellings, 1.0m high front fence, associated car parking and tree removal.
Property Owner	Xiao Chun Yan
Applicant	Steve Wu
Report Author	Hussein Bazzi – Assessment Officer
Lodgement Date	4 October 2018
No. of Submissions	Twenty – seven (27) submissions objecting to the development. Seven (7) submissions to the amended plans.
Cost of Works	\$955,350.00
Reason for Referral to LPP	Contentious Development – Development is the subject of 10 or more unique submissions by way of objection

ITEM 1 (continued)

Recommendation	Approval
Attachments	Attachment 1 – Draft Conditions of Consent Attachment 2 – DCP Compliance Table Attachment 3 – Shadow Analysis Attachment 4 – A3 Plans

1. Executive Summary

The following report is an assessment for the construction of a new multi-dwelling housing development comprising three (3) x two (2) storey, three (3) bedroom dwellings fronting Grove Lane, including a 1.0 metre high front fence, associated car parking and tree removal.

The subject site is a rectangular shaped allotment, being wider than the site is deep. The site has an extended frontage to Grove Lane and is bounded by two corner allotments presenting to Orange Street and Grove Street. Grove Lane is their secondary frontage. The proposed built form is responsive to the site configuration and as a result, does not take the predominant form of multi dwelling developments within the Ryde LGA.

The proposed built form consists of three (3) dwellings stacked side by side which are detached and sited to present to Grove Lane. The proposal meets the definition contained within RLEP 2014. The definition of multi dwelling housing contained within RLEP2014 is as follows *“multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.”*

As a result of this configuration, the proposal results in non-compliances with the requirements of development control plan RDCP2014: Part 3.4 – Multi Dwelling Housing. A detailed discussion of the non-compliances is detailed within this report in relation to the following controls:

- Control 3.2 (b) – Altering site levels
- Control 3.5.4 - Side and Rear Setbacks
- Control 3.5.5(b) – Internal setbacks
- Control 3.6 (c),(g) and (i) – Private Outdoor Space
- Control 3.9(b) - Overshadowing (POS of each unit)
- Control 3.10(d) – Balconies
- Control 4.3(d) – Roof Design

The application was lodged on 4 October 2018 and the proposal was advertised in the Northern District Times and owners of surrounding properties were given notice between 17 October 2018 and 7 November 2018, inclusive of an extension to some objectors until 21 November 2018. In response, twenty-seven (27) submissions were

ITEM 1 (continued)

received with the predominant concerns relating to frontage requirements of RLEP2014, visual privacy, car parking, vehicle safety and accessibility, traffic impacts and the dilapidated state of Grove Lane.

The amended plans were notified on 18 December 2018 to 17 January 2018 and seven (7) submissions were received. The submissions did not raise any new issues than those raised in the initial notification period.

The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal does not result in any significant adverse impacts upon the streetscape or surrounding properties and is determined to be an acceptable form of development. The proposal has been appropriately designed to achieve the required levels of amenity for future occupants without adversely affecting the amenity of neighbouring properties. The proposal is not considered to raise any issues which would be contrary to the public interest.

The development application is recommended for approval subject to the recommended conditions provided in **Attachment 1** of this report.

2. The Site and Locality

The site is legally described as Lot 2 in DP 1180363 and is known as No. 8 Grove Lane, Eastwood. The site is located along the southern side of Grove Lane. The site is adjoined by No. 2 Orange Street to the east and Nos. 27 – 29 Grove Street to the west (**Figure 1**).

The subject site is rectangular in shape with a site area of 911m². The site is wider than it is in depth, with a primary frontage of 52.125 metres to Grove Lane. The site has a southern rear boundary 51.755 metres in width. The eastern side boundary has a depth of 18.04 metres and the western boundary is 17.045 metres in length.

ITEM 1 (continued)



Figure 1: Aerial photograph of site in context

The site slopes gently from Grove Lane to the rear of the site. The site has a gentle slope from the north eastern corner (RL93.11) to the south western corner (RL89.86).

The site benefits from a 1.0 metre wide drainage easement which traverses the adjoining site at No. 2 Orange Street.

The site is presently vacant (**Figures 2 and 3**) and does not include any built form. The site contains existing vegetation including a Macadamia Nut tree, two (2) Jacaranda's, one (1) Chinese Tallow Tree, one (1) Kentia Palm, fruit trees including minor shrubs and weeds. There is no vehicular access from Grove Lane.

ITEM 1 (continued)



Figure 2: Standing west looking east within subject site.



Figure 3: Standing north looking south within subject site.

Adjoining properties and Locality

The site is located within a low density residential area with surrounding development including a variety of single and two (2) storey residential developments such as detached dwellings, attached dual occupancies and multi dwelling housing developments. The surrounding development varies in age, scale and architectural style.

The site is adjoined to the east by a multi-dwelling development at 27 – 29 Grove Street (**Figure 4**) which comprises nine (9) dwellings. The private open space of dwelling 5 is located adjacent to the shared boundary. The site has vehicular access

ITEM 1 (continued)

from Grove Street. Dwelling 5 has a secondary vehicular access from Grove Lane (Figure 5).



Figure 4: Photo of 27 – 29 Grove Street, looking from Grove Street.



Figure 5: Photo from Grove Lane of vehicular access for dwelling 5 within 27-29 Grove Street.

The adjoining site to the west, No. 2 Orange Street accommodates a single storey brick dwelling with a detached outbuilding. A development consent (LDA2018/210) has been issued for construction of a two (2) storey attached dual occupancy. The approved development utilises Grove Lane for vehicular access (Figures 6 and 7).

ITEM 1 (continued)



Figure 8: Vehicular access to 6 and 6A Norma Avenue.



Figure 9: Vehicular access to 8 Norma Avenue.

ITEM 1 (continued)



Figure 10: Vehicular access to 14 Norma Avenue.

The adjoining sites to the south of the subject site are detached dwellings at 4 Orange Street, 4 Lilac Place and 5 Lilac Place with their private open space located along the shared boundary (**Figure 11**).



Figure 11: Aerial photograph of subject site adjoining 4 Orange Street, 4 Lilac Place and 5 Lilac Place.

ITEM 1 (continued)

3. The Proposal

The proposal seeks consent for the construction of multi-dwelling housing comprising three (3) x two (2) storey dwellings fronting Grove Lane. Each dwelling is separated 2.15 metres at the ground floor, a separation of 3.14 metres is provided at the first floor between Units 1 and 2 and 3.54 metres at the first floor between Units 2 and 3. The proposal also includes a 1.0 metre high front fence, associated car parking, construction of three (3) vehicular crossings to service vehicular access to each dwelling from Grove Lane and the proposal also facilitates tree removal. The proposed building footprint is shown in **Figure 12** below.

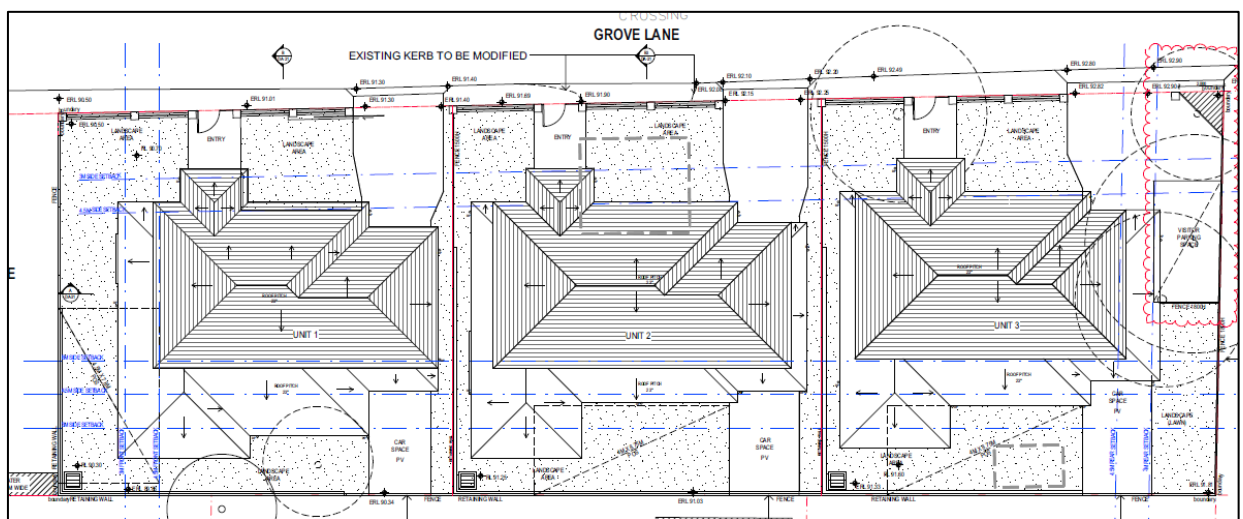


Figure 12: Site Plan.

Details of the development are as follows:

Unit 1:

Ground Floor RL90.75

- Living;
- Kitchen;
- Bathroom;
- Alfresco serving as primary private;
- Associated landscaping;
- Dining;
- One (1) bedroom;
- Laundry;
- Single width garage with tandem car space to the rear; and,
- Erection of privacy screen along the rear boundary.

First Floor RL93.75

- Two (2) Bedrooms – Each includes a walk in robe.
- Two (2) bathrooms
- Sitting Area; and
- Two (2) balconies fronting Grove Lane

ITEM 1 (continued)

Unit 2:

Ground Floor RL91.60

- Living;
- Kitchen;
- Bathroom;
- Alfresco serving as primary private;
- Associated landscaping;
- Study nook;
- Dining;
- One (1) bedroom;
- Laundry;
- Single width garage with tandem car space to the rear; and,
- Erection of privacy screen along the rear boundary.

First Floor RL94.60

- Two (2) Bedrooms – Each includes a walk in robe;
- Two (2) bathrooms;
- Sitting Area; and,
- Two (2) balconies fronting Grove Lane.

Unit 3:

Ground Floor RL92.30

- Living;
- Kitchen;
- Bathroom;
- Alfresco serving as primary private;
- Associated landscaping;
- Study nook;
- Dining;
- One (1) bedroom;
- Laundry;
- Single width garage with tandem car space to the rear; and,
- Erection of privacy screen along the rear boundary.

First Floor RL95.30

- Two (2) Bedrooms – Each includes a walk in robe;
- Two (2) bathrooms;
- Sitting Area; and,
- Two (2) balconies fronting Grove Lane.

Tree Removal:

The proposal will seek to remove the following trees on site:

- Macadamia Nut tree
- Two (2) Jacaranda's
- Fruit Trees
- One (1) Chinese Tallow Tree
- One (1) Kentia Palm
- Minor shrubs and weeds.

Figures 13, 14, 15, 16 and 17 show the various elevations of the proposal.

ITEM 1 (continued)

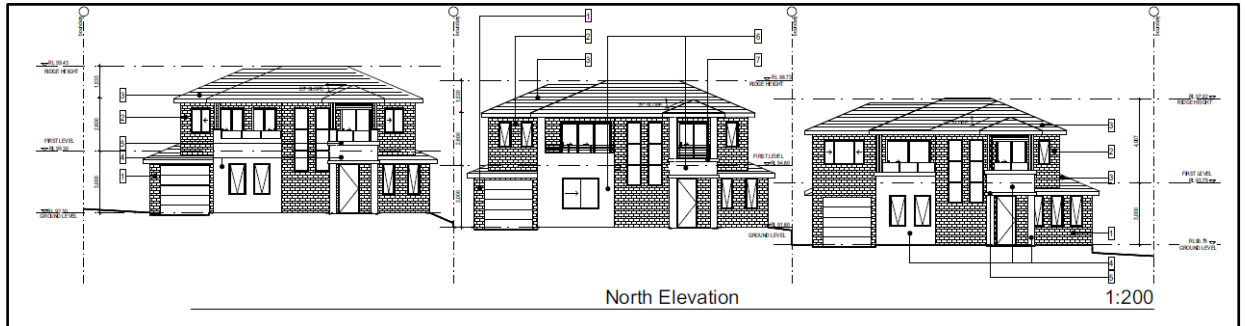


Figure 13: Northern Elevation (Fronting Grove Lane).

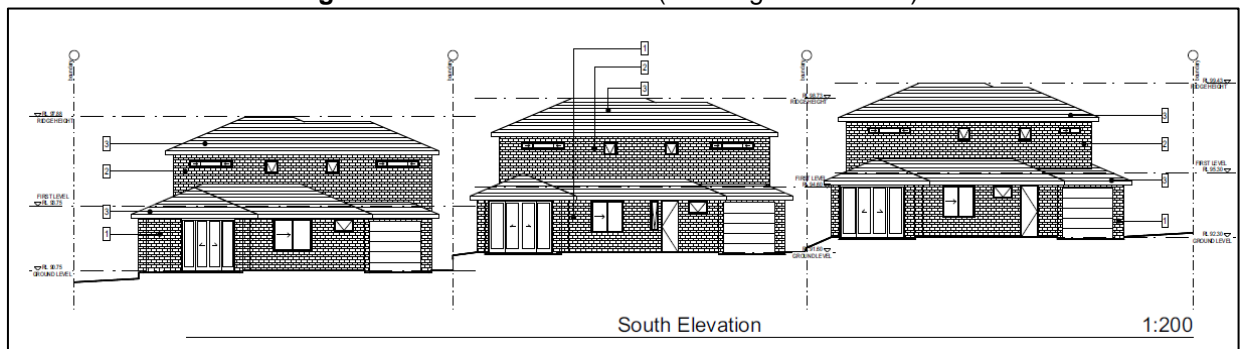


Figure 14: Southern Elevation (Rear).

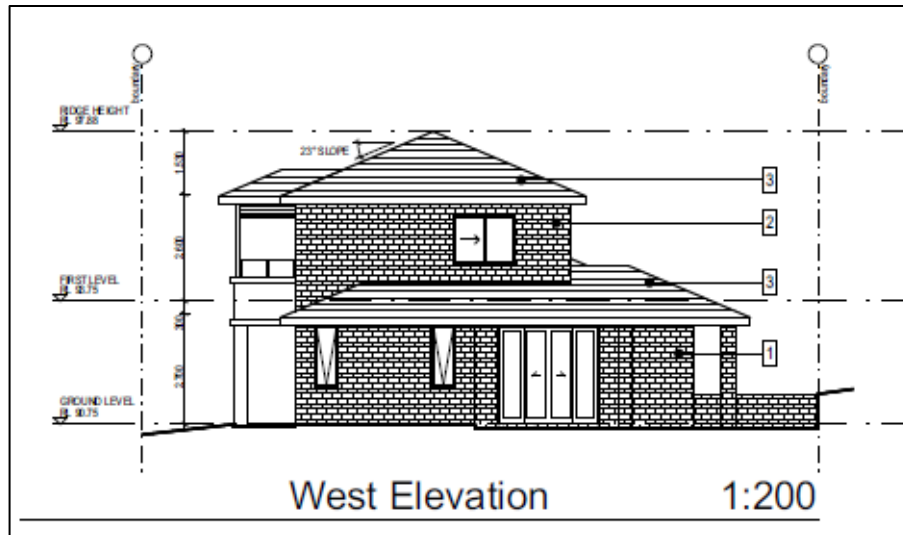


Figure 15: Western Elevation (Unit 1).

ITEM 1 (continued)

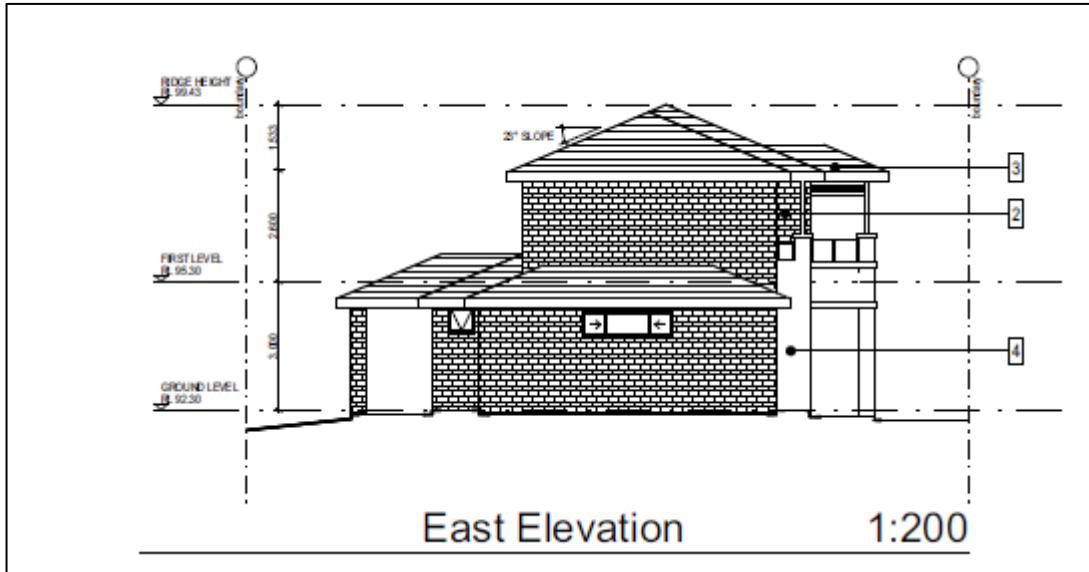


Figure 16: Eastern Elevation (Unit 3).

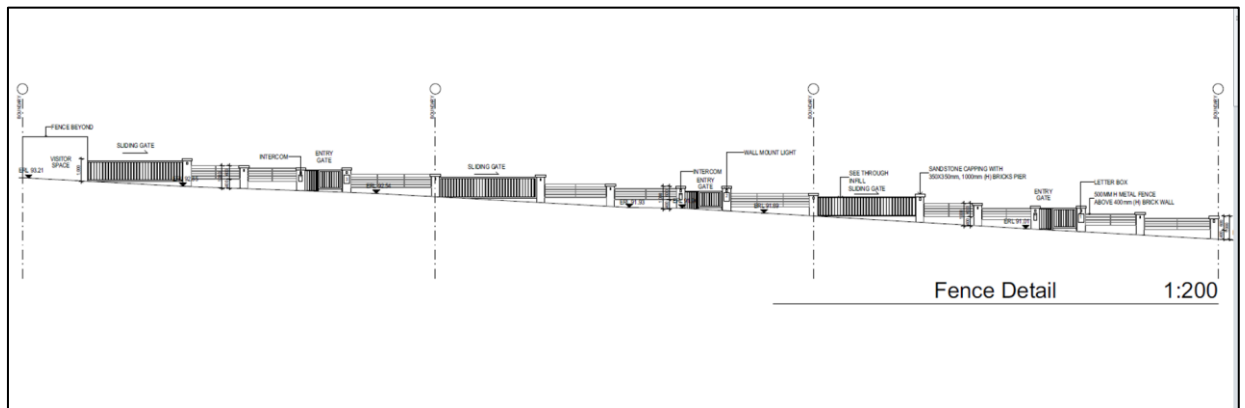


Figure 17: Front fence detail.

ITEM 1 (continued)
4. Background
Development History:

23 May 2012	<p>LDA2012/0152: An application was lodged to Council for a two (2) lot subdivision to subdivide an existing allotment (2 Orange Street) with total site area of 1,532.8m².</p> <p>The subdivision proposed the following:</p> <p><u>Lot 1:</u></p> <p>Total area of 732.4m², a frontage of 16.345m to Orange Street and a total depth of 43.835m and 43.57m depth fronting Grove Lane.</p> <p><u>Lot 2:</u></p> <p>Total area of 800.4m² with a primary frontage to Grove Lane of 45.585m, rear boundary width of 45.275m and depths of 17.185m and 18.065m.</p>
14 August 2012	Consent was granted to LDA2012/0152 for the proposed two (2) lot subdivision.
3 April 2013	Subsequent to LDA2012/0152, a modification (MOD2013/0143) was lodged to Council seeking to modify the consent to for a boundary adjustment and increase the overall site area of Lot 2, to 911m ² and a frontage to Grove Lane of 52.133m.
22 October 2013	MOD2013/0143 was approved by Council.

Application History

4 October 2018	LDA2018/0385 was lodged to Council, seeking consent for a new multi-dwelling housing development comprising 3 x two storey 3 bedroom dwellings.
23 October 2018	A meeting was held with owners of neighbouring allotments, regarding objections to the proposal, expressing concern and raising questions to Council's Officers.
26 October 2018	The subject site and the locality were inspected by the Assessment Officer.
31 October 2018	A Stop the Clock letter was forwarded to the applicant addressing the following: <ul style="list-style-type: none"> • The proposal is not consistent with the guiding principles

ITEM 1 (continued)

	<p>as outlined in Control 1.2 - Guiding Principles of RDCP 2014 Part 3.4: Multi Dwelling Housing;</p> <ul style="list-style-type: none"> • Issues in regard to character and streetscape, overall bulk of the development, building and internal linear separation and neighbourhood amenity; • Non – compliance with the following controls outlined in RDCP 2014 Part 3.4: Multi Dwelling Housing; <ul style="list-style-type: none"> ➤ Control 3.5.4(a) - Side setbacks; ➤ Control's 3.6(c) and 3.9(b) - Overshadowing and Access to Sunlight; ➤ Control 3.10(d) - Visual Privacy; and ➤ Control 4.5.1(a) - Front Fences.
6 November 2018	A meeting was held between Council and the applicant to discuss the letter dated 31 October 2018.
3 December 2018	<p>A request for information was forwarded to the applicant with issues raised by Council's City Works. The issues raised are as follows:</p> <ul style="list-style-type: none"> • Concerns raised by Council's Traffic Engineers; • Concerns raised by Council's Public Domain; and, • Issues raised by Council's Waste department.
17 December 2018	The applicant submitted the requested information, in response to concerns raised by Council.
18 December 2018	Given the nature of amendments to the development, the application was re-notified for a period of four (4) weeks.
29 May 2019	Another request for information was forwarded to the applicant with a concern raised by Council's Development Engineer regarding the visitor car space not providing sufficient sightline distances in accordance with AS 2890.1 including visual privacy concerns raised by Council's Assessment Officer.
5 June 2019	<p>All requested information, was submitted and the application was able to progress to the final stages.</p> <p><i>Note: Upon receiving the amended plans, it was considered that re-notification was not required in this instance as the design changes were minor, did not significantly differ from the re-notified plans on 18 December 2018 nor increase impact on adjoining properties.</i></p>
14 June 2019	An E-mail was forwarded to the applicant requesting updated sections though each dwelling, these sections were to also demonstrate the existing changes in levels between the subject properties at adjoining properties at Lilac Place.

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17 June 2019	The applicant submitted the requested information.
25 June – 24 July 2019	<p>Given the number and the nature of the issues raised in the submissions and that this development was different to the other multi dwelling housing developments that Council has considered, a peer review of the Development Application and assessment report was undertaken by an external Consultant Planner.</p> <p>The review considered the statutory requirements of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment Regulations 2000</i> as well as the submissions received. The review has agreed in principle to the position of Council to support the proposed development subject to conditions of consent.</p>

5. Planning Assessment
5.1 State Environmental Planning Instruments
State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

A BASIX Certificate (Certificate No. 956093M dated 4 September 2018) has been submitted with the application.

The Certificate confirms that the development will meet the NSW government's requirements for sustainability, if built in accordance with the commitments set out below:

Commitment	Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

Conditions 3 and 78 are recommended in the Conditions of consent to ensure compliance with the commitments contained with the BASIX Certificate are adhered to.

State Environmental Planning Policy No. 55 – Remediation of Land

In accordance with Clause 7 of SEPP 55, a consent authority must consider if the land is contaminated, the extent of the contamination, suitability of the proposed use and remediation to standards to ensure if the proposal is suitable.

The site has historically been used for a low density residential use and is not located in close proximity to any known contaminated land. Therefore, it is considered that

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the subject site satisfies the requirements of SEPP 55 with regard to the proposed development.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation. The development proposes the removal of the following existing trees from the site:

- Macadamia Nut tree
- Two (2) Jacaranda's
- Fruit Trees
- One (1) Chinese Tallow Tree
- One (1) Kentia Palms
- Minor shrubs and weeds.

Given that the species to be removed do not contain a significant retention value and some species are not native, it is considered that the proposed development does not unduly impact upon any species with biodiversity value on the site. The proposal is consistent with the provisions of the SEPP.

5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

Ryde Local Environmental Plan 2014 commenced on 12 September 2014 as the new environmental planning instrument applicable to the City of Ryde.

Outlined below are the following clauses applicable to the proposal.

Clause 2.3 - Zone Objectives and Land Use Table

Under Ryde LEP 2014, the site is zoned R2 Low Density Residential, and the proposed development being *Multi Dwelling Housing* is permissible with Council's consent. Multi dwelling housing is defined as *Three (3) or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*

The proposed built form is consistent with this definition. The definition, allows for a detached form of multi dwelling.

Aims and objectives for residential zones:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

ITEM 1 (continued)

- To provide for a variety of housing types.

The proposed development is considered to satisfy the objectives for residential developments. The proposal provides for housing within a low density environment and the provision of a multi dwelling housing development provides for a variety of housing types.

Part 4 - Principal development standards

The following table provides a summary of the applicable Clauses regarding the principal development standards of the proposal:

Clause	Proposal	Compliance				
4.1B Minimum lot sizes for dual occupancies and multi dwelling housing						
(1) The objective of this clause is to achieve planned residential density in certain zones. (2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if: (a) The area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and (b) The road frontage of the lot is equal to or greater than 20 metres.	R2 Low Density Residential Multi dwelling housing Total site Area = 911m ² Total frontage to Grove Lane = 52.125m	Yes				
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Column 1</th> <th style="width: 50%;">Column 2</th> </tr> </thead> <tbody> <tr> <td>Multi dwelling housing</td> <td>900m²</td> </tr> </tbody> </table>			Column 1	Column 2	Multi dwelling housing	900m ²
Column 1	Column 2					
Multi dwelling housing	900m ²					
4.3(2) Height of Buildings						
9.5m	Unit 1: Ridge: 97.88 EGL below: 90.83 Overall height: 7.05m Unit 2: Ridge: 98.73 EGL below: 91.20 Overall height: 7.53m Unit 3: Ridge: 99.43 EGL below: 92.00 Overall height: 7.43m	Yes				

ITEM 1 (continued)

4.5A Density controls for Zone R2 Low Density Residential		
Development consent must not be granted to the erection of multi dwelling housing on land in Zone R2 Low Density Residential unless:	Unit 1: Three (3) Bedroom; Unit 2: Three (3) Bedroom; and, Unit 3: Three (3) Bedroom.	
(a) The site area for the building is not less than:	Total area required = 900m ²	Yes
(i) For each 1, 2 or 3 bedroom dwelling: 300m ² , and	Total site area proposed = 911m ²	
(ii) For each 4 or more bedroom dwelling: 365m ² , and		
(b) Each dwelling will have its own contiguous private open space.	Each dwelling contains its own contiguous private open space.	Yes

Part 6 Additional local provisions
Clause 6.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.

The proposal includes excavation to a maximum depth of 500mm and fills with a maximum height of 300mm contained within the building footprint. The proposal also includes fill associated with landscaping works to a maximum height of 440mm at the south-western corner of the site to create levelled areas of private open space for each Unit. Concern is held regarding the proposed retaining wall along the southern and western boundaries to retain the proposed fill and it is recommended the natural ground levels be maintained within 1 metre of the boundaries.

The proposed extent of excavation and fill does not result in any detrimental impacts upon environmental functions and processes, neighbouring uses or features of surrounding land. The proposal does not significantly or adversely alter the natural topography of the site and maintains relative levels with adjoining properties.

The proposed levels of cut and fill do not adversely impact the amenity of adjoining properties, subject to the recommended **Condition 29** and is considered to be consistent with the provisions of Clause 6.2(3).

Clause 6.4 – Stormwater Management

The objective of this control is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. The proposal is consistent with the provisions of Clause 6.4(3) in that the proposal has been designed to maximise the use of permeable surfaces allowing for

ITEM 1 (continued)

water filtration and avoids adverse impacts of stormwater runoff on adjoining properties and receiving waters.

The proposed stormwater management system for the development will incorporate below ground onsite detention systems contained within the rear alfresco areas of each unit which will be connected to an inter-allotment drainage system that discharges to an existing drainage easement that traversing through No. 2 Orange Street.

The internal drainage details for the development as proposed complies with Council's requirements and is designed to mitigate any potential adverse impacts of stormwater runoff on adjoining properties. Therefore, the proposal satisfies the provisions outlined in Clause 6.4.

5.3 Draft Environmental Planning Instruments**Draft Remediation of Land State Environmental Planning Policy**

The Draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. The subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is consistent with the provisions of the draft SEPP.

5.4 Development Control Plans

ITEM 1 (continued)
Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.4: Multi Dwelling Housing;
- Part 7.2: Waste Minimisation and Management;
- Part 8.1: Construction Activities;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways;
- Part 8.5: Public Civil Works;
- Part 9.2: Access for People with Disabilities;
- Part 9.3: Parking Controls; and
- Part 9.5: Tree Preservation.

The provisions of DCP 2014 have been considered in this assessment. Parts 7.2 to 9.5 are addressed separately via considerations given in the referral responses provided by Council's Development Engineer, Landscape Architect and Council's City Works Directorate. The proposal is consistent with the aims and objectives of RDCP 2014 and where strict compliance has not been achieved with the controls, in accordance with Section 4.15(3A)(b) flexibility has been shown in determining whether a reasonable alternative solution is provided by the proposed development. These matters are discussed below.

Part 3.4 – Multi Dwelling Housing**Control 3.2 (b) – Altering site levels**

The controls 3.2 (a), (b) and (d) requires fill not to be brought into the site and the levels of the site should not be altered more than 300mm. Private open space is required to be provided at natural ground level. The objective of the controls is to ensure development is sympathetic with the natural topography of the site resulting in the protection of privacy of adjoining properties.

The development proposes excavation and fill in excess of 300mm. The maximum extent of altering of site levels is proposed in the following locations:

- Introducing fill internal to each buildings footprint ranging between 200mm – 300mm contained underneath the living areas of each Unit;
- Introducing fill external to the buildings footprint to the western side of each dwelling of 200mm – 440mm;
- Excavation up to 500mm at the eastern side of the Unit 1;
- Excavation up to 400mm to the eastern side of Unit's 2 and 3; and,

ITEM 1 (continued)

- Excavation of up to 500mm (at maximum) to the northern portion of the site within front setback adjacent to Unit 1.

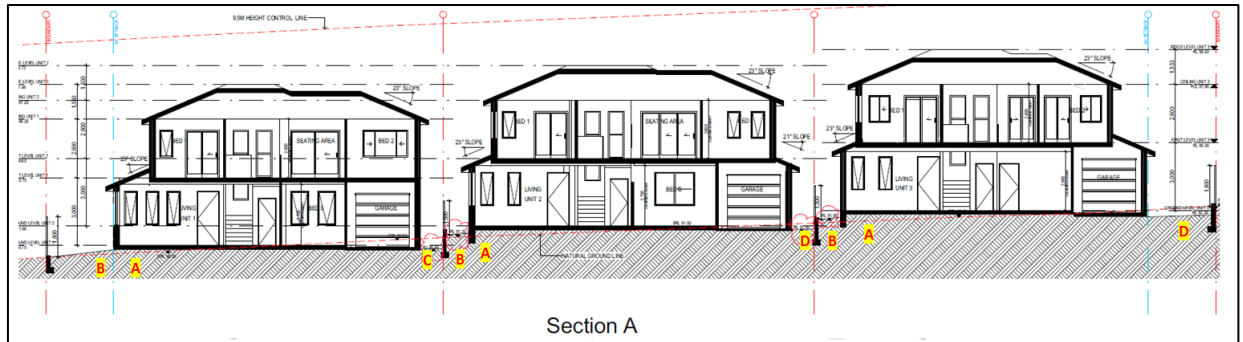


Figure 18: Section A showing the locations of excavation and fill.

Note:

- A: Fill 200mm – 300mm contained underneath the living areas of each Unit;
- B: Fill external to the buildings footprint to the western side of each dwelling of 200mm – 440mm;
- C: Excavation up to 500mm at the eastern side of the Unit 1; and,
- D: Excavation up to 400mm to the eastern side of Unit's 2 and 3.

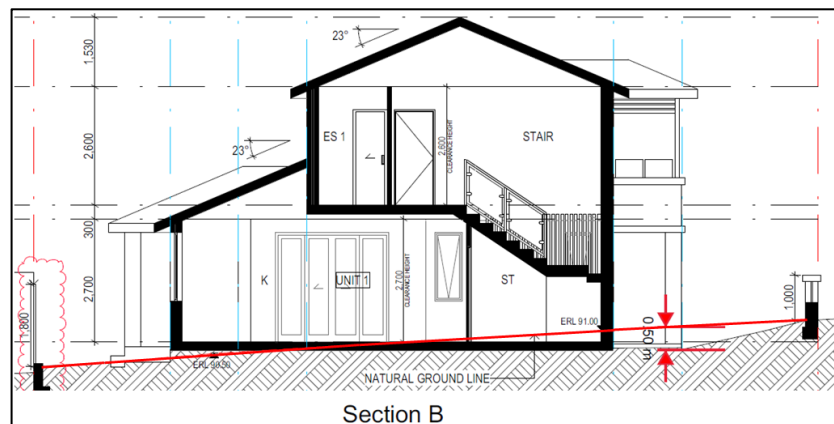


Figure 19: Section B showing the maximum extent of cut within the front setback adjacent to Unit 1.

There presently exists a difference in levels between the subject site and adjoining properties to the south, at Lilac Street of up to 1.0 metre. Concern is held regarding the cumulative impact from the existing adjoining properties being cut into the site and the proposed fill between 200mm to 440mm. It is therefore recommended, the proposed retaining walls be set in a minimum 1.2 metres from the western side and southern rear boundaries and the natural ground level being maintained.

The 1.2m setback has been selected to ensure consistency with Council's requirement for a 1.2m wide landscape strip as specified in Control 3.6(i). Subject to this conditional requirement, the proposed fill can be considered reasonable (**Condition 29**).

In addition to the above, the non-compliance is acceptable for the following reasons:

ITEM 1 (continued)

- The extent of fill introduced to the site are contained within portions of the site to achieve at grade levels;
- The excavation proposed along the eastern side and filling along the western side of each dwelling are wholly contained within the private open spaces of Unit's 1 and 3 to establish usable space for future occupants by levelling out the proportions;
- The extent of filling does not result in a loss of amenity for future occupants or the amenity of adjoining properties;
- The extent of excavation within the front setback will allow for an appropriate driveway grade to allow satisfactory vehicular access in accordance with AS 2890.1; and,
- The proposed development is considered to be sympathetic with the natural topography of the site and adjoining properties.

Therefore, the altering of site levels does not result in any adverse impact to adjoining properties and is supported.

Control 3.5.1 - Front setbacks

The proposed development provides for a 3.0 metres front setback in respect to the porch and balcony structures. The front setback to the front façade is setback a minimum of 4.5 metres. The required setbacks stipulated in controls (a)(i) and (ii) rely upon the average setback between the two adjoining properties. The setback of No. 2 Orange Street determines which control provision is applicable to the proposed development. The existing development (detached outbuilding) at No. 2 Orange Street has a setback of 300mm. The approved dual occupancy has a front setback of 2.0 metres from Grove Lane.

No. 27 – 29 Grove Street is setback 3.0 metres from Grove Lane. The resultant difference between the existing setback of No. 2 Orange Street would require a front setback of 1.65 metres in accordance with (b)(ii). The difference between the approved front setback of No. 2 Orange Street and No. 27-29 Grove Street is less than 2.0 metres and in accordance with (b)(i) a front setback of 3.0 metres would be required.

The two adjoining properties, No. 2 Orange Street and No. 27 – 29 Grove Street utilise Grove Lane as their secondary street frontages, which in accordance with 3.5.3(a) require a 4.5 metres setback for multi dwelling developments (Variation of up to 3.0 metres is permitted for 50% of the elevation as per Control 3.5.4(d)) and 2.0 metres for dwellings and dual occupancy developments under Control 2.9.1(b) of RDCP2014: Part 3.3 - Dwelling Houses and Dual Occupancies (attached). As the subject site is sited between the two corner allotments, the required front setback is less than what would ordinarily be required for a multi dwelling development.

The proposed front setback of 3.0 metres is considered reasonable in this circumstance for the following reasons:

ITEM 1 (continued)

- The setback is not inconsistent with the adjoining development;
- The proposed setback does not alter the character of Grove Lane;
- The proposed configuration is site specific in that only three (3) properties are located on the southern side of Grove Lane and the subject site is the only site with a primary frontage to Grove Lane;
- Properties on the northern side of Grove Lane do not utilise Grove Lane as a primary frontage with dwellings presenting to Norma Road;
- The setback does not adversely impact the existing character upon Grove Lane; and,
- There are no resultant amenity impacts resulting from the proposed setback.

Control 3.5.4 - Side and Rear Setbacks

Control 3.5.4 (a) states that the walls of all buildings must be not less than 4.5 metres from side and rear boundaries. Control 3.5.4(d) allows variation to this setback to 3.0 metres for a maximum of 50% of the wall length to promote interest in design.

The eastern elevation of the garage for Unit 3 is setback 3.0 metres from the boundary. The entire length of eastern elevation of the garage is setback 3.0 metres and does not comply with the maximum allowable reduction of setback to 3.0 metres for 50% of the wall length. **Figures 20 and 21** below show the setbacks on the ground and first floor. The first floor is setback 4.5 metres and complies.

ITEM 1 (continued)

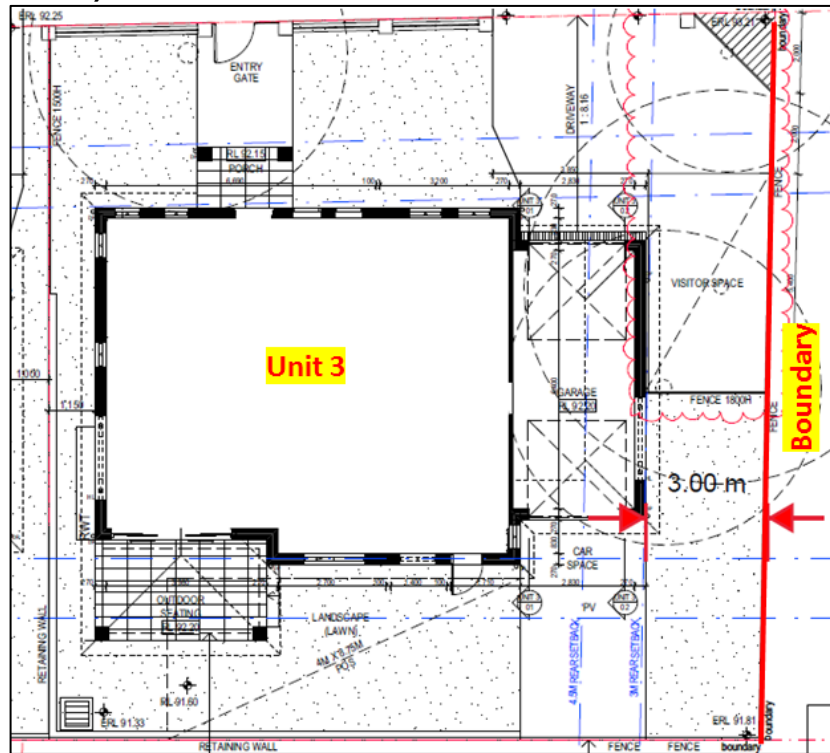


Figure 20: Ground floor setback to the eastern boundary for Unit 2.

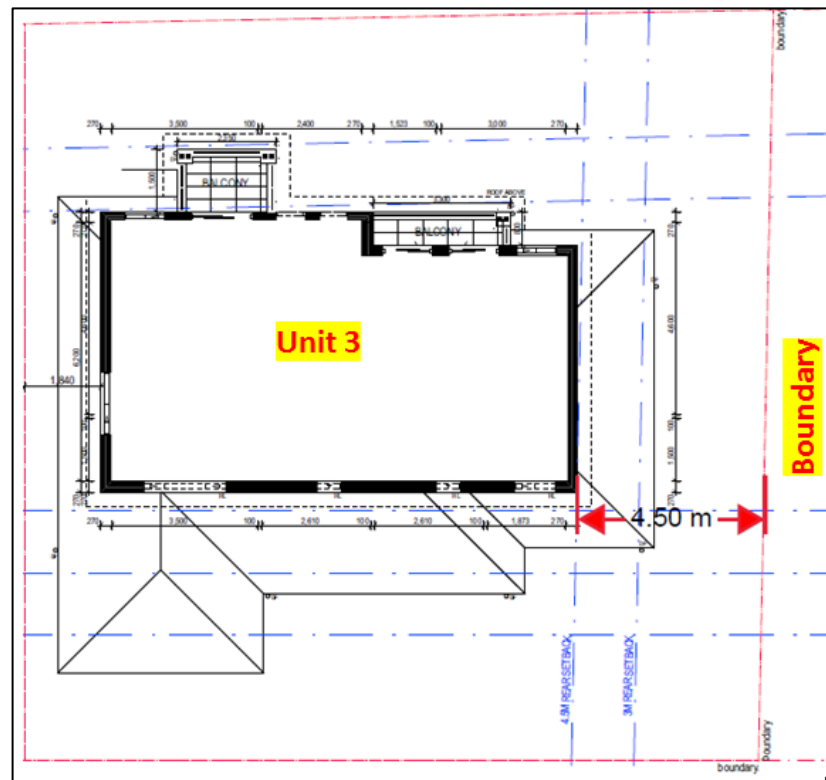


Figure 21: First floor setback to the eastern boundary for Unit 2.

ITEM 1 (continued)

The proposed setback is considered acceptable for the following reasons:

- The proposed eastern elevation of the garage has a length of 6.4 metres and the non-compliance is limited to this length of elevation.
- The provided 3.0 metre setback provides for landscaping and pervious areas as required by the control;
- The reduced setback is associated with a non-habitable structure and achieves appropriate separation between proposed Unit 3 of the development and Unit 5 at 27 – 29 Grove Street;
- The non-compliant setback does not result in adverse impacts on amenity, visual privacy, or visual impact to adjoining properties;
- The encroachment of the setback is single storey structure, providing sufficient separation within the development to the adjoining property;
- The first floor maintains compliance with Control 3.5.4 (a), being set back 4.5 metres from the eastern boundary;
- The non-compliant side setback will allow for Unit 3 to contain satisfactory internal amenity, compliant car parking width and allows for appropriate linear separation between dwellings within the development; and,
- The sitting of the building is considered to be compatible with the streetscape;

Given these reasons, the proposed setback is supported.

Control 3.5.5(b) – Internal setbacks

Control 3.5.5(b) requires a minimum of 9.0 metres separation to be provided between the windows of habitable rooms of facing dwellings. This is the same requirement as per Control 3.10(a) in respect to visual privacy. As demonstrated in Figure 3.4.09 of the DCP (See **Figure 22** below), this requirement typically relates to multi dwelling housing developments with a central driveway, whereas the proposed development present a row of detached dwellings.

The ground floor separation between dwellings is 2.15 metres on the ground floor and the separation is increased to 3.14 metres on the upper floor. Despite the variation to the control's requirement for a separation of 9.0 metres between habitable rooms, the development will not result in any privacy impacts between dwellings as the development does not propose any habitable room windows within the dwelling to face each other (**Figures 23 and 24**) and the proposal is considered acceptable.

ITEM 1 (continued)



Figure 22: Figure 3.4.09 of RDCP 2014: Part 3.4 – Multi dwelling housing.

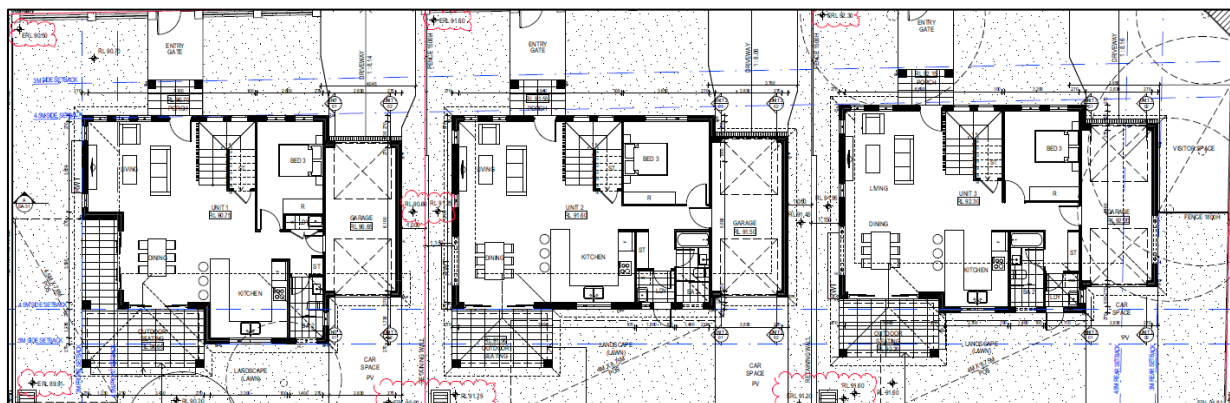


Figure 23: Ground floor plan of each dwelling showing that windows of habitable rooms are offset from each other.

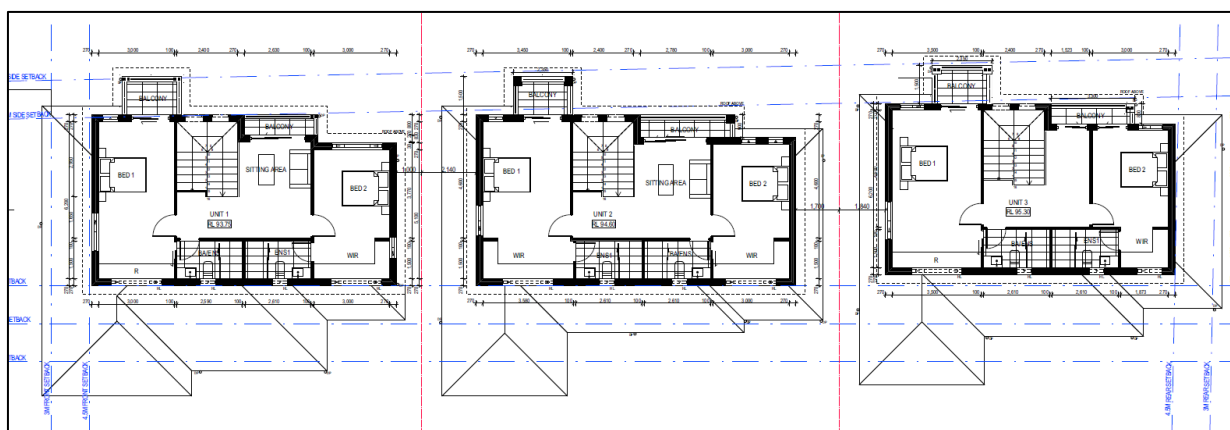


Figure 24: First floor plan of each dwelling showing that windows of habitable rooms are offset from each other.

Control 3.6(c),(g) and (i) – Private Outdoor Space

ITEM 1 (continued)

Control 3.6(c) requires private outdoor space to be orientated or be sufficiently large enough so that sunlight to at least 50% of the courtyard is achieved for two hours between 9am and 3pm on June 21. The proposal does not achieve compliance with this control requirement. The proposal is however acceptable for the reasons discussed in detail under Control 3.9(b). Control 3.6(g) requires that outdoor space must be one area not many small areas, maybe partially paved and must not be covered. Each of the courtyards provided an outdoor seating area that has been roofed and is adjacent to the internal living areas.

If the roofed area was excluded from the area calculation for the private open space, each private open space area would still exceed Council’s requirements. When considering the objectives of the control, the roofed area over the allocated space does not detract from its function as private open space and the roofing will not contribute to the overshadowing of these spaces.

Control 3.6(i) requires multi dwelling developments to provide a minimum 1.2 metre wide landscaped privacy strips between the courtyard and the adjoining property.

The proposal provides for a landscape strip of 800mm between the private open space of each unit and the adjoining dwellings and does not comply with the control requirement. The objective behind the control is to ensure that privacy is maintained between occupants of dwellings within the development and adjoining properties.

Figure 25 below shows the location of the landscape strips.

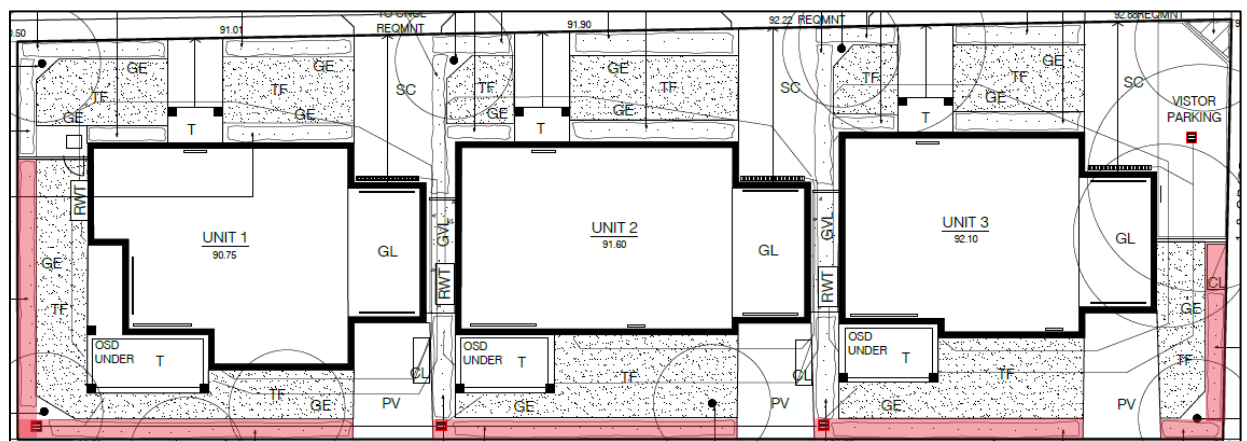


Figure 25: Location of landscape strips along the boundaries (as shaded).

Although a 800mm wide landscape strip has been provided, to ensure that privacy is maintained between the of the occupants of dwellings within the development and adjoining properties, **Condition 29** is recommended, for the proposed retaining walls be set in a minimum 1.2 metres from the western side and southern rear boundaries and the natural ground level being maintained.

Condition 31 is also recommended to provide a 1.2m wide landscape strip along eastern property boundary adjoining Unit 5, 27 – 29 Grove Street. These conditions will ensure the provision of a 1.2m wide landscape strip is provided for the

ITEM 1 (continued)

development inclusive of advanced planting of species to protect privacy between properties (**Condition 71**).

Control 3.9 (b) - Overshadowing (POS of each unit)

Control 3.9(b) requires multi dwelling housing developments to provide two (2) hours sunlight to at least 50% of each courtyard within the development. The private open space for Unit 1 is compliant with the control. The primary open space being the alfresco area has a western aspect and will achieve at least two (2) hours sunlight to 50% of its surface from 12 noon. The private open spaces of Units 2 and 3 will not achieve the required solar access as shown in **Figure 26** below.

Despite the non compliance, in this circumstance the proposal can be considered reasonable for the following reasons:

- The site has north – south orientation with the frontage to Grove Lane having the northern orientation;
- The courtyards are located at the rear of the site and have a southern orientation. Control 3.6(h) does not permit courtyards to be provided within the front setback;
- It is a reasonable design response to locate private open space to the rear of the site to satisfy Control 3.6(h). As a result, it is considered achieving numerical compliance is constrained by the site characteristics;
- The proposal is compliant with Council’s controls for building height, site coverage and generally consistent with setbacks. The non-compliance is not considered to be a result of a poor building envelope but rather the subdivision pattern;
- The requirement to locate courtyards to the rear and side due to the site circumstances ultimately restricts the amount of sunlight able to be obtained to the POS’s of Units 2 and 3;and
- The amenity of future occupants will not be adversely impacted as the north orientated windows will achieve satisfactory internal solar access.

Despite not achieving compliance, it is considered that there is sufficient private open space provided for Units 2 and 3 and will not compromise the functionality or purpose of the space for recreation.

Therefore, as outlined in the reasons above achieving numerical compliance is considered unreasonable and the non-compliance is supported as it is inevitable that there will be some impact on access to sunlight to the courtyards which is inherent and can be expected.

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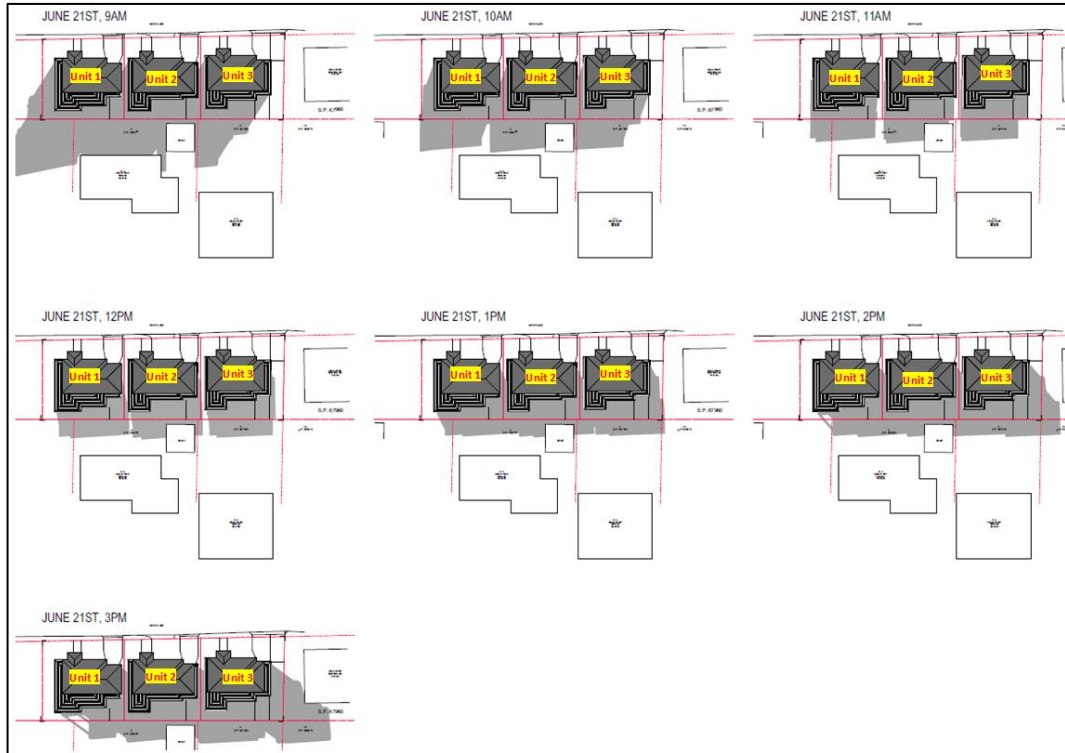


Figure 26: Extent of shadow cast the POS of Units 2 and 3 during mid-winter.

Control 3.10(d) – Balconies

Control 3.10(d) states that balconies are prohibited on all dwellings. The objective behind the control is to ensure that there is no direct overlooking from the development upon adjoining dwellings.

The proposal includes balconies to the northern elevation presenting to Grove Lane. **Figure 27** shows the locations of the balconies within the northern elevation.

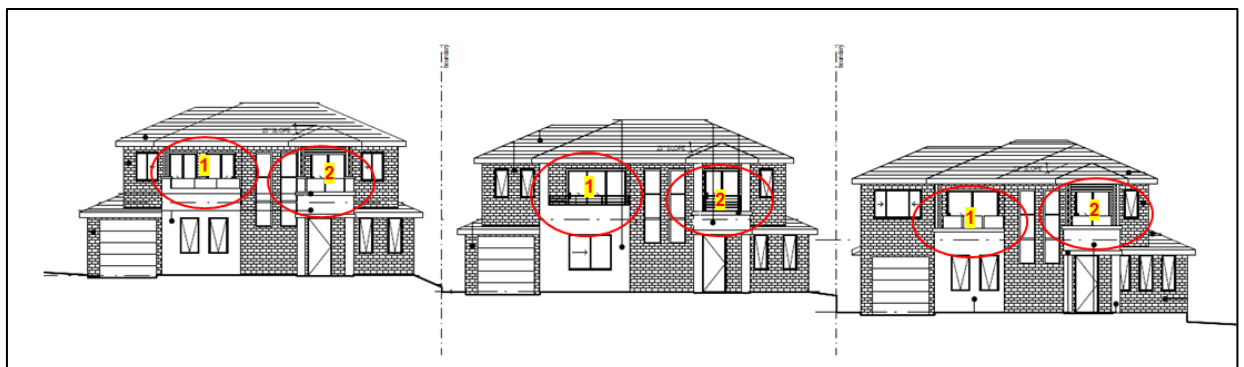


Figure 27: Northern elevation showing the location of balconies on the first floor.

The proposed balconies labelled 1 are associated with sitting areas and the balconies labelled 2 are associated with bedrooms.

ITEM 1 (continued)

The proposed first floor balconies associated with the sitting areas are Juliette balconies with a maximum depth of 900mm (Unit 2) and 800mm (Unit 1 and 3). The proposed depth of these balconies limits opportunities for use and provide for visual interest to the front façade and streetscape presentation.

The balconies associated with the bedrooms have a maximum depth of 1.5 metres, with a maximum width of 2.350 metres and an area of 3.525m². The balconies are not sited within the 9.0 metre privacy sensitive areas and are setback sufficiently from the private open space of adjoining properties. The opportunity for overlooking is obstructed by existing vegetation and car parking structures for properties on the northern side of Grove Lane.

The proposed balconies contribute to the articulation of the front façade and provide visual interest. The balconies do not raise any privacy concerns and provide an interest to the streetscape and despite not complying with the control, the balconies are acceptable.

Control 4.3(d) – Roof Design

Control 4.3(d) states that multi dwelling developments are to provide the use of gable style roofs for Units fronting the street, hipped roofs are generally not permitted. The objective of the control is to provide interest and variation to the appearance of the development and enhance and complement the existing streetscape.

The proposal has been designed utilising hipped roof form presenting to Grove Lane and does not comply. The proposed roof has a pitch of 23°, as shown in **Figure 18** above.

The proposed roof form can be considered acceptable in this circumstance for the following reasons:

- The overall scale of the building is considered to be compatible with recent development within the surrounding streetscape;
- In this instance, the incorporation of a gable roof form will increase the overall bulk of the development as it presents to the streetscape;
- Architectural features have been incorporated into the design, as well as articulation to the façade of each dwelling adding visual interest to the appearance of the development which compliments the existing streetscape, satisfying the objectives of control;
- The streetscape character along the southern side of Grove Lane is undergoing change and the proposed roof form is not inconsistent with the new built form emerging; and,
- The proposed roof provides a variation in the roof line through breaking the roof into smaller elements so that it does not appear as a continuous roof, ultimately minimising the bulk of the development.

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5.5 Planning Agreements OR Draft Planning Agreements

The application is not the subject of any planning agreements or draft planning agreements.

5.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

Council's current Section 7.11 Development Contributions Plan 2007 (Interim Update (2014) effective 10 December 2014) requires a contribution for the provision of various additional services required as a result of increased development density. The contribution is based on the number of additional dwellings there are in the development proposal.

The contribution that are payable with respect to the increase housing density on the subject site (being for residential development outside the Macquarie Park Area) are as follows:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$6,794.29
Open Space & Recreation Facilities	\$16,726.16
Civic & Urban Improvements	\$5,688.90
Roads & Traffic Management facilities	\$776.00
Cycleways	\$484.74
Stormwater Management Facilities	\$1,540.69
Plan Administration	\$130.69
The total contribution amount	\$32,141.47

Condition 17 on the payment of Section 7.11 Contribution of **\$31,826.56** has been included in the Conditions of Consent.

ITEM 1 (continued)**5.7 Any matters prescribed by the regulations**

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. There are no relevant Clauses applying contained within the regulation relevant to the proposal.

6. The likely impacts of the development

As demonstrated within this assessment, it is considered that the proposal will not result in any adverse impacts to the natural and/or built environment. The proposal does not result in any significant adverse impacts upon any adjoining properties or the streetscape.

In this regard, the development is considered satisfactory in terms of environmental impacts.

7. Suitability of the site for the development

As detailed within this report, the subject site is wider than it is in depth and the proposed development has been designed in response to the site configuration. The proposal is not consistent with the traditional form of multi dwelling housing within the City of Ryde due to the site circumstance.

The site meets the minimum frontage width of 20 metres and minimum site area of 900m² and is permissible within the zone. The proposal is compliant with the principal development standards. The proposal is generally compliant with the suite of built form controls and where compliance has not been achieved, the proposal has sought flexibility on the basis of consistency with the objectives of the control despite the non-compliance. The proposal does not result in any adverse impacts on adjoining properties.

The proposal is considered to be an appropriate form of development and is responsive to the site circumstance. On this basis, the site is considered to be suitable for the site.

8. The Public Interest

The public interest is best serviced by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised.

The proposal has been assessed against the relevant environmental planning instruments and Council considers the proposal to be acceptable. The proposal is compliant with the principal development standards and is consistent with the relevant provisions contained within RDCP2014.

ITEM 1 (continued)

The non-compliances are considered to be acceptable on merit and do not result in any adverse impacts upon adjoining properties or the streetscape. On this basis, the proposal is not considered to raise any issues that would be contrary to the public interest.

9. Submissions

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the application was advertised in the Northern District Times and owners of surrounding properties were given notice between 17 October 2018 and 7 November 2018, inclusive of an extension of time granted to some objectors until 21 November 2018.

In response twenty-seven (27) submissions were received. The amended plans received on 17 December 2018 were notified between 18 December 2018 and 17 January 2019, in response to the amended plans seven (7) submissions were received.

In accordance with Control 2.9 (a)(ii) of RDCP2014: Part 2.1 – Notification of Development Applications. The amended plans received on 5 June 2019 and 17 June 2019 were not required to be renotified given the minor extent of design changes, given that the amendments did not increase the impact upon adjoining or neighboring land or cause material impact on the environment.

Overall, in response to the two (2) public notification periods, a total of twenty-seven unique (27) submissions were received objecting to the development, from the following properties:

Address
1 Wishart Street, Eastwood
11 Norma Avenue, Eastwood
3 Wishart Street, Eastwood
4 Lilac Place, Eastwood
6 Norma Avenue, Eastwood
3 Lilac Place, Eastwood
4 Norma Avenue, Eastwood
8 Norma Avenue, Eastwood
14 Wishart Street, Eastwood
Unit 9 of 27-29 Grove Street, Eastwood
32 Grove Street, Eastwood
28 Grove Street, Eastwood
11 Wishart Street, Eastwood
12 Wishart Street, Eastwood
18 Wishart Street, Eastwood
10 Norma Avenue, Eastwood

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Address
6A Norma Avenue, Eastwood
12 Norma Avenue, Eastwood
Unit 2 of 27-29 Grove Street, Eastwood
Unit 4 of 27-29 Grove Street, Eastwood
3 Grove Street, Eastwood
Stringybark Legal (On behalf of the owner of 5 Lilac Place)
155 North Burge Road, Woy Woy (On behalf of the owner for 5 Lilac Place, Eastwood)
4 Walsh Street, Eastwood,
24 Pembroke Road, Marsfield (On behalf of the owner of 8 Norma Avenue).



Figure 28: Map showing the location of objectors within the vicinity (Subject property is shaded in red).

The submissions raised the following issues:

- **Utilising Grove Lane as a street frontage**

Objections were raised that for the purposes Clause 4.1B(2)(b), Grove Lane cannot be utilised as a legal road frontage for multi dwelling developments.

Assessment Officers Comment:

The proposal has a single road frontage to Grove Lane. The frontage was created by the subdivision of 2 Orange Street (LDA2012/0152). The site has a primary frontage to Grove Lane. The subject site has been registered by the Registrar General.

ITEM 1 (continued)

Objections have drawn contention that the use of a laneway does not constitute the definition of a road and it is argued that the development does not meet the requirements with Clause 4.1B(b) of the RLEP 2014 which states:

“(b) development consent can be granted for the use of multi dwelling housing in R2 Zones, if the road frontage of the lot is equal to or greater 20 metres”

A road is not defined under the RLEP2014, the *Environmental Planning and Assessment Act 1979*, or the *Roads Act 1993*. However, the definition of a road outlined within Definitions of the *Road Transport Act 2013*, which defines a road as:

“an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.”

In addition to the above the *Local Government Act 1993* defines a road as:

“road includes:

- (a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and*
- (b) any part of a road and any part of any thing referred to in paragraph (a), and*
- (c) anything forming part of a road or anything forming part of any thing referred to in paragraph (a).”*

Therefore, as outlined in the definitions contained within the *Road Transport Act 2013* and *Local Government Act 1993*, Grove Lane is a road that it is accessible by all members of the public and allows the driving of motor vehicles. Additionally, for the purposes of this assessment it is considered that Grove Lane is also utilised as a secondary frontage for secondary access by the following properties:

- Unit 5 of 27-29 Grove Street;
- 2 Norma Avenue;
- 4 Norma Avenue;
- 6 Norma Avenue;
- 6A Norma Avenue;
- 8 Norma Avenue;
- 10 Norma Avenue;
- 12 Norma Avenue;
- 14 Norma Avenue;
- 31 Grove Street; and,
- 2 Orange Street

Therefore, by definition Grove Lane is a road and may also be considered a primary road frontage for the purposes of the proposed development.

- **Overall height limit**

Objectors were of the view that Grove Lane cannot be utilised as a legal road frontage for multi dwelling developments, objections argued that the development

ITEM 1 (continued)

must comply with the maximum 5.0 height limit for dwellings which do not contain a road frontage, as per Clause 4.3A(2) of RLEP2014.

Assessment Officers Comment:

The proposal is for a multi dwelling housing development consisting of three (3) Units, each being two (2) storeys in height which has a primary frontage to Grove Lane.

The proposed dwellings are not attached and are sited presenting to Grove Lane. The development satisfies the definition of multi dwelling housing and the provision of Clause 4.3A(2). Each dwelling is permissible to be a maximum of 9.5 metres in height given the dwellings are not attached and present to Grove Lane.

- **Overdevelopment and lack of proximity to public transport or amenities**

Objectors raised a concern over the unacceptable increase in density of the site and within the Eastwood Area. An objection also raised a concern that the development is not within proximity to public transport and/or amenities.

Assessment Officers Comment:

Multi dwelling housing developments are permissible in R2 Low Density Residential Zones under the Ryde LEP 2014. The location of the proposed development is within proximity of the Eastwood Town Centre and access to public transport such as bus stops.

Overall, the proposal complies with the site and density requirements outlined in Clauses 4.1B and 4.5A of RLEP 2014, satisfies objectives of R2 Low Density Residential Zones inclusive of the objectives set out in RDCP2014: Part 3.4 – Multi Dwelling housing.

- **Visual Privacy impacts on properties adjacent across Grove Lane**

Objections were raised regarding that the balconies and windows on the first floor fronting Grove Lane will result in visual privacy impacts to dwellings located along Norma Avenue including the developments lack of privacy screens.

Assessment Officers Comment:

The proposal does not comply with Clause 3.10 (d), which prohibits balconies within multi dwelling housing developments. The objective of the control is to ensure that visual privacy is maintained between the development and adjoining dwellings.

The proposed first floor balconies are associated with sitting rooms and bedrooms. The proposed balconies have been supported in this instance as there are no resultant privacy impacts and the proposed balconies provide for articulation and

ITEM 1 (continued)

visual interest of the front façade. It is not necessary to require privacy screens as there are no resultant privacy impacts.

The size of the balconies and depth achieve the required separation distances to ensure there is no adverse impact upon the privacy of the rear private open spaces of properties presenting to Norma Avenue. Direct views are not possible and are further obscured by the provision of existing fences, landscaping and car parking structures located off Grove Lane associated with dwellings presenting to Norma Avenue.

The proposed northern windows are setback 9.0 metres from adjoining properties on the northern side of Grove Lane and these windows are associated with bedrooms and stairwells and are not considered to result in any adverse privacy impacts. Given the use of the room in which they are associated with, it is considered occupants are likely to spend less time in these rooms and are more likely to be concerned with their own privacy than impacting neighbouring properties.

This conclusion is consistent with the planning principle established in the Land and Environment Court case *Meriton v Sydney City Council [2004] NSWLEC 313*, where Senior Commissioner Roseth established the following principle which is relevant to this particular matter:

“The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.”

- **Impact on traffic**

Submissions raised concerns over the overall cumulative impacts on traffic within Grove Lane and the wider road network including the applicants lack in providing an expert traffic study.

Assessment Officers Comment:

Whilst all the submissions raised the impact of traffic, objectors have provided a traffic report prepared by Northern Transport Planning and Engineering Pty Ltd dated January 2019 and a Civil Engineers Statement prepared by Bernard Shuen and Partners dated 16 January 2019. These reports have been considered by Council's Traffic Section and Senior Development Engineer.

With guidance from Council's Senior Development Engineer and Traffic Section, Grove Lane is a local road in the context of the greater road network and primarily caters for secondary access to properties having a secondary frontage to the laneway. Grove Lane is considered unlikely to experience any form of serious traffic congestion given it is not a major thoroughfare.

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Council has no traffic counts for the laneway, an estimation of traffic generation levels can be produced using the industry adopted rates in the RMS “*Guide to Traffic Generating Developments*”.

The guide provides the following traffic generation rates, presented as “*Weekday peak hour vehicle trips*” (vtph – vehicle trips per hour), whereby a vehicle trip presents as a one way movement to and from a property:

Type of Development	Vehicle trips per hour (vtph)
Single dwelling	0.85 vtph / dwelling
Medium density residential dwelling (<i>Smaller units: < 2 bed</i>) (<i>Larger units: 3+ bed</i>)	0.4 – 0.5 vtph / dwelling 0.5 – 0.65 vtph / dwelling

For a conservative approach, this assessment will assume that a single dwelling generates one (1) vehicle trip in the peak hour period and will apply to all residence accessing Grove Lane.

In this case, the traffic generation for the proposed development (3 x 3 bedroom units) is anticipated to be about three (3) vehicle trips per hour during the peak periods.

In terms of the current level of development, the following properties are noted to utilise (or propose to) Grove Lane for vehicle access:

- 4 Norma Avenue;
- 6 Norma Avenue;
- 6A Norma Avenue;
- 8 Norma Avenue;
- 2 Norma Avenue (*Note: This response has considered the proposed dual occupancy*);
- Unit 5 of 27-29 Grove Street
- 10 Norma Avenue;
- 12 Norma Avenue;
- 14 Norma Avenue;
- 31 Grove Street;
- 2 Orange Street (*Note: This response has considered the approved dual occupancy*)

This presents as 13 dwellings (eight (8) single dwellings, four (4) dual occupancy units and Unit 5 of 27-29 Grove Street) having access to the Lane, thereby having a conservative peak hour traffic generation level of 13 vehicle trips per hour. Applying a further 20% increase is also considered to allow for non-local through traffic, the estimated peak level of traffic currently experienced in the Lane would be in the order of 16 vehicle trips per hour.

As such, the net peak level of traffic generation in the Lane following construction of the development is potentially 19 vehicle trips per hour. This rate however is to be considered in conjunction with the following points;

- It is stressed this presents a worst case scenario and unlikely to be representative of the typical daily movement of vehicles;

ITEM 1 (continued)

- The distribution of this traffic generation level (ie the possibility vehicles will access properties from either end of Grove Lane though not travel the full length) has not been accounted for. In practise, traffic levels will be divided further pending on motorist approach/departure and will not travel the full length of the laneway; and,
- The estimated extreme peak represents an *average*, presenting a vehicle movement every 3.33 minutes. The distribution of traffic movements over the hour however would be concentrated at a particular time and it is likely will result in very low traffic movements in a 10 – 15 minute period on the shoulder of this peak period.

Considering that the development may potentially increase the traffic level from the estimated 16 vehicle trips per hour to 19, these additional three (3) vehicle movements are relatively minor.

Council's Traffic Section has advised that a typical local road conveys 150 – 200 vehicles per hour in peak periods. Whilst a laneway would not experience such levels, the potential 19 vehicle trips per hour in Grove Lane is considered low with no adverse impact anticipated in the Lane or surrounding road network. Given the relatively minor level of traffic generation, there is no requirement for the applicant to provide an expert traffic study and this issue does not warrant justification to refuse the application.

- **Lack of on street car parking**

Objections were raised that there is a lack of on street car parking provided within Grove Lane.

Assessment Officers Comment:

At present, there is no sign posting which restricts vehicles parking within Grove Lane. Given the opportunity for laneway upgrades as a result of the subject application, recent approval of No. 2 Orange Street (LDA2018/210), and proposed development at 2 & 2A Norma Avenue (LDA2018/0276), **Condition 82** has been recommended for the developer to provide signage for restricted parking, which will prohibit on street parking within the laneway and provide sufficient space for the two (2) way flow of vehicles.

Whilst it is acknowledged there is a lack of on street car parking along Grove Lane, there is no control requirement for development to provide the provision of on street parking. The proposed development provides for the required off street car parking.

- **Lack of off street car parking**

Objections were raised regarding the lack of off street car parking provided by the proposed development.

ITEM 1 (continued)**Assessment Officers Comment:**

In accordance with RDCP 2014 *Part 9.3: Parking Controls*, the proposal is required to provide a total of two (2) spaces per dwelling inclusive of one (1) visitor space for off street car parking.

The development includes three (3) dwellings containing a minimum of three (3) bedrooms per dwelling. The parking allocation for each of the units provides a single enclosed garage and an open tandem parking space providing for two (2) spaces. Additionally, there is further opportunity for a third vehicle to park in the driveway (wholly within the site) if required. The proposal also accommodates a visitor parking space at the eastern end of the site frontage.

The proposal provides for a total of seven (7) off street car spaces (two (2) per dwelling) and one (1) visitor space, complying with Council's car parking requirements. The car parking rate has not included the potential for an additional three (3) (one (1) per dwelling) to be parked within the driveway.

The proposal satisfies Council's off street car parking requirements.

- **Vehicles and safety**

Objections raised concerns on vehicular manoeuvring, sightlines and safety to pedestrians, cyclists and travelling vehicles within Grove Lane. In addition, objections argued that the development does not provide for vehicles to enter and leave in a forward direction as required under Controls 3.5.2, (a) and 3.8.2 (a) of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

Control 3.5.2(a) relates to the front setback requirement for Hatchet-shaped allotments and is not a relevant control to the subject site. Control 3.8.2(a) requires vehicles to be able to enter and exit the garages and parking areas using a single three (3) point turn. This is the applicable control for the subject site. The objective of the control is to permit vehicles to enter and exit the site in a forward direction.

The development does not comply with the objective of the control as vehicles cannot enter and exit the site in a forward direction. If vehicles enter the site in a forward direction, they would need to reverse into the lane and provide an adequate turning area. The application has been supported by a Parking Assessment prepared by Apex Engineers dated December 2018 and has been reviewed by Council's Senior Development Engineer. The proposal is considered to be satisfactory with respect of vehicular manoeuvring, sightlines and safety for the following reasons:

- The proposed car parking has been located to accommodate sightlines to footpath and the laneway in accordance with the relevant Australian Standard (AS 2890.1);

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- The application has been supported by a swept paths analysis which demonstrates satisfactory access by a B85 (standard size) vehicle is achieved with sufficient clearances on each side of the vehicle to allow entry and exit in a three (3) point turn;
 - Additionally, for a B99 vehicle (slightly larger vehicle) the vehicle entry widths are sufficient to accommodate such a vehicle; and
 - Grove Lane is considered to be subject to low volumes of traffic and pedestrian movement not to warrant major concerns for safety.
-
- **Accommodation of emergency vehicle access**

Objections were raised that the width of Grove Lane is too narrow to accommodate and won't allow access for emergency vehicle such as fire brigade, ambulance and police.

Assessment Officers Comment:

Grove Lane has a width of 6.095 metres which enables access for emergency vehicles such as the police and ambulance fleets which are generally B85 (standard) and B99 (slightly larger) size vehicles. With regard to the fire brigade, the vast majority of the fleet servicing primarily lower scale residential developments comprise of specially built body fitted vehicles with heavier chassis known as General Appliances.

The general width of these vehicles is 2.5 metres and in accordance with *Policy No. 4, Guidelines for Emergency Vehicles*, prepared by NSW Fire Brigades, the minimum requirement for a carriageway width for these General Appliances is 4.5 metres.

As a part of site redevelopment the developer is to provide a 600mm wide footpath and kerb to the southern side of Grove Lane and a rolled kerb to the northern side of Grove Lane which will facilitate two (2) way access for vehicles. The requirements for the footpath and kerbs will result in the width of Grove Lane being reduced to 5.045m.

Therefore, the width of Grove Lane will cater for the the capability to accommodate access for emergency vehicles and does not warrant refusal of the development application.

- **Lack of supporting infrastructure**

Submissions raised concerns over the lack of infrastructure and dilapidating state of Grove Lane.

Assessment Officers Comment:

As part of the development consent, Grove Lane is required to be upgraded in order to

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utilise vehicle access to the site. **Condition 37** requires Grove Lane to be upgraded along the frontage of the site.

The works following works are included (but not limited to) the following:

- The reconstruction of the existing road pavement for the full width of Grove Lane and along the frontage of the development site, and adjacent to all new kerb & gutter and vehicular crossings.
- Provision of a 600mm wide footpath to front the site in Grove Lane which is comprised of a 450mm wide footpath pavement and a further 150mm wide top of standard kerb, such to provide a 600mm path width extending from the property boundary to the face of the kerb.
- Provision of a 300mm wide rolled kerb along the northern side of the lane (adjacent to the rear of properties facing Norma Avenue), this is to be measured from the boundary alignment to the back of the rolled kerb.
- The relocation/adjustment of all public utility services affected by the proposed works; and,
- **Condition 17** requires the payment of Section 7.11 Contributions has been imposed on the consent. This Contribution requires a provision of additional services such as a payment toward open space and recreation facilities, Civic & Urban Improvements, Stormwater Management Facilities and Roads & Traffic Management facilities as a result of development increasing density.

Further, the recent approval of development at 2 Orange Street conditionally required upgrading works to Grove Lane. The redevelopment being undertaken for properties with frontage to Grove Lane (Council presently assessing an application for 2 Norma Avenue) will also be required to undertake upgrading works and will result in the overall improvement of Grove Lane.

- **Overshadowing impact to southern properties at Lilac Place**

Objections raised concerns regarding the over shadowing impacts to the adjoining properties south of the development site at 4 and 5 Lilac Place, Eastwood. The submissions also referenced the planning principal regarding solar access and requested a review the accuracy of the shadows provided by the applicant.

Assessment Officers Comment:

Control 3.9 (b) of RDCP2014: Part 3.4 – Multi Dwelling housing, states that sunlight to at least 50% of each courtyard within the development and principal area of ground level private open space of adjacent properties must not be reduced to less than two (2) hours between 9am and 3pm on June 21 (Winter Solstice). Where existing overshadowing, by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.

To determine the accuracy of the shadow diagrams, the shadow diagrams have been reviewed by Council's Assessment Officer and Urban Designer. The review consisted

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of modelling to carry out the testing on the accuracy of shadows submitted by the applicant. The analysis revealed that the angles used at the times between 9am and 3pm and the length of the shadow cast on 21 June is generally accurate. Further to this, the analysis also found that the applicants shadow cast has also taken into consideration the sloping topography of the land in relation to adjoining properties.

In conclusion to the shadow cast analysis undertaken by Council, did not draw any noticeable inaccuracies in the shadow analysis provided by the applicant and the submitted shadow diagrams are acceptable. **Figures 29** and **30** below shows the submitted shadow diagrams and Council’s shadow modelling. Note: The comparison between the submitted shadows and Council’s analysis is contained within **Attachment 3**.



Figure 29: Submitted Shadow diagrams.

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Figure 30: Modelling of shadows according to Council's shadow analysis.

The table below details the extent of shadow impact upon adjacent properties and the extent of sunlight retained. It is noted that this assessment has taken into account that the existing fence contributes to over shadowing. However, the proposal results in the dwellings shadow cast to extend beyond the shadow created by the existing fence.

Property Address	Access to sunlight within POS
4 Orange Street, Eastwood	The property will be impacted within the north eastern portion of the site at 9am; however this area will not be impacted from 10am onwards. The property will receive the required solar access.
4 Lilac Place, Eastwood	The northern rear portion of the private open space will be impacted by the development between 9am and 3pm, however the extent of over shadowing at worst is along the rear portion of this site and greater than two (2) hours sunlight to 50% of the private open space is provided in compliance with Control 3.9(b).
5 Lilac Place, Eastwood	The development will impact the private open space of this property throughout 21 June (Winter Solstice) during the periods of 9am and 3pm. The impact on sunlight will be a primarily within the morning hours between 9am and 11am and more than 50%

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	solar access is achieved to the private open space from 12pm to 3pm. The proposal complies with the solar access requirements.
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Despite the development achieving compliance with the controls provisions a submission received references the planning principles relating to solar access established in *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*. The table below outlines the principles and Council’s assessment against those principles.

Principle	Response
<p>The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.</p>	<p>The subject sites are located within a low density residential zone. 5 Lilac Place is orientated south of the development site and is considered to be vulnerable to an extent of over shadowing. Therefore, there is a reasonable expectation that there is some portion of impact to the private open space at 5 Lilac Place.</p> <p>As demonstrated above, the impact on sunlight will be a primarily within the morning hours between 9am and 11am and greater than 50% of the area will be provided with sunlight from 12pm to 3pm within the rear portion of the site.</p> <p>No. 5 Lilac Place is battle axe allotment which benefits with two (2) areas for the purposes of private open space which includes a swimming pool and hard paved area within its front setback orientated north (Figure31).</p>  <p>Figure 31: Aerial image showing rear portion of concern and the private open space within the front setback.</p>

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<p>The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.</p>	<p>The site is presently undeveloped and the adjoining properties receive uncompromised solar access from the undeveloped nature of the site.</p> <p>The adjoining properties are located to the south and the existing development at 5 Lilac Place has excavated into the natural topography resulting in the subject site rear boundary being approximately 1 metre higher.</p> <p>For these reasons, any development upon the subject site will result in a change to the existing solar access to the neighbouring property.</p>
<p>Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.</p>	<p>The proposal is compliant with Control 3.9(b) of Ryde DCP in relation to solar access. Further, the proposed development is consistent with the suite of built form controls relating to height, bulk and scale.</p> <p>The shadow cast is not an outcome of poor design, but rather a result of the existing subdivision pattern which results in properties having a north-south orientation.</p>
<p>For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.</p>	<p>The area of concern is regarding the private open space of 5 Lilac Place and the development will not impact on any windows. In this regard, this principle is considered to be not applicable in the circumstances of the case.</p>
<p>For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight.</p> <p>Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity.</p> <p>A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.</p> <p>The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.</p>	<p>The size of the private open space area is approximately 109.85m² (as measured by a survey provided by the objector at 5 Lilac Place) this measurement has also excluded the outbuilding in the rear and sunken access way along the northern elevation of the dwelling (1.530 metres wide). The shadow impact has been considered throughout the day at 9am, 12pm and 3pm.</p> <p>The shadow impact has been measured at ground level. The over shadowing impact is considered satisfactory as the area of concern will receive satisfactory sunlight during mid-winter from 12pm onwards. Reasonable solar access is received to the private open space. The amount of sunlight lost is limited to the morning period and to the area predominantly located along the rear boundary line.</p> <p>The solar access provided is the area immediately adjoining the rear of the dwelling. Additionally, the</p>

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	front of the site where the swimming pool is located and has a northern orientation receives uninterrupted solar access from the development.
Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.	Overshadowing by the existing fence and the changes in levels between sites has been taken into account. The fence line results in overshadowing, however the proposed development results in a shadow that extends beyond the shadow created by the existing fence.
In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.	Considering that the development is within an established suburban area within an R2 Low Density Residential Zone, the area is unlikely to undergo change.

The proposal is compliant with the suite of built form controls. The shadow cast is not a result of poor design, but rather a result of the subdivision pattern and orientation of allotments. Additionally, the shadow impact occurs as a result of the existing change in topography of the adjoining property resulting in a level difference between sites.

The shadow impact would occur as a result any development on the subject site and the change in solar access occurs as the site is presently undeveloped. The proposal does for this reason result in a change to the solar amenity presently received. The proposal however does achieve compliance with Council's solar access requirements and is consistent with the planning principle.

- **Noise**

Objections were raised relating to noise generated by the construction and ongoing future residential use of the development.

Assessment Officers Comment:

The proposal is not considered to generate any additional noise than what would be expected in a residential area.

Any noise emitted from ancillary items such as air conditioning units or the like are subject to **Condition 10** which will require the noise levels to be limited to a maximum of 5db(A) above the background noise levels when measured at any affected residence.

Conditions 4 and **59** are recommended in respect to working hours and noise mitigation during construction to ensure the amenity of surrounding properties is maintained. This issue does not warrant the refusal of the application.

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- **Setbacks**

Objections were raised stating that the development does not comply with Council’s required front, side and rear setback controls as outlined in Clause’s 3.5.1 and 3.5.2 of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

Control 3.5.1 (a)(i) states that front setbacks are to be the same distance as one of the buildings on an adjoining allotment, if the difference between the setbacks of the building on the two adjoining allotments is not more than 2.0 metres. The adjoining setbacks to the northern boundary fronting Grove Lane at 27 – 29 Grove Street is a minimum 3.0 metres from the dwellings (**Figure 32**) and the existing adjoining building (the detached outbuilding) at 2 Orange Street is at maximum 300mm from the boundary (**Figure 33**)

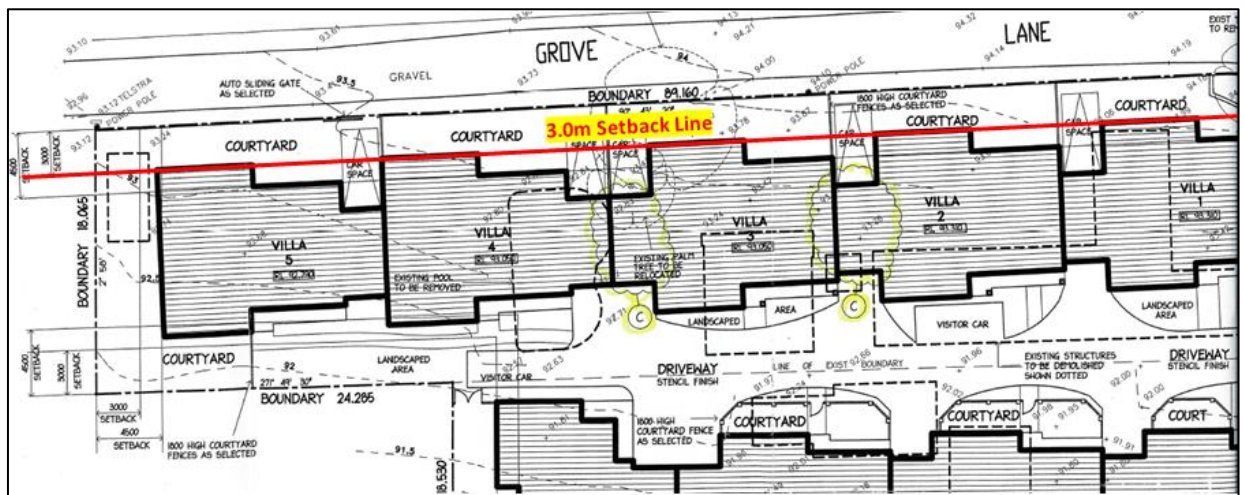


Figure 32: Approved site Plan for multi dwelling development at 27 – 29 Grove Street (LDA2000/595)

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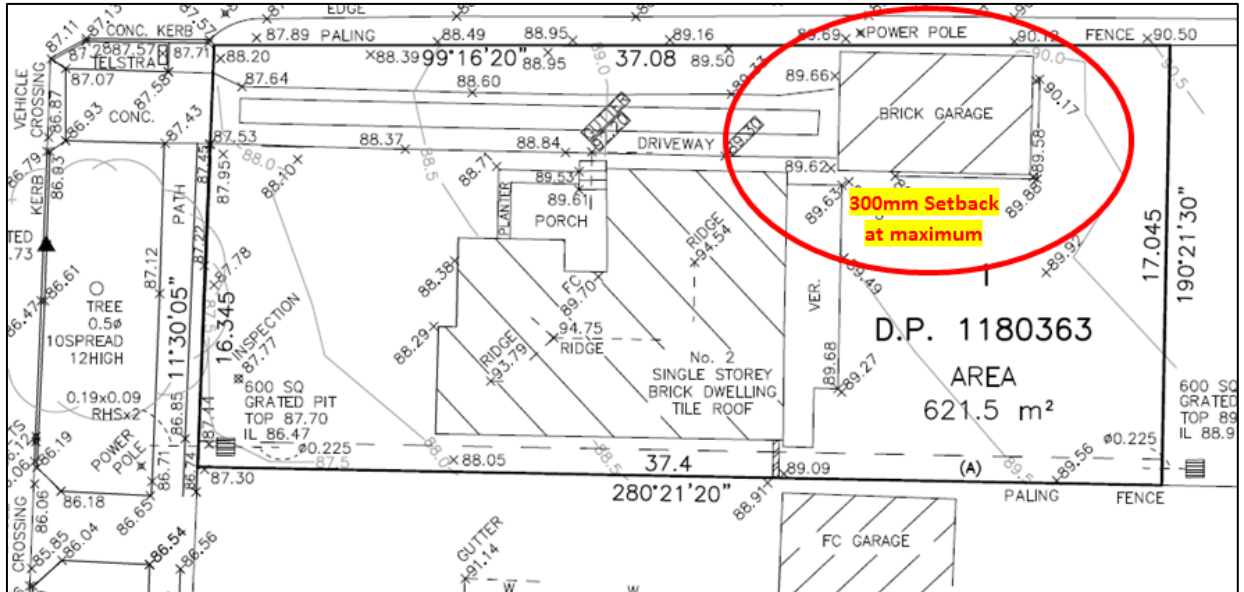


Figure 33: Existing outbuilding setback, at No. 2 Orange Street (As measured from survey)

The difference between the two (2) adjoining setbacks is approximately 2.7 metres. The average setback between the two adjoining properties is 1.65 metres. The proposal has a front setback of 3.0 metres when measured to the porch and balcony above and 4.5 metres to the main façade, complying with this requirement.

However, further consideration was given to the approved development at No. 2 Orange Street and the secondary frontage setback approved at 2.0 metres along Grove Lane when measured from the allotments boundary to edge of the porch of Lot 2 and wall of Lot 1 (**Figure 34**).

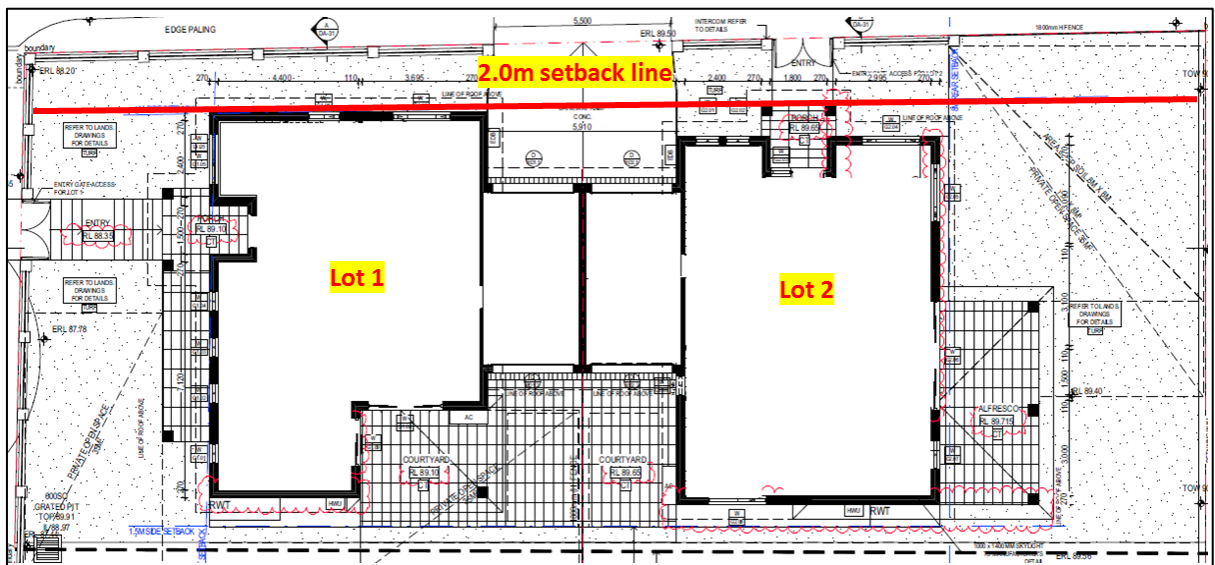


Figure 34: Approved setback of attached dual occupancy at 2 Orange Street from Grove Lane (LDA2018/210 approved on 18 September 2018).

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The adjoining property to the east, Unit 5 of No. 27-29 Grove Street also relies upon Grove Lane as a secondary frontage and has a setback of 3.0 metres to the boundary at Grove Lane. The average of these setbacks is less than 2.0 metres and the proposed 3.0 metre setback for the proposed dwellings will be of the same distance as the buildings on the adjoining allotments and would comply.

The proposed front setback achieves the objectives of the control in that the setback does not result in an adverse privacy impact between dwellings, the proposal provides for the required landscaping within the front setback and does not impact upon significant trees, the setback allows for compliant vehicle manoeuvring, and the development is in keeping with the streetscape character. The front setback being 3.0 metres is consistent with the existing and recently approved built form on the southern side of Grove Lane.

The proposal is compliant with the rear setback requirement of 4.5 metres of control 3.5.4 (a) for Units 2 and 3. The rear setback for Unit 1 relies upon the provisions of control 3.5.4 (d) where Council can permit a variation for a maximum of 50% of the wall length of any dwelling to be not less than 3.0 metres from the rear boundary. Unit 1 satisfies this requirement, with 43% of the rear setback being 3.0 metres with the remaining 57% of the wall being setback 4.5 metres. The proposal complies with the rear setback requirement.

Control 3.5.4 (d) permits the side and rear setbacks to be reduced to 3.0 metres for a maximum of 50% of wall lengths. The proposed western side setback of Unit 1 complies with the control requirement. The proposed western elevation is 3.0 metres for 45% of the wall. The remaining 55% is setback 4.5 metres and complies.

The proposed garage associated with Unit 3 is setback 3.0 metres and does not comply with the required setback. The entire eastern elevation which is 6.4 metres in length is set back 3.0 metres and exceeds the allowable 50% of the wall length to have the reduced setback from 4.5 metres. The first floor complies with the 4.5m requirement and the non-compliant setback on the ground floor will not result in any adverse amenity impacts to adjoining properties is acceptable on merit.

- **Slope of Site**

Objections were raised that the subject site consists of a cross slope greater than 1:14 specified in Control 3.1 (d) of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

In accordance with Control 3.1 (d) of RDCP2014: Part 3.4 – Multi Dwelling housing, sites with a cross fall of more than 1:14 are not acceptable to accommodate multi dwelling housing developments.

The concern with cross fall on sites which exceed a gradient of 1:14 is that it will lead to design that is elevated and adversely impacts upon the privacy of the neighbouring

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property. Concern is held regarding the proposed fill at the south western corner of the property being 440mm, and this in combination with the adjoining property being cut into the site resulting in an unacceptable level difference between properties. **Condition 29** is recommended requiring the retaining walls to be setback 1.2 metres from the southern and western boundaries and the existing ground level to be maintained.

The proposal is considered to be appropriately designed in response to the site's topography. As shown in **Figure 35** below, the overall cross fall across various portions of the site will not exceed 1:14 and is consistent with the objectives of the control for the following reasons:

- The proposal has been appropriately designed in response to the site's topography and does not result in excessive cut and fill. **Condition 29** is recommended to provide increased setback where the proposed fill is greatest at the south western corner of the site;
- The proposal does not significantly alter the existing site levels. The proposal does include fill which is acceptable and does not result in adverse amenity impacts upon adjoining properties or surrounding environment subject to the conditional requirement;
- The proposal does not result in any detrimental privacy impacts on adjoining properties as a result of the site slope;
- The site slope does not result in an excessive bulk and scale of the development. The proposed scale is consistent with surrounding development;
- The proposal includes fill to a maximum height of 440mm at the south-western corner of the property where the slope is greatest.
- Accessibility is continuously achieved both for pedestrians and vehicles, due to the satisfactory grades which do not warrant concern on safety;
- The stormwater drainage and run-off is compliant with Council's requirements; and
- The design of the development is considered to be in accordance with Schedule 4 – Designing for a Slope, as outlined in Part 3.4: Multi Dwelling Housing of RDCP2014.

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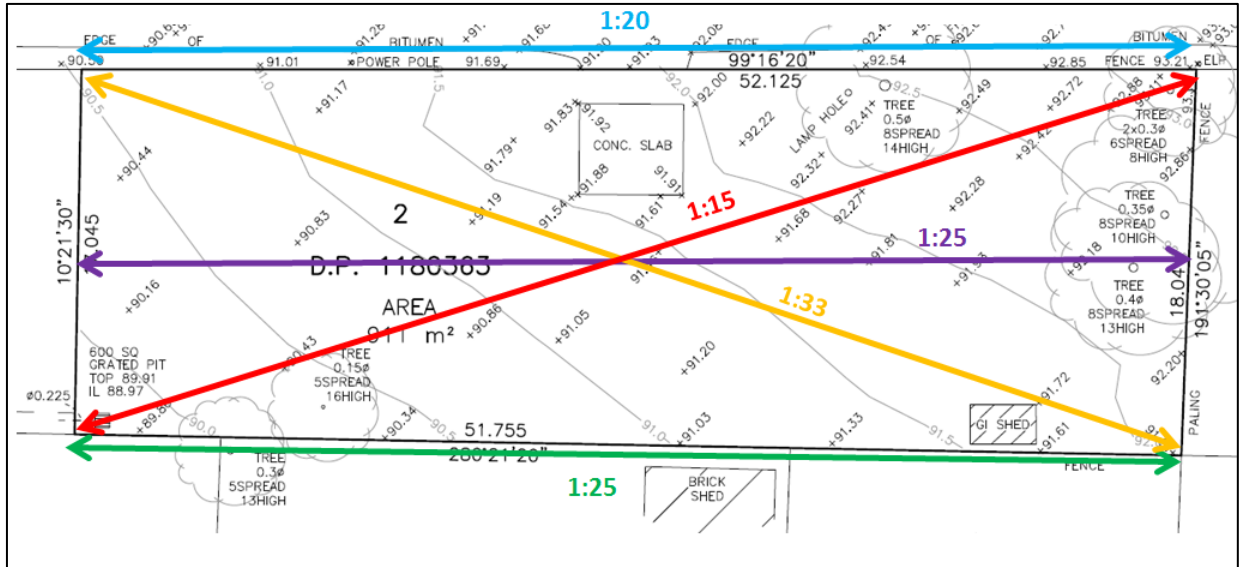


Figure 35: Figure showing the cross slope across the nominated crucial portions of the site.

- Error in laneway width

Objection was raised that the overall width of Grove Lane as shown on the plans provided within the development application is incorrect.

Assessment Officers Comment:

The width of Grove Lane is 6.095 metres. The laneway width has been measured from the boundaries of allotments which adjoin Grove Lane and Norma Avenue. This information has been verified through various plans registered with the NSW Land Registry Services. By way of example **Figure 36**, shows the accurate surveyed lane width registered with the NSW Land Registry Services.



Figure 36: Example of the registered plan with the NSW Land Registry Services for 8 Grove Lane and 2 Orange Street, showing the surveyed width of the laneway.

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- **Outdated images as shown on site context plan**

An objection was raised on the grounds that the aerial images shown on the submitted site context plan is out of date.

Assessment Officers Comment:

The purpose of the photographs as shown on the submitted site context plan, only provide the site and surrounding context. It is agreed that these images are out of date; however this issue does not constitute the refusal of a development application.

- **Building separation and boundaries between units.**

Objections were raised that the development provides minimal building separation between units.

Assessment Officers Comment:

The initial submitted plans did not provide adequate building separation between dwellings. This issue was raised with the applicant and amended plans were submitted which provide for a minimum setback of 1.8 metres at ground floor between dwellings and 3.0 metres at first floor. These separation distances are consistent with required setbacks for single dwellings.

- **Ridge heights and existing power poles**

Concern is raised over the ridge heights of the dwellings conflicting with existing power lines within Grove Lane.

Assessment Officers Comment:

The top most part of the ridge heights for each dwelling are wholly contained within the subject allotment. The existing power lines in question are located external to the subject site and there will be no conflict between the developments ridge heights and existing power lines.

- **Impact on existing utilities and connection with Sydney Water**

Objections raised concerns that the development may impact on existing utilities and that the development must seek approval from Sydney Water to ensure satisfactory connection is made to services and no impact on existing sewer main.

Assessment Officers Comment:

Connection to services is a matter addressed at the Construction Certificate stage as required by standard conditions of consent. **Condition 8** will ensure compliance with the requirements (including financial costs) of any relevant utility provider (Energy

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Australia, Sydney Water, Telstra, RMS, Council etc), in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

In addition, **Condition 25** will require the developer to seek building plan approval from Sydney Water as part of the Construction Certificate and which allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of the development.

Compliance with these conditions will ensure that any impacts on existing utilities are mitigated.

- **Principle Certifying Authority**

A request was made by an objector that the role of the PCA should be Council.

Assessment Officers Comment:

In accordance with Section 6.6 (1) of the *Environmental Planning and Assessment Act 1979*, the preference on selection of the PCA, is decided by the developer. Council is not in a legal position to impose such a condition of consent.

- **Demolition of No. 2 Orange Street prior to commencement of works at 8 Grove Lane.**

A request was made for a condition of consent to be imposed for the demolition of the existing dwelling at No. 2 Orange Street, prior to works undertaken at 8 Grove Lane.

Assessment Officers Comment:

This application only seeks consent for a new multi dwelling housing development on the subject site being 8 Grove Lane. Any works involving other allotments that do not relate to the development application cannot legally be imposed as conditions of consent.

- **Parking and traffic impacts during construction**

Objections were raised regarding the vehicles parking within Grove Lane during the construction of the development.

Assessment Officers Comment:

Council acknowledges that there will always be some impact on the local community as a result of any construction. To ensure traffic and parking impacts are minimised during construction, **Condition 77** is recommended for contractors not to obstruct

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access within Grove Lane or obstruct access to properties utilising the laneway for primary vehicular access.

Conditions 9, 14, 55, 57, 65 and 75 are also recommended which require Road Permits for certain activities, traffic management procedures and approval from the Ryde Traffic Committee prior to any works on the public road. Council considers that compliance with these conditions will minimise impacts regarding traffic and parking during construction.

- **Removal of vegetation**

An objection was raised regarding the removal of vegetation within the site to accommodate the development.

Assessment Officers Comment:

The development proposes the removal of the following existing trees and vegetation from the site:

- Macadamia Nut tree
- Two (2) Jacaranda's
- Fruit Trees
- One (1) Chinese Tallow Tree
- Two (2) Kentia Palms
- Minor shrubs and weeds.

The vegetation located within the property boundaries at 8 Grove Lane is unlikely to be capable of retention as per the current design and level of construction works. This assessment notes that the trees and vegetation of concern are not a significant or protected species identified under the *Biodiversity Conservation Act 2016* nor contain a significant retention value.

As such, the removal of the following trees and vegetation is supported, and this issue will not warrant the refusal of the development application.

- **Stormwater run-off and drainage**

Concerns were raised that the development does not provide a sufficient stormwater design, rainwater tanks and detention systems.

Assessment Officers Comment:

The stormwater management system for the development will incorporate onsite detention systems contained under the rear alfresco areas of each unit which will be connected to an inter-allotment drainage system discharging to an existing drainage easement traversing through No. 2 Orange Street.

The internal drainage details for the development as proposed complies with

ITEM 1 (continued)

Council's requirements and is designed to mitigate any potential adverse impacts of stormwater runoff on adjoining properties.

- **Compatibility of the development within the surrounding area**

Objections were raised regarding the height, scale, density and design of the proposed development being incompatible with the existing surrounding development.

Assessment Officers Comment:

The proposed scale, being two storeys is consistent with the existing surrounding scale of buildings and the anticipated scale of building under the built form controls of the RLEP 2014 and DCP 2014.

The amended proposal is considered to be of an appropriate bulk and scale which is consistent with surrounding development and the local area.

The proposal includes articulated facades, building separation and appropriate setbacks to achieve the desired massing which is consistent with the existing pattern of low scale residential development in the local area.

The development is compliant with Council's height, bulk and scale controls and it is considered that the proposal is consistent with the surrounding streetscape and maintenance of the desired future character of the area and is acceptable. The site is considered to be suitable for the proposed development.

- **Roof Design**

An objection was raised that the development has not provided a gable roof to front Grove Lane, as required by Clause 4.3, Control (d) of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

The proposal does not comply with the control provisions as the proposed roof form is hipped and not gable. The proposal has a hipped roof to each dwelling fronting Grove Lane with a pitch of 23 degrees.

The proposed roof form, despite the non-compliance, is considered to be acceptable. The proposal achieves an appropriate scale which is compatible with surrounding development and the incorporation of a gable roof is unnecessary in this circumstance.

The provision of a gable roof form would contribute to an increased visual bulk. The proposal has incorporated the use of an articulated façade providing visual interest to

ITEM 1 (continued)

the streetscape. The proposed roof form is acceptable and the non-compliance does not warrant the refusal of the application.

- **Front fence**

Objections were raised that the front fence does not comply with Control 4.5.1(a) of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

The proposed front fence initially did not comply with the maximum height limit of Control 4.5.1(a). The amended proposal has a maximum height of 1.0m and is 70% visually permeable and complies with the control requirements.

- **Private Open Space**

An objection raised concern that the development does not satisfy the contiguous private open space requirement under Clause 4.5A(b) of RLEP, does not comply with the minimum 35m² POS requirement nor provide the minimum 4.0 metre dimensions as per the controls set out in 3.6 of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

In accordance with Clause 4.5A(b) of RLEP 2014, each dwelling has been designed to have its own contiguous private open space. The proposal has satisfied this requirement as the private open spaces of all units are contiguous and connected to each other.

In regards to the minimum 35m² requirement as required by Control 3.6(a), the proposal provides the following private open space areas:

- Unit 1: 68m²
- Unit 2: 52m²
- Unit 3: 73m²

The proposed private open space satisfies the minimum 4.0 metre dimension as required under Control 3.6(a) and incorporates alfresco's for each unit to be allocated as primary private open space.

Note: Under the definition of Private Open Space contained within RLEP 2014:

“Private open space means an area external to a building (including an area of land, terrace, balcony or deck) that is used for private outdoor purposes ancillary to the use of the building.”

Therefore, the development has satisfied the following POS requirements and the issue will not warrant the refusal of the application.

ITEM 1 (continued)

- **Floor Space Ratio**

A submission raised a concern that the development exceeds Council’s maximum Floor Space Ratio Control.

Assessment Officers Comment:

In accordance with Clause 4.4a (2) of RLEP 2014, Clause 4.4 (Floor space ratio) does not apply to development for multi dwelling housing on land in Zone R2 Low Density Residential and the proposal is subject to density controls outlined in 4.5A of RLEP.

Overall, the development complies with the density controls and this issue will not warrant the refusal of the development application.

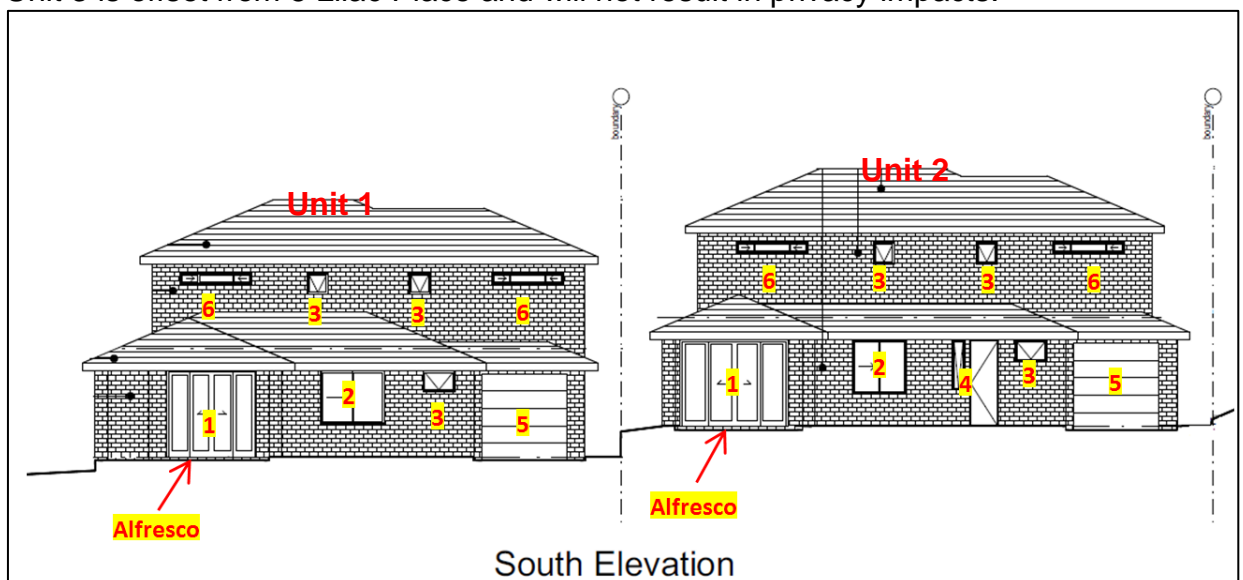
- **Impacts on visual privacy to adjoining property at 5 Lilac Place.**

Objections raised concerns over impacts on visual privacy to the adjoining property at 5 Lilac Place.

Assessment Officers Comment:

The objection raises concerns with regards to the windows to the rear of each dwelling and the tandem parking spaces including the private open spaces. There is an existing level difference between the finished ground level (FGL) at 8 Grove Lane and the existing ground level (EGL) at 5 Lilac Place up to 1.0 metre.

The development includes a combination of openings and includes two (2) alfresco’s associated with Unit 1 and 2 within the southern elevation as shown in **Figure 37**. Unit 3 is offset from 5 Lilac Place and will not result in privacy impacts.



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Figure 37: Southern Elevation of Units 1 and 2.

The openings within the southern elevation are associated with the following:

1. Dining room opening to the alfresco's of Unit 1 and 2;
2. Kitchen windows;
3. Bathrooms;
4. Laundry;
5. Garages and tandem car spaces; and
6. Bedrooms.

The following conditions are recommended to ensure the privacy adjoining properties is maintained:

- **Condition 71**, for advanced planting of the species *Viburnum Odoratissimum* and *Acmena smithii* minor with a minimum height of 1.8 metres along the southern rear boundary, to ensure the screen planting is effective upon completion of the development;
- **Condition 81**, to ensure the replacement of the boundary fence is to be timber lapped and capped constructed to a minimum height of 1.8 metres. The condition also includes that the construction of the boundary fence is to be borne by the developer;
- **Condition 33**, includes a privacy screens to be erected along the southern elevation of each alfresco. The bottom of the privacy screens are to be erected to a minimum 1.6m above the finished floor level and must be at a minimum height of 300mm; and,
- **Condition 32**, will require the kitchen windows of each Unit to engage the use of fixed obscure glazing to a height of 1.6 metres above the finished floor level of all dwellings.

Council considers that compliance with these conditions will mitigate any impact on visual privacy. In this regard, the proposal is not considered to result in any adverse privacy impacts upon 5 Lilac Place, subject to the above conditions for the following reasons:

- The provision of the privacy screens as recommended in **Condition 33** will negate any opportunity for sightlines to overlook into 5 Lilac Place from the alfresco and dining room;
- The provision of fixed obscure glazing to a minimum height of 1.6 metres above finished floor level for the kitchen windows of all Units as required by **Condition 32** will provide no further opportunity for overlooking into 5 Lilac Place;
- The bathroom windows have a sill height of 1.8 metres above the finished floor level of the dwellings and do not present opportunities for overlooking;

ITEM 1 (continued)

- The proposal includes a privacy screen to a height of 1.8 metres above the finished ground level (FGL) of those tandem spaces to mitigate any opportunity for overlooking;
- The proposed windows associated with the bedrooms within Units 1 and 2 have a sill height of, approximately 1.8 metres above FFL presenting no opportunities for overlooking;
- The proposal also includes windows at first floor associated with bathrooms. These openings are small scale and have a sill height of approximately 1.6 metres and results in no potential opportunities for overlooking; and,
- The laundry window and door associated with Unit 2 has a FFL being RL 91.60. Given this room is of lower use where it is considered occupants are likely to spend less time, these openings present no concern in respect to visual privacy. This conclusion is drawn from planning principle established in the Land and Environment Court case *Meriton v Sydney City Council [2004] NSWLEC 313*, where Senior Commissioner Roseth established the following principle which is relevant to this particular matter:

“The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.”

- **Landscape Strips**

An objection was raised that the proposal does not provide the provision of 1.2 metre wide Landscape strips between the courtyards and adjoining property as required by Control 3.6(i) of RDCP2014: Part 3.4 – Multi Dwelling housing.

Assessment Officers Comment:

The proposal provides for a 800mm wide landscape strip along the southern and eastern and western side boundaries. The proposal does not comply with the 1.2 metre dimension. The intent of the control is to ensure that privacy is maintained between future occupants of the development and adjoining properties and landscaping can be provided along the boundaries.

In response to the issue, **Condition 29** is recommended, for the proposed retaining walls be set in a minimum 1.2 metres from the western side and southern rear boundaries and the natural ground level being maintained.

ITEM 1 (continued)

Condition 31 is also recommended to provide a 1.2m wide landscape strip along eastern property boundary adjoining Unit 5, 27 – 29 Grove Street.

- **Clothes line**

A submission has raised concern that the clothes line has not been shown on the plans and the lack of solar access to the private open spaces during the winter solstice will compromise the function of a clothes line.

Assessment Officers Comment:

Condition 30 is recommended to show the location of the clothes lines within the private open spaces of each unit. The positioning of clothes lines does not constitute a reason for the refusal of the application.

- **Waste**

An objection was raised in regards to the proposal not providing a waste storage area in accordance with Schedule 3 - Waste Bin Storage Area Enclosures, of RDCP2014: Part 3.4 – Multi Dwelling housing. Submissions also raised concerns over garbage collection for the proposed development.

Assessment Officers Comment:

In accordance with Schedule 3 - Waste Bin Storage Area Enclosures, of RDCP2014: Part 3.4 – Multi Dwelling housing, the requirement for a waste storage area only applies to multi dwelling developments which contain six (6) or more dwellings and there is no requirement for a multi dwelling consisting of three (3) dwellings to provide an enclosure in accordance with Schedule 3.

Despite not being shown on the plans, **Condition 42** is recommended to ensure that waste storage areas are to be provided behind the building line within the private open spaces of each Unit, prior to the issue of the Construction Certificate.

In regards to waste collection, at present Council's waste collection trucks do not service bins within Grove Lane. Council's Waste section has been consulted on the matter and it is noted that the width of Grove Lane is sufficient to accommodate access for the waste trucks; however there is insufficient clearance for the automated side loader to collect waste.

Council's Waste section has advised that waste collection for the development will be required to present to Orange Street. The consent from the owner of No. 2 Orange Street, was sought and the arrangement has been supported by Council. This arrangement is considered acceptable as the subject development and redevelopment of No. 2 Orange Street will require the construction of a new kerb and gutter to facilitate safe access for pedestrians wheeling the waste bins.

ITEM 1 (continued)

Condition 95 is recommended for a Positive Covenant to be created on the title pursuant to Section 88E of the *Conveyancing Act 1919*. The Positive Covenant will entail that bins for waste collection for each Unit is to be placed in front of No. 2 Orange Street during the prescribed waste collection period and allow future occupants to acknowledge this arrangement. The matter does not warrant the refusal of the application.

- **Dilapidation Report**

A request was raised regarding a requirement of a dilapidation report.

Assessment Officers Comment:

Conditions 24 and 80 are recommended which require provision of dilapidation reports to be prepared both pre and post construction of adjoining properties.

- **Tandem parking spaces**

An objection was raised that the tandem parking spaces located at the rear of each dwelling will result in safety issues, i.e vehicles crashing into the adjoining properties within Lilac Place.

Assessment Officers Comment:

The tandem arrangement car parking is permissible for multi dwelling housing. Nevertheless, **Condition 43** is recommended which requires each tandem space to provide wheel stoppers.

Council considers that compliance with this condition will mitigate any safety concerns regarding the tandem parking spaces.

- **City of Ryde DCP Controls**

An objection was raised that RDCP 2014 had not envisioned this type of development and due to the lack of controls should not be assessed and refused.

Assessment Officers Comment:

In accordance with the definition in RLEP2014, multi dwelling housing is defined as *three (3) or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building*. The proposed built form is consistent with this definition. The definition, allows for a detached form of multi dwelling despite differing from the traditional form of development which run perpendicular from the street with a two (2) storey dwelling fronting the street and single storey attached to the rear.

ITEM 1 (continued)

Development for the purposes of multi dwelling development is permissible on sites which meet the pre conditions relating to frontage and land size under Ryde LEP2014. The subject site satisfies these standards.

The built form controls contained with the DCP are not site specific; rather they establish the general design requirements for the form of development. Where necessary, the DCP does provide for specific controls relating to non-traditional sites such as hatchet shaped allotments for example the provisions of Control 3.5.2(a) where a more site specific design response is required.

The proposed development has been assessed against the controls provisions of Ryde DCP. A detailed assessment is provided within **Attachment 2**. The proposal does not achieve compliance with all provisions and where variation is sought, is discussed in detail within this report.

The site dimension's in being wider than it is long is unusual and generally, the subdivision pattern of Ryde does not include a prominence of sites with these dimensions. However, this form of development is site specific and in this circumstance due to the site dimensions and extended frontage to Grove Lane the proposal has been designed with three (3) detached two (2) storey dwellings. For the reasons contained within this report, the proposed design is considered suitable for the site.

- **Error in wording of Clause 4.3A**

An objection was raised on the grounds that Council had made an error in the Planning Proposal for the LEP (Housekeeping Amendment) 2013. The Planning Proposal replaced the use of the word 'street' was replaced by 'road' for the purposes of 4.3A(2) of RLEP 2014.

Assessment Officers Comment

The objection has made evident that the use of the word 'street' was replaced by 'road' for the purposes of Clause 4.3A(2) of RLEP 2014. Prior to the amendment of the terminology, Clause 4.3A(2) of RLEP 2014 stated:

“(2) Despite clause 4.3, the maximum height of multi dwelling housing in Zone R2 Low Density Residential is 5 metres for dwellings in the multi dwelling housing that do not have a street frontage.”

This matter was considered by Council at the time of the proposed amendment. The intent behind this amendment to the terminology was to enable RLEP to be consistent with legislation regarding the definition of a road as defined under the *Road Transport Act 2013 and Local Government Act 1993*.

ITEM 1 (continued)

These definitions (as outline earlier in this report) have found that a street (or laneway in the circumstances of the case) falls within the definition of a road and therefore, an error was not made on behalf of Council.

- **Overshadowing within the POS of each Unit.**

Submissions raised concern over the overshadowing impact to the private open space within the POS of each Unit on 21 June (Winter Solstice).

Assessment Officers Comment:

The primary private open space of Unit 1 will achieve at least two (2) hours sunlight to 50% of it's surface, in the afternoon hours on 21 June, achieving compliance with Control 3.9(b). The private open spaces of Units 2 and 3 will not achieve sunlight to their private open space between 9am and 3pm during the winter solistice (21 June).

The proposal is considered acceptable for the following reasons:

- The courtyards are orientated to the southern side of the site, which limits achieving numerical compliance;
- The proposal is compliant with Council's built form controls relating to height and achieves an acceptable bulk and scale. The overshadowing is not a result of poor design but rather the existing subdivision pattern which consists of the rear boundary being orientated south;
- The amenity of future occupants will not be significantly impacted as the proposal includes north facing windows which receives satisfactory solar access and provides for increased internal amenity; and
- Private open space is generally provided at the rear of sites as there is increased privacy and in this instance, the rear of the site has a southern orientation which does not meet the solar amenity requirements but provides for increased visual privacy amenity and on balance is a reasonable outcome.

The proposal provides for sufficient private open space areas for Units 2 and 3. The size and location of the space does not compromise the functionality or purpose of the space for recreation. The shadow impacts are inevitable due to the orientation.

- **Zoning**

An objection referencing to *BGP Properties Pty Limited v Lake Macquarie City Council [2004] NSWLEC 399*, where zoning must be given weight, to mitigate against approval, in this case the two (2) lot subdivision of No. 2 Orange Street and 8 Grove Lane has been raised.

Assessment Officers Comment:

ITEM 1 (continued)

The submission relates to a determined development application LDA2012/0152 which approved the two (2) lot subdivision. The submission states that the subdivision was not contemplated by the original zoning and street layout of the area.

The subdivision of land was permissible, created compliant allotment sizes which fronts to a road. The form of development was contemplated by the zoning of the land because it is a compliant and permissible form of development. The subdivision did not alter the R2 zoning of the site.

The boundary adjustment approved under (MOD2013/0143) did increase the allotment size in order to enable multi dwelling development. The modification did not alter the zoning of the site. The proposed development is permissible with the R2 low density residential zone. The proposed development does not alter the zoning of the site.

Non-compliance with the minimum allotment size does not prevent a development application being lodged. A development application for multi dwelling development is required to be assessed and considered against the relevant planning controls. The individual merits of the application are considered as is being undertaken with the proposed development.

The proposal satisfies the objectives of the residential zone, by providing a development that allows the provision for a variety of housing types. The proposal also satisfies the objective and provisions of RLEP 2014 - Clause 4.1B. The proposal has also satisfied the built form controls as per Council's requirements.

The site and surrounding land uses have been historically zoned for low density residential purposes, within an established suburban setting; this includes zoned R2 under the gazettal of RLEP2014. Overall, there is no plausible indication that the zoning of the site will change to a zone other than for the purposes of residential uses.

Therefore, there is no further assessment warranted to evaluate whether the proposed development is suitable within the current zone.

10. Referrals**Senior Development Engineer**

The application was referred to Council's Senior Development Engineer, for assessment of the engineering components of the development. The following comments are provided:

“Stormwater Management

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The proposed stormwater management system for the development has provided an inter allotment drainage system discharging to an existing drainage easement which traverses 2 Orange Street (neighbouring lot to the west of the subject site).

A review of the plans notes:

- *Each of the dwellings provides separate onsite detention systems contained under the rear patio of the dwelling having design parameters compliant with Council's development controls. Whilst being located at the rear of the site, the proposed stormwater system has accommodated a surface inlet pit in the downstream corner of the each of the lots, adequate for the purpose of collecting any surcharge flows should such an event occur. With the landscaping plan proposing extensive planting along each of the downstream boundaries, the configuration does not present any potential impact to the downstream neighbouring properties.*
- *Each dwelling provides 3000L of rainwater storage by way of a separate rainwater tank, as per the BASIX certificate.*

Traffic Generation

Council's Planning Officer has requested a review of several submissions of objection which have drawn concern relating to potential impacts of traffic generation and traffic safety in Grove Lane arising from the proposal.

Grove Lane is a local road in the context of the greater road network and primarily caters only for access to adjoining properties having some frontage to it. The road is most unlikely to experience any through traffic and does not present any opportunity for "rat-running".

Council unfortunately has no traffic counts for the roadway, however the peak hour trip movements could potentially be estimated utilising the rates provided in the RMS document "Guide to Traffic Generating Development".

The guide provides the following traffic generation rates, presented as "Weekday peak hour vehicle trips" (vtph – vehicle trips per hour) whereby a vehicle trip presents as a one way movement to/ from a property:

Type of Development	Vehicle trips per hour (vtph)
Single dwelling	0.85 vtph / dwelling
Medium density residential dwelling (Smaller units: < 2 bed) (Larger units: 3+ bed)	0.4 – 0.5 vtph / dwelling 0.5 – 0.65 vtph / dwelling

ITEM 1 (continued)

As can be seen, denser development results in lower traffic generation rates per dwelling, attributed to the socio-economic demographics of occupants. There is an argument that dual occupancy development would have a lower rate than that of a single dwelling. In case, it is conservatively estimated that all dwellings have a traffic generation level equivalent to that of a single dwelling and that this rate simply be rounded up 1 vtp/h in the peak period.

In terms of the number of properties accessing Grove Lane, the provided submissions and inspection of Council's aerial photos identify the following properties:

- 2 Norma Avenue - This corner lot has recently been subdivided with the southern portion adjoining Grove Lane but the new northern lot having sole frontage to Norma Avenue. Potential access to Grove Lane for this new lot would be most unlikely given the extensive frontage it has to Norma Avenue and the requirement for a ROW burdening the new southern lot. Whilst possible it is inconceivable that the owner will develop the land in this configuration.*
- 4 Norma Avenue (1 Dwelling);*
- 6 & 6A Norma Avenue (Dual Occupancy);*
- 8, 10 and 12 Norma Avenue (Single Dwellings) – 10 Norma was not listed in the submission but has vehicle access and will be considered.*
- 2 Orange Street (Dual Occupancy) – Approved but yet to be constructed.*
- Unit 5 at 27 to 29 Grove Street; and,*
- 31 Grove Street (Single Dwelling)*

Accordingly the estimated peak hour traffic volumes generation presents, in the worst case scenario which assumes there being 13 single dwellings undertaking 1 vehicle trip in the same peak hour period. Applying a further 20% increase to non-local / through traffic (unlikely however this is a conservative estimate) yields 16 vtp/h and, with the addition of the proposed development (3 units) 19 vtp/h.

The following matters are to be noted:

- It is stressed that the deduced estimate presents a worst case scenario and is not representative of typical daily movement of vehicles.*
- For simplicity and conservativeness, the distribution of this traffic generation level (ie the possibility that vehicles accessing to/ from properties will enter Grove Lane from one end only) is not considered. In practise, the estimated traffic volume will be divided further as traffic will either depart / enter the eastern or western end and not travel the full length of the road.*
- The estimated extreme peak would represent an average vehicle movement of a vehicle every 3.33 minutes. The distribution of traffic movements over the hour would be represented as a "bell curve" and so it*

ITEM 1 (continued)

is plausible of there being no traffic movements in a 10 – 15min period on the shoulder of this peak period.

The RMS guidelines provide guidance concerning the “environmental capacity” of a roadway. In Traffic Engineering practise, the capacity of a length of road is generally is dependent on the capacity of the intersection at each end to accommodate that traffic.

As such, the traffic capacity of roads is considerably higher than what is deemed environmentally acceptable to residents adjoining that roadway. Section 4.3.5 (Performance Standards) of the RMS guidelines consequently discuss “Environmental Capacity” and notes that the matter is subjective considering the range of perceptions and attitudes to traffic implications that residents may have. Further, the guidelines note that of there being no particular threshold at which problems emerge.

Table 4.6 of the guide specifies a maximum peak hour volume (veh / hour) of 100 vehicles per hour for “Access Way” roads, applicable at this site. The estimated maximum peak generation of 19 vehicles per hour is significantly below this level. Considering that the development potentially may produce an additional 3 vehicle movements per hour in the extreme worst case, the result is considered negligible and does not warrant concern or justification to refuse the application.

Vehicle Access and Parking

A review of the parking allocation notes that each of the units provides a single enclosed parking space, an open forward parking space (in tandem) and potential for a third vehicle to stand in the driveway (wholly in the site) if required. A visitor parking space is provided at the eastern end of the site frontage. The total parking capacity satisfies the DCP part 9.3 (Parking Controls) in relation to parking capacity.

The development is noted to be held in regard to the DCP Part 3.4 (Multi Dwelling Housing for low Residential Zone) which presents controls intended for villa / townhouse style development. The development however differs from this by providing three separate freestanding units, all having street frontage and providing separate garages and vehicle access points.

With this in mind, the development controls of this DCP Part relating to vehicle access are not considered entirely applicable. The following matters therefore are mostly based on engineering principal related to traffic safety and efficient vehicle access. A review of the proposed parking design and the updated Parking Assessment from Apex Engineers dated December 2018, notes:

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- *The applicant has provided driveway grades which approximate to 11.5%. This is in accordance with AS 2890.1 however the arrangement lacks any crest threshold which would prevent any stormwater runoff entering the site from Grove Lane. This has likely to be raised as a concern by Councils City Works but is one that could potentially be resolved with condition, noting there is potential to increase the grades.*
- *The dimensions and widths of all parking spaces are compliant with AS 2890.1.*
- *A swept path analysis is provided demonstrating access by a B85 vehicle can readily be achieved with sufficient clearances on each side of the vehicle. The Standard warrants a B99 vehicle (a slightly larger vehicle) be utilised in locations where failure to enter “would occasion intolerable congestion and possible hazard. Despite that Grove Lane being subject to low volumes of traffic (as noted above) would not be have such implications, it is estimated the provided vehicle entry widths are sufficient to accommodate such a vehicle.*

Recommendation

There are no objections to the proposed development with respect to the engineering components, subject to the application of conditions being applied to any development consent being issued for the proposed development.”

Landscape Architect

The application was referred to Council’s Landscape Architect for assessment against the landscaping components of the development, the following comments are provided:

Existing Trees

An Arboricultural Impact Assessment has been submitted with the application prepared by TALC dated 10/09/2018

A summary of the existing trees identified by the Arborist are show in the table below:

Tree No.	Species “Common name”	Proposed recommendation by Arborist	Comment
1	<i>Macadamia integrifolia Macadamia Nut</i>	<i>Remove</i>	<i>Agree. Tree is located too close to Unit 3</i>
2	<i>Jacaranda mimosifolia Jacaranda</i>	<i>Remove</i>	<i>Agree. Tree in poor condition</i>

ITEM 1 (continued)

3	Jacaranda mimosifolia Jacaranda	Remove	Agree. Tree in poor condition
4	Sapium sebiferum Chinese Tallow Tree	Remove	Agree. Tree in poor condition
5	Howea forsteriana Kentia Palm	Remove	Agree. Palm will be impacted by stormwater pipes.
6	Howea forsteriana Kentia Palm	Retain – tree on adjoining property	Agree

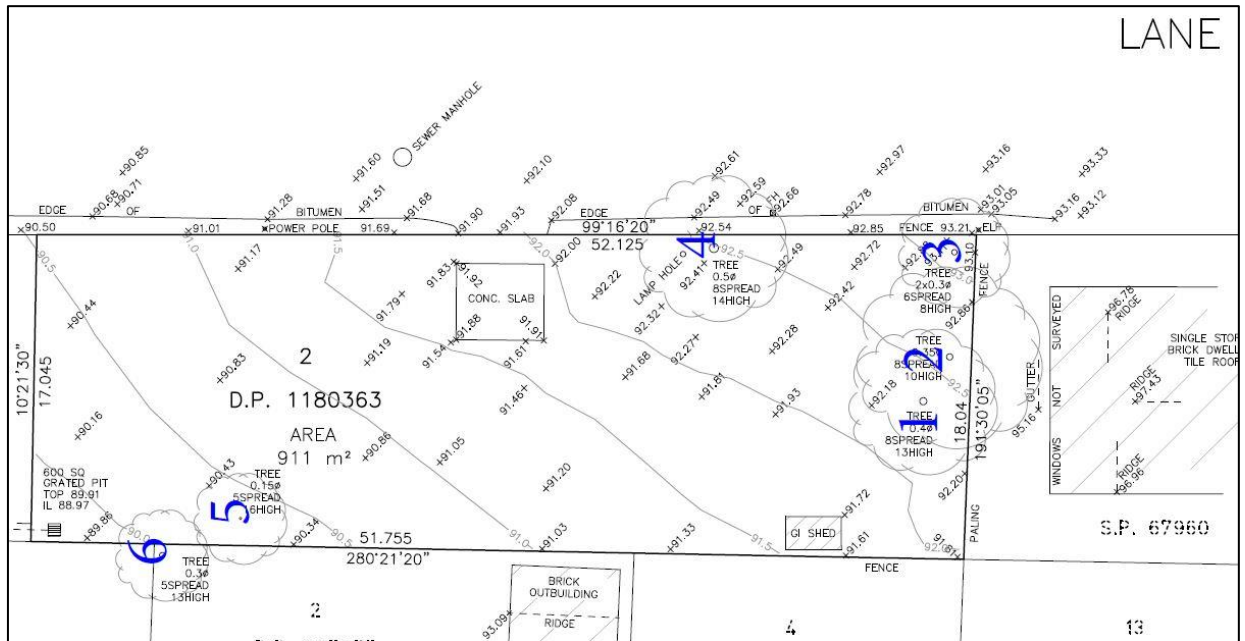


Figure 38: Location of trees

Landscape Plan

The Landscape plan is generally satisfactory.

- The plan provides for screen planting along the neighbouring boundaries.
- A physical connection has been provided between the outdoor paved area and the private yard.
- Less than 40% of the front garden will be hard paved.
- Trees and shrubs are in scale with the development.
- Private open space has been provided.

However 35 *Murraya paniculata* are proposed to be planted, this plant has become a weed in bushland and should not be planted. A native shrub is to be substituted for the *Murraya*.

Stormwater plan

Generally on-site detention tanks should not be located in the front setback, the

ITEM 1 (continued)

tank should be located under the driveway. This has been achieved with underground tanks under the rear paved areas.

The stormwater pipes are generally compatible with retention of Tree 6.

Recommendation

No objection subject to conditions imposed.”

City Works

The application was referred to Council's City Works Directorate. The comments provided by each department are as follows:

Drainage

“It is noted that the proposed development is not located in a flood prone area and that the proposed concept does not make connections or alterations to Council stormwater assets or easements.

An existing drainage easement is present downstream of the proposed development. The proposed development design proposes to connect into the existing pit at the start of this easement. The development engineer is to confirm that there are no defined localised overland flow paths or underground stormwater connections to the existing pit from adjacent properties i.e. 27-29 Grove St Eastwood.

Otherwise, if there are connections from other adjacent properties (inter-allotment drainage), then these must be retained or accounted for.”

Traffic

“The proposed development is for construction of multi-dwelling housing consisting of three dwellings (i.e. three 3-bedroom townhouses).

Traffic generation for the proposed development (i.e. 3 townhouses) is expected to be about 2 vehicle trips per hour. Therefore, the net increase in traffic would be at most 2 additional vehicle trips per hour during the AM and PM peak periods. This is considered negligible in the surrounding road network.”

Public Domain

“The property location is within the Ryde Local Area Precinct, outside of the Eastwood Town Centre Precinct.

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- *Undergrounding of the existing overhead services/power lines would not be required as the proposed development is outside of the area covered by a plan for the required extent of undergrounding.*
- *Given the potential increase in vehicular and pedestrian usage of the laneway the existing lighting in the laneway shall be upgraded using the current Ausgrid standard LED luminaire.*
- *There are two existing power poles along the frontage of the development site. One has a street light, which will require upgrading, another has no light but will require a new luminaire to be installed.*
- *Road Opening Permits will be required for any construction work on the road.*
- *There will be several hold points for inspections during the course of the construction in the public domain area.*

From a Public Domain perspective there are no objections to approval of this application subject to conditions.”

Waste

The waste collection arrangements have been reviewed by Council's Waste department. At present Council's Waste trucks do not service Grove Lane. The waste collection arrangements are that future occupants will place bins in front of No. 2 Orange Street during the prescribed waste collection period. Council's waste section has raised no objection to this arrangement, subject to **Condition 95**.

11. Conclusion

Upon consideration of the development against Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other relevant statutory provisions, the proposal is considered to be suitable for the site and is in the public interest.

Therefore the development is recommended to be approved for the following reasons:

- The development complies with the relevant provisions of RLEP 2014 with no adverse impact to adjoining properties.
- The proposal provides the opportunity to redevelop the site to deliver a diverse choice of housing to meet the future needs of residents, which fulfils the objectives of R2 Low Density Residential Zone.
- The proposal is considered to respond to the existing and the desired future character of the area.

Notwithstanding the variations outlined above within this report, the development generally complies with the relevant provisions outlined in RDCP 2014 Part 3.4: Multi

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Dwelling Housing which provides acceptable amenity for future occupants and adjoining properties.

12. Recommendation

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, it is recommended that the Ryde Local Planning Panel grant consent to LDA2018/0385 for a new multi-dwelling housing development comprising 3 x two storey 3 bedroom dwellings, 1.0m high front fence, associated car parking and tree removal at 8 Grove Lane, Eastwood subject to the conditions in the attached consent outlined in **Attachment 1** of this report.

ATTACHMENTS

- 1 Draft Conditions of Consent
- 2 DCP Compliance Check
- 3 Shadow Analysis
- 4 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

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Report Approved By:

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Senior Coordinator - Assessment

Sandra Bailey
Manager - Development Assessment

Liz Coad
Director - City Planning and Environment

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ATTACHMENT 1
Attachment 1 – Conditions of Consent

GENERAL

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

Document Description	Date	Plan No/Reference
Site Plan	17.06.2019	Job No. 1306, DWG No. DA -01, Issue D
Ground Floor & First Floor Plan	17.06.2019	Job No. 1306, DWG No. DA -11, Issue D
Elevations & Fence Detail	14.12.2018	Job No. 1306, DWG No. DA -21, Issue B
Sections A & B	17.06.2018	Job No. 1306, DWG No. DA -31, Issue C
Sections B1 & B2	17.06.2019	Job No. 1306, DWG No. DA -31-1, Issue A
Driveway Sections	03.09.2018	Job No. 1306, DWG No. DA -32, Issue A
Stormwater Drainage Plan	04.06.2019	REF: 2018660 S1, Revision B
Stormwater Drainage Plan Details	04.06.2019	REF: 2018660 S2, Revision B
Landscape Plan	04.06.2019	DWG No. LO1/1 – K23118, Revision B
Arboricultural Assessment Report	10.09.2018	Arboricultural Assessment Report prepared by Tree Landscape Consultants.
Parking Design Review	December 2018	Parking Design Review prepared by Apex Engineers

The Development must be carried out in accordance with the plans approved under this condition.

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **BASIX.** Compliance with all commitments listed in BASIX Certificate numbered **956093M**, dated **4 September 2018**.
4. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
5. **Hoardings.**
- (a) A hoarding or fence must be erected between the work site and any adjoining public place.

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- (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
6. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
 7. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
 8. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
 9. **Roads Act.** Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.
 10. **Ancillary Elements – Noise.** Any noise emitted from ancillary elements such as air-conditioning units or the like must not exceed 5dB(A) above the background noise level when measured at any affected residence.
 11. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure, must be undertaken in accordance with Council’s 2014 DCP Part 8.5 “Public Domain Works”, except otherwise as amended by conditions of this consent.
 12. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant’s expense.
 13. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
 14. **Road Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where

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ATTACHMENT 1

there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) required within the road reserve. No works shall be carried out on the footpath without this permit being paid and a copy kept on the site.

15. **Construction Staging.** For any staging of the public domain works, the applicant shall provide a detailed construction management and staging plan.
16. **Public areas and restoration works.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities, including repairs of damaged infrastructure as a result of the construction works associated with this development site, shall be undertaken by the Applicant in accordance with Council's standards and specifications, and DCP 2014 Part 8.5 *Public Civil Works*, to the satisfaction of Council.

PRIOR TO CONSTRUCTION CERTIFICATE

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

17. **Section 7.11.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:

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A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$6,794.29
Open Space & Recreation Facilities	\$16,726.16
Civic & Urban Improvements	\$5,688.90
Roads & Traffic Management facilities	\$776.00
Cycleways	\$484.74
Stormwater Management Facilities	\$1,540.69
Plan Administration	\$130.69
The total contribution amount	\$32,141.47

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in Section 7.11 Development Contributions Plan 2007 Interim Update (2014), effective from 10 December 2014.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

The contribution must be paid **prior to the issue of any Construction Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

A copy of the Section 7.11 Development Contributions Plan may be inspected at the Ryde Customer Service Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

18. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.
19. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.
20. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the

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ATTACHMENT 1

release of the **Construction Certificate**. (Category: Other buildings with delivery of bricks or concrete or machine excavation).

21. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
 - (a) Infrastructure Restoration and Administration Fee
 - (b) Enforcement Levy
22. **Driveway Access Levels.** The applicant is to apply to Council, pay the required fee, and have issued site specific driveway access levels by Council prior to the issue of the **Construction Certificate**.
23. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
24. **Dilapidation Survey/Report.** A dilapidation survey/report is to be undertaken that addresses all properties (including any public place) that may be affected by the construction work namely **Unit 5, 27 – 29 Grove Street, 5 Lilac Place, 4 Lilac Place and 4 Orange Street**. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*) prior to the release of the **Construction Certificate**.
25. **Sydney Water – Building Plan Approval.** The plans approved as part of the Construction Certificate must also be approved by Sydney Water prior to excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Please go to www.sydneywater.com.au/tapin to apply.
26. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
27. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
28. **Fibre-ready facilities and telecommunications infrastructure.** Prior to the issue of any Construction Certificate satisfactory evidence is to be provided to the Certifying Authority that arrangements have been made for:

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- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

And

- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note: Real estate development project has the meanings given in Section 372Q of the Telecommunications Act).

29. **Retaining walls.** Amended plans and specifications shall be submitted to the Private Certifier demonstrating the proposed retaining walls associated with all units along the southern and western boundaries shall be setback 1.2 metres from the boundaries and the natural ground levels retained within the provided setback. Landscaping is required to be provided within the setback as per **Condition 71**.

Note: To also ensure that the minimum required length for the tandem car parking spaces are provided, the retaining walls must not extent along the slab those tandem car parking spaces and the privacy screens as shown on the plans, namely, Job No. 1306, DWG No. DA -11, Issue D (Site Plan), Job No. 1306, DWG No. DA -01, Issue D (Ground Floor Plan) and DWG No. LO1/1 – K23118, Revision B (Landscape Plan), are to be erected.

30. **Clothes lines.** A clothes line is to be provided for each unit and contained within the private open spaces. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the **Construction Certificate**.

31. **Amended Landscape Plan.** The Landscape Plan is to be amended to comply with the following:

- Replacement of the proposed *Murraya paniculata*, as this plant has become a weed in bushland. A native shrub with a height capable at minimum 2.0 metres is to be substituted for the *Murraya paniculata*; and,
- A 1.2m wide Landscape strip is to be provided along eastern property boundary adjoining Unit 5, 27 – 29 Grove Street.

Amended Landscape Plans are to be submitted to and approved by the Principal Certifier prior to the issue of a **Construction Certificate**.

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32. **Obscure Glazing.** The kitchen windows of all dwellings are to engage the use of fixed obscure glazing from a minimum height of 1.6m above FFL. Details demonstrating compliance with this condition are to be provided in the plans for the **Construction Certificate**.
33. **Privacy Screens.** The provision of privacy screens are to be erected to the southern elevation of the alfresco's of each unit. The bottom of the privacy screens are to be erected in accordance with the following heights:
- Unit 1: RL92.25 (1.6m above FFL)
 - Unit 2: RL93.10 (1.6m above FFL)
 - Unit 3: RL93.80 (1.6m above FFL)

Each screen is to be a minimum height of 300mm and must have; no individual opening more than 30mm wide, and a total area of all openings that is no more than 30% of the surface area of the screen or barrier. Details demonstrating compliance with this condition are to be provided in the plans for the **Construction Certificate**.

34. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the inter-allotment drainage easement discharging to Orange Street, generally in accordance with the plans by MBC Consulting Engineers (Refer Project No. 2018660 Dwgs S1 & S2 Rev A dated 30 August 2018) subject to any variations marked in red on the approved plans and noted following;

- All forward tandem parking spaces in the rear yard of the unit are to incorporate a minimum 150mm high kerb at the downstream end of the space and surface inlet pit/ grate so as collect any stormwater runoff from this hardstand area and prevent it being dispersed into the downstream property.

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and are to be prepared by a chartered civil engineer and comply with the following:

- The certification must state that the submitted design (including any associated components such as pump/ sump, absorption, onsite dispersal, charged system) are in accordance with the requirements of AS 3500.3 (2003) and any further detail or variations to the design are in accordance with the requirements of City of Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.

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35. **Erosion and Sediment Control Plan.** An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified consultant, detailing soil erosion control measures to be implemented during construction. The ESCP is to be submitted with the application for a Construction Certificate. The ESCP must be in accordance with the manual *“Managing Urban Stormwater: Soils and Construction”* by NSW Department – Office of Environment and Heritage and must contain the following information:

- Existing and final contours
- The location of all earthworks, including roads, areas of cut and fill
- Location of all impervious areas
- Location and design criteria of erosion and sediment control structures,
- Location and description of existing vegetation
- Site access point/s and means of limiting material leaving the site
- Location of proposed vegetated buffer strips
- Location of critical areas (drainage lines, water bodies and unstable slopes)
- Location of stockpiles
- Means of diversion of uncontaminated upper catchment around disturbed areas
- Procedures for maintenance of erosion and sediment controls
- Details for any staging of works
- Details and procedures for dust control.

The ESCP must be submitted with the application for a Construction Certificate. This condition is imposed to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

36. **Public domain improvements.** The public domain is to be upgraded along Grove Lane frontage of the development site in accordance with the City of Ryde standards, specifications and DCP 2014 Part 8.5 *Public Civil Works*. The works shall include but are not limited to road and footpath paving, construction of new driveway crossings, improvement to street lights, and shall be completed to Council's satisfaction at no cost to Council.

A public domain design plan for the following works shall be submitted to, and approved by Council's City Works Directorate, prior to the issue of the Construction Certificate.

- a) Footpath, driveway crossings, kerb & gutter and road paving as specified in the condition of consent for public infrastructure works.
- b) The existing street light fronting the development site in Grove Lane shall be upgraded and replaced with a current Ausgrid standard LED luminaire.

One new street light using Ausgrid standard LED luminaire is to be installed on the existing power pole located in Grove Lane adjacent to the

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development site near its boundary with the neighbouring property at 27-29 Grove Street, Eastwood.

The street lighting will remain on the Ausgrid street lighting network.

37. **Public Infrastructure Works.** Public infrastructure works shall be designed and constructed as outlined in this condition of consent.

Engineering drawings prepared by a Chartered Civil Engineer (registered on the NER of Engineers Australia) are to be submitted to, and approved by Council's City Works Directorate prior to the issue of the Construction Certificate. The works shall be in accordance with City of Ryde DCP 2014 Part 8.5 - Public Civil Works, and DCP 2014 Part 8.2 - Stormwater Management, where applicable. The approved works must be completed to Council's satisfaction at no cost to Council.

The drawings shall include plan views, sections, existing and proposed surface levels, drainage pit configurations (if applicable), kerb returns, existing and proposed signage and line-marking, and other relevant details for the new works. The drawings shall also demonstrate the smooth connection of the proposed works into the remaining street scape.

The Applicant must submit, for approval by Council as a Road Authority, full design civil engineering plans and applicable specifications for the following required infrastructure works:

- The removal of redundant vehicular crossing in Grove Lane and replacement with a new footpath, kerb, gutter and road pavement.
- The reconstruction of the existing road pavement for the full width of Grove Lane and along the frontage of the development site, and adjacent to all new kerb & gutter and vehicular crossings.
- Provision of a 600mm wide footpath to front the site in Grove Lane which is comprised of a 450mm wide footpath pavement and a further 150mm wide top of standard kerb, such to provide a 600mm path width extending from the property boundary to the face of the kerb.
- Provision of a 300mm wide rolled kerb along the northern side of the lane (adjacent to the rear of properties facing Norma Avenue), this is to be measured from the boundary alignment to the back of the rolled kerb.
- Two single and one double vehicular access crossings along Grove Lane, in accordance with the DA approved plans. The vehicular access crossings shall be designed in accordance with City of Ryde Development Control Plan 2014 Part 8.3 *Driveways*. The maximum length of each layback shall be determined by swept paths. The proposed garage floor level for each dwelling shall be elevated to achieve compliance with the relevant Australian standard.
- Stormwater drainage installations in the public domain in accordance with the DA approved plans.

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- Signage and line-marking details.
- Staging of the public civil works, if any, and transitions between the stages shall be clearly indicated on a separate plan.
- The relocation/adjustment of all public utility services affected by the proposed works shall be acknowledged by the Developer and all costs associated with the relocation/adjustment of the services will be borne by the Developer. Written approval from the applicable Public Authority shall be submitted to Council along with submission for the public domain design plans. All the requirements of the Public Authority shall be complied with.

Notes:

- The Applicant is advised to consider the finished levels of the public domain, including new or existing footpaths, prior to setting the floor levels for the proposed building.
- Depending on the complexity of the proposed public domain works, the Council's review of each submission of the plans may take a minimum of six (6) weeks.
- Prior to submission to Council, the Applicant is advised to ensure that the drawings are prepared in accordance with the standards listed in the City of Ryde DCP 2014 Part 8.5 - *Public Civil Works*, Section 5 "*Standards Enforcement*". A checklist has also been prepared to provide guidance, and is available upon request to Council's City Works Directorate.
- City of Ryde standard drawings for public domain infrastructure assets are available on the Council website. Details that are relevant may be replicated in the public domain design submissions; however Council's title block shall not be replicated.

38. **Driveway Access and Boundary Alignment Levels.** The applicant shall apply to Council for site specific driveway access and boundary alignment levels prior to the issue of any Construction Certificate. The application shall be accompanied by preliminary engineering plans of civil works along the frontage of the development site. The Council issued levels shall be incorporated into the detail design plans for the public domain improvements and infrastructure works, and the design of the internal driveway, car parking areas, landscaping and stormwater drainage plans. Fees are payable in accordance with Council's Schedule of Fees & Charges at the time of the application.

39. **Vehicle Footpath Crossings.** To protect the footpath from damage resulting from the vehicular traffic, the footpath crossing/s shall be designed and constructed in accordance with the City of Ryde Development Control Plan 2014 Part 8.3 *Driveways* and Part 8.5 - *Public Civil Works*, and all relevant Australian Codes and Standards (AS/NZS 2890.1). In order to avoid the access driveway looking like a public road, kerbs shall not be returned to the boundary alignment line. The applicant shall provide Council with certification from a

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Chartered Civil Engineer (registered on the NER of Engineers Australia) confirming that the vehicle footpath crossing and driveway design meet Council requirements and the relevant standards, prior to the issue of the Construction Certificate.

40. **Public Domain Works – Defects Security Bond.** To ensure satisfactory performance of the public domain works, a defects liability period of twelve (12) months shall apply to the works in the road reserve following completion of the development. The defects liability period shall commence from the date of issue by Council, of the Compliance Certificate for the External Works. The applicant shall be liable for any part of the work which fails to perform in a satisfactory manner as outlined in Council's standard specification, during the twelve (12) months' defects liability period.

A bond in the form of a cash deposit or Bank Guarantee of \$35,000 shall be lodged with the City of Ryde prior to the issue of a Construction Certificate to guarantee this requirement will be met. The bond will only be refunded when the works are determined to be satisfactory to Council after the expiry of the twelve (12) months defects liability period.

41. **Engineering plans assessment and works inspection fees.** The applicant is to pay to Council fees for assessment of all engineering and public domain plans and inspection of the completed works in the public domain, in accordance with Council's Schedule of Fees & Charges at the time of the issue of the plan approval, prior to such approval being granted by Council.

Note: An invoice will be issued to the Applicant for the amount payable, which will be calculated based on the design plans for the public domain works.

42. **Waste storage.** The waste and recycling storage areas and facilities are to be provided and shown on the plans. The waste storage areas are to be located in the private open spaces of each Unit. The design of the waste storage areas are to be in accordance with the requirements of RDCP 2014: Part 7.2 Waste Minimisation and Management. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the **Construction Certificate**.

43. **Wheel Stoppers.** To ensure safety and mitigate damage to adjoining properties located south of the development site. Wheel stoppers are to be provided at the south each of each tandem car parking space. The wheel stoppers are to be designed by a suitably qualified professional and must be constructed in accordance with the relevant Australian Standard. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the **Construction Certificate**.

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PRIOR TO COMMENCEMENT OF CONSTRUCTION

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

44. Site Sign.

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
 - (i) Showing the name, address and telephone number of the Principal Certifying Authority for the work,
 - (ii) Showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - (iii) Stating that unauthorised entry to the work site is prohibited.
- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

45. Residential building work – insurance. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

46. Residential building work – provision of information. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA has given the Council written notice of the following information:

- (a) In the case of work for which a principal contractor is required to be appointed:
 - (i) The name and licence number of the principal contractor; and
 - (ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- (b) In the case of work to be done by an owner-builder:
 - (i) The name of the owner-builder; and
 - (ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further

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work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

47. **Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with Safework NSW requirements and be a minimum of 1.8m in height.
48. **Tree Retention.** As identified in the Arborist Report prepared by TALC dated 10/09/2018. The following tree is to be retained and protected

Tree No.	Species "Common name"
6	Howea forsteriana Kentia Palm

The existing boundary fence will not provide sufficient protective fencing for the tree. Protection of tree 6 is to be in accordance with sections 4.5, 4.6 and 4.7 of the Arborist Report prepared by TALC dated 10/09/2018. A Level 5 Project Arborist be appointed to inspect and document with Certificates of Compliance to the certifying authority as stipulated in SECTION 5 MONITORING AND CERTIFICATION of AS4970-2009.

PROJECT PHASE	ACTIVITIES	PROJECT ARBORIST
Initial Site Preparation	Establish/delineate TPZ Install protective measures and undertake soil rehabilitation for all trees to be retained.	Project Arborist to mark Tree Protection Zones and install fences, mulch, irrigation and signage. Issue a Certificate of Compliance of tree protection measures being in place and soil rehabilitation undertaken
Construction work	Liaison with site manager, compliance and any deviation from approved plan	Maintain or amend protective measures Supervision and monitoring formal notification of any deviation from approved tree protection plan
Stormwater connection installation through TPZ, Implement hard and soft landscape works	Supervise Installation of pipes within tree TPZ	Excavate trench through TPZ under Arborist supervision, install pipework, remove selected protective measures as necessary and perform remedial tree works. Issue a Certificate of Compliance
Practical Completion	Tree vigour and structure Assessment and undertake soil rehabilitation for all retained trees	Remove all remaining tree Protection measures. Certification of tree protection and soil rehabilitation for Protected Trees
Defects liability / maintenance period	Tree vigour and structure	Undertake any required remedial tree works. Certification of tree protection if necessary

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49. **Tree Removal.** As identified in the Arborist Report prepared by TALC dated 10/09/2018. The following trees on site are to be removed:

Tree No.	Species "Common name"
1	Macadamia integrifolia Macadamia Nut
2	Jacaranda mimosifolia Jacaranda
3	Jacaranda mimosifolia Jacaranda
4	Sapium sebiferum Chinese Tallow Tree
5	Howea forsteriana Kentia Palm

50. **Work Zones and Permits.** Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.
51. **Notice of Intention to Commence Public Domain Works.** Prior to commencement of the public domain works, a *Notice of Intention to Commence Public Domain Works* shall be submitted to Council's City Works Directorate. This Notice shall include the name of the Contractor who will be responsible for the construction works, and the name of the Supervising Engineer who will be responsible for providing the certifications required at the hold points during construction, and also obtain all Road Activity Permits required for the works.
- Note:** Copies of a number of documents are required to be lodged with the Notice; no fee is chargeable for the lodgement of the Notice.
52. **Notification of adjoining owners & occupiers – public domain works.** The Applicant shall provide the adjoining owners and occupiers' written notice of the proposed public domain works a minimum two weeks prior to commencement of construction. The notice is to include a contact name and number should they have any enquiries in relation to the construction works. The duration of any interference to neighbouring driveways shall be minimised; and driveways shall be returned to the operational condition as they were prior to the commencement of works, at no cost to the owners.
53. **Pre-construction inspection.** A joint inspection shall be undertaken with Council's Engineer from City Works Directorate prior to commencement of any public domain works. A minimum 48 hours' notice will be required when booking for the joint inspection.

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54. **Pre-Construction Dilapidation Report.** To ensure Council's infrastructures are adequately protected a pre-construction dilapidation report on the existing public infrastructure in the vicinity of the proposed development and along the travel routes of all construction vehicles, up to 100m either side of the development site, is to be submitted to Council. The report shall detail, but not be limited to, the location, description and coloured photographic record of any observable defects to the following infrastructure where applicable.

- (a) Road pavement,
- (b) Kerb and gutter,
- (c) Footpath,
- (d) Drainage pits and lintels,
- (e) Traffic signs and line-markings
- (f) Any other relevant infrastructure.

The report is to be dated and submitted to, and accepted by Council's City Works Directorate, prior to any work commencing. All fees and charges associated with the review of this report shall be in accordance with Council's Schedule of Fees and Charges and shall be paid at the time that the Dilapidation Report is submitted.

55. **Road Activity Permits.** To carry out work in, on or over a public road, the Consent of Council is required as per the *Roads Act 1993*. Prior to the commencement of the relevant works and considering the lead times required for each application, permits for the following activities, as required and as specified in the form "*Road Activity Permits Checklist*" (available from Council's website) are to be obtained and copies submitted to Council with the *Notice of Intention to Commence Public Domain Works*.

- a) **Road Use Permit.** The applicant shall obtain a Road Use Permit where any area of the public road or footpath is to be occupied as construction workspace, other than activities covered by a Road Opening Permit or if a Work Zone Permit is not obtained. The permit does not grant exemption from parking regulations.
- b) **Work Zone Permit.** The applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. **A Roads and Maritime Services Road Occupancy Licence shall be obtained for State Roads.**
- c) **Road Opening Permit.** The applicant shall apply for a road-opening permit and pay the required fee where a new pipeline is to be constructed within or across the road pavement or footpath. Additional road opening permits and fees are required where there are connections to public utility services (e.g. telephone, telecommunications, electricity, sewer, water or gas) within the

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- road reserve. No opening of the road or footpath surface shall be carried out without this permit being obtained and a copy kept on the site.
- d) **Elevated Tower, Crane or Concrete Pump Permit.** The applicant shall obtain an Elevated Tower, Crane or Concrete Pump Permit where any of these items of plant are placed on Council's roads or footpaths. This permit is in addition to either a Road Use Permit or a Work Zone Permit.
 - e) **Crane Airspace Permit.** The applicant shall obtain a Crane Over Airspace Permit where a crane on private land is operating in the air space of a Council road or footpath. Approval from the Roads and Maritime Services for works on or near State Roads is required prior to lodgement of an application with Council. A separate application for a Work Zone Permit is required for any construction vehicles or plant on the adjoining road or footpath associated with use of the crane.
 - f) **Hoarding Permit.** The applicant shall obtain a Hoarding Permit and pay the required fee where erection of protective hoarding along the street frontage of the property is required. The fee payable is for a minimum period of 6 months and should the period is extended an adjustment of the fee will be made on completion of the works. The site must be fenced to a minimum height of 1.8 metres prior to the commencement of construction and throughout demolition and/or excavation and must comply with WorkCover (New South Wales) requirements.
 - g) **Skip Bin on Nature Strip.** The applicant shall obtain approval and pay the required fee to place a Skip Bin on the nature strip where it is not practical to locate the bin on private property. No permit will be issued to place skips.
56. **Temporary Footpath Crossing.** A temporary footpath crossing, if required, must be provided at the vehicular access points. It is to be 4 metres wide, made out of sections of hardwood with chamfered ends and strapped with hoop iron, and a temporary gutter crossing must be provided.
57. **Ryde Traffic Committee Approval.** A plan showing details of the proposed signage and line marking, and/or traffic devices including pedestrian refuge, pedestrian crossing or LATM measures, shall be submitted to the Council and approved by the Ryde Traffic Committee prior to the installation of any traffic devices, signage and line-marking.

DURING CONSTRUCTION

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

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58. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
59. **Noise from construction work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from construction work.
60. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
61. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- (a) Fill is allowed under this consent;
 - (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
 - (c) The material is reused only to the extent that fill is allowed by the consent.
62. **Construction materials.** All materials associated with construction must be retained within the site.
63. **Site Facilities**
The following facilities must be provided on the site:
- (a) Toilet facilities in accordance with Safework NSW requirements, at a ratio of one toilet per every 20 employees, and
 - (b) A garbage receptacle for food scraps and papers, with a tight fitting lid.
64. **Site maintenance**
The applicant must ensure that:
- a. Approved sediment and erosion control measures are installed and maintained during the construction period;
 - b. Building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
 - c. The site is clear of waste and debris at the completion of the works.
65. **Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".
66. **Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.

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67. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.
68. **Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.
69. **Tree works – arborist supervision.** A Consultant Arborist must be appointed to oversee all works, including demolition and construction, in relation to the trees identified for retention on the site.
70. **Tree works – provision of arborist details.** Council is to be notified, in writing, of the name, contact details and qualifications of the Consultant Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.
71. **Advanced Planting.** As shown on the approved Landscape Plan, the nominated species (*Viburnum Odoratissimum*, *Acmena smithii* minor including replacement species required by **Condition 31**) proposed to be planted along the southern boundary are to be planted with a minimum height of 1.8m.
72. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.
73. **Erosion and Sediment Control.** The applicant shall install erosion and sediment control measures in accordance with the approved plan at the commencement of works on the site. Suitable erosion control management procedures in accordance with the manual “Managing Urban Stormwater: Soils and Construction” by the NSW Department – Office of Environment and Heritage, must be practiced at all times throughout the construction. Where construction works deviate from the plan, soil erosion and sediment control measures are to be implemented in accordance with the above referenced document.
74. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of the Stormwater Management Plan by MBC Consulting Engineers (Refer Project No. 2018660 Dwgs S1 & S2 Rev B dated 4 June 2019) submitted in compliance to the condition labelled “Stormwater Management.”.
75. **Traffic Management.** Traffic management procedures and systems must be in place and practised during the construction period to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 1985 and City of Ryde, Development Control Plan 2014: Part 8.1 - Construction Activities.

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76. **Hold Points during construction - Public Domain.** Council requires inspections to be undertaken by a Chartered Civil Engineer (registered on the NER of Engineers Australia), for the public domain, at the hold points shown below.

The Applicant shall submit to Council's City Works Directorate, certification from the Engineer, at each stage of the inspection listed below, within 24 hours following completion of the relevant stage/s. The certificates shall contain photographs of the works in progress and a commentary of the inspected works, including any deficiencies and rectifications that were undertaken.

- a) Prior to the commencement of construction and following the set-out on site of the position of the civil works to the levels shown on the approved civil drawings.
- b) Upon excavation, trimming and compaction to the subgrade level - to the line, grade, widths and depths, shown on the approved civil engineering drawings.
- c) Upon compaction of the applicable sub-base course.
- d) Upon compaction or construction of any base layers of pavement, prior to the construction of the final pavement surface (e.g. prior to laying any pavers or asphalt wearing course).
- e) Upon installation of any formwork and reinforcement for footpath concrete works.
- f) Final inspection - upon the practical completion of all civil works with all disturbed areas satisfactorily restored.

77. **Parking during Construction.** To minimise parking impacts within Grove Lane during construction, the parking of contractors is not to obstruct access within Grove Lane or obstruct access to properties utilising the laneway for primary vehicular access.

PRIOR TO OCCUPATION CERTIFICATE

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.

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78. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate as approved under **Condition 3**.
79. **Landscaping.** All landscaping works approved by **Condition 1** are to be completed prior to the issue of any **Occupation Certificate**.
80. **Post-construction dilapidation report.** The submission of a post-construction dilapidation report which clearly details the final condition of all property, infrastructure, natural and man-made features that were recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining and private properties, prior to the issue of any **Occupation Certificate**.
81. **Boundary Fencing.** Prior to the issue of the Occupation Certificate, the boundary fence adjoining properties located south of the development site are to be replaced at the applicant's expense. The fencing is to be at minimum 1.8 metres high.
82. **Grove Lane Parking Restrictions.** To prevent the parking of vehicles in Grove Lane which may impose on vehicle access to properties accessed from the Lane and / or inhibit the passage of emergency vehicles, a written submission must be made to the Local Traffic Committee seeking the approval of "No Parking" parking restrictions in the Lane. The submission must be accompanied by a sign and line marking plan which is to locate the position of traffic and parking restrictions, which are to be positioned mindful of traffic flow and vehicle swept paths into all vehicle access points.

The extent of the restrictions (ie possibly the full length of Grove Lane) is subject to the discretion of Council's Traffic Section, may be altered by the consideration of the Local Traffic Committee and will likely require the consultation of residents fronting Grove Lane. The applicant is bear all costs of this exercise, including but not limited to, the consultation process with residents, any costs associated with the approval and the installation of the approved traffic and parking measures. The recommendations of the Local Traffic Committee must be implemented prior to the issue of any Occupation Certificate.

Note: The Local Traffic Committee meets on a schedule of every 6 weeks and therefore approval for these measures may take in the order of 3 months from the date of application.

83. **Public domain – work-as-executed plan.** A works as executed plan for works carried out in the public domain must be provided to and endorsed by Council prior to the issue of any **Occupation Certificate**.

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84. **Letterboxes and street/house numbering.** All letterboxes and house numbering are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.
85. **Stormwater Management - Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Occupation Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system (including any onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption system) and finished surface levels which convey stormwater runoff.
86. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to the relevant section of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention components incorporated in the approved Stormwater Management system. This is to ensure that the drainage system will be maintained and operate as approved throughout the life of the development, by the owner of the site(s). The terms of the instrument are to be in accordance with the Council's terms for these systems as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7, and to the satisfaction of Council, and are to be registered on the title prior to the release of the Occupation Certificate for that title.
87. **Compliance Certificates – Engineering.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate. All certification must be issued by a qualified and practising civil engineer having experience in the area respective of the certification unless stated otherwise.
- a) Confirming that all components of the parking areas contained inside the site comply with the relevant components of AS 2890 and the City of Ryde DCP 2014, Part 9.3 “Car Parking”.
 - b) Confirming that the constructed interallotment drainage system complies with the construction plan requirements and the City of Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
 - c) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with the City of Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and has been constructed to function in accordance with all conditions of this consent relating to the discharge of stormwater from the site.

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- d) Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including any on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
 - e) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual *“Managing Urban Stormwater: Soils and Construction”* by the NSW Department – Office of Environment and Heritage and the City of Ryde DCP 2014, Part 8.1 “Construction Activities”.
 - f) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council’s satisfaction.
88. **On-Site Stormwater Detention System - Marker Plate.** To ensure the constructed On-site detention will not be modified, a marker plate is to be fixed to each on-site detention system constructed on the site. The plate construction, wordings and installation shall be in accordance with City of Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures. The plate may be purchased from Council’s Customer Service Centre at Ryde Civic Centre (Devlin Street, Ryde).
89. **Public Domain Improvements and Infrastructure Works – Completion.** All public domain improvements and infrastructure works shall be completed to Council’s satisfaction, in accordance with the approved public domain plans and at no cost to the Council, prior to the issue of any Occupation Certificate.
90. **Restoration – Supervising Engineer’s Certificate.** Prior to the issue of any Occupation Certificate, the Applicant shall submit to Council a certificate from the Supervising Engineer confirming that the final restoration of disturbed road and footway areas for the purpose of connection to public utilities, including repairs of damaged infrastructure and replacement of any redundant vehicular crossings as a result of the construction works associated with this development site, have been completed in accordance with the Council’s standards and specifications, and DCP2014 Part 8.5 *Public Civil Works*, or the Roads and Maritime Services’ standards and specifications, where applicable.
91. **Public Domain Works-as-Executed Plans.** To ensure the public infrastructure works are completed in accordance with the approved plans and specifications and that the assets to be handed over to Council are accounted for inclusion in Council’s Assets Register, Works-as-Executed Plans shall be submitted to Council for review and approval. The Works-as-Executed Plans are to be prepared on a copy of the approved plans and certified by a Registered Surveyor, and shall contain notations in red, all departures from the Council approved details. Any rectifications required by Council shall be completed by the Developer prior to the issue of any Occupation Certificate.

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92. **Supervising Engineer Final Certificate.** Prior to the issue of any Occupation Certificate, the Applicant shall submit to Council, a Final Certificate from the Supervising Engineer confirming that the public domain works have been constructed in accordance with the Council approved drawings and City of Ryde standards and specifications. The certificate shall include commentary to support any variations from the approved drawings.
93. **Post-Construction Dilapidation Report.** To ensure Council's infrastructures are adequately protected a post-construction dilapidation report on the existing public infrastructure in the vicinity of the completed development and along the travel routes of all construction vehicles, up to 100m either side of the development site, is to be submitted to Council. The report shall detail, but not be limited to, the location, description and coloured photographic record of any observable defects to the following infrastructure where applicable.
- (a) Road pavement,
 - (b) Kerb and gutter,
 - (c) Footpath,
 - (d) Drainage pits and lintels,
 - (e) Traffic signs and line-markings
 - (f) Any other relevant infrastructure.

The report shall include summary statement/s comparing the pre and post construction conditions of the public infrastructure. The report is to be dated and submitted to, and accepted by Council's City Works Directorate, prior to issue of the Occupation Certificate. The report shall be used by Council to compare with the pre-construction dilapidation report, and to assess whether restoration works will be required prior to the issue of the Occupation Certificate.

All fees and charges associated with the review of the report shall be in accordance with Council's Schedule of Fees and Charges, and shall be paid at the time that the Dilapidation Report is submitted.

94. **Final Inspection – Assets Handover.** For the purpose of the handover of the public infrastructure assets to Council, a final inspection shall be conducted in conjunction with Council's Engineer from City Works Directorate following the completion of the external works. Defects found at such inspection shall be rectified by the Applicant prior to Council issuing the Compliance Certificate for the External Works. Additional inspections, if required, shall be subject to fees payable in accordance with Council's Schedule of Fees & Charges at the time. A minimum 48 hours' notice will be required when booking for the final inspection.
95. **Positive Covenant – Waste Collection.** At present Grove Lane is not serviced by Council's waste collection services. A positive covenant shall be created, under Section 88E of the Conveyancing Act 1919. The positive covenant is to state that bins for each Unit is to be placed in front of No. 2 Orange Street

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during the prescribed waste collection period. This is to ensure that future occupants to acknowledge that waste collection is not within Grove Lane and bins are to be placed in front of No. 2 Orange Street. The wording of the Instrument shall be submitted to, and approved by Council's Waste Section prior to lodgement at NSW Land Registry Services. The Instrument shall be registered and a registered copy of the document shall be submitted to and approved by the consent authority prior to the issue of an Occupation Certificate. All associated costs shall be borne by the applicant.

96. **Compliance Certificate – External Works and Public Infrastructure Restoration.** Prior to the issue of any Occupation Certificate, a compliance certificate shall be obtained from Council's City Works Directorate confirming that all works in the road reserve including all public domain improvement works and restoration of infrastructure assets that have been dilapidated as a result of the development works, have been completed to Council's satisfaction and in accordance with the Council approved drawings. The applicant shall be liable for the payment of the fee associated with the issuing of this certificate.
97. **Engineering Condition – Public Domain Works.** All outstanding civil works associated with all road works, kerb and gutter, footpath, vehicular crossings, stormwater drainage works and street lights for this development site shall be completed as required and in accordance with Council's specifications, or Ausgrid Standard for street lights, and to the satisfaction of Council prior to the issue of the strata plans/subdivision certificate.

OPERATIONAL CONDITIONS

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

98. **Single dwellings only.** Each dwelling is not to be used or adapted for use as two separate domiciles or a boarding house.

End of consent

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ATTACHMENT 2
Attachment 2 – DCP Compliance check

Part 3.4 – Multi Dwelling Housing

PART 3.0 Site Planning

DCP 2014	Proposed	Compliance
3.1 Slope of Site		
a. Dwellings present to street. At least one entrance visible.	Each dwelling will presents to Grove Lane. Note: Although, Grove Lane is a laneway, for the purposes outlined in the definition of a road under the <i>Road Transport Act 2013</i> , the proposal satisfies this requirement.	Yes
b. Sites with slope greater than 1:6 unacceptable.	Site will not slope greater than 1:6.	Yes
c. Site that slope up from street more than 1:6 unacceptable.	Site will not slope up from street greater than 1:6.	Yes
d. Cross fall more than 1:14 not acceptable.	The site will not exceed a cross fall greater than 1:14.	Yes
3.2 Altering the Levels of the Site		
a. No imported Fill.	Fill is proposed, within the site within the following locations: <ul style="list-style-type: none"> • 200mm external to the building footprint along western side of unit 1; • 200mm within the building footprint underneath the living area footprint of unit 1; • Up to 400mm external to the building footprint along western side of unit 2; • Up to 300mm within the building footprint underneath the living area footprint of unit 2; • Up to 300mm external to the building footprint along western side of unit 3; and, • Up to 300mm within the building footprint underneath the living area footprint of unit 3. 	No - Supported
b. No altering of levels of site (not covered by building envelope) more than 300mm.	As shown above the development seeks to propose to fill within areas external to the building footprint. The extent of non –compliant excavation	

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ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>c. No basement garages and minimal retaining walls.</p> <p>d. Private open space provided at natural ground level.</p>	<p>external to the building footprint is as follows:</p> <ul style="list-style-type: none"> • Up to 500mm at the eastern side of the unit 1; • Up to 400mm to the eastern side of unit 2; • 400mm to the eastern side of unit 3; and, • Up to 500mm (at maximum) to the northern portion of the side within front setback. <p>At grade garages proposed for each dwelling and minimal retaining walls only proposed where required, which not excessive in this instance.</p> <p>Private open space is provided predominantly at ground level.</p>	<p>No – Supported</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
3.3 Storey and Height		
3.3.1 Storeys		
<p>a. Street facing dwelling may be two storeys provided:</p> <p>i. Two storey dwelling not attached to any other two storey dwelling.</p> <p>ii. Two storey dwelling is suitable within streetscape.</p>	<p>The development comprises of three (3), two (2) storey dwellings fronting Grove Lane which are not attached.</p> <p>The proposal includes articulated facades, building separation and an acceptable linear building mass inclusive of pitched roofs to be consistent with the existing pattern detached style dwellings, within the local area. Overall, the development is considered to be compatible within the streetscape.</p>	<p>Yes</p> <p>Yes</p>
3.3.2 Height		
<p>a. As per Clause 4.3 and 4.3A (2) of RLEP 2014.</p>	<p>Unit 1: Ridge: 97.88 EGL below: 90.83 Overall height: 7.05m</p> <p>Unit 2: Ridge: 98.73 EGL below: 91.20 Overall height: 7.53m</p> <p>Unit 3: Ridge: 99.43</p>	<p>Yes</p>

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ATTACHMENT 2

DCP 2014	Proposed	Compliance
	EGL below: 92.00 Overall height: 7.43m	
3.4 Site Coverage		
Site coverage < 40% Pervious area > 35%	Site Coverage: $\frac{336.8\text{m}^2}{911\text{m}^2}$ = 36.9% (37%) Pervious Area: $\frac{330\text{m}^2}{911\text{m}^2}$ = 36.2% (36%)	Yes Yes
3.5 Setbacks		
3.5.1 Front Setbacks		
a. Development must be i. same as adjoining if difference between setbacks of adjoining dwellings is <2m ii. Average of setback between the two if >2m b. Setback of 1m less than the above std for not more than 50% of the front elevation. c. May vary this requirement if streetscape is likely to change: not less than 7.5m for 50% of frontage, not less than 6.5m for 50% of frontage.	<p>The adjoining setbacks to the northern boundary fronting Grove Lane at 27 – 29 Grove Street is at minimum 3.0m from the dwellings and the existing adjoining building (the detached outbuilding) at 2 Orange Street is at maximum 300mm from the boundary.</p> <p>The difference between the two (2) adjoining setbacks is approximately 2.7m. Therefore this will require to comply with Control 3.5.1 (a)(i). This will result in the required setback to be at minimum 1.65m from the boundary. Therefore, the proposal complies with the front setback requirement.</p> <p>However, it is considered that a 1.65m front setback will not achieve the objectives of the control; therefore the approved setback for the attached dual occupancy at No. 2 Orange Street from Grove Lane is considered for the purposes of this assessment. The approved setback from Grove Lane from the approved development at No. 2 Orange Street is 2.0m when measured from the allotments boundary to edge of the porch of Lot 2 and wall of Lot 1.</p> <p>Given that the setback from the existing dwellings contained within 27 – 29 Grove Street are 3.0m to the boundary at Grove Lane and the approved development at 2 Orange Street is 2.0m, the average is between the two (2) allotments is less than 2.0m and the proposed 3.0m setback for the</p>	Yes

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
	<p>proposed dwellings at 8 Grove Lane will be of the same distance as the buildings on the adjoining allotments.</p> <p>Furthermore, the proposal is the front setback being 3.0m for each unit measured from the boundary to the edge of the front porches is satisfactory.</p>	
3.5.4 Side and Rear Setbacks		
<p>a. Min 4.5m unless vehicular access is included in this area, then min 6m.</p> <p>Note: Control 3.5.4 (d) permits Min 3.0m side setback up to 50% of the wall.</p>	<p>Side setbacks</p> <p><u>Western side:</u></p> <p>The side setback of Unit 1 from the western boundary is compliant when applying Control 3.5.4 (d), where 45% of the wall accounts for 3.0m and the remaining 55% portion of the wall is 4.5m.</p> <p><u>Eastern side:</u></p> <p>The side setback for Unit 3 is 3.0m when measured from the garage wall on the ground floor to the eastern boundary, the wall above on the first floor above is setback 4.5m, from the eastern boundary. Nevertheless the proposal is non-compliant with the control.</p> <p><i>Note: Considering the configuration of dwellings and that vehicular access is provided directly off Grove Lane. The 6.0m setback is not required.</i></p> <p>Rear Setback</p> <p>The walls for Units 2 and 3 measure to 4.5m.</p> <p>With regard to the rear setback for Unit 1, the application of Control 3.5.4 (d) is</p>	<p>Yes</p> <p>No - Supported</p> <p>Yes</p>

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>b. Must be adequate to provide appropriate solar access.</p> <p>c. Ensure existing substantial trees not within proposed courtyard areas.</p>	<p>applied. Unit 1 accounts for a 43% rear setback of 3.0m of the wall and 57% remains 4.5m. Therefore, the rear setback is compliant with the control.</p> <p>The side and rear setbacks are generally compliant, however access to sunlight to the courtyards, is an issue. (See 3.6 Private Outdoor Space and 3.9 Overshadowing and Access to Sunlight)</p> <p>No existing substantial tree's located in courtyards.</p>	<p>No – See 3.6 Private Outdoor Space and 3.9 Overshadowing and Access to Sunlight</p> <p>Yes</p>
3.5.5 Internal Setbacks		
<p>a. Habitable windows do not overlook habitable windows of another dwelling.</p> <p>b. Min 9m separation provided between habitable windows within development.</p>	<p>Habitable windows located on the first floor between dwellings do not contain the minimum 9.0m separation. However consideration the windows of each dwelling have been designed to be offset from each other and not overlook into the windows of other habitable windows within the proposed development. This arrangement is considered to be acceptable.</p>	<p>No - Supported</p>
3.6 Private Outdoor Space		
<p>a. Minimum:</p> <p>i. 30sqm for 2 bed.</p> <p>ii. 35sqm for 3 or more bed.</p> <p>b. POS min 4m dimensions.</p> <p>c. At least 50% access to sunlight for 2 hours.</p> <p>d. Courtyards do not contain existing substantial trees.</p> <p>e. Access other than through dwelling to POS and not less than 1m wide.</p> <p>f. Private outdoor space securely enclosed and visible from living area.</p> <p>g. Must be one area.</p>	<p>Unit 1: 68m² Unit 2: 52m² Unit 3: 73m²</p> <p>Each POS contains dimensions of 4.0m at minimum.</p> <p>The dwellings will not achieve the minimum requirement of two (2) hours to 50% solar access to their private open space during mid-winter.</p> <p>No existing substantial tree's located in courtyards.</p> <p>Access to POS of each unit is other than through the dwelling is provided through the garages which are greater than 1.0m wide.</p> <p>Each POS is securely enclosed and visible from the living area.</p> <p>One (1) area per dwelling.</p>	<p>Yes</p> <p>Yes</p> <p>No - Supported</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
h. Courtyards not in front setback.	No courtyards within the front setback.	Yes
i. Min 1.2m wide landscape privacy strip between courtyard and adjoining property.	Landscape strips of 800mm have been provided between POS of each unit and adjoining properties. This requirement has been conditioned to retain natural ground levels on boundaries for 1.2m	No – Resolved via condition
3.7 Landscaping		
a. Landscape plan submitted.	Submitted.	Yes
b. Landscaping completed prior to occupation.	To be imposed as a condition of consent (See Condition 79)	Yes – Subject to condition
c. Existing trees retained and buildings setback appropriately.	No existing trees to be retained. Removal has been supported by Council's Landscape Architect.	Yes
d. Existing substantial trees not located within courtyards.	No existing substantial trees are located within courtyards.	Yes
e. Tree location must not cause damage to building.	Tree location is considered not to cause damage to the future integrity of buildings.	Yes
f. Arboriculture assessment where significant tree/s impacted.	Submitted with application and supported by Council's Landscape Architect.	Yes
g. Landscape strips for privacy not more than 1.2m wide and be 3 to 4m high. Trees 5 to 6m high.	Landscape strips of 800mm have been provided between POS of each unit and adjoining properties at 5 Lilac Place.	No - Supported
h. Landscape strip not less than 1.2m wide between driveway and boundary. Shrubs 2 to 2.5m high. Trees 5 to 6m high.	Not Applicable. Individual driveways per Unit .	N/A
i. Landscape strip not less than 1m between driveway and wall of dwellings.	Not Applicable. Individual driveways per Unit.	N/A
j. Edge between driveway and paths edged with concrete, not timber.	Not Applicable. Individual driveways per Unit.	N/A
k. Rolled edge between driveway and garden/lawn areas.	Not Applicable. Individual driveways per Unit.	N/A
l. Trees within footpath to be protected.	Not Applicable. Individual driveways per Unit.	N/A
m. OSD tanks and above ground OSD not located in front setback.	Not Applicable. None impacted.	N/A

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
Driveway preferable. In landscape area, min 300mm soil cover.	Each of the dwellings provides separate onsite detention systems contained under the rear patio of the dwelling having design parameters compliant with Council's development controls. Whilst being located at the rear of the site, the proposed storm water system has accommodated a surface inlet pit in the downstream corner of the each of the lots, adequate for the purpose of collecting any surcharge flows should such an event occur. With the landscaping plan proposing extensive planting along each of the downstream boundaries, the configuration does not present any potential impact to the downstream neighbouring properties.	Yes
3.8.1 Car Parking		
Car Parking		
a. Number of parking spaces, refer to Part 9.3 of DCP: - 1 space per 1 or 2 B dwelling, - 2 spaces per 3+B dwelling, - 1 visitor space per 4 dwellings. b. At least 1 space per dwg must be lockable garage (round up). c. Additional onsite parking to be provided for hatchet-shaped lots. d. Hatchet shaped lots require 1 additional space for every 4 dwellings and be accessible to all residents. e. Garages not located between dwellings and street frontage. f. Garages and parking spaces do not dominate streetscape. g. Garage (doors) should be designed to reduce visual prominence. h. Tandem parking not permitted in front of a garage. i. Garages and parking areas convenient.	Two (2) spaces per dwelling provided including one (1) visitor space for the Three (3) dwellings. Total = 6 spaces + 1 Visitor. Each dwelling has been provided with its own lockable garage. Not Applicable. Not hatchet shaped allotment. Not Applicable. Not hatchet shaped allotment. Garages not located between dwellings and street frontage as setback behind each dwellings facade. Garages are considered not to dominate the street frontage as setback 1.0m behind the dwellings façade.	Yes Yes N/A N/A Yes Yes Yes
	Single width garages doors ad setback	Yes

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
j. Garages separate dwellings.	behind each building's façade.	
	Tandem arrangements are located to the rear.	Yes
	Garages and parking areas are considered to be convenient.	Yes
	Each dwelling will be separated via internal setbacks, in addition to the provided linear separation, garages are placed to the east of each unit separating each dwelling.	Yes
3.8.2 Manoeuvrability		
a. Vehicles must be able to enter and leave the garages and parking areas using a single 3 point turn.	Given that each dwelling consists of an individual driveway, directly accessible to Grove Lane, as demonstrated in proposed parking design and the updated Parking Assessment from Apex Engineers dated December 2018.	N/A
b. Corner lots, reversing out permitted depending on traffic conditions.	Not applicable. Site is not a corner allotment.	N/A
c. Corner lot, vehicle access point not less than 6m from property boundary at intersection of 2 roads.	Not applicable. Site is not a corner allotment.	N/A
d. Tandem arrangement permitted where no impact on manoeuvrability.	Tandem arrangements will not impact on manoeuvrability.	Yes
e. Enter and leave parking spaces in a single 3 point turn.	Not required. Separate driveways for each dwelling.	Yes
f. Comply with AS 2890.1.	The applicant has demonstrated compliant with AS 2890.1.	Yes
3.8.3 Driveways		
a. Driveways paved and extent minimised appropriately.	Driveways are paved and minimised appropriately.	Yes
3.8.4 Driveway crossings		
a. Up to 10 spaces – 4m More than 10 – not more than 6m If width of driveway crossings more than 30% of frontage, two crossings not permitted.	Unit 1: 4.0m Unit 2: 3.8m Unit 3 + Visitor space: 3.0m	Yes
3.9 Overshadowing and Access to Sunlight		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>a. Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.</p> <p>b. Sunlight to at least 50% of each courtyard, and principal ground level open space >2hrs between 9am and 3pm on June 21 or</p> <p>Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.</p> <p>c. Shadow diagrams must indicate extent of shadowing within development and adjoining properties.</p>	<p>Habitable room windows face courtyards and, no closer than 1.5m to facing wall.</p> <p>The dwellings will not achieve the minimum requirement of two (2) hours to 50% solar access to their private open space during mid-winter.</p> <p><i>Note: Existing overshadowing by existing buildings or fences is not greater than the proposed.</i></p> <p>Shadow diagrams indicates the extent of overshadowing to adjoining properties and is acceptable as the private open spaces of 4 Orange Street, 4 and 5 Lilac Place will receive two (2) hours to 50% of their private open space.</p>	<p>Yes</p> <p>No - Supported</p> <p>Yes</p>
<p>3.10 Visual and Acoustic Privacy</p>		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
a. Min 9m separation between facing habitable room windows.	Although some habitable windows do not contain the minimum 9.0m separation the windows of each dwelling have been designed to not overlook into the windows of other habitable windows within the proposed development.	No - Supported
b. No direct views between living area windows or adjacent dwellings (otherwise screening or obscuring necessary).	No direct views from living areas to the private open space of other dwellings.	Yes
c. Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius.	No direct views between living areas and adjoining dwellings as concealed by the 1.8 metre high boundary fence and screen planting. With reference, to the balconies located at the front, it is considered there are no adverse privacy impacts. These balconies are Juliet style balconies are proposed at front of the dwellings. A review of the privacy impacts from these balconies is considered to be minimal considering the amount of leisure time spent on these balconies	Yes
d. No balconies. Elevated landings (or similar associated with stairs into courtyard) max 1m wide	Balconies proposed located to the front of each dwelling. All other elevated landings will not exceed 1.0 metres in height.	No - Supported
e. Living and sleeping areas protected from high levels of external noise?	Living and sleeping areas are considered to be protected by external noise.	Yes
f. Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A)	To be a condition of consent. (Condition 10)	Yes – Subject to condition
3.11 Accessibility		
3.11.1 Pedestrian Access		
a. Safe access achieved for pedestrians.	Safe access is achieved for pedestrians.	Yes
b. Continuous access path provided and separate from vehicle access.	Continuous access path separate from vehicular access.	Yes

ITEM 1 (continued)

ATTACHMENT 2

PART 4.0 Building Form

DCP 2014	Proposed	Compliance
4.1 Appearance		
a. Complement streetscape.	The development is considered to complement the streetscape.	Yes
b. Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick.	Includes a pitched roof, vertically orientated windows with verandas and constructed out of face brick.	Yes
c. At least 1 dwg must face street.	All dwellings face Grove Lane which is considered a street.	Yes
4.2 Ceiling Height		
a. Floor to Ceiling min 2.7m	Floor to ceiling height of 2.6m for the first floors.	No
4.3 Roofscape and Roof Materials		
a. Pitch 22-30 degrees where visible from a public place.	Roof pitch of 23 degrees provided.	Yes
b. Pitch increase to 35% where second storey contained in roof.	Not applicable. No storey contained within roof.	Yes
c. Eaves of at least 300mm.	450mm eaves overhang.	Yes
d. Gables fronting street is required and hip roofs generally not permitted.	No gable roof fronting Grove Lane is proposed.	No - Supported
e. Variation in roof line.	Variations in the roof lines are provided.	Yes
f. Use materials consistent with traditional materials.	Roofs will be constructed out of traditional materials.	Yes
4.4 Building materials for Walls		
a. Exterior walls use materials consistent in form and colour of existing development.	Exterior walls are consistent with colours of existing development.	Yes
b. Windows have vertical proportion of between 2:1 and 3:1.	Vertical proportioned windows provided.	Yes
4.5 Fences		
4.5.1 Front fence		
a. Front fences not higher than 1m and must be at least 70% visually permeable.	Front fence is 1.0m high and is at least 70% visually permeable.	Yes
b. Front fences constructed of		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
materials including: i. Wooden pickets (open), ii. Masonry (sand stone or facebrick); and iii. Wrought iron or similar.	Fence is masonry rendered face brick.	Yes
4.6 Clotheslines and drying area		
a. Clothes drying facility provided to each dwelling in appropriate location.	To be a condition of consent (Condition 30).	Yes – Subject to condition
b. Laundry within each dwelling.	A laundry facility is provided within each dwelling.	Yes
4.7 Lighting		
a. Front yard lighting and front of dwelling provided. b. External lighting must not adversely affect adjoining properties. c. Spot lights discouraged.	To be imposed as a condition of consent (Condition 27).	Yes – Subject to condition
4.8 Location of bin enclosures		
a. A. Waste and recycling storage areas and facilities provided in accordance with Part 7.2 of Waste DCP.	No details provided, this matter will be dealt with as a condition of consent to ensure the waste storage locations within the private open spaces (Condition 42).	Yes - Subject to condition

ITEM 1 (continued)

ATTACHMENT 3

SHADOW TESTING

Shadow diagrams submitted by Applicant



Shadow analysis undertaken by Council



B DROVE LANE EASTWOOD - 26 JULY 2019

Lifestyle and opportunity @ your doorstep

ITEM 1 (continued)

ATTACHMENT 3



Shadow diagrams submitted by Applicant

JUNE 21ST, 1PM



JUNE 21ST, 2PM



JUNE 21ST, 3PM



Shadow analysis undertaken by Council

JUNE 21ST, 1PM



JUNE 21ST, 2PM



JUNE 21ST, 3PM



18 DRONG LANE EASTWOOD, 20 JULY 2019

Lifestyle and opportunity @ your doorstep

City of Ryde

2 53 LAVARACK STREET, RYDE - CONSTRUCTION OF A NEW TWO STOREY DUAL OCCUPANCY (ATTACHED), TREE REMOVAL, FRONT FENCE AND STRATA SUBDIVISION - LDA2018/0434

Report prepared by: Assessment Officer- Town Planner

Report approved by: Senior Coordinator - Assessment; Manager - Development Assessment; Director - City Planning and Environment

Report dated: 27 August 2019

**City of Ryde
Local Planning Panel Report**

DA Number	LDA2018/0434
Site Address & Ward	53 Lavarack Street, Ryde Central Ward
Zoning	R2 Low Density Residential
Proposal	Construction of a new two (2) storey dual occupancy (attached), tree removal, front fence and strata subdivision.
Property Owner	Laiwen Jiang
Applicant	Architecture Design Studio (NSW) PTY LTD
Report Author	Hussein Bazzi – Assessment Officer
Lodgement Date	7 November 2018
No. of Submissions	Two (2) submission objecting to the development
Cost of Works	\$824,375.00
Reason for Referral to LPP	Departure from Development Standard –The proposal results in 28% departure from the minimum frontage requirement of Clause 4.1B(2)(b) of RLEP 2014.
Recommendation	Refusal
Attachments	Attachment 1 – DCP Compliance Table Attachment 2 – C4.6 variation to Clause 4.1B(2) Attachment 3 – A3 Plans

ITEM 2 (continued)**1. Executive Summary**

The following report is an assessment for the proposed construction of an attached two (2) storey dual occupancy, front fence, associated tree removal and strata subdivision.

This application is reported to the Ryde Local Planning Panel for determination as it proposes a departure from a development standard in excess of 10% in accordance with the *Environmental Planning and Assessment Act 1979*, Section 9.1 - Directions by the Minister.

The subject site is irregular shaped has a dual frontages to Lavarack Street (14.337 metres) and Lane Cove Road (20.32 metres). The existing dwelling on the site presents to Lavarack Street, which is the site's primary frontage and the boundary to Lane Cove Road is the rear boundary.

The proposed built form consists of two (2) attached dwellings which present to Lavarack Street. Lavarack Street does not meet the development standard for a minimum 20 metre frontage required for dual occupancy development pursuant to Clause 4.1B(2) of Ryde Local Environmental Plan 2014. The proposal seeks a 28% variation to the standard.

The submitted Clause 4.6 written variation request does not satisfy the pre-conditions required to satisfy the consent authority and allowing variation to the standard.

The proposal has been designed to present to Lavarack Street but seeks to rely upon the frontage width to Lane Cove Road in stating the proposal satisfies the development standard. Council does not support this interpretation and application of the requirements of Clause 4.1B(2).

The proposed design results in inconsistencies with the requirements of Part 3.3: Dwelling Houses and Dual Occupancy (Attached) of Ryde Development Control Plan 2014. A detailed discussion of the non-compliances is detailed within this report in relation to the following controls:

- Section 2.1 - Desired future character of the area;
- Section 2.5.1, Control's (c)(i) and (g)(i) - Streetscape
- Section 2.9.1, Control (c) and Section 2.11.1, Control's (c), (j) and (p) - Garage setback; and,
- Section 2.9.2, Control (b) - Side Setbacks

The assessment has also concluded that the proposal is inconsistent with the provisions of State Environmental Planning Policy (Infrastructure) 2007, in which insufficient information was provided to determine if the development will provide acceptable level of amenity from traffic noise, vibrations and/or vehicle emissions arising from Lane Cove Road.

ITEM 2 (continued)

The application was lodged on 7 November 2018 and owners of surrounding properties were given notice between 21 November 2019 and 10 December 2018. Amended plans were received on 28 June 2019 and renotified between 9 July 2019 and 26 July 2019. In response to the two (2) public notification periods, a total of two (2) submissions were received from the adjoining neighbour at 55 Lavarack Street, Ryde. The submissions raised concerns in relation to demolition, visual privacy, boundary fencing, damages and water tanks.

The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal presents inconsistencies with the desired future character of the area including other impacts to the amenity of future occupants.

The Clause 4.6 submission does not satisfy the pre conditions required under Clause 4.6(3)(a) and (b) and Clause 4.6(4) of Ryde LEP 2014. The proposal is an unacceptable form of development and the application is recommended for refusal.

2. The Site and Locality

The site is legally described as Lot 49 within DP 210723 and is known as No. 53 Lavarack Street, Ryde. The site is located on the eastern side of Lavarack Street toward the head of the cul-de sac and is to the west of Lane Cove Road (**Figure 1**).

The subject site is irregular shaped with a site area of 638.5m² and consists of a dual frontage to Lavarack Street and Lane Cove Road. Lavarack Street is a local road which is the primary road frontage of the allotment and Lane Cove Road is a classified road acting as the rear boundary.

The site has a frontage to Lavarack Street, 14.337 metres in width and a splayed frontage to Lane Cove Road of 20.32 metres. The site has a depth of 36.575 metres along the northern boundary and 38.05 metres along the southern boundary.

ITEM 2 (continued)



Figure 1: Aerial photograph of the site in context.

The general topographical features of the site consist of the site falling from the rear (RL93.40) to Lavarack Street (RL92.80). The site has a gentle cross fall at the rear portion of the site from the southern boundary (approximately RL94.00) to the northern boundary (approximately RL93.20).

The site presently accommodates a single storey dwelling which presents to Lavarack Street (**Figure 2**). Other site works include minor ancillary structures. Vehicular access is achieved from Lavarack Street adjacent to the northern side boundary.

The site is also burdened by an existing 1.829 metre wide electricity easement which traverses along the entire length of the southern boundary.

ITEM 2 (continued)



Figure 2: Site as viewed from Lavarack Street.

The site contains a domestic landscape setting, with mature trees along the side boundaries.

The site is located within a low density residential area with surrounding development including a variety of single and two (2) storey residential developments such as detached dwellings and attached dual occupancies, each development varies in age, scale and architectural style and is sited within a domestic landscaped setting (**Figures 3 and 4**).



Figure 3: Streetscape as viewed from the site looking north.

ITEM 2 (continued)



Figure 4: Streetscape as viewed from site looking south.

The adjoining site to the south is known as 51 Lavarack Street and consists of a single storey brick dwelling with an associated carport (**Figure 5**). The adjoining site to the north is known as 55 Lavarack Street which is a single storey weatherboard dwelling (**Figure 6**). Properties on the eastern side of Lavarack Street contain dual frontages with Lane Cove Road being the rear of the properties (**Figure 7 and 8**). Vehicular Access is obtained from Lavarack Street.



Figure 5: Adjoining property to south, No. 51 Lavarack Street.

ITEM 2 (continued)



Figure 6: Adjoining property to the north, No. 55 Lavarack Street.



Figure 7: Adjoining property to the south, No. 51 Lavarack Street as viewed from Lane Cove Road.



Figure 8: Adjoining property to the south, No. 55 Lavarack Street as viewed from Lane Cove Road.

ITEM 2 (continued)

All properties along the eastern side of Lavarack Street, adjoining Lane Cove Road do not utilise Lane Cove Road as their primary frontage and utilise Lavarack Street as a point for vehicular access.

3. The Proposal

The proposal seeks consent for the construction of an attached two (2) storey dual occupancy, front fence, associated tree removal and strata subdivision. The proposal also involves construction of a new vehicular crossing at the centre of the site from Lavarack Street. Details of the development are as follows:

• Dual Occupancy (Attached)

The design of the dual occupancy generally varies between the proposed dwellings. The internal room layouts of both dwellings within the dual occupancy are almost identical and essentially mirror each other with a common party wall to separate the dwellings.

The entrance doors of both dwellings differ as the entrance Unit 01 is orientated to face south and the entrance of Unit 02 is setback behind the façade and orientated to face the street (**Figure 13**). The internal layout of both dwellings is as follows:

Unit 01:Ground Floor (RL 93.40)

- Living/dining;
- Kitchen;
- Bathroom;
- Alfresco serving as primary private open space at the rear;
- An entry hall;
- Laundry;
- Single width garage; and,
- A courtyard orientated to the northern side boundary.

First Floor (RL96.40)

- Four (4) bedrooms (Master bedroom includes a walk in robe and ensuite);
- Bathroom;
- Family/Living area;
- Balcony orientated to the rear; and,
- Balcony fronting Lavarack Street.

Unit 02:Ground Floor (RL 93.40)

- Living/dining;
- Kitchen;
- Bathroom;
- Alfresco serving as primary private open space at the rear;
- An entry hall;
- Laundry; and;
- Single width garage.

ITEM 2 (continued)

First Floor (RL96.40)

- Four (4) bedrooms (Master bedroom includes a walk in robe and ensuite;
- Bathroom;
- Family/Living area; and
- Balcony orientated to the rear; and,
- Balcony fronting Lavarack Street.

Figures 9, 10, 11, 12 and 13 below show the various elevations of the proposed development including a architectural perspective.



Figure 9: Western elevation presenting to Lavarack Street.

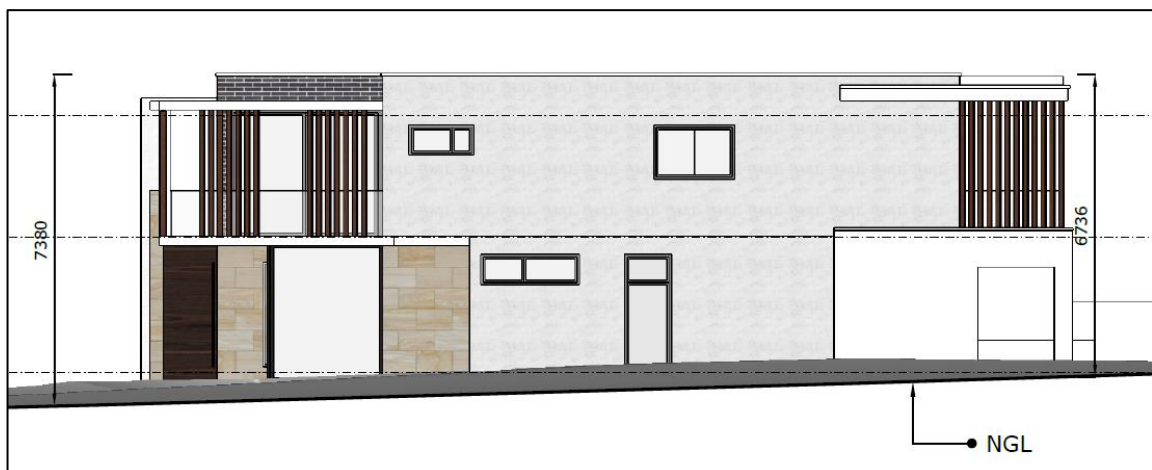


Figure 10: Southern elevation.

ITEM 2 (continued)

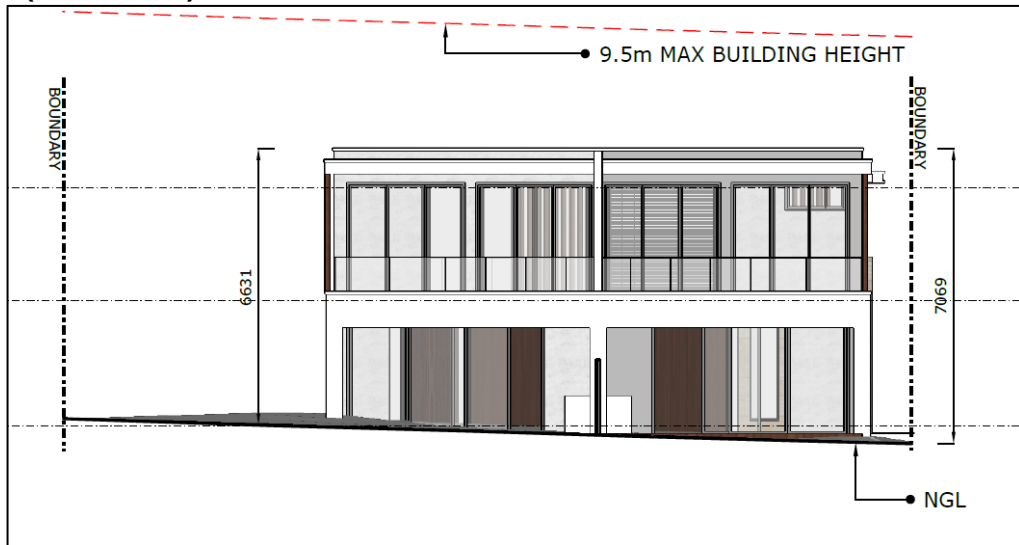


Figure 11: Eastern elevation presenting to Lane Cove Road.

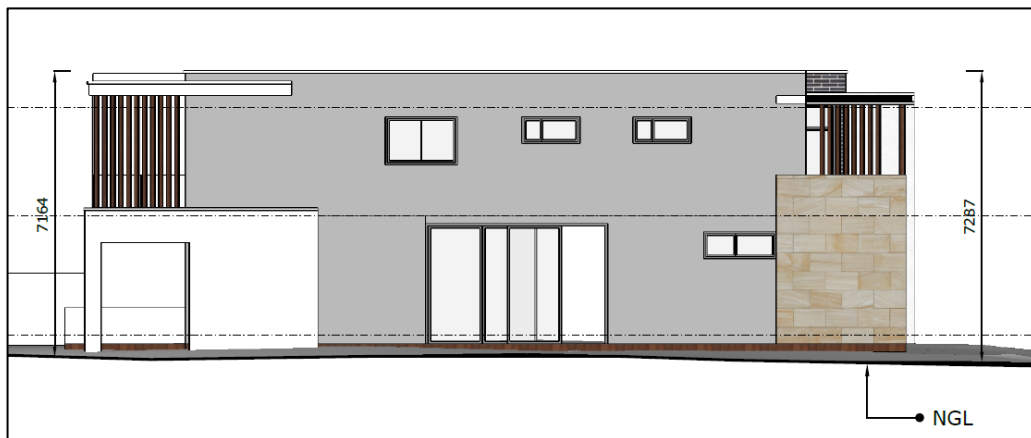


Figure 12: Northern elevation.



Figure 13: Architectural perspective.

ITEM 2 (continued)

Figure 13 above demonstrates that the entrance door of Unit 02 is orientated to Lavarack Street whilst the entrance door of Unit 01 is orientated to the south, near the garage.

• **Tree Removal:**

The proposal will seek to remove the following trees on site:

- Pencil Cactus;
- Caucasian Fir;
- Three (3) White Cedar's;
- Japanese Cedar;
- Camellia;
- Eastern Red Bud;
- Chinese Juniper;
- Minor Shrubs and weeds; and,
- Camphor Laurel located on the street verge.

• **Front Fence**

The proposal seeks to erect a 1.2 metre high open style fence along the front boundary of Lavarack Street with 350mm wide piers. **Figure 14** below shows the elevation of the proposed front fence.

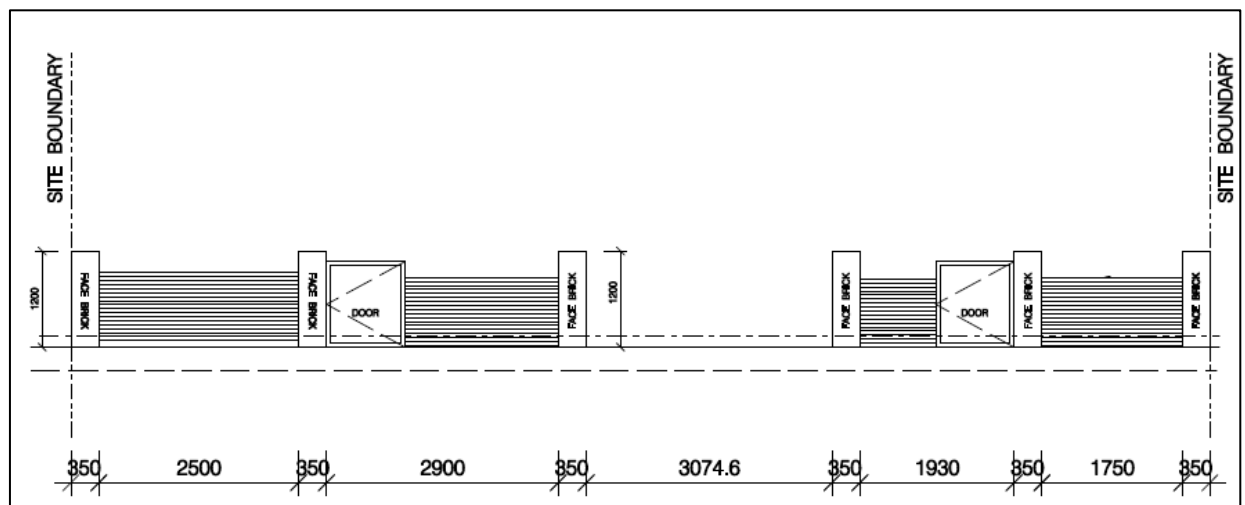


Figure 14: Proposed front fence elevation to Lavarack Street.

• **Strata Subdivision**

The proposal also seeks consent for strata subdivision of the finished building. The subdivision plan and line of subdivision is shown in **Figure 15** below:

ITEM 2 (continued)

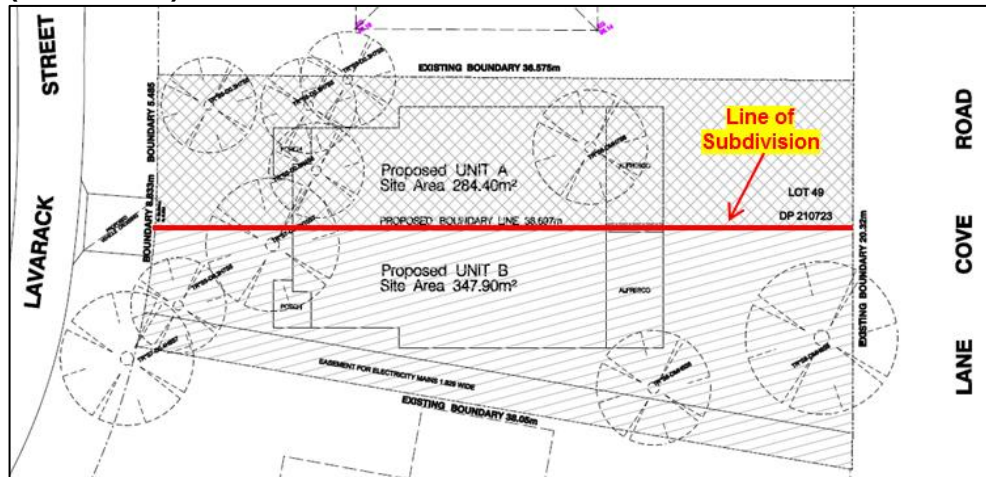


Figure 15: Proposed subdivision.

4. Background

Application History

7 November 2018	The Development Application was lodged.
21 November – 10 December 2018	The application was notified to surrounding property owners.
8 May 2019	<p>A letter was sent to the Applicant requesting the application be withdrawn. The subject site consisted of two (2) road frontages to Lane Cove Road (20.32 metres) and a non-compliant frontage of 14.337m metres to Lavarack Street.</p> <p>The proposal did not comply with the development standard as the proposal sought to utilise the non-compliant frontage to Lavarack Street as its primary road frontage. The proposal represented a 28% shortfall in the development standard for the minimum frontage required for dual occupancy (attached) developments. The application was not supported by a Clause 4.6 variation request to vary the development standard.</p> <p>A particular concern was raised regarding the suitability of the site for the proposed development, given the significant shortfall in the frontage. The justifications required under Clause 4.6 include consistency with the objectives of the zone, standard and demonstration that it is unreasonable or unnecessary to comply with the standard and that the proposal is in the public interest.</p> <p>Given the pre-conditions required to enable an acceptable</p>

ITEM 2 (continued)

	<p>variation, Council were of the view that the application could not be supported and the applicant was encouraged to withdraw the application.</p> <p>The letter also addressed the following non-compliances with Council's DCP 2014 - Part 3.3: Dwelling Houses and Dual Occupancy (Attached):</p> <ul style="list-style-type: none"> • Section 2.1 - Desired Future Character; • Section 2.9.1, Control (c) – The garages were not 1.0 metres behind the dwellings facade; and, • Section 2.13, Control (e) – Extent of hard paving within the front setback. <p style="padding-left: 40px;">Also addressed in the letter was other matters for consideration which included insufficient detail and inconsistencies as shown on the plans:</p> <ul style="list-style-type: none"> • Insufficient detail was provided to determine the extent of excavation and filling proposed within and outside the building footprint. The plans did not detail any retaining walls, which given the proposed levels, would be necessary; • The impact on existing trees on the site including the adjoining property may be impacted by excavation external to the building footprint, which was not taken into account; • The landscape plan and architectural plans were inconsistent with regards to the pedestrian pathways, which have not been shown on the plans despite entrance doorways shown on the front fence elevation; • The proposal did not provide a driveway long section showing details of the driveway cross over from Lavarack Street into the site. The architectural plans also did not show the driveway; • The brick pier located in the centre of the driveway, presented safety issues for vehicles reversing out of the driveway; • The measurements nominated on the front fence elevation were not accurate; • The architectural plans did not nominate the location and sill height RL's of all windows of neighbouring properties; • The hot water systems as required in the BASIX commitments were not shown on the plans; and, • The balcony of Unit 02 was encroaching over the existing
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ITEM 2 (continued)

	electricity easement, which was not supported.
27 May 2019	The applicant had indicated to Council that the application was not to be withdrawn and requested an extension of time to submit amended plans and a Clause 4.6 - Variation request. An extension was granted, however it was advised to the applicant that the application would not be supported despite a Clause 4.6 variation submitted.
13 June 2019	A further extension was requested by the applicant. The extension was granted by Council.
28 June 2019	The applicant submitted all amended information, including a 4.6 - Variation and the application was able to progress.
9 July – 26 July 2019	The amended plans were notified to surrounding property owners.

5. Planning Assessment
5.1 State Environmental Planning Instruments
State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

A BASIX Certificate (Certificate No. 968963M dated 19 October 2018) has been submitted with the application.

The Certificate confirms that the development will meet the NSW government's requirements for sustainability. The proposed certificate targets are set out below:

Commitment	Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	51

State Environmental Planning Policy No. 55 – Remediation of Land

In accordance with Clause 7 of SEPP 55, a consent authority must consider if the land is contaminated, the extent of the contamination, suitability of the proposed use and remediation to standards to ensure if the proposal is suitable.

The site has historically been used for a low density residential use and is not located in close proximity to any known contaminated land. Therefore, it is considered that the subject site satisfies the requirements of SEPP 55 with regard to the proposed development.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

ITEM 2 (continued)

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation. The development proposes the removal of the following existing trees from the site:

- Pencil Cactus;
- Caucasian Fir;
- Three (3) White Cedar's;
- Japanese Cedar;
- Camellia;
- Eastern Red Bud;
- Chinese Juniper;
- Minor Shrubs and weeds; and,
- Camphor Laurel located on the street front.

The proposed trees to be removed are not considered to contain biodiversity values. The proposed trees to be removed do not contain a significant retention value and some species are not native. It is considered that the proposed development does not unduly impact on any species with biodiversity value and the proposal is consistent with the objectives of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

The subject site has a frontage to Lane Cove Road which is a classified road and is subject to consideration pursuant to Clause 101 and 102 of the SEPP. Clause 101(2) states the following:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The development does not propose vehicular access from Lane Cove Road and satisfies Clause 101 (2)(a). The proposal will not adversely affect the ongoing operation of Lane Cove Road and satisfies Clause 101 (2)(b).

ITEM 2 (continued)

However, concern is held that the proposal has not been designed or includes measures to ameliorate potential traffic noise or vehicle emissions within the site arising from Lane Cove Road as required by Clause 101(2)(c). The proposal has been designed utilising single glazed openings (Sheet DWG No. A000) within the eastern elevation associated with Dwelling 1.

This is not considered to be an appropriate means of protecting the dwelling from traffic noise and will impact upon the amenity of future occupants. The application has not been accompanied with an acoustic assessment or a specialist report to measure air quality on the impact from vehicle emissions from Lane Cove Road.

Clause 102(1)(a) applies to residential developments which are likely to be affected by noise and/or vibration from roads with an annual average daily traffic volume of more than 20,000 vehicles. Lane Cove Road is anticipated to generate a traffic volume of 77,000 vehicles per day. The proposal is required to be considered under the provisions of Clause 102(3) which states:

- 3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Insufficient information has been submitted with the application and limited details to assess potential traffic noise and/or vibration from Lane Cove Road. Accordingly, these requirements of the SEPP are considered not to be satisfied.

The applicant has provided justification outlined in the submitted Statement of Environmental Effects prepared by Andrew Robinson Planning Services Pty Ltd dated November 2018. The justification is as follows:

“The application is not accompanied by an Acoustic Assessment. Notwithstanding, it is anticipated that the proposed materials and methods of construction will be sufficient to achieve the required noise criteria without the need for substantial attenuation measures.

As such, it is requested that if consent is granted, Council impose a condition to require appropriate construction materials and methods to be incorporated into the design and construction of the building in order to satisfy the noise design criteria specified under the ISEPP, the BCA, AS1469 – Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors, AS3671 – Road Traffic

ITEM 2 (continued)

Noise Intrusion – Building Siting and Construction, Development Near Rail Corridors and Busy Roads – Interim Guidelines, and the NSW EPA Industrial Noise Policy.”

The Applicant is reliant on construction methods to mitigate any impact on noise or vehicle emissions within the site. No details have been provided to Council to ascertain why these methods will be or determine suitability. Without considering this impact at the development application stage, Council is not satisfied that the proposal will be consistent with the provisions of Clause 102(3)(a) and (b).

The proposal is consistent with the objective of Clause 101(1)(a) as the development does not compromise the effective and ongoing operation and function of Lane Cove Road. However, the proposal is inconsistent with the objective of Clause 101(1)(b) and provisions of Clause 101(2)(c) and Clause 102(3)(a) and (b) as measures have not been demonstrated to prevent or reduce the potential impact of traffic noise and vehicle emissions arising from Lane Cove Road. Therefore, the proposal cannot be supported.

5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

RLEP 2014 commenced on 12 September 2014 as the new environmental planning instrument applicable to the City of Ryde.

Outlined below are the following clauses applicable to the proposal.

Clause 2.3 - Zone Objectives and Land Use Table

Under Ryde LEP 2014, the property is zoned R2 Low Density Residential, and the proposed development being a *Dual Occupancy (Attached)* is permissible with Council's consent.

Aims and objectives for residential zones:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

The proposal provides for housing within a low density environment and the provision of a dual occupancy development provides for a variety of housing types. A concern is raised to the provision of additional housing within the low density residential environment on a lot with a deficient frontage for dual occupancy (attached) developments. The provision of an attached dual occupancy on a site that is contrary with Clause 4.1B, conflicts with objectives of the zone (Further details are discussed in the table contained within *Section 5.2 - Ryde Local Environmental Plan 2014, Clause 4.6 - Exemptions to Development Standards*).

ITEM 2 (continued)
Part 4 - Principal development standards

The following table provides a summary of the applicable Clauses regarding the principal development standards of the proposal:

Clause	Proposal	Compliance				
4.1A(2) Dual Occupancy (Attached) subdivisions						
Development consent may only be granted to the strata subdivision of a dual occupancy (attached) on land in Zone R2 Low Density Residential if the land has an area of at least 580m ² .	Site Area: 638.5m ²	Yes				
4.1B Minimum lot sizes for dual occupancies and multi dwelling housing						
<p>(1) The objective of this clause is to achieve planned residential density in certain zones.</p> <p>(2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:</p> <p>(a) The area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and</p> <p>(b) The road frontage of the lot is equal to or greater than 20 metres.</p> <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="text-align: center;">Column 1</th> <th style="text-align: center;">Column 2</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Dual occupancy (attached)</td> <td style="text-align: center;">580 square metres</td> </tr> </tbody> </table>	Column 1	Column 2	Dual occupancy (attached)	580 square metres	<p>R2 Low Density Residential</p> <p>Dual Occupancy (Attached)</p> <p style="text-align: center;">Site Area: 638.5m²</p> <p>Dual frontage:</p> <p>Primary frontage to Lavarack Street: 14.31 metres.</p> <p>Width to Lane Cove Road: 20.32 metres</p>	<p>Yes</p> <p>Yes</p> <p>No – See Clause 4.6 Variation below</p>
Column 1	Column 2					
Dual occupancy (attached)	580 square metres					
4.3(2) Height of Buildings						
9.5m	<p>Max point of dwelling: RL99.9 EGL below ridge: RL93.40 Overall Height = 6.5 metres</p> <p>However, the submitted plans do not nominated a ridge height and the submitted plans the scale is inconsistent with the dimensions shown. Nonetheless, the proposal is sited below the height standard.</p>	Yes				
4.4(2) Floor Space Ratio						
0.5:1 (319.25m ²)	<p>Ground Floor: 182.49m² First Floor: 171.11m² Total GFA: 353.6m² Minus (36m²) for garages: 317.6m²</p>	Yes				

ITEM 2 (continued)

Clause	Proposal	Compliance
	$\frac{317.6\text{m}^2}{638.5\text{m}^2}$ <p>FSR = 0.50:1</p>	

Clause 4.6 – Exemptions to Development Standards.

The subject site has a dual frontage of 14.337 metres to Lavarack Street and to Lane Cove Road of 20.32 metres. The site meets the 20 metre frontage requirement to Lane Cove Road. However, the proposal has been designed to present to Lavarack Street including vehicular access where the site has a frontage of 14.337 metres and does not comply with the standard.

Reference is made to the requirements of SEPP (Infrastructure) 2007 - Clause 101(2)(a) which states:

“The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road”.

Lane Cove Road is a classified road and Lavarack Street is a local road with unobstructed vehicular access. Under the requirements of the SEPP, Lavarack Street provides for the alternative vehicular access and it would be unlikely for the site to utilise Lane Cove Road as its primary road frontage. As a result, the development has been designed to present to Lavarack Street as the road frontage and contravenes Clause 4.1B (2)(b) of RLEP 2014. Clause 4.1B (2)(b) of RLEP 2014 states:

“(b) the road frontage of the lot is equal to or greater than 20 metres”

Whilst acknowledged that there is a 20.32 metre frontage to Lane Cove Road, the control requires the road frontage to be equal to or greater than 20 metres. This requires that any road frontage where a dual occupancy (attached) development presents, to contain a minimum of 20 metre width.

The proposal results in a 28% variation to the development standard. The Applicant has submitted a Clause 4.6 request prepared by Andrew Robinson Planning Services Pty Ltd dated 26 June 2019 to vary the development standard and the following below is a discussion based on the Applicant’s submission, including the assessment made by Council:

ITEM 2 (continued)**Is the proposed development consistent with the objectives of the particular standard?**

The applicant addresses the objectives of the control within the section “*Strict Compliance is unreasonable or unnecessary in the circumstances of the case*” of the submitted Clause 4.6. The applicant addresses the objectives as follows:

The objectives of the minimum lot sizes for dual occupancy and multi dwelling housing principal development standard is to achieve planned residential density in certain areas. It is considered that the proposed development achieves the objective of the standard for the following reasons:

- *The objective of the development standard specifically relates to residential densities (i.e. the population to be accommodated on the site having regard to its size), not streetscape appearance and character or the potential to alter the subdivision pattern;*
- *The site exceeds the minimum required site area and has a road frontage (albeit at the rear of the site) that achieves the required 20m minimum road frontage and as such, has the environmental capacity to accommodate the proposed increased residential density. This view is supported by the fact that consent has been granted to an attached dual occupancy at No. 71 Lavarack Street that has a similar site area, although in opposite circumstances to No. 53, the site achieves a 20m road frontage to Lavarack Street, but narrows to the rear. Notwithstanding, the residential density for both properties is essentially the same (i.e. a doubling of the residential density);*
- *It is considered that a distinction cannot be drawn between the proposed development and the approved dual occupancy at No. 71 Lavarack Street in terms of a failure to satisfy the objective of the development standard on the basis of density, as the Council has accepted that the proposed density can be achieved on a site of greater than 580m².*

Notwithstanding, given that Council has raised streetscape and landscape character and the potential to adversely affect the existing subdivision pattern as reasons why the proposal fails to meet the objective, the following comments are made:

- *The width of the site at the front building line has increased to 15.29m and the proposed landscaping within the front setback area incorporates feature trees on either side of the driveway, together with an understorey of shrubs and groundcovers, as well as turf, similar to the treatment of the majority of existing properties in the street;*

ITEM 2 (continued)

The proposed scale and massing of the building is consistent with the desired future character of the locality and the proposed landscape character is consistent with the established landscaped character.

Assessment Officers Comment:

Clause 4.1B(1) identifies the standard's objective. The objective is as follows:

"The objective of this clause is to achieve planned residential density in certain zones."

In order to achieve the housing target requirements established in The Greater Sydney Region Plan within the Sydney North District Plan Clause 4.1B establishes minimal frontage and area requirements to facilitate dual occupancy development within the R2 zone. The purpose of this standard is to facilitate the additional dwellings required to meet the nominated housing targets.

The Greater Sydney Region Plan nominates a planned density of an additional 7,600 dwellings within the City of Ryde by 2021. As of 30 January 2019, The City of Ryde had delivered an anticipated 12,786 dwellings. The Ryde Local Government Area has exceeded this housing density requirement set by the Sydney North District Plan.

Land zoned R2, had delivered 1,372 dwellings with a further anticipated 262 dwellings. This additional density is anticipated on sites which meet the development standard of 20 metre frontage with (inclusive of the 580m² site area requirement).

Whilst the applicant identifies the objective of the control, the applicant's justification relates to the proposal's consistency with the required site area, existing development within Lavarack Street (No. 71 Lavarack where the primary frontage is 20.115 metres) and the siting of the development being wide enough to accommodate such development.

These matters do not address the minimum width departure and how then the site meets the specific objective. All developments are expected to achieve compliance the 20 metre standard.

Development standards are ordinarily the manner of achieving planning objectives. However, if the development has an alternative means of achieving the objective, strict compliance with the standard would be unnecessary as it would be achieved anyway and unreasonable as no purpose would be achieved. The onus is upon the applicant to demonstrate how the objective is met. Reliance upon other approvals does not address this. The requirement is for this development to demonstrate how the objective is achieved. This has not been met.

The applicant's justification relies upon the 20.32 metre width to Lane Cove Road is sufficient to satisfy the objective. This justification does not address how the proposal

ITEM 2 (continued)

seeks to utilise Lavarack Street as the primary frontage to accommodate the development, this results in further implications to the character.

The site, being non-compliant with the standard seeks to satisfy the pre-condition in stating it meets the objective of the standard. The objective has not been achieved with the justifications made by the applicant. The proposal does not meet the objective of Clause 4.1B(1) for dual occupancy developments.

Is the proposed development consistent with the objectives for development within the zone?

The following points below are the applicant's demonstration on consistency with the objective of the zone:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposed dual occupancy development will provide additional residential accommodation and housing choice in an established residential neighbourhood, in a location with good access to public transport, shops, facilities and recreational opportunities.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Noted. The proposed residential land use provides residential accommodation that is located in proximity to shops and facilities that will meet the day to day needs of residents of the proposed development.

- *To provide for a variety of housing types.*

As noted above, the proposed attached dual occupancy will replace the existing dwelling house with new and modern residential accommodation in the form of a dual occupancy, in a low density residential form compatible with the emerging and desired future character of the locality.

Assessment Officers Comment:

The objective of R2 - Low Density Residential Zones are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

ITEM 2 (continued)

The applicant relies on the justification that the proposal achieves the objectives of the zone through the provision of an additional dwelling which is proposed within an established neighbourhood that is within proximity to public transport and local amenities.

Whilst it is agreed that the proposal will provide for additional housing within a low density environment and would provide for a variety of housing types. A fundamental concern is raised in regard to the provision of additional housing within the low density residential environment. As stated above, the objective of the control is to achieve planned residential density. This planned residential density was established within the Greater Sydney Region Plan which nominated a planned density of an additional 7,600 dwellings within the City of Ryde by 2021.

The City of Ryde has exceeded this density target and delivered 12,786 dwellings. With consideration for R2 – Low Density Residential zones, the City of Ryde has delivered 1,372 dwellings with a further anticipated 262 dwellings.

This additional density is anticipated on sites which meet the development standard of 20 metre frontage with (inclusive of the 580m² site area requirement). Therefore, the provision of an attached dual occupancy on a site that is contrary with the control and objective of Clause 4.1B and conflicts with objectives of the zone.

It should be further noted that R2 low density residential objectives are not LGA specific and therefore does not relate to the anticipated density within the City of Ryde.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant's justification is as follows:

As described earlier, the road frontage of the site to Lavarack Street is 5.69m less than the statutory minimum and represents a variation of 28% below the 20m development standard. In numerical terms this represents a relatively significant variation to the principal development standard. Notwithstanding, as demonstrated in the NSW LEC decisions in Micaul Holdings Pty Limited v Randwick City Council and Moskovich v Waverley Council there should be no artificial conservatism about the use of Clause 4.6 based on the numerical extent of the variation being sought, given that the purpose of Clause 4.6 is to allow flexibility and to achieve better outcomes for a site by allowing developments to exceed development standards where there are justifiable circumstances.

An important finding in Micaul Holdings Pty Limited was that while the judgement did not directly overturn the Four2Five v Ashfield decision, the Chief Judge indicated that one of the obligations of a consent authority is to be satisfied that the applicant's written request has adequately addressed the matters in Clause 4.6(3), namely...that

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compliance with the development standard is unreasonable and unnecessary in the circumstances of the case....and that there are sufficient environmental planning grounds to justify contravening the development standard.

In this particular instance, it is considered that compliance with the development standard is unreasonable and unnecessary and that there is sufficient environmental planning merit to justify the proposed non-compliance, as described below:

The objectives of the minimum lot sizes for dual occupancy and multi dwelling housing principal development standard is to achieve planned residential density in certain areas. It is considered that the proposed development achieves the objective of the standard for the following reasons

- The objective of the development standard specifically relates to residential densities (i.e. the population to be accommodated on the site having regard to its size), not streetscape appearance and character or the potential to alter the subdivision pattern;*
- The site exceeds the minimum required site area and has a road frontage (albeit at the rear of the site) that achieves the required 20m minimum road frontage and as such, has the environmental capacity to accommodate the proposed increased residential density. This view is supported by the fact that consent has been granted to an attached dual occupancy at No. 71 Lavarack Street that has a similar site area, although in opposite circumstances to No. 53, the site achieves a 20m road frontage to Lavarack Street, but narrows to the rear. Notwithstanding, the residential density for both properties is essentially the same (i.e. a doubling of the residential density);*
- It is considered that a distinction cannot be drawn between the proposed development and the approved dual occupancy at No. 71 Lavarack Street in terms of a failure to satisfy the objective of the development standard on the basis of density, as the Council has accepted that the proposed density can be achieved on a site of greater than 580m².*

Notwithstanding, given that Council has raised streetscape and landscape character and the potential to adversely affect the existing subdivision pattern as reasons why the proposal fails to meet the objective, the following comments are made:

- The width of the site at the front building line has increased to 15.29m and the proposed landscaping within the front setback area incorporates feature trees on either side of the driveway, together with an understorey of shrubs and groundcovers, as well as turf, similar to the treatment of the majority of existing properties in the street;*
- The proposed scale and massing of the building is consistent with the desired future character of the locality and the proposed landscape character is consistent with the established landscaped character.*

ITEM 2 (continued)

In consideration of the above, Council's attention is also drawn to the Department of Planning and Environment's publication "Varying development standards: A Guide" (August 2011), which outlines the matters that must be considered when varying a development standard.

*The Guide has essentially adopted the 5 point test for consideration set out by the Land & Environment Court in *Wehbe v Pittwater Council* (2001) NSW LEC 827, specifically that there are five different ways in which compliance with a development standard can be considered unreasonable or unnecessary, namely:*

- *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: *As discussed above, the proposal is considered to be consistent with the objective of the minimum lot sizes for dual occupancy and multi dwelling housing development standard, notwithstanding the numerical variation.*

- *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: *The objective of the minimum lot sizes for dual occupancy and multi dwelling housing development standard remains relevant and the proposal is consistent with, or at least is not antipathetic to this objective, notwithstanding the numerical variation. The objective relates to density and in the absence of further objectives, it is considered that issues such as streetscape and landscape character and subdivision pattern do not relate to the objective.*

- *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: *The proposal is consistent with the objectives of the minimum lot sizes for dual occupancy and multi dwelling housing development standard, notwithstanding the numerical variation, and it would not defeat the purpose of the standard.*

- *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: *The minimum lot sizes for dual occupancy and multi dwelling housing development standard has not been abandoned by Council through its actions in granting consent for other buildings in the vicinity that depart from the standard. Notwithstanding, in granting consent to a dual occupancy on another site of a similar size (No. 71) demonstrates that Council is satisfied that the proposed density can be achieved on an allotment of this size.*

- *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be*

ITEM 2 (continued)

unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: *The proposed attached dual occupancy is a permissible land use and the zoning of the site is considered to be appropriate in this location and in the context of the surrounding land uses and built form.*

In light of the above, it has been demonstrated that the first test under the Wehbe method has been met, such that the requirement to strictly adhere to the numerical development standard for minimum lot sizes for dual occupancy and multi dwelling housing is considered to be unreasonable and unnecessary in this instance.

Assessment Officers Comment:

The most common way to demonstrate that compliance with the development standard is unreasonable or unnecessary is that the objectives of the development standard are achieved despite non-compliance with the standard. However, the submission does provide an assessment against other means of demonstrating that compliance is unreasonable or unnecessary.

Whilst the Applicant's submission identifies the objective of the control, it does not demonstrate how it is achieved.

The Applicant's justification is reliant on the site area and existing development within Lavarack Street (No. 71) to demonstrate acceptability with the departure of the standard. In particular the following points have been noted from the justification provided by the applicant:

- The 20.32 metre frontage to Lane Cove Road is achieved. The site does not meet the road frontage to Lavarack Street in which the proposal has been designed to utilise Lavarack Street as its primary frontage.
- The Applicant references 71 Lavarack Street. This site achieves the 20 metre frontage requirement to Lavarack Street. The rear frontage to Lane Cove Road does not satisfy the frontage requirement. The Applicant states that both sites are essentially the same. The sites are different and the non-compliance not the same.
- The Applicant states that the width of the dwellings at the building line is 15.29 metres. The site does not meet the minimum 20 metre width requirement until 34.17 metres into the site and results in only 49m² of site area meeting the 20 metre requirement. The site would then be non-compliant with the minimum site area requirement of 580m² required by Clause 4.1B(2)(a). (**Figure 16**).
- The scale and mass is consistent within the existing streetscape. All development is subject to the suite of built form controls. The scale and massing of development is consistent with what the control requires and does not provide for justification for the frontage requirement not being met. By approving a development of this kind, it will result in an undesirable outcome for the desired future character of the area.

ITEM 2 (continued)

The Applicant has addressed the Webhe provisions. The Applicant agrees that the standard has not been abandoned and the site is appropriately zoned. The proposal relies upon the site being wide enough to accommodate an attached dual occupancy and existing development and compliance as to its acceptability. It should be noted that all development is required to comply with these controls and this is not a sufficient justification for contravening the standard.

The applicant's justification has failed to demonstrate how the proposal achieves the objective of the standard despite the non-compliance and therefore it is unnecessary or unreasonable to comply with the standard. The proposal has not met the jurisdictional prerequisite of Clause 4.6(3)(a).

Are there sufficient environmental planning grounds to justify contravening the development standard?

The Applicant provides the following response for sufficient environmental planning grounds to justify contravening the development standard:

Based on the discussion above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- *The objective specifically relates to density (i.e. the environmental capacity of the site to accommodate the proposed increase in population density) and on the basis of density, it is difficult to draw a distinction between the ability of the similar sized allotment at No. 71 to support an attached dual occupancy and the inability of No. 53 to support an attached dual occupancy where the resulting density on both sites would be the same;*
- *Despite the reduced road frontage to Lavarack Street, the site exceeds the minimum site area of 580m² and achieves the required 20m road frontage to Lane Cove Road. As such, the site is considered to have the physical capacity to support the proposed density.*

Assessment Officers Comment:

The written submission is required to establish there are sufficient environmental planning grounds to justify contravening the standard (Clause 4.6(3)(b)).

The request has not identified the grounds which are particular to the circumstances of the proposed development on the subject site. The justification relies upon existing development at 71 Lavarack Street; this is not a sufficient environmental planning ground in itself notwithstanding the difference in the site circumstances.

ITEM 2 (continued)

The site at no point meets the combination of minimum site area and site width required by Clause 4.1B(2)(a) and (b).

The Applicant has not demonstrated that there are specific conditions about this site to vary the standard. Compliance with other planning controls is not a sufficient environment planning ground. Absence of impact, is not a sufficient environmental planning ground. The built form is something that could be achieved on a site which complied with the development standard.

The written request has not adequately addressed the matters required by Clause 4.6(3)(b). The proposal has not demonstrated there are sufficient environmental planning grounds to justify contravention of the development standard.

The consent authority cannot be satisfied by the justification made that the matters required to be addressed in Clause 4.6(3) have in fact been demonstrated.

Is the proposed development in the public interest?

The Applicants response is as follows:

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Table below demonstrates that the proposed development will be in the public interest because it will be consistent with both the minimum lot size for dual occupancies and multi dwelling housing principal development standard objective and the R2 Low Density Residential zone objectives of the LEP.

Clause 4.1B - Minimum lot sizes for dual occupancies and multi dwelling housing

a) *To achieve planned residential density in certain zones.*

Despite the non-compliance to the minimum road frontage to Lavarack Street, the site has the environmental / physical capacity to support the proposed increase in population density.

In this regard, it is difficult to draw a distinction between the ability of the similar sized allotment at No. 71 Lavarack Street to support an attached dual occupancy and the inability of No. 53 to support an attached dual occupancy where the resulting density on both sites would be the same.

R2 Low Density Residential - Zoning Objectives

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- *To provide for the housing needs of the community within a low density residential environment.*

The proposed dual occupancy development will provide additional residential accommodation and housing choice in an established residential neighbourhood, in a location with good access to public transport, shops, facilities and recreational opportunities.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Noted. The proposed residential land use provides residential accommodation that is located in proximity to shops and facilities that will meet the day to day needs of residents of the proposed development.

- *To provide for a variety of housing types.*

As noted above, the proposed attached dual occupancy will replace the existing dwelling house with new and modern residential accommodation in the form of a dual occupancy, in a low density residential form compatible with the emerging and desired future character of the locality.

Assessment Officers Comment:

This part of the clause sets out the considerations of public interest for the purposes of Clause 4.6, which are:

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

The public interest is being consistent with the objectives of the development standard. The applicant has not satisfied that the development is consistent with the objectives of the development standard as discussed above. The development is not in the public interest for the following reasons:

- The submission has failed to satisfactorily address consistency with the objective of Clause 4.1B. The residential densities required for the Ryde LGA have been achieved and yet the proposal seeks to provide for an attached dual occupancy on a site which does not meet the minimum the frontage width to facilitate such a development. The site is considered only capable of accommodating a single residential dwelling;
- The Applicant has not satisfactorily demonstrated that the control is unreasonable or unnecessary in the circumstances of the case as required by Clause 4.6(3)(a); and,

ITEM 2 (continued)

- No adequate justification has been provided by the applicant that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

As the development has not met the prerequisites of Clause 4.6(3)(a) and (b) it cannot be demonstrated that the proposal satisfies Clause 4.6(4)(a)(i). Therefore, the proposal is not considered to be in the public interest.

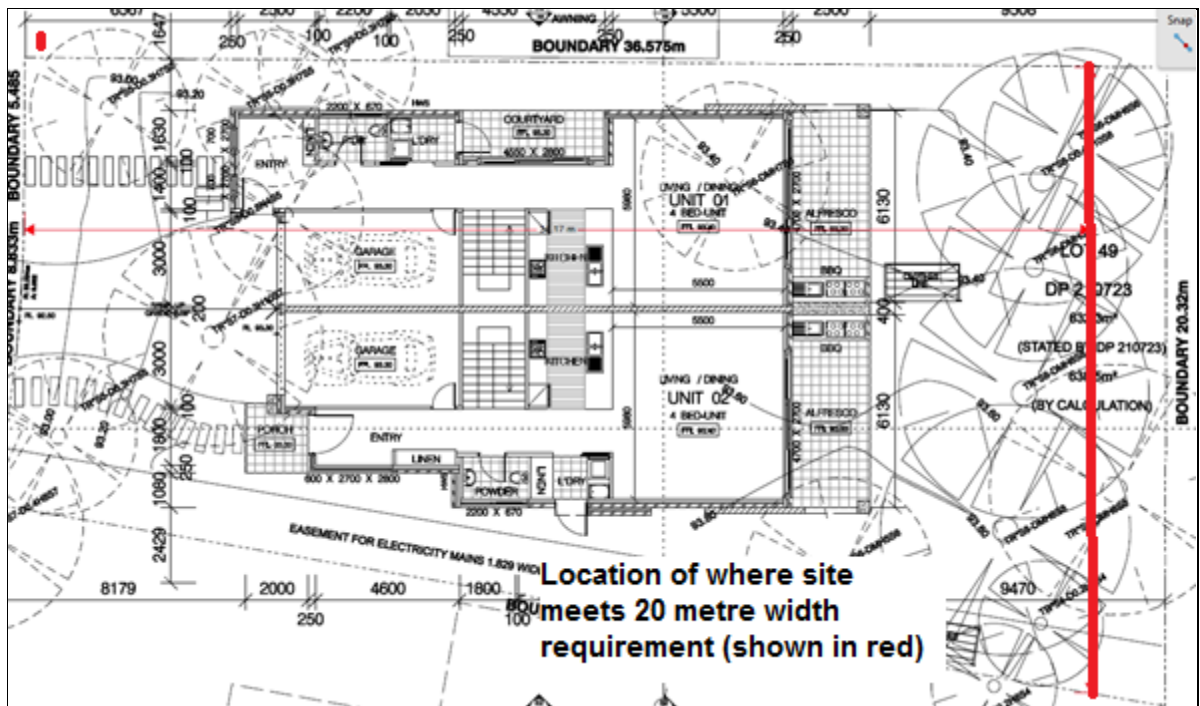


Figure 16: Site plan demonstrating where the 20 metre width is achieved.

Figure 16 represents the location on the site in which the minimum 20 metre width required by Clause 4.1B(2)(b) is achieved. At this point, The site area is 49m² which is a significant departure from the 580m² site area required by Clause 4.1B(2)(a).

Part 6 - Additional local provisions

Clause 6.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.

The proposal seeks to excavate external to the buildings footprint to maximum depths of 350mm within the private open space of Unit 01 and 540mm – 650mm to the south eastern corner of Unit 02. The proposal also seeks to excavate to a depth of 400mm within the buildings footprint under internal living area of Unit 02 and

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introduce fill with a maximum height of 130mm contained within the buildings footprint buildings.

The proposed extent of excavation and fill is not considered to result in any adverse detrimental impacts upon environmental functions and processes, neighbouring uses or features of surrounding land.

The proposed development involves appropriate levels of cut and fills which does not adversely impact the amenity of adjoining properties and is consistent with the provisions of Clause 6.2(3).

Clause 6.4 – Stormwater Management

The objective of this control is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. The proposal is consistent with the provisions of Clause 6.4(3) in that the proposal has been designed to maximise the use of permeable surfaces allowing for water filtration and avoids adverse impacts of stormwater runoff on adjoining properties and receiving waters.

The proposed stormwater management system for the development will incorporate combined onsite detention systems within the rain water tanks which and will discharge to the kerb in Lavarack Street.

The internal drainage details for the development as proposed complies with Council's requirements and is designed to mitigate any potential adverse impacts of stormwater runoff on adjoining properties. The proposal satisfies the provisions outlined in Clause 6.4.

5.3 Draft Environmental Planning Instruments**Draft Remediation of Land State Environmental Planning Policy**

The Draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. The subject site has been historically used for residential purposes. As such, it is unlikely

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to contain any contamination and further investigation is not warranted in this case.

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is consistent with the provisions of the draft SEPP.

5.4 Development Control Plans**Ryde Development Control Plan 2014 (RDCP 2014)**

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.3: Dwelling Houses and Dual Occupancy (Attached);
- Part 7.2: Waste Minimisation and Management;
- Part 8.1: Construction Activities;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways;
- Part 8.5: Public Civil Works;
- Part 9.2: Access for People with Disabilities;
- Part 9.3: Parking Controls; and
- Part 9.5: Tree Preservation.

The provisions of RDCP 2014 have been considered in this assessment. Parts 8.1 to 9.5 are addressed separately via considerations given in the referral responses provided by Council's Senior Development Engineer and Council's Landscape Architect. A discussion of the non-compliance's with the provisions of the DCP is discussed below:

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)**Section 2.1 - Desired future character of the area**

The objectives of this control are to ensure that development is consistent with the desired future character of the low density residential areas. A feature of the desired future character of low density residential areas is to limit the amount of dual occupancy (attached) dwellings. The intent behind limiting the amount of dual occupancy developments within R2 Zones is established under the objective of RLEP

ITEM 2 (continued)

2014 - Clause 4.1B(1) which is to “*achieve planned residential density in certain zones.*”

This objective primarily relates to overall residential density within R2 zones. As stated above in *Section 5.2 - Ryde Local Environmental Plan 2014, Clause 4.6 - Exemptions to Development Standards* of this report, the Greater Sydney Region Plan within the Sydney North District Plan nominates a planned density of an additional 7,600 dwellings within the City of Ryde by 2021 in which the Ryde LGA has significantly exceeded this target.

The desired future character is to limit dual occupancies. This is achieved by allowing for dual occupancy development on specific sites which meet the minimum allotment size and width. For example there are existing dual occupancies within Lavarack Street, being 52 and 71 Lavarack Street, these developments achieve the minimum 20 metre frontage requirement.

The proposal seeks to develop a site non-compliant primary frontage and would be contrary to the objective of development being consistent with the desired future character.

Section 2.5.1, Control's (c)(i) and (g)(i) – Streetscape

The objectives of the streetscape controls seek to ensure that dwellings relate well to each other. The controls require new development to be compatible with the existing streetscape. Control's (c)(i) and (g)(i) specify that the orientation of dwellings, are to be consistent with existing development within the streetscape, this can be achieved by having front doors and building entries which are prominent elements within the façade, apparent and identifiable from the street.

The proposal has been designed to orientate Unit 01's front entrance to the southern side boundary. This design response results in the proposal presenting as a single dwelling without two distinguished front entrances. Whilst this orientation is not consistent with the streetscape, it does result in a better presentation to the streetscape in achieving conformity in the built form and sits within the streetscape context.

The front entrances of the development will not be prominent features of the façade, or apparent and identifiable from the street. The design has incorporated a centralised garage whilst designating the entrance door of Unit 01 to face the south and the entrance of Unit 02 to be setback 1.0 metres behind the face of the garages (**Figure 17**).

ITEM 2 (continued)



Figure 17: Architectural perspective showing the dwelling entrances.

Whilst the design response is trying to achieve a presentation to Lavarack Street of a single dwelling, it results in departures from the control requirement. The Applicant's intent behind the orientation of the entrances is to present the development as a single dwelling when viewed from Lavarack Street which is achieved.

Section 2.9.1, Control (c) and Section 2.11.1, Control's (c), (j) and (p) - Garage setback.

Section 2.9.1, Control (c) and Section 2.11.1, Control's (c), (j) and (p) relate primarily to the positioning and design of the garages. The controls require garages to be setback a minimum of 1.0 metre from the dwelling's front façade.

The objectives of the controls are to provide articulation to a dwellings front façade whilst ensuring that car parking structures and garage doors are not prominent features with regard to either the individual lot or the streetscape.

The proposed garage is setback 1.5 metres behind the façade of Unit 01, however the proposal is non – compliant with Controls 2.9.1(c), 2.11.1 (c) and (p)) as the garage protrudes 1.0 metres in front of the main façade of Unit 02 (**Figure 18**).

ITEM 2 (continued)

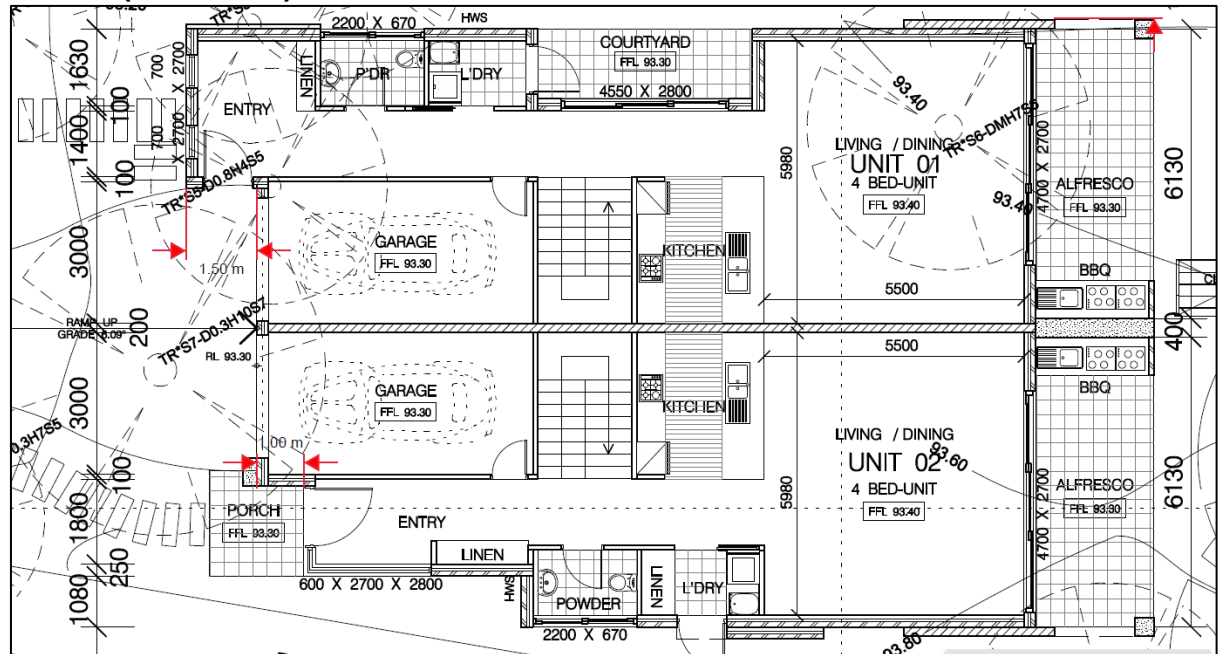


Figure 18: Measurements of the garage location from the dwellings main façade.

The proposal has been designed siting the entrance to Unit 01 being orientated towards the southern side boundary and the dwelling entrance to Unit 02 being recessed and is sited behind the front of the proposed garages. As a result, the proposal is technically non-compliant with the control requirements.

The garage doors will have a combined width of 5.2 metres with a height of 2.8 metres, these results in a total surface area of 14.56m². The street elevation utilises a combination of materials within the front façade including sandstone block wall finish, frosted glass, timber louvres, render and timber. The proposal includes articulating elements to achieve the desired presentation.

Section 2.9.2, Control (b) - Side Setbacks

Control 2.9.2 (b) states two (2) storey dwellings are to be setback 1.5 metres from the side boundary, this measurement is measured at 90 degrees from the allotment's side boundary to the outside edge of the building elevation including balconies, terraces and porches.

The proposal is calculated to be non-compliant with the required side setback at the rear of proposed Unit 01. Council's measurements indicate that the side setback to the northern boundary is 1.26 metres at the ground floor and first floor (**Figure 19**). The proposal is non-compliant with the control.

The objectives of the control is to enable building siting to be compatible with the streetscape, provide car access and provide access to the rear of the site.

The proposal despite the non-compliance is consistent with the objectives of the control. The non-compliance at the rear of the site will not be read from Lavarack

ITEM 2 (continued)

Street, car access is not provided to the rear of the site and pedestrian access is attainable within the provided setback.

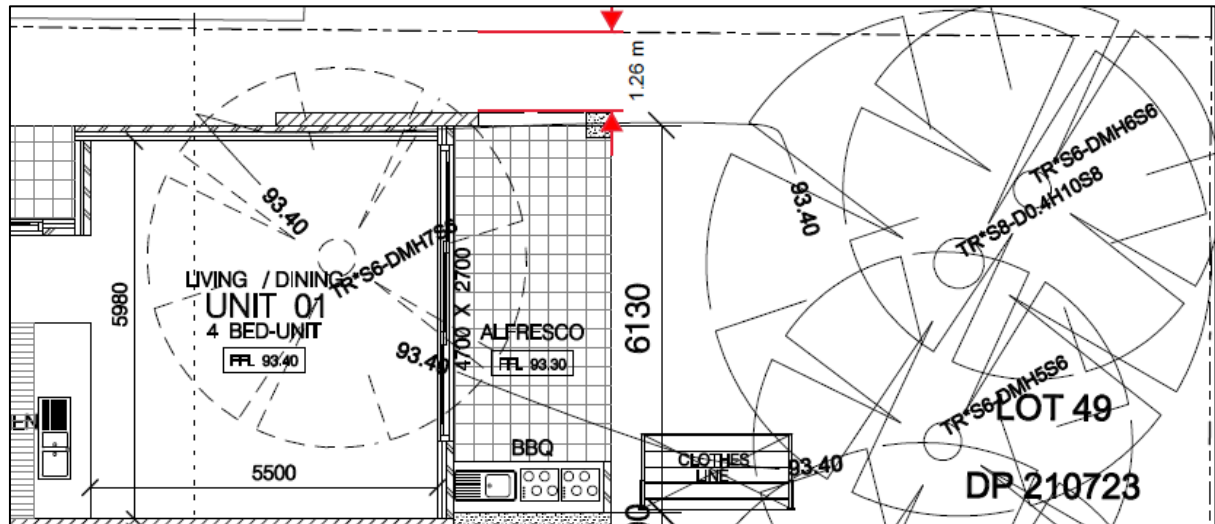


Figure 19: Proposed side setbacks from northern boundary at rear.

5.5 Planning Agreements OR Draft Planning Agreements

The application is not the subject of any planning agreements or draft planning agreements.

5.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

The application has been recommended for refusal; therefore Section 7.11 will not apply.

5.7 Any matters prescribed by the regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning, Industry and Environment including others. There are no relevant Clauses applying contained within the regulation relevant to the proposal.

6. The likely impacts of the development

The proposal has not demonstrated compliance with the requirements of SEPP (Infrastructure) 2007. Without such demonstration, the proposal is considered to result in amenity impacts for future occupants. The proposal will also result in an undesirable precedent to the character of locality on sites with a similar configuration.

Therefore, the proposal is considered to contain amenity impacts for future occupants.

ITEM 2 (continued)**7. Suitability of the site for the development**

The site is zoned R2 Low Density Residential. The proposal is for an attached dual occupancy and associated works. The proposal does not meet the minimum required frontage. The submitted clause 4.6 variation to the Clause 4.1B (2)(b) has not met the jurisdiction prerequisites to enable the consent authority to support the proposed departure from the development standard.

8. The Public Interest

The public interest is best serviced by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised.

The proposal has been assessed against the relevant environmental planning instruments and the development is not acceptable. The proposal is non-compliant with the principal development standard regarding the frontage width for dual occupancies as required by Clause 4.1B(2)(b).

The submitted Clause 4.6 variation has not met the required prerequisites for the consent authority to be satisfied in permitting the variation. In addition, insufficient information has been provided to demonstrate an acceptable amenity outcome for future occupants in respect to SEPP (Infrastructure) 2007.

The proposal is considered to raise issues that are contrary to the public interest.

9. Submissions

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, owners of surrounding properties were given notice between 21 November 2019 and 10 December 2018.

The amended plans received on 28 June 2019 were renotified between 9 July 2019 and 26 July 2019.

In response to the two (2) public notification periods, a total of two (2) submissions were received from the adjoining neighbour at 55 Lavarack Street, Ryde. The submissions raised the following concerns:

- **Demolition and Asbestos removal**

A concern was raised regarding the demolition of the existing dwelling and asbestos removal.

Assessment Officers Comment:

ITEM 2 (continued)

Development consent is not sought for demolition as part of this application. Demolition would be subject to a separate approval. Any approval for demolition is subject to compliance with the relevant Australian Standards and legislative requirements for demolition which includes regulations relating to asbestos removal.

• **Visual Privacy**

The submission requested that all windows on the northern and eastern elevations require additional treatment consisting of high set and frosted glass.

Assessment Officers Comment:

The proposal contains eight (8) openings within the northern elevation presenting to 55 Lavarack Street. **Figure 20** below shows the location of those openings.

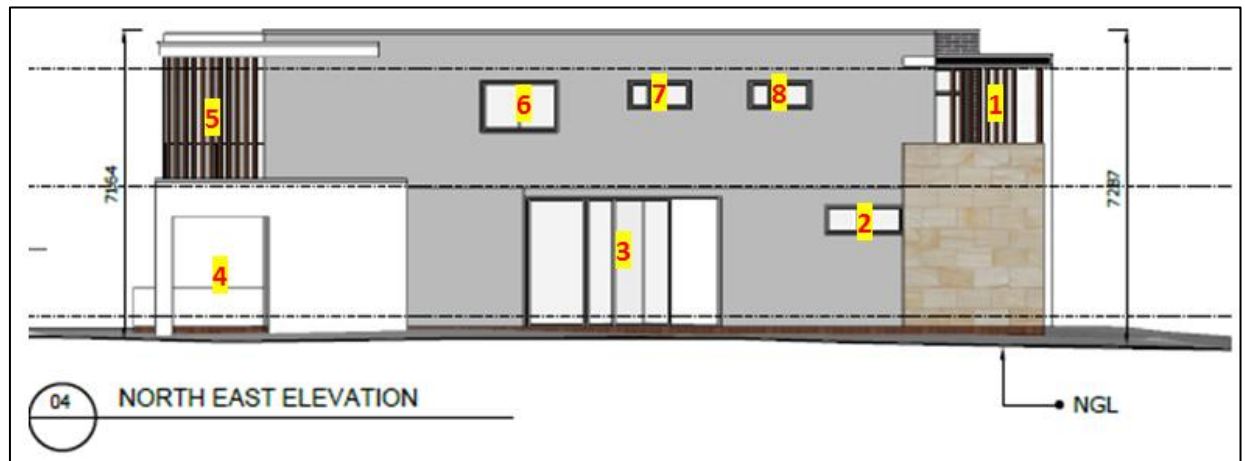


Figure 20: Northern elevation showing proposed openings

- Item 1 is a first floor balcony accessible via the master bedroom of Unit 01. The balcony has a depth of 3.63 metres and includes fixed louvers along the northern elevation for a length of 2.2 metres of the balcony. The adjoining dwelling is setback from Lavarack Street and the proposed screening depth would prevent overlooking of the adjoining dwelling;
- Item 2 is a ground floor window which services a bathroom and consists of a sill height 1.8 metres above the finished floor level (FFL), resulting in no impact on overlooking into 55 Lavarack Street;
- Item 3 is the ground floor courtyard access which are sliding doors that are orientated to the northern boundary. The finished level of the courtyard is RL93.30 and the general level of sightlines is at RL94.90. Sightlines will be concealed by a 1.8 metre high boundary fence, with the top of the fence at RL95.07;

ITEM 2 (continued)

- Item 4 is the alfresco area adjoining the living area for Unit 01. The finished level of the alfresco is RL93.30 and the general level of sightlines is at RL94.90 (1.6 metres above the finished level of the alfresco). Considering that there is a level difference in the rear of the site, a boundary fence would have a height of RL95.09 at this portion of the site. Any opportunity for overlooking will be concealed by the boundary fence;
- Item 5 is a first floor balcony with a depth of 1.58 metres. The balcony is accessed from bedrooms 3 and 4 of Unit 01. The northern elevation of the balcony contains fixed louvers, which obscure sightlines to the adjoining properties, it is noted that this balcony is the only opening on the northern elevation to warrant concern, however the louvers will obstruct the general 45 degree view corridor;
- Item 6 is a first floor window servicing bedroom 2. The window has a sill height of 1.2 metres above FFL. This window services a lower use room, it does not warrant concern as it is considered a room where occupants spend less waking time. The proposed window does not align with openings within the adjoining dwelling. This conclusion is consistent with the planning principle established in the Land and Environment Court case *Meriton v Sydney City Council* [2004] NSWLEC 313, where Senior Commissioner Roseth established the following principle which is relevant to this particular matter:

“The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.”

- Items 7 and 8 are first floor highlight windows associated with bathrooms. The windows have a sill height of 1.8 metres above FFL and present no visual privacy impacts.

The proposal does not result in any adverse privacy impacts on the adjoining dwelling at 55 Lavarack Street.

- **Boundary Fences**

An objection was raised regarding the side boundary fence between 53 and 55 Lavarack Street.

Assessment Officers comment:

Council is not a regulatory authority in regard to boundary fencing. Issues relating to dividing fences are subject to the provisions of the *Dividing Fences Act 1991* and is a civil matter between property owners.

ITEM 2 (continued)

• **Damages**

The submission noted that any damages during construction, all expenses will be borne by the applicant.

Assessment Officers comment:

In the case of any damages to private property as a result of construction, the developer and/or builder will be liable for any damages.

• **Water Tanks**

The submission objected to the height of the rainwater tanks along the northern boundary adjoining 53 and 55 Lavarack Street.

Assessment Officers comment:

The height of the rainwater tanks along the northern boundary adjoining 55 Lavarack Street is 2.020 metres high and will protrude 220mm above the boundary fence. The reasons for the height are due to the capacity required for the rain water tanks as outlined in the water commitments within the BASIX certificate and combination of the OSD system.

Considering the location of the tanks is toward the rear of both allotments and there is adverse no impact, the tanks are acceptable.

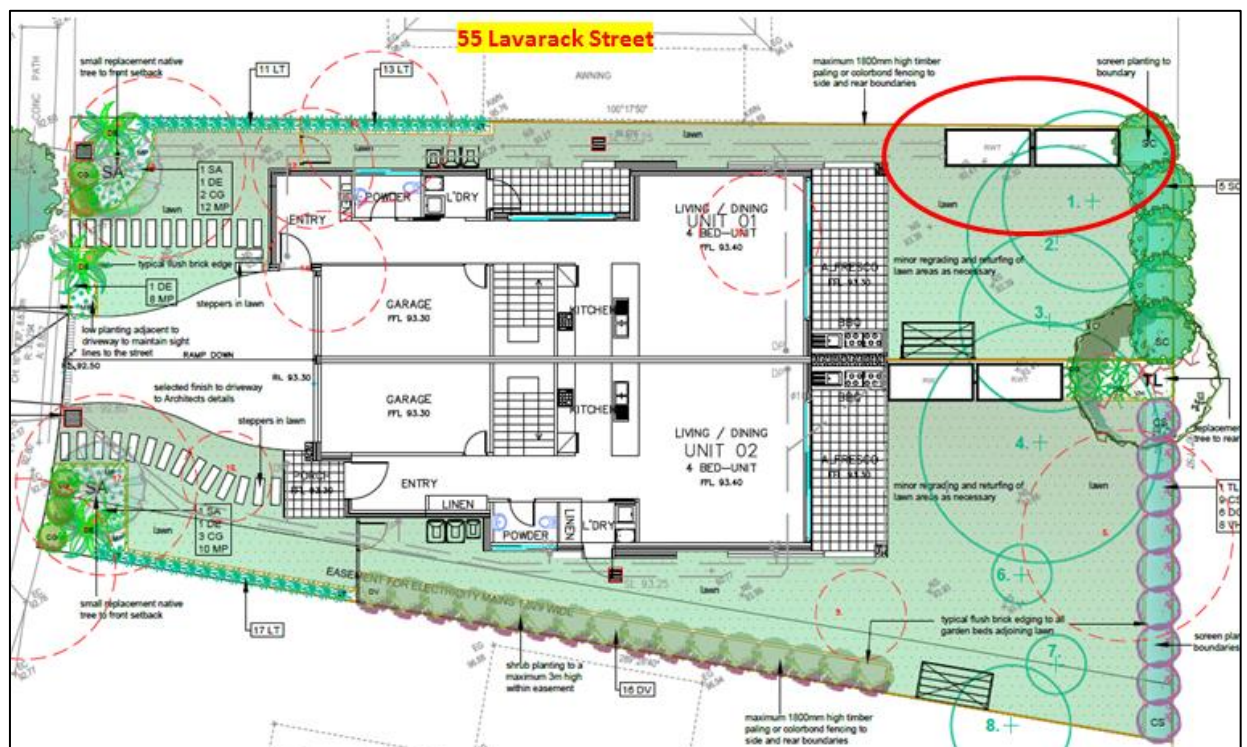


Figure 21: Location of rainwater tank along the boundary between 53 and 55 Lavarack Street.

ITEM 2 (continued)**10. Referrals****Senior Development Engineer**

The application was referred to Council's Senior Development Engineer for an assessment of the engineering components of the proposal. The comments provided are as follows:

“Stormwater Management

The proposed stormwater management system for the development discharges to the kerb in Lavarack Street and incorporates an onsite detention system complying with Councils requirements.

The plans completed by Allied Consultants Pty Ltd, drawing number 53LAVA-HYD-1 to 3, Revision B, dated 26th October 2018 have been reviewed and are generally in accordance with Council's requirements. The standard conditions of consent regarding stormwater management shall suffice.

It is noted that there is an easement for electricity mains along the southern side boundary. A condition will be imposed where the drainage network must be constructed outside of the easement.

Vehicle Access and Parking

One off-street parking space is provided within each garage satisfying the requirements of Council's DCP. The space provided complies with AS2890.1:2004.

Recommendation

There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development.”

A second referral was forwarded to Council's Senior Development Engineer, in relation to the amended plans received to Council on 28 June 2019. The Development Engineers comments on the amended plans are as follows:

“Stormwater Management

The amended stormwater plan, completed by Allied Consultants Pty Ltd, drawing number 53LAVA-HYD-1 to 3, Revision C, dated 27th June 2019, has

ITEM 2 (continued)

been reviewed and raises no objection. The plans were amended to reflect the latest architectural plans. The previous recommendation and conditions remain.

To address the retaining walls, additional conditions have been implemented to ensure structural integrity and stormwater drainage.

Vehicle Access and Parking

Vehicular access and garage spaces remain unchanged, thus raising no objections.

Recommendation

There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development.”

Council’s Landscape Architect

The application was referred to Council’s Landscape Architect for the consideration on the proposed tree removal within the site. The comments provided are as follows:

“Existing Trees

An Arborist Report has been submitted with the application prepared by The Ents Tree Consultancy dated 5/10/2018.

A summary of the existing trees identified by the Arborist are show in the table below:

Tree No.	Species “Common name”	Proposed recommendation by Arborist	Comment
1	<i>Acer palmatum Japanese Maple</i>	<i>Retain</i>	<i>Agree</i>
2	<i>Syagrus romanzoffiana Cocos Palm</i>	<i>Retain</i>	<i>Agree</i>
3	<i>Thuja occidentalis White Cedar</i>	<i>Retain</i>	<i>Agree</i>
4	<i>Cupressus sp Cypress Pine</i>	<i>Retain</i>	<i>Agree</i>
5	<i>Ligustrum lucidum Privet</i>	<i>Remove</i>	<i>Agree</i>
6	<i>Cupressus sempervirens Mediterranean Cypress</i>	<i>Retain</i>	<i>Agree</i>
7	<i>Cupressus sempervirens Mediterranean Cypress</i>	<i>Retain</i>	<i>Agree</i>
8	<i>Archontophoenix cunninghamiana</i>	<i>Retain. Located on</i>	<i>Agree</i>

ITEM 2 (continued)

	<i>Bangalow Palm</i>	<i>adjoining property</i>	
9	<i>Euphorbia tirucalli</i> <i>Pencil Cactus</i>	<i>Remove</i>	<i>Agree</i>
10	<i>Camellia japonica</i> <i>Camellia</i>	<i>Remove</i>	<i>Disagree.</i> <i>Transplant to</i> <i>where Tree 5 has</i> <i>been removed.</i>
11	<i>Abies nordmanniana</i> <i>Caucasian Fir</i>	<i>Remove</i>	<i>Agree</i>
12	<i>Thuja occidentalis</i> <i>White Cedar</i>	<i>Remove</i>	<i>Agree</i>
13	<i>Cercis canadensis</i> <i>Eastern Red Bud</i>	<i>Remove</i>	<i>Agree</i>
14	<i>Cryptomeria japonica</i> <i>Japanese Cedar</i>	<i>Remove</i>	<i>Agree</i>
15	<i>Thuja occidentalis</i> <i>White Cedar</i>	<i>Remove</i>	<i>Agree</i>
16	<i>Thuja occidentalis</i> <i>White Cedar</i>	<i>Remove</i>	<i>Agree</i>
17	<i>Juniperus chinensis</i> <i>'Variegata'</i> <i>Chinese Juniper</i>	<i>Remove</i>	<i>Agree</i>

Figures 22, 23, 24 and 25 below shows the location of existing trees on the site.

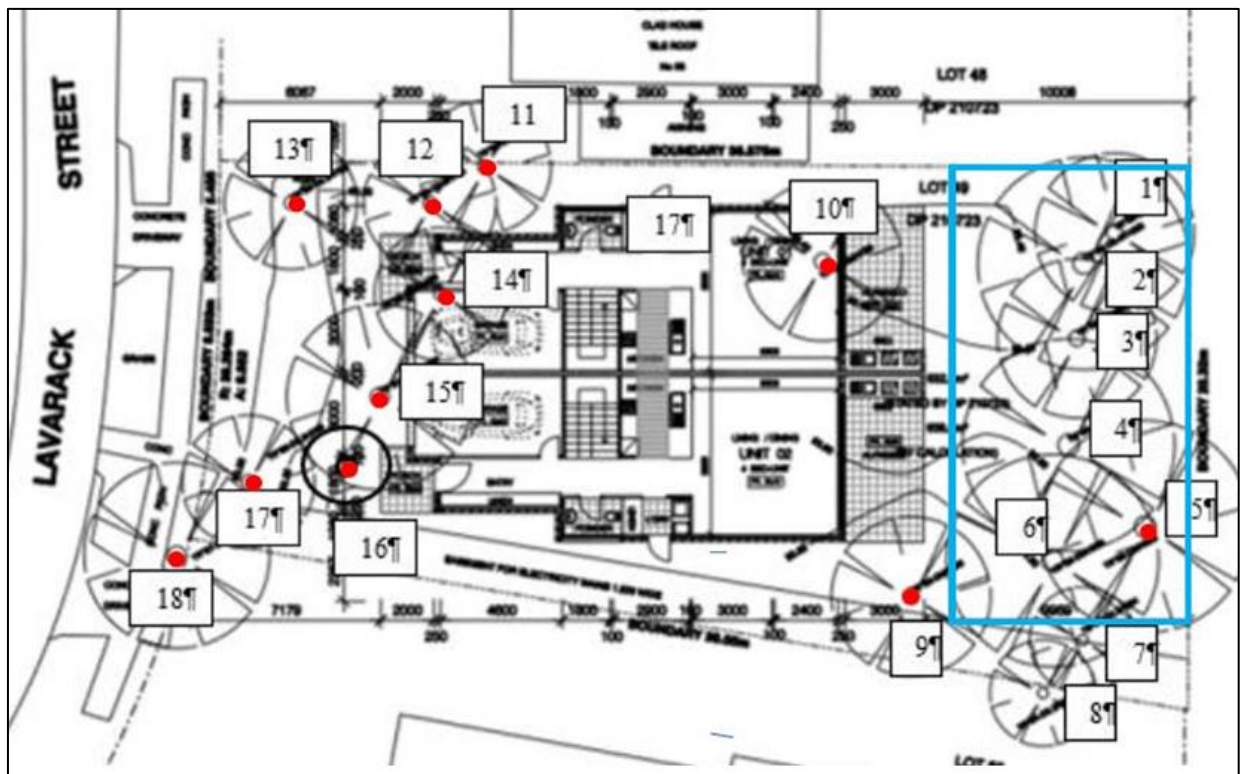


Figure 19: Tree location plan (Note: Blue line indicates 1.8 metre chainmesh fencing and red dots indicate trees to be removed).

ITEM 2 (continued)



Figure 20: Existing trees to be retained in backyard.



Figure 21: Existing trees within rear of the site to be retained.

ITEM 2 (continued)



Figure 22: Trees within the front of the site proposed to be removed.

Landscape Plan

The Landscape plan is satisfactory as the following has been provided:

- *A physical connection has been provided between the outdoor paved area and the private yard;*
- *Less than 40% of the front garden will be hard paved;*
- *Pathway between front and rear yards has been provided;*
- *Trees and shrubs are in scale with the development;*
- *Front garden has at least one tree that can grow to a minimum height of 10 metres (Syzygium australe);*
- *Backyard has a tree with a mature height of at least 15 metres (the existing trees); and,*
- *Private open space has been provided.*

The Camellia japonicas (Tree 10) is to be transplanted to where Tree 5 has been removed. In this new location the Camellia will not interfere with proposed stormwater pipes and building works.

Stormwater Plan

Generally on-site detention tanks should not be located in the front setback, the tank should be located in the backyard and is

The stormwater pipes and tanks are generally compatible with retention of the existing trees to be retained.

Recommendation

ITEM 2 (continued)

There are no objections subject to conditions imposed.”

A second referral was forwarded to Council’s Landscape Architect on amended plans received to Council on 28 June 2019. The purpose of the referral was to ensure that the trees proposed for retention will not be impacted by the proposed extent of excavation within the rear setback. The commentary provided is as follows:

“As requested by the Assessing Officer, the amended plans showing excavation and retaining walls around the south-east corner of the building have been reviewed.

It is concluded that there will be no impact on the existing trees to be retained.”

Council’s Tree Management Officer

The application was referred to Council’s Tree Management Officer as the proposal sought the removal of an existing *Cinnamomum camphora* (Camphor Laurel) located on the street verge. The comments provided are as follows:

“The proposed removal of the Camphor Laurel within the Council verge of the adjoining property is considered.

One (1) Camphor laurel (Cinnamomum camphora) identified as tree 18 in the Arborist report and located in the road reserve at the front of 51 Lavarack Street be removed and replaced as part of the development process, if approved in its current format subject to conditions.”

11. Conclusion

After consideration of the development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is not suitable for the site and is contrary to the public interest.

Therefore, it is recommended that the application be refused. The reasons for decision are as follows:

- Inadequate acoustic information has been provided to demonstrate that the development will not result in amenity impacts to future occupants as a result from Lane Cove Road.
- The site fails to comply with the frontage requirement to Lavarack Street and the applicants Clause 4.6 written variation is not well founded and fails to demonstrate consistency with the objective of the control, that the non-compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravention of the development standard.

ITEM 2 (continued)

The development would be inconsistent with Council's desired future character of the area which is to limit dual occupancy developments to sites that have a minimum road frontage of 20 metres.

12. Recommendation

Pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, that the Ryde Local Planning Panel refuse LDA2018/434 for the construction of a two (2) storey dual occupancy (attached), tree removal, front fence and strata subdivision on land at 53 Lavarack Street, Ryde for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of the State Environmental Planning Policy (Infrastructure) 2007 in that:
 - The proposal is inconsistent with Clause 101(1)(b) and Clause 101 (2)(c) as the development is a type that is sensitive to traffic noise or vehicle emissions. The application has not provided any information or measures to ameliorate potential traffic noise or vehicle emissions arising from Lane Cove Road; and,
 - Insufficient information has been provided to determine if the proposal is consistent with the provisions of Clause 102(3)(a) and (b), as the applicant has not demonstrated that any noise generated from Lane Cove Road will not exceed 35 dB(A) at any time between 10pm and 7am for bedroom and any other relevant area not exceed 40 dB(A) at any time.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of Ryde Local Environmental Plan (RLEP 2014) in that:
 - The proposal is contrary to the objectives of the R2 – Low Density Residential Zone. The provision of an attached dual occupancy on a site that is contrary with Clause 4.1B, conflicts with objectives of the zone;
 - The proposed development does not comply with Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014. The proposal seeks to utilise the primary frontage to Lavarack Street with a width of 14.337 metres which does not meet the minimum width of 20 metres; and,
 - The written request prepared by Andrew Robinson Planning Services Pty Ltd dated 26 June 2019 made to pursuant to Clause 4.6 of the Ryde Local Environmental Plan 2014 to vary the minimum frontage width is not well founded. In particular, the written request fails to adequately demonstrate the following:
 - i. The proposed development is inconsistent with the objectives of the standard (Clause 4.6 (4)(a)(ii));
 - ii. That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(a)

ITEM 2 (continued)

- and Clause 4.6(4)(a)(i)); and,
- iii. That there are sufficient environmental planning grounds to justify contravening the development standard and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(b) and Clause 4.6(4)(a)(i)). The 20.32 metre frontage to Lane Cove Road, existing development within Lavarack Street, the width at the building line and site area are not sufficient environmental planning grounds to justify contravening the development standard.
2. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development is inconsistent with the desired future character of the area which is to limit dual occupancy development as outlined in Ryde Development Control Plan 2014 - Part 3.3: Dwelling houses and Dual Occupancy (Attached), Section 2.1 - Desired future Character.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development is considered to contain an undesirable precedent to the character of the locality.
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed attached dual occupancy is not suitable for the site given the proposal does not meet key development standards for dual occupancy developments under the relevant planning controls.
5. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments and local provisions.
6. Pursuant to Section 1.3 of the *Environmental Planning and Assessment Act 1979*, the development is contrary to the objects as the development does not:
- Promote the orderly and economic use and development of land; and,
 - Promote good design and amenity of the built environment nor promote the proper construction and maintenance of buildings.

ITEM 2 (continued)

ATTACHMENTS

- 1 DCP Compliance Table
- 2 C4.6 variation to Clause 4.1B(2)
- 3 A3 Plans - subject to copyright provision - CIRCULATED UNDER SEPARATE COVER

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ITEM 2 (continued)

**ATTACHMENT 1
Attachment 1 – DCP Compliance Table**

DCP 2014	Proposed	Compliance
Part 3.3 - Dwelling Houses and Dual Occupancy (attached)		
Section 1.0 Introduction		
Part 1.6 Site Analysis		
Site analysis to be submitted.	Site analysis, Issue D prepared by Architecture Design Studio (NSW) Pty LTD and dated 28.06.2019	Yes
Section 2.0 General Controls		
2.1 Desired Future Character		
Development is to be consistent with the desired future character of the low density residential areas.	The desired future character is to contain a limited number of dual occupancy developments. Considering that the development does not meet the required primary frontage for dual occupancy developments, the proposal is non-compliant with this requirement by not limiting the amount of dual occupancies.	No – Not Supported
2.2 Dwelling Houses		
(a) Landscape setting which includes significant deep soil areas at the front and rear	Deep soil areas in front and rear proposed.	Yes
(b) Maximum two storeys high	Two (2) Storeys	Yes
(c) Dwellings address the street	Front door of Unit 01 does not address the street.	No
(d) Boundary between public and private space is clearly articulated	Boundary between public and private space is clearly defined.	Yes
(e) Garages and carports are not to be visually prominent features	Garage is centralised on a site with a deficient frontage for dual occupancy developments, including non-compliant with the requirements of the garages position i.e. setback from the façade.	No – See sections 2.9.1, Control (c) and Section 2.11.1, Control's (c), (j) and (p)
(f) Dwellings are to respond appropriately to the site analysis	The development responds appropriately to the site analysis by providing sufficient internal amenity for the dwellings through appropriate levels of solar access and provides for cross ventilation.	Yes
2.3 Dual Occupancy (attached)		
(a) New dual occupancy buildings are to meet the controls for new dwelling houses set out in 2.2.1.	The development generally satisfies this requirement.	Yes
2.4 Subdivision		
Minimum lot sizes apply under RLEP	Strata subdivision proposed.	Yes

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
Clause 4.1A	Required 580m ² minimum. Site area equals 632.30m ²	
2.5 Public Domain Amenity		
2.5.1 Streetscape		
(a) Site design, building setbacks and level changes respect the existing topography	The siting of the development is responds to the overall topography, with sufficient building setbacks.	Yes
(b) Front gardens to complement and enhance streetscape character	Front garden is considered to be satisfactory and complements the streetscape.	Yes
(c) Dwelling design is to enhance the safety and amenity of the streetscape	The dwellings design is considered to provide passive surveillance from the dwelling to the street.	Yes
(d) Carports and garages visible from the public street are to: (i) Be compatible with the building design (ii) Be setback behind the dwelling's front elevation	The garage is consistent with the design of the dwelling. The garage is centralised on a site with a deficient frontage and not setback from the buildings front elevation.	No – See sections 2.9.1, Control (c) and Section 2.11.1, Control's (c), (j) and (p)
(e) Driveways and hard stand areas are to be minimised.	The driveway and hard stand area within the front setback are considered to be minimised and does not dominate the front setback.	Yes
(f) Dwellings, garages and carports are to be orientated to match the prevailing orientation of such buildings in the streetscape	The dwelling is considered to be designed to orientate to match the prevailing orientation of buildings within the street.	Yes
(g) Facades from the public domain are to be well designed.	The façade of the development is considered not to be well designed as the Front door of Unit 01 does not address the street and the garage will be the prominent feature within the street.	Yes
2.5.2 Public Views and Vistas		
(a) A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Fence 70% open where height is >900mm. (b) Garages/carports and outbuildings are not to be located within view corridor if	Not applicable. No public views or vistas are available.	N/A

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
they obstruct view.		
2.5.2 Pedestrian & Vehicle Safety		
(a) Car parking located to accommodate sightlines to footpath & road in accordance with relevant Australian Standard.	Car parking is located to accommodate sightlines to footpath & road in accordance with relevant Australian Standard.	Yes
(b) Fencing that blocks sight lines is to be splayed.	Fencing will not obstruct sightlines.	Yes
(c) Refer to relevant AS when designed driveways		
2.6 Site Configuration		
2.6.1 Deep Soil Areas		
- 35% of site area min.	Permeable (deep soil) area: 268.22m ² approx (42% of site area).	Yes
- Deep soil area must include: (ii) Front garden area to be completely permeable (exception driveway, pedestrian path and garden walls).	Front DSA: 100% permeable area in front yard = 70.19m ² . Hard surface areas have been kept to a minimum in the front yard.	Yes
- Dual occupancies need only one 8m x 8m in back yard	8m x 8m dimensions for a DSA are capable to be provided within the rear setback of Unit 02.	Yes
- Deep soil areas to have soft landscaping	Soft landscaping is proposed.	Yes
- Deep soil areas to be 100% permeable. Not covered by structures, paving or the like, or have below surface structures such as stormwater detention elements.	Deep soil areas are free of underground structures with no underground structures below.	Yes
2.6.2 Topography & Excavation		
(a) Building form and siting relates to the original topography of the land and of the streetscape.	Building form generally relates to the original topography of the land and of the streetscape.	Yes
(b) The area under the building footprint may be excavated or filled so long as: (i) the topography of the site requires cut and/or fill in order to reasonably accommodate a		

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(ii) dwelling the depth of excavation is limited to 1.2m maximum	Within BF Max cut: 400mm	Yes
(iii) the maximum height of fill is 900mm	Max fill: 130mm	Yes
(c) Areas outside the dwelling footprint may be excavation and/or filled so long as:		
(i) the maximum height of retaining walls is not >900mm	Height of retaining wall is 650mm	Yes
(ii) the depth of excavation is not >900mm	Outside BF Max cut: 650mm	Yes
(iii) the height of fill is not >500mm	Max Fill: N/A	N/A
(iv) the excavation and filled areas do not have an adverse impact on the privacy of neighbours	Excavation will not contain an adverse impact on the privacy of neighbours.	Yes
(v) the filled areas do not have an adverse impact on the privacy of neighbours	No fill external to building footprint.	Yes
(vi) the area between the adjacent side wall of the house and the side boundary is not filled	No fill adjacent side of wall and side boundary.	Yes
(vii) the filled areas are not adjacent to side or rear boundaries	No fill adjacent to side or rear boundary.	Yes
(d) Fill is not allowed in areas of overland flow. Refer to Part 8.2 stormwater management	Not Applicable. Site is not affected by overland flow.	N/A
(e) Generally the existing topography is to be retained.	Existing topography is generally maintained.	Yes
2.7 Floor Space Ratio (FSR)		
(a) FSR is 0.5:1 in accordance Clause 4.4	Ground floor = 182.49m ²	Yes
(b) A floor area of 36m ² maybe excluded when this area accommodates 2 car space. An area of 18m ² may be excluded when the area accommodates 1 parking space.	First floor = 171.11m ²	
	Total (Gross Floor Area) = 353.6m ²	
	Exclude 36m ² = 317.6m ²	
	$\frac{317.6m^2}{638.5m^2}$	
	FSR = 0.50:1	

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
2.8 Height		
2.8.1 Building height		
(a) Building heights are to be as follows: - Maximum height of 9.5 metres for dwellings and dual occupancy. - Outbuildings including garages and carports maximum height 4.5 metres.	Max point of dwelling: RL99.9 EGL below ridge: RL93.40 Overall Height = 6.5 metres	Yes
<u>Maximum wall plate</u> - 7.5m max above FGL or - 8m max to top of parapet NB: TOW = Top of Wall EGL = Existing Ground Level FGL = Finished Ground Level	TOW RL: 100.02 FGL below: 93.40 TOW Height = 6.62m	Yes
<u>Maximum number of storeys:</u> - 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL). - 1 storey maximum above attached garage incl semi-basement or at-grade garages	Development is two (2) storeys at maximum. The development consists of an at grade garage with one (1) storey above.	Yes Yes
2.8.2 Ceiling Height		
(a) Habitable rooms to have 2.4m floor to ceiling height (min).	2.7m minimum room height.	Yes
2.9 Setbacks		
2.9.1 Front setbacks		
(a) Dwellings are generally to be set back 6m from street front boundary	Front Setback: 6.57m	Yes
(b) On corner sites, the setback secondary frontage minimum 2m.	Not applicable. Not a corner allotment.	N/A
(c) Garages and carports, including semi-basement garages and attached garages, set back min 1m from façade	Garage is setback 1.5m behind façade of Unit 01 and protrudes 1.0m in front of the main façade of Unit 02.	No – Variation acceptable
(d) The front setback free of structures. The exception is car parking structures which comply with 2.11.	Front setback is clear of ancillary elements and structures with the exemption of the driveway.	Yes
(e) Attached garages, including semi-basement garages on	Not applicable. Garages both front Lavarack Street.	N/A

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>secondary frontages not to protrude forward of the façade. The exception is garages located on battle axe allotments. These garages do not need to be setback.</p> <p>(f) The outside face of wall built above a garage aligns with the outside face of the garage wall below.</p>	<p>The wall above the garage aligns with the outside face of the garage below.</p>	<p>Yes</p>
2.9.2 Side Setbacks		
<p>(a) One storey dwellings setback 900mm</p> <p>(b) Two storey dwellings setback 1.5m</p> <p>(c) The second storey addition to a single storey dwelling are to be set back 1.5m</p> <p>(d) Allotments wider than they are long, one side setback a min of 20% of the width of the lot or 8m, whichever is greater.</p>	<p>Ground Floor:</p> <p>Northern side: 1.26m minimum</p> <p>Southern side: 2.4m minimum</p> <p>First Floor:</p> <p>Northern side: 1.26m minimum</p> <p>Southern side: 2.0m minimum</p>	<p>No – Variation acceptable Yes</p> <p>No – Variation acceptable Yes</p>
2.9.3 Rear Setbacks		
<p>(a) The rear setback min 25% of the site length or 8m, whichever is greater.</p> <p>(b) Allotments wider than they are long, min setback of 4m</p> <p>(c) Dwelling on battle axe allotment are to be setback the rear boundary of the front lot min of 8m. Single storey garage or outbuilding can be within setback.</p>	<p>A rear setback of 9.3m is 25% of site length.</p> <p>Proposed rear setback is 9.508m</p>	<p>Yes</p>
2.11 Car Parking and Access		
2.11.1 Car Parking		
<p>(a) Dwellings 2 spaces. Dual occ 1 space/dwg</p> <p>(b) Spaces can be enclosed or roofed.</p> <p>(c) Garages setback 1m behind front elevation.</p> <p>(d) Located forward of existing dwelling if: (i)there is no other suitable position</p>	<p>Number of car spaces: 2 spaces(1 per dwelling)</p> <p>Spaces are enclosed.</p> <p>Garage is setback 1.5m behind façade of Unit 01 and protrudes 1.0m in front of the main façade of Unit 02.</p> <p>Not applicable. New dwellings proposed.</p>	<p>Yes</p> <p>Yes</p> <p>No – Variation acceptable</p> <p>N/A</p>

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(ii) no vehicular access to the rear of side of the site (iii) it is preferred that it is single car width.		
(e) Garages doors solid. No expanded mesh doors.	Garage door proposed is solid.	Yes
(f) Preference located off laneways, secondary street frontages.	Lavarack Street is preferred street frontage to accommodate car parking.	Yes
(g) Driveway widths minimised. Driveways single car width except where needed to be widen to double garage access.	The driveway is of single width and extends to a double interlay to provide access to each garage servicing both dwellings.	Yes
(h) Driveways not roofed.	The driveway is not roofed.	Yes
(i) Min width 6m or 50% of the frontage whichever is less	The width of the garages is 6.0m (Combined) wide visible from the street	Yes
(j) Total width garage doors not be >5.7m	Note: 50% of frontage = 7.16m. The width of each garage doors combined is 5.2m.	Yes
(k) Driveways for battle axe enable vehicles to enter and leave in forward direction	Not applicable. Not a battle axe allotment.	N/A
(l) Garage doors not be recessed more than 300mm	Garage door recess is 240mm.	Yes
(m) Garage windows >900mm from boundaries	Not applicable. No windows.	N/A
(n) Free standing garages max GFA 36m ²	Not applicable. No free standing garages.	N/A
(o) Design and materials to complement dwelling.	The design of the garages is in keeping with the design and materials of the dwelling.	Yes
(p) Setback at least 1m from façade	Garage is setback 1.5m behind façade of Unit 01 and protrudes is 1.0m in front of the main façade of Unit 02.	Yes
(q) Carports not enclosed.	Not applicable. No carports.	N/A
2.13 Landscaping		
(a) Major trees to be retained	Tree removal is supported to be	Yes

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
where practical	removed by Council's Landscape Architect.	
(b) Lots adjoining bushland, protect and retain indigenous native vegetation and use native indigenous plant spaces for a distance of 10m	Not applicable. Allotment is not adjoining urban bushland.	N/A
(c) Provide useful outdoor spaces	The proposed private open spaces for each dwelling is functional.	Yes
(d) Physical connection between dwelling and external ground level	Physical connection between the dwelling and outdoor spaces is provided.	Yes
(e) Provide landscape front garden. Hard paved areas no more than 40%.	Extent of hard paving within front setback is 38%	Yes
(f) Pathway along one side boundary connecting front to rear. Not to be blocked by ancillary structures. Not required where there is rear lane access or corner allotment.	Obstruction free pathway provided on each side of the dwelling to service entry to the rear of both Units.	Yes
(g) Landscape elements in front garden to be compatible with scale of dwelling.	Trees and shrubs are in scale with the development	Yes
(h) Front garden at least 1 canopy tree at least 10m in height	Front garden has at least one tree that can grow to a minimum height of 10 metres (<i>Syzygium australe</i>).	Yes
(i) Mature tree at least 15m in rear garden with the DSA.	Existing trees within the rear setback are proposed to be retained.	Yes
(j) Locate and design landscaping to increase privacy between dwellings.	Landscaping along the side setbacks provide for privacy between dwellings.	Yes
(k) Retaining walls and other landscape elements not to obstruct stormwater overland flow.	Not applicable. Site is not affected by overland flow.	N/A
(l) OSD not to be located within front setback unless it is underneath driveway	The on-site detention is a combined system with the rainwater tanks and provided within the rear of each dwelling.	Yes
(m) Landscaping to include POS	Landscaping includes ground level private open space for each dwelling.	Yes

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
2.14 Dwelling Amenity		
2.14.1 Daylight and Sunlight Access		
<p>(a) Living areas are to be predominantly located to the north where possible</p> <p>(b) Sites with northern side boundary to have increased setback of 4 metres is preferred.</p>	<p>Living areas face north where orientation allows.</p> <p>The 4.550m x 2.8m door of the courtyard orientated north of Unit 01 is setback 3.3m and allows sufficient solar access to penetrate to the living area between 12pm and 3pm on 21 June.</p>	<p>Yes</p> <p>Yes</p>
<u>Subject Dwelling:</u>		
<p>(c) Windows to north facing living areas of subject dwellings are to receive at least 3 hours of sunlight between 9am to 3pm on June 21.</p>	<p>The north facing window adjoining the courtyard of Unit 01 will receive at least three (3) hours solar access between 12pm and 3pm on 21 June through the 4.550m x 2.8m door of the courtyard orientated north.</p>	<p>Yes</p>
<p>(d) Private open space is to receive at least 2 hours sunlight between 9am to 3pm on June 21.</p>	<p>The private open space of each Unit will achieve at least 2 hours to 50% of the private open space. Unit 01 will receive sunlight greater than 50% to its POS between the times of 9am and 3pm. Unit 02 will achieve sunlight will receive sunlight greater than 50% to its POS between 9am and 1pm.</p>	<p>Yes</p>
<u>Neighbouring properties:</u>		
<p>(e) For neighbouring properties:</p> <p>(i) sunlight to 50% of principal areas of ground level POS is not reduced to less than 2 hours between 9am to 3pm on 21 June;</p>	<p>Hours of sunlight to adjoining principal open space: Greater than 2 hours to 50% of its area between 9am and 1pm.</p>	<p>Yes</p>
<p>(ii) windows to north facing living areas to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of surface, where can be reasonably maintained given orientation and topography.</p>	<p>The living area window of the property at 51 Lavarack Street, will achieve at least 3 hours sunlight to a portion of its surface on 21 June.</p>	<p>Yes</p>
2.14.2 Visual Privacy		
<p>(a) Orientate the windows of main living spaces (living room, dining, kitchen, family etc) to the front and rear</p> <p>(b) Orientate terraces, balconies</p>	<p>The windows of both internal living areas are orientated to the rear of the dwelling, the windows orientated to the side boundaries servicing those living areas are high</p>	

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>and outdoor living areas to front or rear and not side boundary</p> <p>(c) Terraces and balconies are not to overlook neighbour's living areas and POS</p> <p>(d) Living and kitchen windows, terraces and balconies are not to allow direct view into neighbouring dwelling or POS</p> <p>(e) Side windows are to be offset by sufficient distance to avoid visual connection between dwellings.</p> <p>(f) Splayed walls with windows are not to be located above ground level where the windows provide views into adjoining property.</p>	<p>sill and raise no concerns over visual privacy. The proposal also includes a side courtyard for Unit 01 (RL93.30) with a minimum distance of 1.5m from the northern boundary, when standing in the courtyard, eye level will be at RL94.90 and any opportunity for overlooking will be nil considering that the top of the 1.8m high boundary fence will be at approximately RL95.10 from the north western edge of the deck and RL95.20 from the north eastern corner of the deck. There are also balconies at the first floor, the balconies orientated to the rear will not present any opportunity to overlook as concealed by privacy screens. There are also balconies orientated to the front of the dwellings, the balconies of Unit 01 do not present any privacy impacts to the adjoining dwelling at 55 Lavarack Street. In this regard the proposal is satisfactory in this aspect relating to visual privacy. Windows of living areas, family and dining areas are not placed within close or direct view of adjoining dwellings or open space.</p> <p>Side windows are offset from adjoining windows.</p> <p>Given the height, width and located of the balconies and terraces associated with the dwellings, there is no opportunity for overlooking.</p>	<p>Yes</p>
2.14.4 View Sharing		
<p>(a) The siting of development is to provide for view sharing.</p>	<p>Not applicable. No view sharing opportunities provided within the locality of the development.</p>	<p>N/A</p>
2.14.5 Cross Ventilation		
<p>(a) Designed to optimise access to prevailing breezes and provide for cross ventilation.</p>	<p>The proposed plan layout is designed to optimise access to prevailing breezes and to provide for cross ventilation.</p>	<p>Yes</p>
2.15 External Building Elements		
2.15.1 Roofs		
<p>(a) Relate roof design to the desired built form by:</p> <p>(i)articulating the roof</p> <p>(ii)roof is consistent with the architectural character of dwelling</p> <p>(iii)eaves minimum 450mm</p>	<p>The proposal incorporate a flat roof form with a parapet which is acceptable with materials and colours that acceptable within the existing streetscape.</p>	<p>Yes</p>

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>overhang on pitched roofs (iv) compatible roof form, slope, material and colour to adjacent buildings (v) roof height is in proportion to the wall height of the building</p> <p>(b) The main roof not trafficable terrace.</p> <p>(c) Proposed attic contained within the volume of the roof space.</p> <p>(d) Skylights to be minimised on roof planes visible from the public domain. Skylights are to be symmetrical.</p> <p>(e) The front roof plane is not to contain both dormer and skylight. Dormers are preferred.</p> <p>(f) Balconies and terraces are not to be set into roofs.</p> <p>(g) Scale of the roof is to be in proportion with the scale of the wall below.</p> <p>(h) Attics may be located in the garage roofs if the garage is located next to the dwelling. Garages located within front or rear setbacks are not to have attics.</p>	<p>The roof of the dual occupancy will not be a trafficable terrace.</p> <p>Not applicable. No attic spaces proposed.</p> <p>Not applicable. No Skylights proposed.</p> <p>Not applicable. No skylights or dormers proposed.</p> <p>No terrace or balcony is set into the roof.</p> <p>The scale of the roof in in proportion with the scale of the walls below.</p> <p>Not applicable. No attics.</p>	<p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>N/A</p>
2.16 Fences		
2.16.1 Front and return Fences and Walls		
<p>(a) Reflect the design of the dwelling</p> <p>(b) Materials compatible with the house and other fences in streetscape.</p> <p>(c) Solid fence or wall max 900mm. Open light weight fence (timber picket) 1m.</p> <p>(d) Return fence is to be no higher than front fence.</p> <p>(e) Fences max 1.8m if 50% open with solid base max 900mm.</p>	<p>Front fence reflects the design of the dwelling.</p> <p>Considered to reflect the character and height of neighbouring fences.</p> <p>Not applicable. No solid bases.</p> <p>Not applicable. No return fence is proposed.</p> <p>Front fence is 1.2m high and greater than 50% open.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p>

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(f) Fences arterial road solid and 1.8m max.	Fence is located on Lavarack Street which is not an arterial road.	Yes
(g) No Colorbond or timber paling.	Neither colorbond or timber paling.	Yes
(h) Retaining walls max 900mm.	Not applicable. No retaining walls along front boundary.	Yes
(i) Overland flow - fencing open not impede flow of water.	Not applicable. Site is not affected by overland flow.	N/A
(j) Fence piers max 350mm.	Max width of piers no greater than 350mm.	Yes
Part 7.2 Waste Minimisation and Management		
2.3 All developments		
(a) Developments must provide space for onsite waste containers	Development has provided location of onsite waste containers.	Yes
(b) Compliant size of storage areas and number of storage containers.	Sizes are compliant with the size or storage and number of containers.	Yes
(c) Space to be provided for bulk waste where appropriate.	Not applicable. General household waste containers.	N/A
(d) Storage of green waste provided.	Storage location of green waste provided.	Yes
(e) Stored within the boundaries of the site.	Storage space is contained wholly within site boundaries.	Yes
(f) Site Waste Minimisation and Management Plan (SWMMP) to be submitted.	The applicant has submitted a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	Yes
(g) Located to provide easy, direct and convenient access.	Located within a easy, direct and convenient location.	Yes
(h) No incineration devices.	Not applicable. No Incineration device proposed.	N/A
(i) Collection point identified on plan.	Waste collection point is located on Lavarack Street.	Yes
(j) Path for wheeling bin collection not less than 14:1	Path for the wheelie bins will not be less than 14:1.	Yes
2.5 Residential Developments comprising 1 or 2 Dwellings		
(a) Space inside each dwelling for receptacles for garbage, recycling.	Space has been provided inside each dwelling for garbage and recycling.	Yes

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(b) Space provided outside the dwellings to store the required garbage, recycling and green waste bins. Screened from street. Easy access to wheel the bins to the kerbside.	Storage space has been provided behind the side gate and not visible from the street.	Yes
Part 8: Engineering		
8.1 Construction Activities		
2.1.2 Erosion and Sediment Control Plan		
Erosion and sediment control plan to be submitted.	Erosion and sediment control notes provided in stormwater plans.	Yes
Part 8.2 Stormwater and Floodplain Management		
2.0 Stormwater Drainage		
(a) Drainage is to be piped in accordance with Section 2.0 Stormwater Drainage	Stormwater Plan prepared by Allied Consultants ref 53LAVA-HYD- 1-3, Issue C and dated 27.06.2019. Proposal has been considered satisfactory by Council's Development Engineer and compliant with the provisions of Part 8.2 Stormwater and Floodplain Management.	Yes

ITEM 2 (continued)

ATTACHMENT 2



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Clause 4.6 Exceptions to Development Standards

Clause 4.3 Height of Buildings - Ryde Local Environmental Plan 2014

Proposed Attached Dual Occupancy and Strata Title Subdivision - No. 53 Lavarack Street, Ryde

1.0 Introduction

This Clause 4.6 Exceptions to Development Standards request has been prepared by Andrew Robinson Planning Services Pty Ltd (ARPS) on behalf of Laiwan Jiang to accompany a development application for a proposed attached dual occupancy and Strata Title subdivision at No. 53 Lavarack Street, Ryde.

The Clause 4.6 Exceptions to Development Standards request relates to the minimum lot size for dual occupancies and multi dwelling housing principal development standard prescribed under subclause 4.1B(2)(b) of Ryde Local Environmental Plan 2014. Subclause 4.1B(2) states:

- (2) *Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:*
- (a) *the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and*
 - (b) *the road frontage of the lot is equal to or greater than 20 metres.*

Column 1

Dual occupancy (attached)
Multi dwelling housing

Column 2

580 square metres
900 square metres

No. 53 Lavarack Street has a site area of 632.3m² and therefore meets the minimum required lot size of 580m² for attached dual occupancies. However, while the site has a 20.32m frontage to Lane Cove Road at the rear of the site, the road frontage to Lavarack Street is only 14.31m. This frontage is 5.69m less than the statutory minimum and represents a variation of 28% below the 20m standard.

2.0 The Effect of Clause 4.6 Exceptions to Development Standards

Clause 4.6 of Ryde Local Environmental Plan 2014 states (in part):

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Andrew Robinson Planning Services Pty Ltd
ABN: 86 120 626 566

ITEM 2 (continued)

ATTACHMENT 2

53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

June 2019

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')

In summary, the principles arising from the above matters are:

- (i) That the relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No. 1;
- (ii) That the environmental planning grounds must be particular to the circumstances of the proposed development and/or the site at [60] in Four2Five No. 1; and
- (iii) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than way 1 in *Wehbe*, because that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.

ITEM 2 (continued)

ATTACHMENT 2

53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

June 2019

In relation to (iii) above, Method 1 in *Wehbe* requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

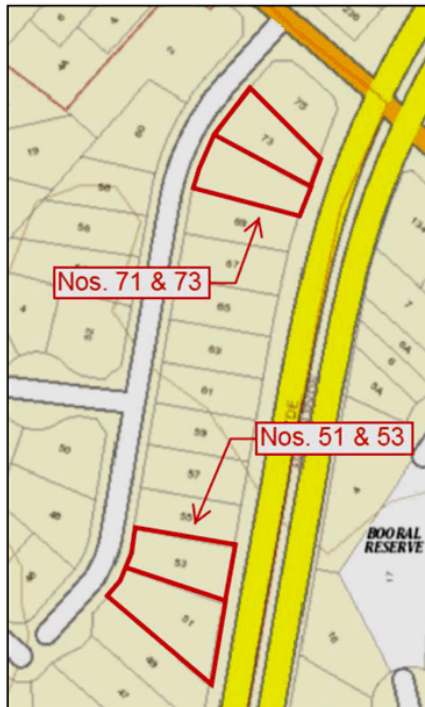
However, as a result of *Four2Five*, it is now necessary to demonstrate something *more* than simply achieving the objective of the standard. In this regard, a proposed development that contravenes the development standard, but as a result, achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

3.0 Justification for Variation

What is the context of the variation?

No. 53 Lavarack Street is a trapezoidal shaped allotment, having a frontage of 14.31m to Lavarack Street, a secondary street frontage of 20.32m to Lane Cove Road at the rear and depths of 36.575m and 38.05m. The site has a total area of 632.3m². The existing subdivision pattern along the eastern side of Lavarack Street surrounding the site is predominantly regular (rectangular) shaped allotments that have a front and rear width that is the same. However, due to the slight bend in the street adjacent to No. 53 and again at the northern end of the street, near its intersection with Twin Road, together with the rear frontage of these allotments to Lane Cove Road, there are a number of trapezoidal shaped allotments where the front and rear allotment widths vary. At the southern end of this section of Lavarack Street, the allotment widths to Lavarack Street are less than the allotment widths to Lane Cove Road, whereas at the northern end, the allotment widths to Lavarack Street are greater than the allotment widths to Lane Cove Road. As can be seen in **Figure 1** below, this is particularly evident for Nos. 51 & 53, as well as Nos. 71 & 73 Lavarack Street.

Figure 1: Extract from *Six Maps* showing the existing subdivision pattern in Lavarack Street.



Source: maps.six.nsw.gov.au

ITEM 2 (continued)

ATTACHMENT 2

53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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The site is located in an established low density residential neighbourhood, where the predominant built form is single and two storey dwelling houses set in landscaped gardens. Adjoining the site to the south is a single storey brick and tile roof dwelling and beyond this, a two storey brick and tile roof dwelling. To the north the site is a single storey weatherboard clad and tile roof dwelling house and then another single storey weatherboard clad and tile roof dwelling house. Directly opposite the site to the west are two storey dwelling houses.

However, there are a number of two storey attached dual occupancies similar to the proposed development in the surrounding area. The nearest is located to the north at No. 71 Lavarack Street. As indicated above, this allotment is one of the trapezoidal shaped allotments where the frontage to Lavarack Street is wider than the rear frontage to Lane Cove Road. A comparison of the attached dual occupancy approved at No. 71 and the proposed dual occupancy at No. 53 is provided by the artist's impressions of both developments in **Figure 2** below.

Figure 2: Comparison of the existing dual occupancy at No. 71 and the proposal at No. 53.



It is considered that the form, scale and landscape treatment within the front setback area of both developments is similar, despite the different frontage widths. Accordingly, it is considered that despite the reduced frontage, the proposed dual occupancy will be of a form, scale and appearance that is compatible with the desired future character, presenting an attractive facade to Lavarack Street and will make a positive contribution to the streetscape character and urban form and scale.

Strict Compliance is unreasonable or unnecessary in the circumstances of the case.

As described earlier, the road frontage of the site to Lavarack Street is 5.69m less than the statutory minimum and represents a variation of 28% below the 20m development standard. In numerical terms this represents a relatively significant variation to the principal development standard. Notwithstanding, as demonstrated in the NSW LEC decisions in *Micaul Holdings Pty Limited v Randwick City Council* and *Moskovich v Waverley Council* there should be no artificial conservatism about the use of Clause 4.6 based on the numerical extent of the variation being sought, given that the purpose of Clause 4.6 is to allow flexibility and to achieve better outcomes for a site by allowing developments to exceed development standards where there are justifiable circumstances.

An important finding in *Micaul Holdings Pty Limited* was that while the judgement did not directly overturn the *Four2Five v Ashfield* decision, the Chief Judge indicated that one of the obligations of a consent authority is to be satisfied that the applicant's written request has adequately addressed the matters in Clause 4.6(3), namely.....that compliance with the development standard is unreasonable and unnecessary in the circumstances of the caseand that there are sufficient environmental planning grounds to justify contravening the development standard.

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53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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In this particular instance, it is considered that compliance with the development standard is unreasonable and unnecessary and that there is sufficient environmental planning merit to justify the proposed non-compliance, as described below:

The objectives of the minimum lot sizes for dual occupancy and multi dwelling housing principal development standard is *to achieve planned residential density in certain areas*.

It is considered that the proposed development achieves the objective of the standard for the following reasons:

- The objective of the development standard specifically relates to residential densities (i.e. the population to be accommodated on the site having regard to its size), not streetscape appearance and character or the potential to alter the subdivision pattern;
- The site exceeds the minimum required site area and has a road frontage (albeit at the rear of the site) that achieves the required 20m minimum road frontage and as such, has the environmental capacity to accommodate the proposed increased residential density. This view is supported by the fact that consent has been granted to an attached dual occupancy at No. 71 Lavarack Street that has a similar site area, although in opposite circumstances to No. 53, the site achieves a 20m road frontage to Lavarack Street, but narrows to the rear. Notwithstanding, the residential density for both properties is essentially the same (i.e. a doubling of the residential density);
- It is considered that a distinction cannot be drawn between the proposed development and the approved dual occupancy at No. 71 Lavarack Street in terms of a failure to satisfy the objective of the development standard on the basis of density, as the Council has accepted that the proposed density can be achieved on a site of greater than 580m².

Notwithstanding, given that Council has raised streetscape and landscape character and the potential to adversely affect the existing subdivision pattern as reasons why the proposal fails to meet the objective, the following comments are made:

- The width of the site at the front building line has increased to 15.29m and the proposed landscaping within the front setback area incorporates feature trees on either side of the driveway, together with an understorey of shrubs and groundcovers, as well as turf, similar to the treatment of the majority of existing properties in the street;
- The proposed scale and massing of the building is consistent with the desired future character of the locality and the proposed landscape character is consistent with the established landscaped character.

In consideration of the above, Council's attention is also drawn to the Department of Planning and Environment's publication "*Varying development standards: A Guide*" (August 2011), which outlines the matters that must be considered when varying a development standard.

The Guide has essentially adopted the 5 point test for consideration set out by the Land & Environment Court in *Wehbe v Pittwater Council (2001) NSW LEC 827*, specifically that there are five different ways in which compliance with a development standard can be considered unreasonable or unnecessary, namely:

- *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: As discussed above, the proposal is considered to be consistent with the objective of the *minimum lot sizes for dual occupancy and multi dwelling housing* development standard, notwithstanding the numerical variation.

- *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: The objective of the *minimum lot sizes for dual occupancy and multi dwelling*

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ATTACHMENT 2

53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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housing development standard remains relevant and the proposal is consistent with, or at least is not antipathetic to this objective, notwithstanding the numerical variation. The objective relates to density and in the absence of further objectives, it is considered that issues such as streetscape and landscape character and subdivision pattern do not relate to the objective.

- *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: The proposal is consistent with the objectives of the *minimum lot sizes for dual occupancy and multi dwelling housing* development standard, notwithstanding the numerical variation, and it would not defeat the purpose of the standard.

- *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: The *minimum lot sizes for dual occupancy and multi dwelling housing* development standard has not been abandoned by Council through its actions in granting consent for other buildings in the vicinity that depart from the standard. Notwithstanding, in granting consent to a dual occupancy on another site of a similar size (No. 71) demonstrates that Council is satisfied that the proposed density can be achieved on an allotment of this size.

- *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The proposed attached dual occupancy is a permissible land use and the zoning of the site is considered to be appropriate in this location and in the context of the surrounding land uses and built form.

In light of the above, it has been demonstrated that the first test under the Wehbe method has been met, such that the requirement to strictly adhere to the numerical development standard for *minimum lot sizes for dual occupancy and multi dwelling housing* is considered to be unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify contravening the development standard.

Based on the discussion above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- The objective specifically relates to density (i.e. the environmental capacity of the site to accommodate the proposed increase in population density) and on the basis of density, it is difficult to draw a distinction between the ability of the similar sized allotment at No. 71 to support an attached dual occupancy and the inability of No. 53 to support an attached dual occupancy where the resulting density on both sites would be the same;
- Despite the reduced road frontage to Lavarack Street, the site exceeds the minimum site area of 580m² and achieves the required 20m road frontage to Lane Cove Road. As such, the site is considered to have the physical capacity to support the proposed density.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Table below demonstrates that the proposed development will be in the public interest because it will be consistent with both the minimum lot size for dual occupancies and multi dwelling housing principal development standard objective and the R2 Low Density Residential zone objectives of the LEP.

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53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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LEP Clause	Objective	Proposal
Clause 4.1B Minimum lot sizes for dual occupancies and multi dwelling housing	<i>a) To achieve planned residential density in certain zones.</i>	<p>Despite the non-compliance to the minimum road frontage to Lavarack Street, the site has the environmental / physical capacity to support the proposed increase in population density.</p> <p>In this regard, it is difficult to draw a distinction between the ability of the similar sized allotment at No. 71 Lavarack Street to support an attached dual occupancy and the inability of No. 53 to support an attached dual occupancy where the resulting density on both sites would be the same.</p>
	R2 Low Density Residential Zoning Objectives	<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p> <p><i>To provide a variety of housing types.</i></p>

4.0 Non-compliance does not hinder the attainment of the Objects of the Environmental Planning and Assessment Act 1979

The Wehbe decision identifies that in assessing a variation to a development standard, consideration must be given to Objects (a)(i) and (a)(ii) in Section 5 of the *Environmental Planning and Assessment Act 1979* is necessary. These are:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

The proposed variation to the *minimum lot sizes for dual occupancy and multi dwelling housing* development standard will not contravene either of these Objects. The proper management of the existing urban environment in order to achieve better social and community outcomes, as well as the orderly and economic use and development of land, will be realised through the provision of high quality

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53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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residential accommodation in a location with good access to public transport options and in proximity to shops, services and recreational facilities and educational establishments.

5.0 Secretary's Concurrence

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained prior to granting consent to a development that contravenes a development standard. In accordance with the Planning Circular (PS 18-003) issued on 21 February 2018, as the proposal contravenes a numerical standard by more than 10%, The City of Ryde Council cannot assume the Secretary's concurrence in this instance. Accordingly, the application will need to be considered by the Ryde Local Planning Panel.

Notwithstanding, provided below is a discussion on the matters under subclause 4.6(5) that the Secretary must consider in deciding whether to grant concurrence:

➤ ***Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.***

The variation to the minimum lot size for dual occupancies and multi dwelling housing principal development standard (specifically the minimum lot frontage) under *Ryde Local Environmental Plan 2014* will not give rise to any environmental planning matter which could be deemed to have either State or Regional significance. The variation to the development standard being sought will not have any effects outside the immediate area of the site.

➤ ***The public benefit of maintaining the development standard.***

No substantive public benefit would be realised by maintaining the development standard. Despite the frontage to Lavarack Street not meeting the required 20m minimum, the site width increases to the rear to achieve the 20m and has an area that is some 52m² greater than the required minimum of 580m². As such, it is unreasonable to suggest that the public benefit would be compromised due to the proposed density, given approval has been given to another dual occupancy on an allotment of similar dimensions.

➤ ***Any other matters required to be taken into consideration by the Secretary before granting concurrence.***

Despite not achieving the statutory minimum road frontage to Lavarack Street, the proposed redevelopment of the site will facilitate the orderly and economic redevelopment of the site for the purposes of an attached dual occupancy that will positively contribute to the achievement of the objectives of *Ryde Local Environmental Plan 2014*.

5.0 Conclusion

Based on the discussion provided above, it can be concluded that:

- strict compliance with the *minimum lot sizes for dual occupancies and multi dwelling housing principal development standard under Ryde Local Environmental Plan 2014* is unreasonable or unnecessary in the circumstances of the case where:
 - the objective of the development standard specifically relates to residential densities (i.e. the population to be accommodated on the site having regard to its size) and the site has the environmental / physical capacity to accommodate the proposed increased residential density. This view is supported by the granting of consent to an attached dual occupancy at No. 71 Lavarack Street that has a similar site area and dimensions, although in opposite circumstances to No. 53 where the site achieves a 20m road frontage to Lavarack Street, but narrows to the rear.
 - it is difficult to draw a distinction between the ability of the similar sized allotment at No. 71 Lavarack Street to support an attached dual occupancy and the inability of

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53 Lavarack Street, Ryde – Clause 4.6 Exception to Development Standards Request

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No. 53 to support an attached dual occupancy where the resulting density on both sites would be the same.

- the proposed design solution is considered to represent an appropriate development outcome for the site, displaying a high quality design, whilst ensuring that a high standard of amenity for future residents will be achieved.
- there are sufficient environmental planning grounds having regard to the Court matters *Four2Five v Ashfield Council* and *Wehbe v Pittwater Council* to justify the contravention to the development standard as the objectives of the *minimum lot sizes for dual occupancy and multi dwelling housing* development standard are still met, despite the non-compliance;
- the attached dual occupancy has been designed to a high quality and the amenity for future residents will be to a high standard;
- the non-compliance does not directly result in any adverse environmental impacts in terms of the building being out of context with the anticipated bulk and scale of development in the locality;
- the proposal will provide additional high quality housing choice in keeping with the desired future character of the area; and
- the scale and nature of the non-compliance does not give rise to any matter of State or Regional significance, nor does it adversely affect the public interest.

Having regard to the circumstances of this case where:

- the overall style, scale and built form of the building is commensurate with the likely future 'built environment' and desired character of the area;
- the proposal is consistent with the aims and objectives of *Ryde Local Environmental Plan 2014*; and
- the proposal is generally consistent with the objects of the *Environmental Planning & Assessment Act 1979*, in particular, the orderly and economic use and development of land and ecologically sustainable development,

it is submitted that this Clause 4.6 Exceptions to Development Standards request is well founded. As such, strict compliance with the *minimum lot size for dual occupancies and multi dwelling housing* principal development standard (specifically the minimum lot frontage) prescribed in Clause 4.1B of *Ryde Local Environmental Plan 2014* is unreasonable and unnecessary having regard to the circumstances of the case. Accordingly, having regard to the assessment and justification contained in this Clause 4.6 Exceptions to Development Standards submission, it is requested that Council support the proposed variation and the development in its proposed form.

Dated: 26 June 2019

Andrew Robinson Planning Services Pty Ltd



Andrew Robinson MPIA
Director

3 34 MAWARRA CRESCENT, MARSFIELD - REVIEW OF DETERMINATION OF LDA2018/0364 FOR THE DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW TWO STOREY DUAL OCCUPANCY (ATTACHED) - APL2019/0007

Report prepared by: Senior Coordinator - Assessment

Report approved by: Manager - Development Assessment; Director - City Planning and Environment

Report dated: 28 August 2019

**City of Ryde
Local Planning Panel Report**

DA Number	APL2019/0007
Site Address & Ward	34 Mawarra Crescent, Marsfield – West Ward
Zoning	R2 Low Density Residential
Proposal	Review of LDA2018/364 for the demolition of existing structures and construction of a new two (2) storey attached dual occupancy
Property Owner	Ivan Radovnikovish and Mary G Radovnikovish
Applicant	Sett Homes
Report Author	Kimberley Kavwenje – Senior Coordinator Assessment
Lodgement Date	5 July 2019
No. of Submissions	One (1) submission
Cost of Works	\$876,760.00
Reason for Referral to	The original determination was made by the Panel and the review is required to be determined by the

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LPP	Panel.
Recommendation	Refusal
Attachments	Attachment 1: Compliance Table Attachment 2: C4.6 variation to Clause 4.1B Attachment 3: A3 Plans submitted with APL

1. Executive Summary

The following report is an assessment of a Section 8.3 Review of Determination of Development Application LDA2018/364 for demolition of existing structures and construction of a new two (2) storey attached dual occupancy development. The development application was considered by the Ryde Local Planning Panel on 14 March 2019 in which the application was determined by refusal.

The original development application was reported to the Ryde Local Planning Panel for determination as it proposed a departure from a development standard in excess of 10% in accordance with the Minister's Section 9.1 Direction by the Minister, dated 23 February 2018. In accordance with Section 8.3(5) of the Environmental Planning and Assessment Act 1979, the application is required to be determined by the Ryde Local Planning Panel.

The subject site does not meet the development standard for a minimum 20 metre frontage required for dual occupancy development pursuant to Clause 4.1B of Ryde LEP 2014. The site has a frontage of 17.55 metres. The proposal seeks a 12.25% variation to the standard. The submitted Clause 4.6 written variation request does not satisfy the jurisdictional prerequisites required to satisfy the consent authority and to allow variation to the standard.

Particular concern is held regarding the levels across the site and how the proposed development relates. The application does not include sufficient information including a long section to identify the extent of excavation and fill proposed. The supporting documentation including the planning assessment, architectural plans and Council's review result in conflicting calculations. The proposal is contrary to Clause 6.2 Earthworks of Ryde LEP 2014.

The proposal includes provision of an extensive basement level, 148.9m² in area. The proposal creates a 2.89 metres floor to ceiling height for the basement level. The basement has a width of 11.87 metres and is elevated between 330mm to 700mm above natural ground as it presents to Mawarra Crescent. The proposed basement creates a predominant element when viewed from the streetscape.

The proposal results in a 22.56m² exceedance of the Floor Space Ratio development standard of Clause 4.4 of Ryde LEP 2014. No variation has been sought pursuant to

ITEM 3 (continued)

Clause 4.6. As such, development consent cannot be granted to the proposed development without such a variation being sought.

The proposal has not been supported by a compliant BASIX Certificate in accordance with Clause 50 and Schedule 1(2)(l) of the Environmental Planning and Assessment Regulation 2000. The Certificate submitted conflicts with the submitted plans with respect of landscape area and car parking.

The application was lodged on 5 July 2019 and notified until 29 July 2019. One (1) submission was received. Due to the lodgment date and statutory time frames for determination there was no opportunity for further information to be requested or submitted in response to the concerns held in relation to design.

Due to the fundamental concerns about the frontage width of the site, the site is not considered to be suitable for the development, and on this basis, the application is recommended for refusal.

2. The Site and Locality



Figure 1 Aerial photograph of site

The site is legally described as Lot 10 within DP 260270 and is known as 34 Mawarra Crescent, Marsfield. Mawarra Crescent is a cul-de-sac and the site is located on the eastern side of Mawarra Crescent, on the south eastern side of the cul-de-sac (**Figure 1**). The site is irregular in shape with an area of 677.9m². The site has an arc frontage of 17.55 metres to Mawarra Crescent and a south-eastern boundary width of 22.6 metres. The site has a north-eastern side boundary length of 32.885 metres and a south-western boundary length of 37.355 metres.

The site is located on the high side of the site and slopes from the rear to the street. The front of the site is steeply sloping with an embankment with a change in level at

ITEM 3 (continued)

the front of the site of 2.07 metres (RL82.02 – RL84.05) with an approximate slope of 1:4. The site is relatively level for the remainder of the site with a gentle cross fall north-east to south-west.

The site currently accommodates a single storey brick dwelling (**Figure 2**). The site has vehicular access adjacent to the south-western side boundary. Other site works include a rear covered area and concrete. The site has been predominantly cleared of vegetation with lawn areas at the front and rear of the site.

The site is burdened by a drainage easement 1.0 metre in width along the south-western side boundary.



Figure 2 Site as viewed from Mawarra Crescent

The site is located within a low density residential setting, mainly consisting of single and two storey dwellings. The streetscape includes large two storey development with examples of semi basement garages and single storey double garages.

The site is adjoined to the north-east by a single residential dwelling and secondary dwelling at No. 32A Mawarra Crescent which is a battle axe allotment (**Figure 3**). The dwelling is orientated towards the shared boundary and does not present directly to the streetscape. The battle axe access separates the site from No. 32 Mawarra Crescent located to the north of the subject site (**Figure 4**). The site contains a two storey dwelling sited above a semi basement double garage located adjacent to its northern side boundary.

ITEM 3 (continued)



Figure 3 Adjoining dwelling at 32A Mawarra Crescent



Figure 4 Adjoining site to north, No. 32 Mawarra Crescent

The adjoining property to the south is No. 36 Mawarra Crescent. The site accommodates a two storey dwelling (**Figure 5**) with vehicular access adjacent to the south-western side boundary to a double garage.

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Figure 5 Adjoining property to south, No. 36 Mawarra Crescent

To the rear of the subject property is No. 203 Vimera Road which is a two storey dwelling. The site contains a single storey addition which is sited within 1 metre of the shared boundary (**Figure 6**) and along the northern side boundary. The site contains a swimming pool which extends along the shared boundary and a single storey element adjacent to the rear boundary.



Figure 6 Adjoining property to the rear, No. 203 Vimiera Road

To the east of the site, located at No. 205 Vimiera Road (**Figure 7**) is an attached dual occupancy development approved under LDA2016/0610). The site has area of 780.9m² and a frontage of 25.82 metres to Epping Road. The site has a frontage of 18.16 metres to Vimiera Road and rear boundary of 28.475 metres.

ITEM 3 (continued)



Figure 7 Western elevation of existing dual occupancy at No. 205 Vimiera Road

3. The Original Determination

The applicant seeks a review pursuant to Section 8.3 of the Environmental Planning and Assessment Act 1979 to the decision to refuse Local Development Application LDA2018/364 for demolition and construction of a two storey attached dual occupancy on land at 34 Mawarra Crescent, Marsfield for the following reasons:

1. The proposed development provides an inadequate lot width and is inconsistent with the requirements of Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014.
2. The proposed development failed to submit a satisfactory written request to vary the lot width development standard which complies with Clause 4.6 Exceptions to development standards of the Ryde Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *Ryde Development Control Plan 2014*:

Part 3.3 – Dwelling houses and Dual Occupancy (attached)

- *Section Clause 2.1 – Desired Future Character* in that the proposal:
 - does not demonstrate that amenity for the subject dwellings or neighbouring properties will be provided; and
 - is inconsistent with the streetscape.
- *Section 2.6.2 – Topography and Excavation* in that
 - the level of excavation exceeds the required level;
 - the height of the retaining walls in the front setback exceed the maximum, height; and
 - the level of excavation is not consistent with the streetscape.
- *Section 2.11.1 – Car Parking* in that

ITEM 3 (continued)

- the external garage width exceeds the maximum width;
 - the garage door width exceeds the maximum width; and
 - the non-compliance results in a visually dominant garage.
 - *Section 2.13 – Landscaping* in that the hard paving in the front setback exceeds the maximum requirement and results in an unacceptable landscaped setting.
 - *Section 2.14.1 – Daylight and Sunlight Access* in that:
 - the proposal provides insufficient information to demonstrate that the adjoining property receives sufficient solar access to its north facing living rooms windows to maintain amenity; and
 - the proposal provides insufficient information to demonstrate adequate solar access is provided to the subject dwellings' north facing living room window in order to provide amenity.
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, that the proposed attached dual occupancy is not suitable for the site given the proposal does not meet key development standards for dual occupancy development under the relevant planning controls.
5. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, in that the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.
6. Approval of the development proposed would create an undesirable precedent.

4. The Review

The subject application is a review of the Ryde Local Planning Panel's decision to refuse LDA2018/364. The proposal seeks consent to demolish the existing dwelling and construction of a new two (2) attached dual occupancy. The proposed works include:

- Demolition of the existing dwelling and associated structures;
- Construction of attached dual occupancy comprising:
 - Basement Floor RL82.11 including two single garages, storage rooms (including extensive storage room adjacent to southern side boundary), plant room, lift provision and internal stair access within storage room adjacent (Dwelling B).
 - Ground floor RL85.00 comprising entrance, study, lounge, WC, guest bedroom, laundry, open plan kitchen, meals and family room. Internal stair access to first floor, internal stairs to garage associated with Dwelling A.
 - Elevated front balcony accessed from lounge. Alfresco accessed from kitchen and family room within Dwelling A and accessed from meals from Dwelling B.
 - First Floor RL88.040 comprising void, 2 bedrooms, bathroom, master bedroom with WIR and ensuite. Internal stair access.

ITEM 3 (continued)

- Vehicular access from Mawarra Crescent to two single car garage partially excavated at RL82.11
- Associated landscaping works.

The submitted architectural plans are provided in **Attachment 3**.

The design changes proposed include:

- The proposed entrance balconies (north-western elevation) are open balustrade, formerly were solid balustrades.
- The proposal notates the garage door width presentation of 5.64 metres. The notation has changed but not the width of the garage as originally proposed.
- The driveway crossover has been reduced to 5.0 metres from 6.0 metres
- Basement layout has been reconfigured including extension of storage length associated with Dwelling B to 13.89 metres from 12.34 metres, plant room increased to 3.58 metres from 1.9 metres
- The step down from the dwelling entrances to the front patios increased to 170mm from 85mm
- The overall depth of Dwelling B has been reduced to 20.510 metres from 20.870 metres. This has been achieved by reducing the size of the patio and study at the south-western corner of Dwelling B to 2.58 metres from 2.94 metres.
- Two (2) x two (2) skylights are proposed above the lounge rooms of both dwellings.
- Screening plants provided along south western boundary.
- Amended landscape plan.

ITEM 3 (continued)

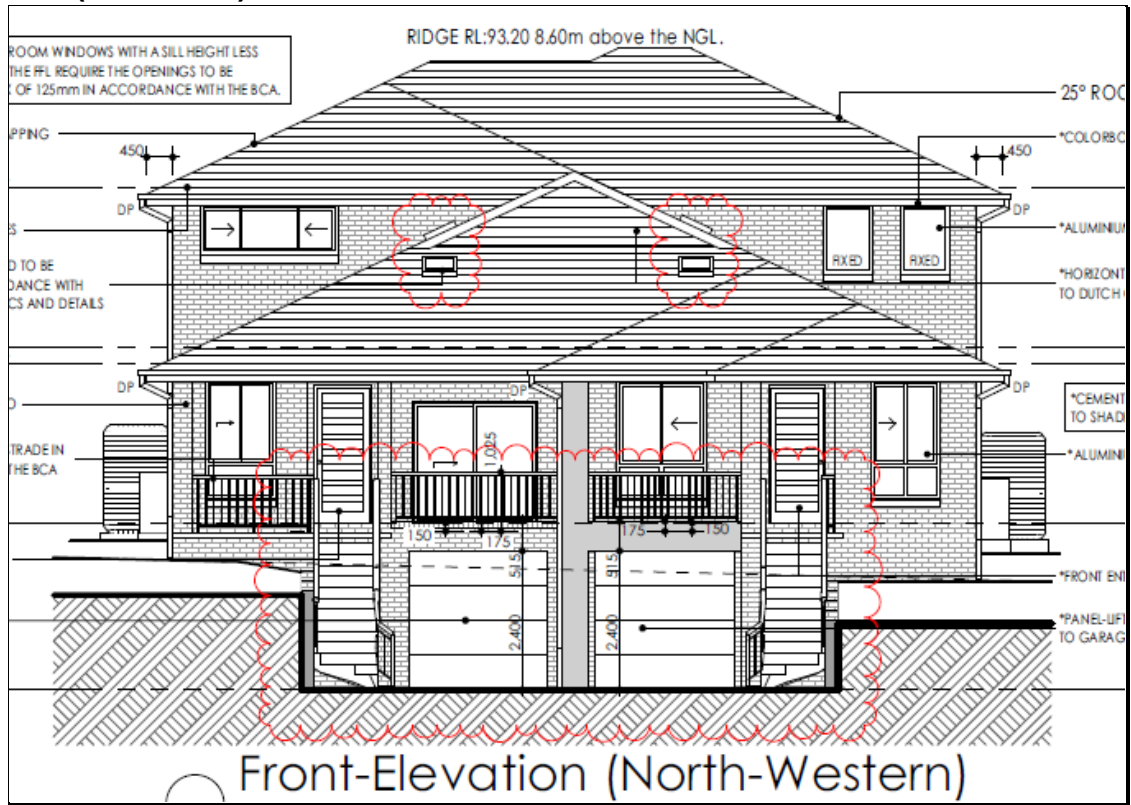


Figure 8 Proposed north-western elevation presenting to Mawarra Crescent

5. Background

Development History

14 March 2019

Local Development Application LDA2018/364 for demolition and construction of a two storey attached dual occupancy was refused by the Ryde Local Planning Panel. This determination is the subject of the Review.

Application History

5 July 2019

Section 8.3 Review of Development Application LDA2018/364 lodged.

16 July – 29 July 2019

The Section 8.3 Review Application was notified to adjoining property owners. One (1) submission was received objecting to the proposed development.

6. Planning Assessment

6.1 Environmental Planning and Assessment Act 1979

ITEM 3 (continued)
SECTION 8.3 REVIEWS

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides for a request to review a determination made for certain application types within 6 months of the date of determination. The proposal has been considered in accordance with the provisions of Section 8.2 and 8.3 as detailed below:

PROVISION	COMMENT
Section 8.2 Determinations and decisions subject to review	
<p>Section 8.2 (1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:</p> <p>(a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),</p> <p>(b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),</p> <p>(c) the decision of a council to reject and not determine an application for development consent.</p>	<p>The subject application is prescribed as a type pursuant to Section 8.2(1)(a).</p>
<p>(2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division:</p> <p>(a) a complying development certificate,</p> <p>(b) designated development,</p> <p>(c) Crown development (referred to in Division 4.6).</p>	<p>The review is of a development application which was not a designated development or crown development.</p>
Section 8.3 Application for and conduct of review	
<p>(2) A determination or decision cannot be reviewed under this Division:</p> <p>(a) after the period within which any appeal may be made to the Court has</p>	<p>The application was determined on 14 March 2019. The lapsing date for the period is 14 September 2019. This report has been prepared prior to this date.</p>

ITEM 3 (continued)

<p>expired if no appeal was made, or (b) after the Court has disposed of an appeal against the determination or decision.</p>	
<p>(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.</p>	<p>The application is supported by amended architectural and landscape plans. Further shadow diagrams and a revised Clause 4.6 variation accompany the application. The amendments made by the applicant include amendments to the design of the proposal and supporting documentation.</p> <p>The application as amended is substantially the same development as the development described in the original application. The amendments undertaken relate to the design details in terms of streetscape presentation, addition of skylights, further information relating to solar access, amended landscaping and revised Clause 4.6 submission.</p>
<p>(5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.</p>	<p>Development Application LDA2018/364 was determined by the Panel. The review will be determined by the Panel.</p>
<p>Section 8.4 Outcome of review</p>	
<p>After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.</p>	<p>As a consequence of the review it is recommended that the decision to refuse LDA2018/384 be confirmed.</p>
<p>Section 8.5 Miscellaneous provisions relating to reviews</p>	
<p>(1) The regulations may make provision for or with respect to reviews under this Division, including: (a) specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and (b) setting the period within which reviews must be finalised, and (c) declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.</p>	<p>The owners have lodged the review of determination application and the review is being undertaken by a Senior Coordinator Assessment. The Development Application was assessed by a Senior Assessment Officer. The Ryde Local Planning Panel determined the Development Application and will determine the Review.</p> <p>The application has been notified in accordance with the development control plan. One (1) submission was received and addressed within this report.</p>

ITEM 3 (continued)

	The assessment of the application has been finalised within the allowable time frame of 6 months.
(2) The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.	The development application was refused by the Ryde Local Planning Panel. The subject review is being determined by the Ryde Local Planning Panel and is not the subordinate of the delegate who made the original determination.
(3) If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.	N/A
(4) If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.	The determination is recommended to be confirmed.
(5) Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.	The notice of determination will include a specified date.
(6) A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.	Noted.
(7) If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.	Noted.

6.2 State Environmental Planning Instruments
State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has historically been used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case

ITEM 3 (continued)**State Environmental Planning Policy (Building Sustainability Index BASIX) 2004**

The proposal relies upon BASIX certificate 960957M_05 and dated 28 June 2019. The submitted BASIX Certificate is inconsistent with the submitted architectural plans in the following regards:

- The Certificate nominates provision of 3 car parking spaces. The submitted architectural plans show 2 x single garages.
- The Certificate nominates an area of garden lawn as 306.48m² for Dwelling A. This area is not achieved. The submitted landscape MS005-18 Issue B-5 dated 27.06.19 does not demonstrate this area is achieved in association with Dwelling A.
- The area of garden nominated for Dwelling B is 0m². This is inconsistent with the submitted landscape plan.

The certificate does not demonstrate compliance with the provisions of the SEPP and is unacceptable in this regard and forms part of the recommendation for refusal.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

It is considered that the proposed development does not cause undue impacts upon the existing trees and vegetation on the site and is acceptable in this regard.

SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the subject site and has been considered in this assessment.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above SREP. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development.

The objective of improved water quality is satisfied through compliance with the provisions of Council's Development Control Plan 2014 Part 8.2.

ITEM 3 (continued)

The proposed development raises no other issues and otherwise satisfies the aims and objectives of the SREP.

6.3 Ryde Local Environmental Plan 2014

Ryde Local Environmental Plan 2014 commenced on 12 September 2014 as the new environmental planning instrument applicable to the City of Ryde.

The subject site is identified as being within the R2 Low Density Residential zone under the provisions of RLEP 2014. Within this zone an attached dual occupancy is a permissible form of development with consent.

Aims and objectives for the low density residential zones:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

The development proposing two dwellings provides for a housing choice within the R2 land. This is the purpose of permitting dual occupancy development on certain sites within the R2 zoning. However, the development seeks variation to the development standard of Clause 4.1B(2)(b) for the property width. The proposal also exceeds the development standard for Floor Space Ratio. The combination of non-compliance's raises concerns with the proposal's achievement of the zone's objectives.

Clause 4.1B – Minimum lot sizes for dual occupancies and multi dwelling housing

Clause 4.1B(2) of RLEP 2014 requires that:

(2) *Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:*

- (a) *the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table (see below), and*
- (b) *the road frontage of the lot is equal to or greater than 20 metres.*

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

ITEM 3 (continued)

The site has an area of 677.9m², which complies with the minimum of 580m² prescribed in Clause 4.1B(2)(a). The proposal has a width of 17.55 metres and does not comply with the requirements of Clause 4.1B(2)(b). The proposal seeks a 12.25% variation to the standard. The Applicant has submitted a Clause 4.6 variation prepared by Urbanesque Planning and dated 5 July 2019 and is addressed below.

Clause 4.3 Height

The proposal is subject to a maximum height of 9.5 metres. The proposal has a height of 8.66 metres and complies with the development standard.

Clause 4.4 Floor space ratio

The proposal is subject to a maximum FSR of 0.5:1 (338.95m²). The proposal results in a FSR of 0.525:1 (356.31m²) and does not comply with the development standard. The applicant indicates compliance has been achieved.

There is an inconsistency between the calculations identified on Sheet 01 of 17 which nominates a FSR of 0.499:1 (338.55m²). The calculation does not include any of the basement floor area. Ryde LEP defines gross floor area as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

And

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

The basement protrudes between 330mm to 700mm above existing ground, however when scaled from the submitted plans the front of basement level would be sited above 1 metres above the existing ground level. A long section has not been

ITEM 3 (continued)

submitted but is necessary to show the proposed finished levels, spot levels to clearly demonstrate the protrusion of the basement level and whether the definition of basement is met.

Notwithstanding this, the calculation has excluded the entire basement on the presumption of (e)(i) and (ii). However, this is not the definition which refers to car parking which is identified in (g). The proposal results in garages, 33.2m² (Dwelling B) and 25.36m² (Dwelling A) which exceed Council's requirement of 18m² per dwelling. The proposal results in additional 22.56m² of floor space which has not been included in the calculation and is the likely cause of the discrepancy between calculations.

A Clause 4.6 variation has not been sought. Development consent cannot be granted without the jurisdictional prerequisite being satisfied. This forms part of the recommendation for refusal. The issue of FSR was not a reason for refusal under LDA2018/364. However, this assessment has identified this non compliance and forms part of the recommendation for refusal.

Clause 4.6 Exceptions to development standards

The development contravenes Clause 4.1B(2)(b) which requires dual occupancy developments to contain a road frontage which is equal to or greater than 20 metres. The site has a frontage of 17.55 metres to Mawarra Crescent and does not comply with the development standard. The proposal results in a 12.25% departure from the standard.

The applicant has submitted a revised Clause 4.6 request prepared by Urbanesque Planning and dated 5 July 2019 (**Attachment 2**) to vary the development standard and the following table below is discussion is based on applicant's submission, including the assessment made by Council:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:

ITEM 3 (continued)

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case

The submission relies upon the common ways to demonstrate compliance with a development standard is unreasonable or unnecessary in accordance with *Wehbe v Pittwater Council (2007)*. The submission relies upon the objectives of the standard are achieved notwithstanding the non compliance with the standard.

The applicant's request provides the following justification:

The objective of the road frontage standard is expressed at Clause 4.1B(1):-

"The objective of this clause is to achieve planned residential density in certain zones."

The two development standards contained in Clause 4.1B(2) are intended to work together to ensure lots sizes are sufficient in area and width to accommodate dual occupancy development, thereby achieving the desired residential density.

To achieve numerical compliance, an allotment must have both an area of at least 580m² and a road frontage of at least 20m. Numerical compliance with these two development standards will achieve the objective of the control. In other words, numerical compliance is a means to an end, the end being the objective of the control.

In the present case, the site area is 677.9m² which exceeds the minimum lot size for a dual occupancy by 97.9m². The first of the two development standards is satisfied numerically.

The nature of the road frontage control is to ensure a site has sufficient width to allow development of two dwellings resulting in development deemed to achieve the planned residential density. In one sense the residential density is expressed as a floor space ratio. The floor space ratio applying to the land is

ITEM 3 (continued)

0.5:1. The controls intend that the desired residential density for dual occupancy development should only be achieved on sites with the specified area and road frontage unless a variation is justified. As the desired site area is achieved and the floor space ratio is compliant, the focus of this request is on the suitability of site and the proposed development having regard to the road frontage.

In relation to the road frontage development standard, it should be noted that the control is a 'blunt instrument' in that it does not take into account other factors that may influence the site and its suitability for dual occupancy development. For example, the development standard does not contemplate the shape of an allotment in considering suitability. A Clause 4.6 variation allows such other factors to be taken into account in deciding the merits of the non-compliance with the numerical standard.

In the present case, the site is irregular in shape, having a curved road frontage of 17.55m to Mawarra Crescent however the site broadens gradually and has a rear width of 22.6m. The average site width is 20.075m. The site is 20m wide approximately mid-block. Also as mentioned, the site area exceeds the minimum by 97.9m².

The frontage width is a result of the configuration of the road and the lot which is identified as immutable physical environmental planning constraint which cannot be changed or complied with. As such the land requires a site responsive design so that the objectives of the development standard may be satisfied. The application must demonstrate that the site can be developed with an acceptable environmental outcome notwithstanding the frontage width. We contend that it does.

The existing dwelling takes full advantage of the site width and presents minimal side setbacks along the northern and southern boundaries. The rear setback is also relatively close and non-compliant by present DCP standards.

By comparison, the proposed dual occupancy will have compliant front, rear and side setbacks and will therefore result in a better environmental planning outcome on the site compared to the existing development. The floor space ratio and height controls are compliant. The resulting built form is proportionate to the site area and the dimensions of the land. Therefore, the built form of the development properly relates to both the geometry of the site and the surrounding built environment. Importantly, the landscaped area in the front setback is 62.5% (79.9m²) which exceeds Council's control of 60%. This ensures a satisfactory and supportable outcome for the public domain which is compatible with the streetscape. The front setbacks areas may also support medium height trees.

The proposed development is demonstrated to achieve the desired residential density through appropriate site planning and built form, notwithstanding non-compliance with the numerical road frontage development standard. Therefore, the site is considered suitable to support the proposed development and the objective of the control is achieved.

Pursuant to Cl.4.6(4)(a)(i), compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case.

Assessment Officer's Comments: The most common way is to demonstrate that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved despite non-

ITEM 3 (continued)

compliance with the standard. The objective of the standard does not need to be satisfied in order to address the unreasonable or unnecessary test required by Clause 4.6(3)(a). However, in this submission, the applicant has sought to rely upon demonstrating the proposal satisfies the standard's objective.

Clause 4.1B(1) of Ryde LEP 2014 identifies the standard objective's as follows:

The objective of this clause is to achieve planned residential density in certain zones.

The variation request has not demonstrated that the objective of the standard is achieved, despite the non-compliance. The applicant has provided a merit based justification for consistency with the built form controls as to demonstrate acceptability on the basis of site suitability. However, this does not address the objective of the standard for the following reasons:

- The objective is to achieve planned residential density in certain zones. In order to achieve the housing target requirements established in The Greater Sydney Region Plan within the Sydney North District Plan, Ryde LEP 2014 contains Clause 4.1B which establishes a minimal frontage and area requirements to facilitate dual occupancy development within the R2 zone on certain sites in order to achieve the planned residential density. The purpose of this standard is to facilitate the additional dwellings required to meet the nominated housing targets.

The Greater Sydney Region Plan nominates a planned density of an additional 7,600 dwellings within the City of Ryde by 2021. As of 30 January 2019, The City of Ryde had delivered an anticipated 12,786 dwellings. Council has exceeded this housing density requirement set by the Sydney North District Plan.

Land zoned R2, had delivered an additional 1,372 dwellings with a further 262 dwelling anticipated. This additional density is anticipated on sites which meet the development standards. The density is not reliant upon allotments which do not meet the development standard of Clause 4.1B(2).

- The submission contends meeting the numerical requirements of Clause 4.1B(2)(a) and (b) is the means to the end of demonstrating the objective of the standard is met. The submission contends the site exceeds the site area requirements of Clause 4.1B(2)(a) by 97.9m² and the first of the two numerical requirements is met. However, the numerical requirements cannot be simply viewed in isolation. They work in conjunction to achieve the objective in achieving the planned residential density. While the site area is exceeded, the minimum road frontage is not met.

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Consideration is given to how the site performs in regards to both numerical requirements. **Figure 9** shows that the site area of 309.27m² meets the 20 metres frontage requirement. The site does not meet the 20 metres required width until 18.2 metres along the northern side boundary and 23 metres along the southern boundary. Whilst the standard does not require an entire site to meet the 20 metre frontage, it provides context to the site's performance against the standard as a whole. The site at no point satisfies both the requirements of (a) and (b).

- The submission claims the residential density is expressed as FSR and that the proposal is compliant. The proposal has not demonstrated compliance with the FSR development standard of Clause 4.4. This is not a sufficient justification as all development is required to comply with the standard. A single dwelling is still subject to a FSR of 0.5:1.
- The submission relies upon site suitability to demonstrate consistency with the objective. The means of achievement of the objective has not been demonstrated by the submission in stating the development achieves the desired residential density through appropriate site planning and built form.

The site suitability is greater than an irregular frontage. The design response creates an extensive basement level, which is not responsive to the site's topography. To accommodate two dwellings, the proposal has sited the built form within the steepest part of the site where there is a 1:4 slope which results in a development undesired by the built form controls.

- The submission seeks to rely upon an acceptable design response to overcome the physical constraint of the site width. The applicant contends an acceptable environmental outcome is achieved. The site is constrained by the change in levels within the front of the site and its curved frontage. Constrained sites require a greater level of design response to achieve acceptable and desired outcomes.
- The Applicant contends suitability for the purposes of this form of development is achieved by compliance with built form controls. This does not appropriately consider or demonstrate it is unreasonable or unnecessary to comply with the standard by means of achieving the objectives of the standard.

The existing dwelling has a double garage (**Figure 2**) which is not cut into the site and the proposed built form associated with the dual occupancy necessitates the extensive excavation and interruption to the site. The design response demonstrates the constraints of accommodating a dual occupancy development on site which is not suitable for this form of development. The proposal as discussed throughout this report is not appropriate and is

ITEM 3 (continued)

inconsistent with the suite of built form controls and does not achieve the desired amenity for occupants and impacts neighbouring properties.

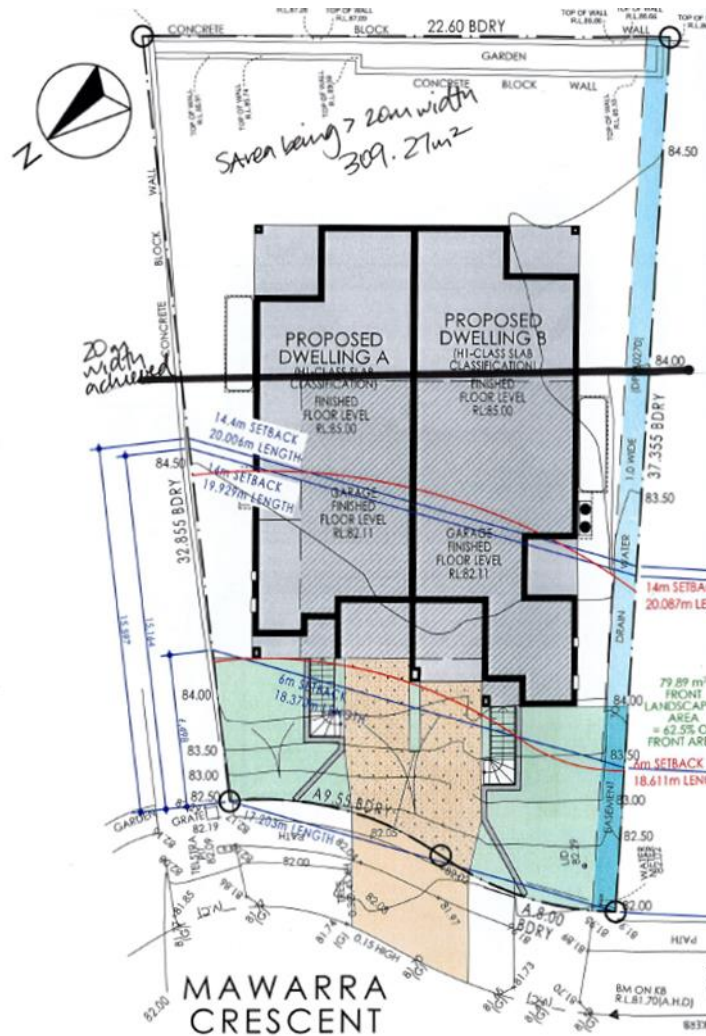


Figure 9 Location where 20 metre width achieved and resultant site area meeting the width

- The submission has not demonstrated what specifically about this site, makes it suitable for a dual occupancy development. Compliance with FSR and built form controls is not sufficient. These are controls every development and every site is expected to comply with. The submission does not provide an explanation as to why, in this circumstance, it is appropriate to vary the standard to facilitate this form of development due to providing an alternative means of satisfying the objective.
- The site, being non-compliant with the standard seeks to satisfy the jurisdictional prerequisite in stating it meets the objective of the standard. This has not been achieved with the justification relating to the merits of the built form instead of the stated objective of planned residential density.

ITEM 3 (continued)

- The objective would be thwarted by allowing for additional housing which further exceeds the identified density targets within Ryde on a site which does not meet the minimum frontage width.

The proposal does not meet the objective of Clause 4.1B(1) for dual occupancy developments.

The submission has not demonstrated achievement of the objective and therefore why it is unnecessary or unreasonable to comply with the standard. The proposal does not satisfy Clause 4.6(3)(a) and Clause 4.6(4)(a)(i).

Environmental planning grounds to justify contravening the development standard

The submitted request provides the following in response to addressing what the environmental planning grounds are for the variation.

Pursuant to Cl.4.6(4)(a)(ii), the matters preceding are considered to provide sufficient environmental planning grounds to justify contravening the development standard.

It is worth pointing out that in Four2Five Pty Ltd v Ashfield Council (2015) Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In a follow up judgement on further appeal, the Chief Judge, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

An excellent example of how an irregular site with a frontage of 18m may be successfully developed with a dual occupancy in accordance with the controls is that of No. 205 Vimiera Road Marsfield which is at the rear of the subject site. Refer to Figure 2.

Assessment Officer's Comments: The submission is required to establish there are sufficient environmental planning grounds to justify contravening the standard (Clause 4.6(3)(b)). The submission refers to a neighbouring property which has a compliant frontage and is not the subject site. No. 205 Vimiera Road is a corner allotment which has a frontage of 25.82 metres to Epping Road and a site area of 780.9m². This site is irregular in shape but compliant with the development standard of Clause 4.1B(2)(a) and (b).

The proposal has not demonstrated there are sufficient environmental planning grounds to justify contravention of the development standard in accordance with

ITEM 3 (continued)

Clause 4.6(3)(b). No environmental planning grounds have been specified by the applicant. Compliance with other planning controls is not sufficient environmental planning ground. The built form is something that could be achieved on a site which complied with the development standard. The consent authority cannot be satisfied by the justification made that the matters required to be addressed in Clause 4.6(3)(b) and 4.6(4)(a)(i) have in fact been demonstrated.

Public interest – Development consistent with the zone objectives and objectives of the development standard

The Applicant provided the following response in addressing the provisions of Clause 4.6(4)(a)(ii):

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. Refer to Initial Action Pty Ltd v Woollahra Municipal Council (2018).

In assisting the consent authority in its satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), we refer to the objectives for development within the zone in which the development is proposed to be carried out. The land is within the R2 Low Density Residential Zone.

The development provides for the housing needs of the community in a low density residential environment through the supply of one additional dwelling on the land. As a dual occupancy, the development provides housing choice. The development thereby demonstrates compatibility with the relevant zone objectives.

The applicant has provided the following justification regarding consistency with the zone objectives:

In assisting the consent authority in its satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), we refer to the objectives for development within the zone in which the development is proposed to be carried out. The land is within the R2 Low Density Residential Zone.

The development provides for the housing needs of the community in a low density residential environment through the supply of one additional dwelling on the land. As a dual occupancy, the development provides housing choice. The development thereby demonstrates compatibility with the relevant zone objectives.

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Assessment Officer's Comments: Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the applicant's request has addressed (3)(a) and (b) (unreasonable and unnecessary and sufficient environmental planning grounds).

The submission's suggestion that the consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b) is inconsistent with the findings of Preston CJ's conclusions in **Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61** and **RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130**. In these decisions, a request under cl. 4.6 will only adequately address Clause 4.6(3) if the consent authority is satisfied that the matters have in fact been demonstrated.

It is Council's opinion the variation has not demonstrated sufficient environmental planning grounds and that it is unreasonable or unnecessary to comply with the standard.

Clause 4.6 (4)(a)(ii) requires that the consent authority is satisfied that the development is in the public interest. This part of the clause sets out the considerations of public interest for the purposes of Clause 4.6. The submission has not demonstrated and Council cannot be satisfied that the development is consistent with the objectives of the development standard and the objectives for the zone.

As part of the public interest consideration, the development must be consistent with the objectives of the zone. In the case of R2 Low Density Residential in RLEP 2014, the objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

The proposal would be consistent with the objectives of the R2 zone in so far as the proposal would provide for housing choice within the R2 land and providing for housing needs. The R2 low density residential objectives are not LGA specific and therefore does not relate to the anticipated density or consistency with the desired built form within The City of Ryde. The development seeks variation to the development standard of Clause 4.1B(2)(b) for the property width. The proposal also exceeds the development standard for Floor Space Ratio. The combination of non compliance's raises concerns with the proposal's achievement of the zone's objectives. A single dwelling would also achieve consistency with zone objectives and is a permissible form of development within the zone. The reasons provided for

ITEM 3 (continued)

the proposal achieving the objectives of the zone are reasons any development could state is achieved. There is nothing specific about this development, which means it achieves the zone objective

Council is not satisfied that the development is consistent with the objectives of the development standard Clause 4.1B(1).

Council is of the view that the development is not in the public interest for the following reasons:

- The submission has not demonstrated how the proposal achieves the objective of the standard as required by Clause 4.6(3)(a) and 4.6(4)(a)(i).
- The submission relies upon satisfying the objective of the standard in Clause 4.1B(1) to demonstrate it is unreasonable or unnecessary to comply with the standard. This has not been achieved and Council is not satisfied that Clause 4.6(3)(a) and 4.6(4)(a)(i) has been demonstrated.
- The submission has not specified sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b) and 4.6(4)(a)(i)); and
- The submission has failed to satisfactorily address consistency with the objective of Clause 4.1B.

Therefore, the proposal is not considered to be in the public interest. The development has not demonstrated consistency with Clause 4.6(4)(a)(ii).

Matters required to be taken into consideration by the Director-General before granting the concurrence

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards.

Conclusion

The original determination, in reasons 1 and 2 addressed the non compliant frontage and unsatisfactory Clause 4.6 submission as detailed below. These reasons are maintained.

- 1.The proposed development provides an inadequate lot width and is inconsistent with the requirements of Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014.
- 2.The proposed development failed to submit a satisfactory written request to vary the lot width development standard which complies with Clause 4.6 Exceptions to development standards of the Ryde Local Environmental Plan 2014.

ITEM 3 (continued)**Clause 6.2 Earthworks**

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The submitted architectural plans do not include a long section to demonstrate the extent of cut proposed associated with the basement garage.

The proposal includes excavation associated with the basement which has an area of 148.9m². The basement has a finished floor level of RL82.11 and includes excavation to a depth of 2.79 metres. The basement level includes an extensive storage area associated with Dwelling B.

The proposal sites the building footprint within the steepest part of the site and seeks to directly enter the site to a semi basement garage. The proposal therefore results in excavation, with the driveway itself a maximum of 1.99 metres below existing ground level within the front setback and creates a considerable disruption to the site. Excavation is also proposed adjacent to the drainage easement and insufficient information has been submitted regarding the construction methods associated with the cut.

The proposal has not been supported by sufficient information demonstrating a long section, cross section at the front of the building or details regarding the destination of such extensive excavated material being removed from the site. The proposal is not considered satisfactory with respect of Clause 6.2(3)(b), (c), (d), (e) and (h).

6.4 Draft Environmental Planning Instruments**Draft Remediation of Land State Environmental Planning Policy**

The Draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. The proposal has not been supported by a Stage 2 site assessment as recommended. As such, the Consent Authority cannot be satisfied that the proposed site is suitable for the proposed development given the preliminary findings of contamination on site.

ITEM 3 (continued)

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating a number of SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is not inconsistent with the provisions of the draft SEPP.

6.5 Development Control Plans

Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.3: Dwelling Houses and Dual Occupancy (Attached);
- Part 7.2: Waste Minimisation and Management;
- Part 8.1: Construction Activities;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways;
- Part 8.5: Public Civil Works;
- Part 9.2: Access for People with Disabilities;
- Part 9.3: Parking Controls; and
- Part 9.5: Tree Preservation.

The provisions of RDCP 2014 have been considered in this assessment. Parts 8.1 to 9.5 are addressed separately via considerations given in the referral responses provided by Council's Development Engineer.

An assessment of the relevant controls is provided in **Attachment 1 Compliance Table**. A discussion of the non-compliance's with the provisions of the DCP is discussed below:

The original determination in Reason 3 of the refusal detailed the concerns with non compliances with relevant provisions of Ryde DCP 2014. The reason stated:

3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *Ryde Development Control Plan 2014*:

Part 3.3 – Dwelling houses and Dual Occupancy (attached)

ITEM 3 (continued)

- *Section Clause 2.1 – Desired Future Character* in that the proposal:
 - does not demonstrate that amenity for the subject dwellings or neighbouring properties will be provided; and
 - is inconsistent with the streetscape.
- *Section 2.6.2 – Topography and Excavation* in that
 - the level of excavation exceeds the required level;
 - the height of the retaining walls in the front setback exceed the maximum, height; and
 - the level of excavation is not consistent with the streetscape.
- *Section 2.11.1 – Car Parking* in that
 - the external garage width exceeds the maximum width;
 - the garage door width exceeds the maximum width; and
 - the non-compliance results in a visually dominant garage.
- *Section 2.13 – Landscaping* in that the hard paving in the front setback exceeds the maximum requirement and results in an unacceptable landscaped setting.
- *Section 2.14.1 – Daylight and Sunlight Access* in that:
 - the proposal provides insufficient information to demonstrate that the adjoining property receives sufficient solar access to its north facing living rooms windows to maintain amenity; and
 - the proposal provides insufficient information to demonstrate adequate solar access is provided to the subject dwellings' north facing living room window in order to provide amenity.

An assessment of the amended proposal and supported documentation maintains concerns with the proposal in regard to streetscape presentation, consistency with the desired future character, extent of excavation and demonstrating compliant solar access is achieved to the proposal. The concerns are discussed in detail below.

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)**2.1 Desired Future Character**

The objective of this part is to ensure that development is consistent with the desired future character of the low density residential area. The control (a) requires consistency with the desired future character and Part 2.1 details the fourteen means of achieving consistency with the desired future character. The concern with the proposed development relates to the proposed basement level which leads to a design response which is antipathetic to the desired character.

The proposal includes an extensive basement level which includes a storage area of 133m³. The basement has been designed to create additional floor space as designated storage areas and plant rooms. However, the proposed air conditioning condensers are shown on plan along the side boundaries above ground.

The proposed design approach is not responsive to the natural topography of the site and excavation has not been minimised. The design response results in an increased floor to ceiling height of 2.89 metres for access to the basement garage level. A floor to

ITEM 3 (continued)

ceiling height of 2.2 metres is required under the Australian Standard AS2890.1 for domestic garage. This is excessive and can readily be addressed through redesign to reduce the visual presence of the garage. The excavated nature of the basement garage is achieved through retaining walls within the front setback to facilitate access to the extensive basement level.

The level adopted to create the basement level leads to the design inconsistency with the desired character of the locality. The proposal results in extensive cut within the front setback to achieve the floor level of RL82.11. The proposal for a dual occupancy development on a constrained site by its irregular frontage, topography and undersized width contribute to the garage and entrance being a dominant feature. The proposal will clearly present as a dual occupancy development within the streetscape.

The desired future character includes limiting the number of dual occupancies and buildings to look similar to detached dwelling. This is reinforced by the objective of Clause 4.1B(1) to achieve planned residential density in certain zones. The application seeks to refer to the existing dwelling at 32 Mawarra Crescent as a reference point for achieving this outcome. This dwelling was approved under the provisions of Dwelling House and Duplex Building – Development Control Plan 1998. Notwithstanding consent being issued and sought pursuant to different planning instruments, this dwelling, despite its scale presents as a single dwelling with a basement for the parking of two vehicles 40m² in area (**Figure 10**). This would not be apathetic to the semi-basement control requirements of the current DCP provisions of Section 2.11.2. The adjoining dwelling has a single pedestrian entrance point and the proposed parking is responsive to the site and its irregular nature. This dwelling would be consistent with the desired future character. The garage has a width of 6.5 metres, and equates to 55.7% of the front façade of the dwelling. The garage is perceived from the streetscape, with a width of 36.5% of the property frontage. The proposed basement has a perceived width of 66.6% of the property width and is sited between 330mm to 700mm above existing ground level.

The design response does not address the desired future character in limiting the number of dual occupancies buildings. The proposal seeks to provide a dual occupancy on a site which does not meet the minimum frontage. The proposal has not achieved the objective of Clause 4.1B(1). In achieving the desired future character, consideration is given to sites suitable for dual occupancy development. The subject site does not achieve the frontage and where the site widens, it does not meet the required area requirement. As a result, the proposal provides for a development which is inconsistent with the suite of built form controls, does not appropriately deal with the site constraints and has not demonstrated the required amenity is achieved to the proposed dwellings. The proposal is contrary to the desired future character.

ITEM 3 (continued)

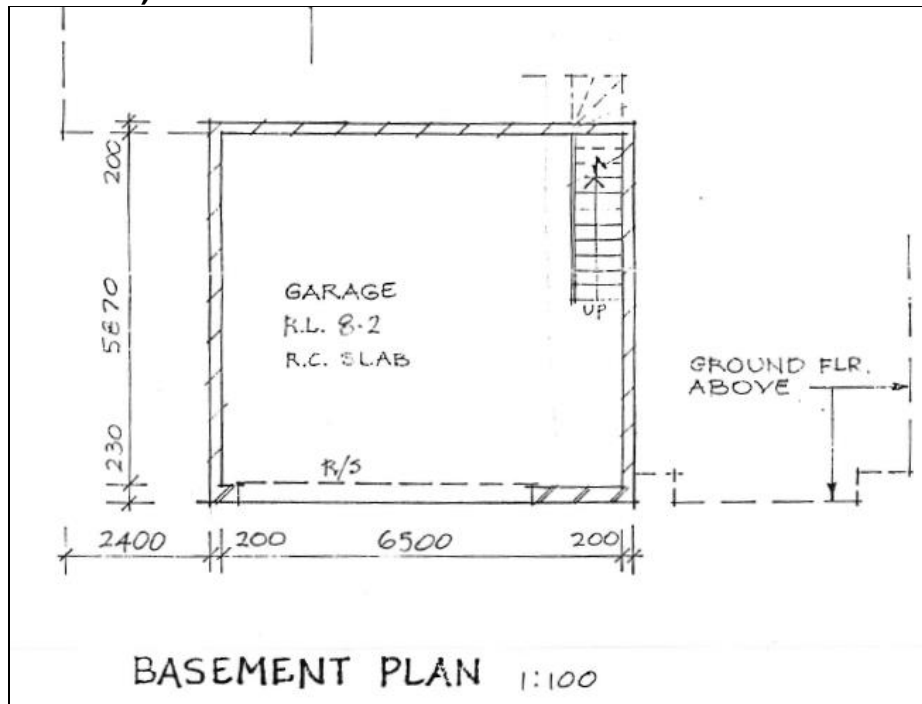


Figure 10 Approved basement level of 32 Mawarra Crescent 40m² in area

2.2 Dwelling Houses and 2.3 Dual Occupancy (attached)

Control (a) of Section 2.3 Dual Occupancy requires dual occupancy buildings to meet the controls for new dwellings set out in 2.2.1. The proposal is non compliant with the provisions of 2.2.1 in regards to the extent of excavation and insufficient and conflicting information shown on the plans and discussed in detail above.

2.2.1 New dwelling houses

Control (e) requires garages not to be visually prominent features and (f) requires dwellings to respond appropriately to the site's constraints and opportunities as identified in the site analysis.

The basement level is partially elevated. The garage door width has been reduced in the modified plans. However, due to the protrusion and width, the level results in a visual presence in the streetscape.

The proposal has been designed to directly enter from Mawarra Crescent with an at grade driveway to a basement level RL82.11 (**Figure 8**). This design approach results in cut within the front setback in response to the site's topography. There is a 2.03 metre level change at the front of the site. The proposal results in retaining walls within the front setback. The height of the retaining walls is approximately 1.49 metres. The driveway is calculated to be a maximum 1.99 metres below natural ground level. No top of wall heights to clearly show the height of the retaining walls has been submitted.

ITEM 3 (continued)

The site is constrained by its topography, curved frontage and orientation. On constrained sites such as this, the maximum FSR is often difficult to achieve. The proposal results in a non compliant FSR and has not been designed in consideration of the constraints. The proposal seeks to provide for two dwellings which do not receive compliant solar access.

The proposed design results in the basement and the associated retaining walls and pedestrian stairs presenting as the visually dominant element. The proposal is not considered to respond appropriately to the site's constraints and opportunities as required by Control (f).

2.5 Public Domain Amenity

2.5.1 Streetscape

The proposed design is not responsive to the site's topographic changes as required by control (a). There is a level change of 2.03 metres within the front setback with the remainder of the site being relatively level. The proposal seeks to directly enter the site and excavation within the front setback resulting in an increased floor to ceiling height of the basement level, increased retaining walls within the front setback and a built form which is not characteristic of development anticipated by the suite of built form controls.

The existing single dwelling achieves vehicular access from Mawarra Crescent without extensive cut. Similarly, the existing single dwelling at 32 Mawarra Crescent is a part two storey part three storey dwelling with a semi-basement beneath part of the dwelling. The adjoining dwelling although it includes provision of a semi-basement garage, the excavation is limited to the garage and the proposal presents as a single dwelling within the streetscape. The parking structure is minimised by the siting adjacent to the side boundary.

The proposal is subject to specific controls and provisions both within the LEP and DCP relating to extent of excavation. The proposed excavation is excessive. The proposal includes an extended basement façade in addition to two elevated pedestrian stairs in response to the raised floor level necessitated by the semi basement level presenting to the streetscape.

Control (d) requires garages visible from the public street to be compatible with the building design and set back behind the dwelling's front elevation. The garage door width has been reduced, but the basement width which is readily visual from the streetscape, has a width of 11.87 metres. The basement protrudes between 330mm to 700mm above ground contributing to the overall dominance of the parking structure.

2.6 Site Configuration

2.6.2 Topography and Excavation

ITEM 3 (continued)

The extent of excavation and the need for retaining walls was identified for a reason for refusal of the original development application. Control (a) requires building form and siting to relate to the original topography of the land and of the streetscape. Control (b)(i)(ii) and (iii) permits the area under the dwelling to be excavation as long as the topography of the site requires cut and/or fill in order to reasonably accommodate a dwelling. The depth of excavation is limited to maximum of 1.2metres and fill to a maximum height of 900mm. Control (e) requires generally the existing topography of to be retained and the areas of excavation and fill are to be minimized.

The proposed basement has an area of 148.9m². The proposed basement footprint equates to 22% of the site area. The proposal is non compliant with 2.6.2(b)(i) and (ii). The extent of excavation across the site has not been minimized and does not occur as a result of a site constraint, rather a design approach and could be minimized through redesign. The proposal is non compliant with control (e).

The control Part 9.3, 2.2 requires provision of 1 space per dwelling in a dual occupancy development. The proposed 148.9m² of basement level is not reasonable for association with two dwellings. The site, relies upon extensive excavation for the semi basement level to facilitate a non compliant site being developed for a dual occupancy development.

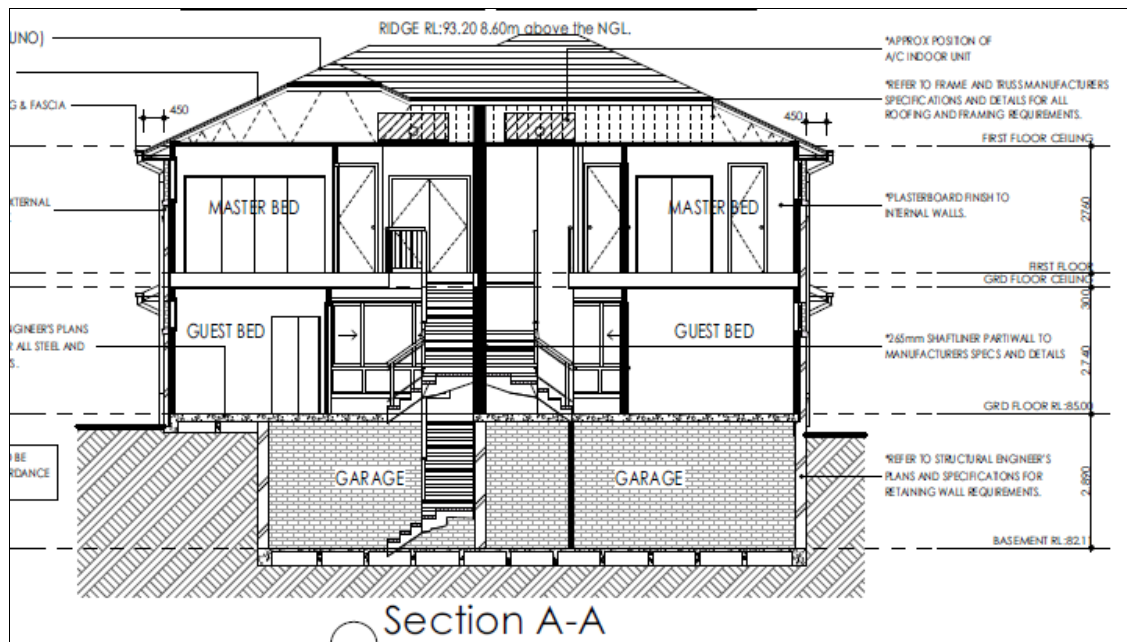


Figure 11 Section A-A Sheet 14 of 17 Issue B5 prepared by SETT Homes

Control (c) relates to areas outside of the dwelling footprint which may be excavation and/or filled so long as retaining walls are not greater than 900mm (i), the depth of excavation is not more than 900mm (ii) and the height of fill is no more than 500mm (iii). Control (c)(vi) and (vii) requires the area between the adjacent side wall of the house and the side boundary is not filled and the fill areas are not adjacent to side and rear boundaries.

ITEM 3 (continued)

Section A-A (**Figure 11**) shows a 500mm difference between the ground floor and adjoining natural ground level along the south western side boundary. The section is taken through the guest bedrooms, where the existing ground level is approximately RL84.5 along the south western side boundary and RL84.45 (when referenced against Sheet 3 and Sheet 9). The finished ground level or RL85.00 would mean there is a level difference of 500mm which has not been responded to within the design.

The proposal has been designed to directly enter from Mawarra Crescent with an at grade driveway which results in extensive cut in response to the site's topography. The proposal necessitates retaining walls within the front setback. The submitted plans do not include TOW heights for the retaining walls associated with the driveway access. The height of the retaining walls is approximately 1.49 metres and does not comply with (c)(i) and (ii).

The objectives of this part are to retain natural ground level and existing landform. To create consistency along streetscape, minimize the extent of excavation and fill and to ensure that the excavation and fill does not result in an unreasonable loss of privacy or security for neighbours. The proposed development is inconsistent with the control requirement and does not meet the objectives of the control.

2.7 Floor Space Ratio

Control (a) requires FSR to comply with Clause 4.4 of Ryde LEP 2014, which has a maximum FSR of 0.5:1. The proposal results in a FSR of 0.52:1 and does not comply. Control (b) states an area of 18m² may be excluded where a single parking space is proposed. The proposal includes two (2) single car garages with an area of 33.2m² (Dwelling B) and 25.36m² (Dwelling A) which exceed Council's requirement of 18m² per dwelling. This contributes to the FSR non compliance. The proposal is unacceptable with respect of Section 2.7 Floor Space Ratio.

2.8 Height

2.8.1 Building Height

Control (a) requires building height to be in accordance with the height table. The table states the maximum number of storeys is 2, but a maximum of 1 floor level of the building including car parking level can be located above a garage, which is attached to a dwelling, whether a semi basement garage or a garage at grade.

The proposal is technically defined as being three storeys in height for a length of 5.4 metres associated with Dwelling B and 5.87 metres associated with Dwelling A. The proposal includes provision of 2 floor levels (ground and first) above the semi-basement garage and does not comply.

Storey is defined in the Ryde LEP as follows:

ITEM 3 (continued)

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

The objectives of the control are to ensure that the height of development is consistent with the desired future character of the low density residential areas and is compatible with the streetscape and to ensure that the height of dwellings does not exceed 2 storeys.

The concern with the proposed development relates to the proposed basement level which leads to a design response which is antipathetic to the desired character. Whilst the proposal is compliant with the height development standard, the proposal is inconsistent with the desired future character. There is concern with compatibility with the streetscape presentation due to the extensive cut across the site width and the created levels. The proposal being sited within the steepest part of the site contributes to a design that necessitates extensive excavation in order to achieve the necessary parking for a dual occupancy development. The proposal is contrary to the objectives of the control and contrary to the control (a).

2.9.3 Rear setbacks

Control (a) requires dwellings to have a minimum rear setback of 25% of the length of the site or 8 metres, whichever is the greater. The average site length is calculated to be 35.12 metres and the proposal is subject to a rear setback of 8.78 metres. The proposal does not comply with the control requirement and has minimum rear setback of 8.057 metres.

The objectives of the control is to provide an area for private outdoor recreation, allow for space for vegetation, mature tree and deep soil zones, to separate dwellings to achieve privacy and to enable contiguous vegetation corridors across blocks.

The proposal can be considered acceptable with respect of the proposed rear setback for the following reasons:

- The rear south eastern elevation is articulated and provides for a rear setback between 8.057 metres and 10.96 metres.
- The extent of non compliant is 723mm and is limited to a width of 8.15 metres within the south eastern elevation.
- The proposal has been designed to incorporate alfresco dining areas at the rear north-eastern and south-western corners of the dwelling to provide for outdoor recreation.

ITEM 3 (continued)

- The ground floor contains openings associated with the family rooms, kitchen and dining rooms and do not result in impacts upon the adjoining properties.
- The first floor contains windows associated with Bedroom 2 only and does not result in a privacy impact.
- The proposal provides for a the required deep soil landscape area of 8 metres by 8 metre.
- The rear deep soil landscape area accommodates the required mature canopy trees required under 2.13(i)
- The rear setback provides for the required vegetation corridor along allotments.
- The proposal is consistent with the objectives of the control.

2.11 Car Parking and Access***2.11.1 Car Parking***

Controls (i) and (j) requires the minimum width of garages to be 6 metres or 50% of the street frontage whichever is the lesser and the total width of garage doors not to be greater than 5.7 metres. The amended proposal nominates a width of 5.4 metres for the garages to demonstrate compliance with the provisions of (j) and implies compliance with (i). However, the basement has a total width of 11.87 metres which presents to Mawarra Crescent. The proposal includes a storage area 4.065 metres in width associated with Dwelling B which is not setback 1.0 metre behind the dwelling façade and a storage area of 2.045 metres associated with Dwelling A. The basement level is excessive and is not consistent with the desired form for dual occupancy development.

The objectives of the control is to provide for off street parking, ensure car parking structures and garage doors are not prominent features with regard to either the individual lot or the streetscape and to ensure parking structures are consistent with the design of the dwelling. The siting of the garage where there is a significant change in topography, the protrusion above ground, floor to ceiling height and width results in the semi basement and associated structures being the prominent features of the development when viewed from the streetscape. The proposed parking is not responsive to the site and is unacceptable.

ITEM 3 (continued)**2.11.2 Semi-basement Car Parking**

Semi-basement car parking is a car parking structure set partly below ground level. The proposed basement would result in a maximum height of 700mm above natural ground at the south-western corner. This is inconsistent with what is shown on the submitted plans (**Figure 12**) south western elevation shows 1.0 metre protrusion. The absence of a long section through the development contributes to a misrepresentation of the levels across the site and the extent of level changes proposed. A cross section has also not been provided across the front of the site where the basement protrudes the greatest height above natural ground.

The provisions of Section 2.11.2 states that it is important that semi-basement parking is only used where it will be compatible with the streetscape. Semi-basement parking needs to be carefully designed to ensure the building is not raised unnecessarily high above ground level and the retaining walls and access ramps do not dominate the individual lot or the street.

Control (b) requires the walls of semi-basement car parks to not extend beyond the walls of the dwelling above and semi-basement car parking can only be used where it is appropriate with regard to the site topography of the site (c). The proposed basement, extends beyond the walls of the dwelling above, beneath the internal courtyard associated with Dwelling B and is non compliant.

The objectives of the control is to provide for off street parking, ensure car parking structures and garage doors are not prominent features with regard to either the individual lot or the streetscape and to ensure parking structures are consistent with the design of the dwelling.

The proposed basement area is excessive and is not representative or sympathetic to a low scale residential development. Semi basement car parking is capable of being supported where it is minimized and responsive to the site. The proposed basement unnecessarily extends within the site and includes excavation which far exceeds the requirement of 1.2 metres of Section 2.6.2 Control (b)(i)(ii) and (iii). The proposed basement arrangement is unacceptable as it creates conflict with the streetscape presentation, locates the parking within the steepest part of the site necessitating increased cut within the front setback and then extends within the site unnecessarily altering the site's topography.

ITEM 3 (continued)

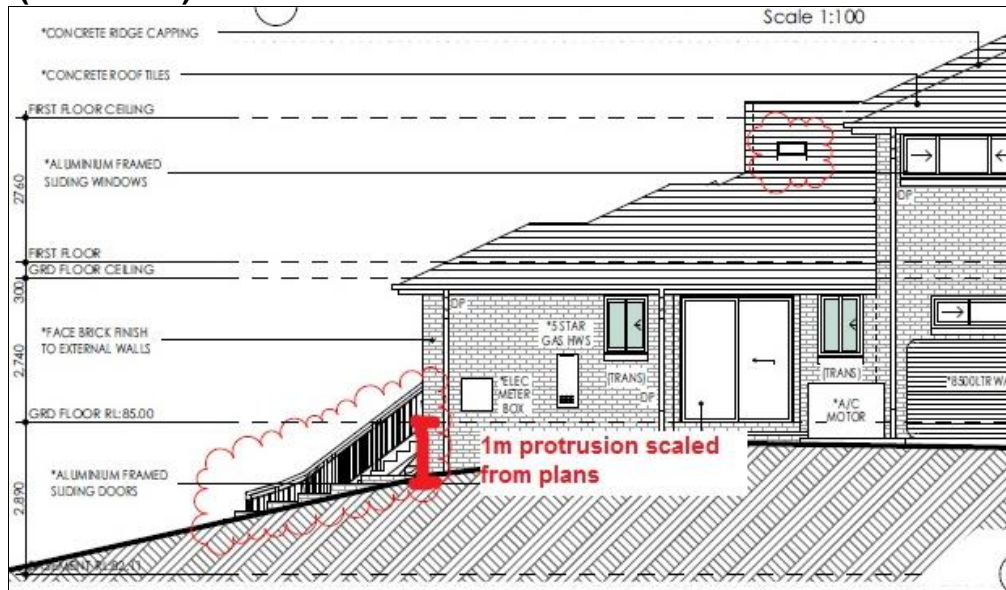


Figure 12 South western elevation Sheet 13 of 17 prepared by SETT Homes

2.13 Landscaping

Control (d) requires a physical connection between the dwelling and the external ground level where there is a level difference. There is a level difference between ground level of RL85.00 and adjoining ground level of RL84.50. The submitted plans do not provide for a connection between these areas in response to the level difference of 500mm.

Control (f) requires pathways to be provided along one boundary connecting the front to the rear of the site. The pathway is not to be blocked by ancillary structures. The proposal provides for a pathway along the southern boundary associated with Dwelling B. the rainwater tank is located within the setback and results in 400mm width between proposed landscaping within the drainage easement and rainwater tank to access the rear of the site.

2.16 Fences

2.16.1 Front and return fences and walls

The proposal does not nominate any front fencing. However, the landscape plan indicates masonry letterbox. The letter box is 600mm in width and 1.0m in height and would not comply with the control requirements. Given the frontage is otherwise free of any fencing, the proposed letterbox width and height is acceptable on merit.

2.14 Dwelling Amenity

2.14.1 Daylight and Sunlight Access

ITEM 3 (continued)

The original determined raised concerns with compliant solar access not being demonstrated and the shadow impact upon the neighbouring property. Control (c) requires windows to north facing living areas of subject dwelling to receive at least 3 hours sunlight between 9am and 3pm on 21 June. The submitted shadow diagrams, shown in **Figure 13** have not adequately demonstrated compliant solar access is achieved to the proposed dwellings. The information for example does not take into consideration the shadow which will impact the proposed dwellings from the adjoining properties to the north. The supporting planning assessment prepared by Ingham Planning Pty Ltd indicates *the proposed dual occupancy dwellings receive morning solar access to the rear family rooms for almost 2 hours in mid-winter from 9am to 10:45am and receive in excess of 2 hours solar access to the front lounge rooms in the afternoon in mid winter.*

The proposal has been designed with two living areas. The family rooms are located at the rear of the dwellings and do not receive the required sunlight. The extent of sunlight received cannot be determined by the level of information received.

The proposal appears to rely upon a combination of the two living areas receiving solar access. The control however, relates only to north facing living areas. The front lounge rooms and associated balconies have a northern aspect to achieve the required sunlight access. The amended design has included provision of two (2) skylights associated with each lounge room. The submitted shadow diagrams indicate sunlight is achieved to these skylights.

Insufficient information has been submitted to demonstrate the sunlight access received to the proposed dwellings. The appropriateness for reliance upon skylights as the means of attaining sunlight to the lounge room is also of concern. It is reflective of a design response seeking to maximize yield and provide two dwellings on a constrained site rather than providing for the design amenity of occupants.

ITEM 3 (continued)

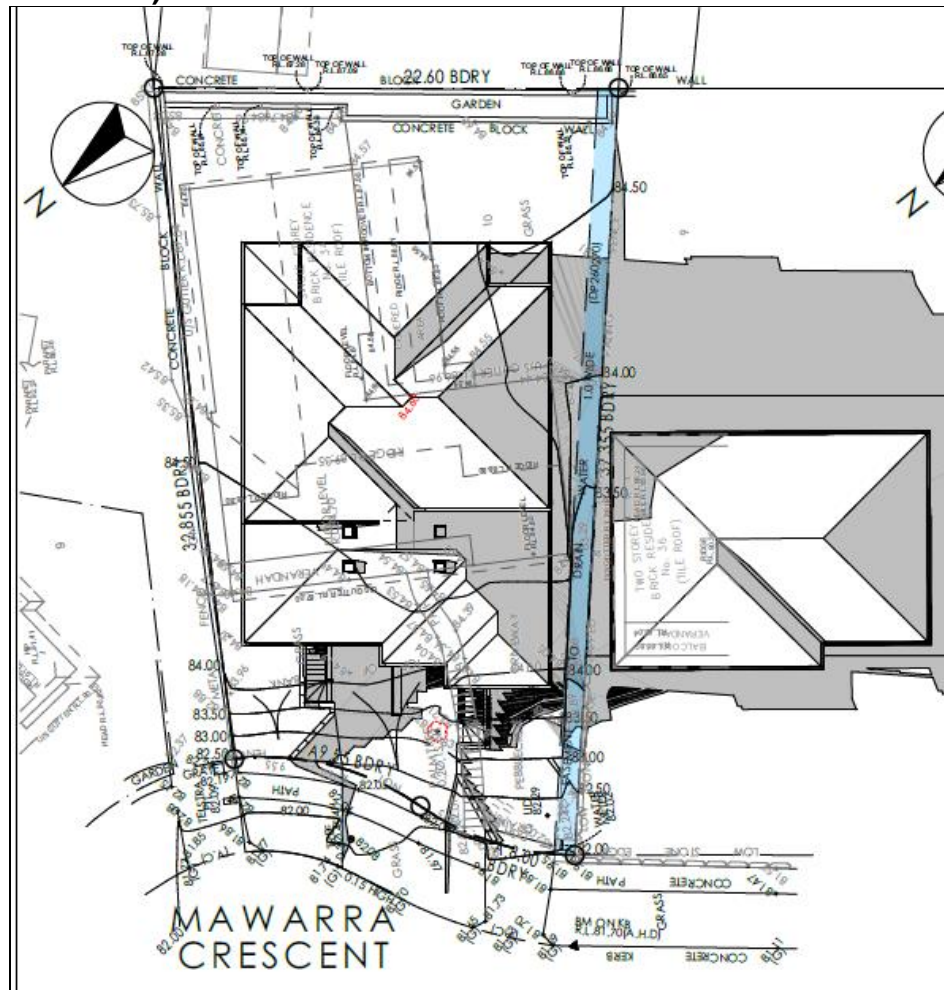


Figure 13 Shadow diagram exert Sheet 06 of 17 submitted by SETT Homes

Control (e)(ii) requires windows to north facing living areas of adjoining properties to receive at least 3 hour sunlight between 9am and 3pm on 21 June over a portion of surface, where this can be reasonably maintained given orientation and topography. The proposal has provided further shadow information (**Figure 14**). The supporting planning assessment prepared by Ingham Planning Pty Ltd indicates the shadow diagram demonstrates 3 hours solar access in mid winter between 9am and 3pm is provided to the whole of this living room window from 12 noon onwards.

The proposal demonstrates that the window is unaffected by shadow between 1 and 2pm. A portion of the window is affected at 12 noon and at 3pm direct sunlight is not achieved to this opening. It is considered likely however, that a portion of this window would receive sunlight at 11:30am and at 2:30pm and would likely achieve compliance with the control provision. This has not been demonstrated by the submitted information however.

The objectives of the control is to maximise sunlight and daylight access, to ensure that new development maintains appropriate sunlight access to neighbouring dwelling and neighbouring private open space and to encourage the use of passive solar design. The proposal has not demonstrated compliance with control (c) and

ITEM 3 (continued)

(e)(ii). The proposal has not demonstrate appropriate solar access to provided to the proposed dwellings and maintained to the neighbouring property at 36 Mawarra Crescent. It is considered likely, the proposal could demonstrated compliance with control (e)(ii) but the information submitted has not achieved this. The proposal is unacceptable in this regard.

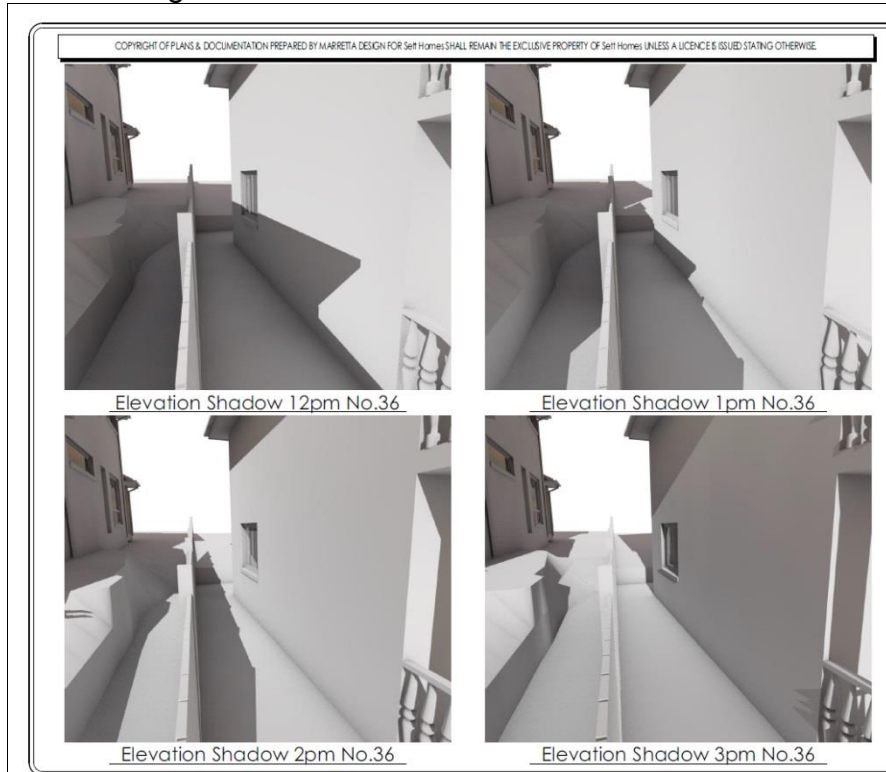


Figure 14 Elevation shadow diagram Sheet 07 of 17 prepared by SETT Homes

Part 7 Environment

7.1 Energy Smart, Water Smart

The submitted BASIX Certificate 960957M_05 and dated 28 June 2019 is not consistent with the submitted plans, particularly in relation to landscape area. This forms part of the recommendation for refusal.

7.2 Waste Minimisation and Management

Control (g) and (k) requires the bin location to be provided in an easy, direct and convenient access to permit easy transfer to the collection point. A path is required to be provided with enables wheeling of bins to be not less than 1:14. The landscape plan nominates the provision of 2 bin receptacles along the side boundaries. The proposal does not provide for all the required bins. The submitted plans do not include a path for wheeling the bins to the kerb side for collection. There is specific concern given the proposed level difference at the front of the site is 2 metres over a 6 metre length. It is considered highly likely however, the storage of bins and

ITEM 3 (continued)

recycling receptacles would be provided within the basement level. This however is not shown on the submitted plans.

6.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

Council's current Section 94 Development Contributions Plan 2007 (Interim Update (2014) effective 10 December 2014) requires a contribution for the provision of various additional services required. The proposal is recommended for refusal and therefore no Section 7.11 Contribution is required.

6.7 Any matters prescribed by the regulations

The development application was lodged and assessed in accordance with the relevant sections of the Environmental Planning and Assessment (EPA) Regulation 2000, as amended. The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. The sections of the Regulation relevant to the proposal are:

Australian Standard for Demolition - Clause 92(1)(b)

Clause 92(1)(b) of the Environmental Planning & Assessment Regulations 2000 requires the consent authority to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. The demolition of the existing structures could be conditioned to be carried out in accordance with a construction/demolition management plan, and this will be required to be submitted prior to the issue of a Construction Certificate if the application were recommended for approval.

7. The likely impacts of the development

The likely impacts of the development have been considered within this report and are deemed to be unacceptable. The proposal seeks consent for a dual occupancy development upon a site which does not satisfy the development standard of Clause 4.1B(2)(b) of the Ryde LEP 2014. The proposal has sought variation on the basis that the site is suitable for the proposed development.

The assessment demonstrates that the proposal will have adverse impacts upon the environment due to the nature of the proposed development. All relevant issues regarding environmental impacts of the development are discussed within in this report. The development is considered unsatisfactory in terms of environmental impacts.

8. Suitability of the site for the development

The site is zoned R2 Low Density Residential. The proposal is for an attached dual occupancy and associated works. The proposal seeks consent for a dual occupancy development upon a site which does not satisfy the development standard of Clause

ITEM 3 (continued)

4.1B(2)(b) of the Ryde LEP 2014. The proposal is not considered to be suitable for the site due to the non compliant road frontage of 20 metres.

The proposal has not demonstrated the objectives of Clause 4.1B(1) have been achieved to meet the jurisdictional prerequisite required to enable the consent authority to support variation. The proposal results in a non compliant FSR of 0.52:1 and does not comply with Clause 4.4. No variation has been sought and the consent authority cannot grant consent without variation having been sought.

The proposal has not been supported by sufficient information to demonstrate the proposal does not result in any adverse impacts. The proposal has not demonstrated compliant solar access is achieved to the proposed dwellings.

9. The Public Interest

The public interest is best served by the consistent application of the requirements of relevant Environmental Planning Instruments and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised. The proposal has been assessed against the relevant planning instruments and is considered to be unacceptable.

Approval of such a development is contrary to the public interest and the application is recommended to maintain the original determination of refusal.

10. Submissions

In accordance with DCP 2014 Part 2.1 Notice of Development Applications, the proposal was notified to adjoining property owners between 16 July – 29 July 2019. In response, one (1) submission was received raising the following concerns:

- ***The proposal is non compliance with Clause 4.1B of the Ryde LEP 2014 in respect of the minimum 20 metre road frontage for dual occupancies.***

Comment: The proposal is non compliant with the development standard of Clause 4.1B and this forms part of the recommendation to maintain the refusal of the development application.

- ***Overshadowing of north facing windows of 36 Mawarra Crescent***

Comment: The proposal does result in overshadowing of the living room window. The applicant has submitted further elevational shadow diagrams (**Figure 14**) which indicate sunlight is provided to this window between 12 noon and the Applicant indicates until 3pm. This is not agreed to. As the proposal results in a partial impact at 12 noon, the extent is not known by the level of information submitted and the window does not receive direct sunlight at 3pm. However, it is considered this opening is likely to receive partial sunlight between 11:30am and 2:30pm and would meet the control requirement.

ITEM 3 (continued)

- ***Incompatible with the streetscape***

Comment: This is agreed to and forms part of the recommendation for refusal.

- ***Privacy and acoustic impacts***

Comment: Concern is raised regarding the visual privacy impact upon the front verandah of 36 Mawarra Crescent. The existing verandah presents to Mawarra Crescent and is not considered to be private as it is readily visible from the streetscape. The existing verandah has a RL83.04 at ground floor and RL85.62 at first floor and aligns with Dwelling B south-western corner where the study and powder room is proposed.

The proposed study does not contain any openings within the south western elevation. The proposed powder room contains an opening which is notated as being translucent and has a sill height of 1.4 metres. The proposed opening is not considered to result in any adverse privacy impacts upon the front verandahs.

The proposal is not considered to generate any additional noise than what would be expected in a residential area.

- ***The application fails to satisfy the requirements of Clause 4.6 due to non compliances with regards to excessive excavation, the design resulting in poor amenity for both dwellings and incompatibility with the street and future desired character***

Comment: The submitted Clause 4.6 submission is not considered to demonstrate how the proposal achieves the standard's objective, why it is unreasonable or unnecessary to comply with the development standard or provided sufficient environmental planning grounds to warrant variation to the standard. The proposal has not met the jurisdictional prerequisites to enable the consent authority to vary the standard. This forms part of the recommendation to maintain the reason for refusal.

- ***The amendments are minor and do not address the fundamental issues with the development***

Comment: The design responses have not adequately addressed the reasons for refusal. The original determination for refusal is recommended to be maintained.

- ***The redesign of the driveway area will not likely change the excessive level of excavation required.***

Comment: The proposal does include extensive excavation which is non compliant with Clause 6.2 Earthworks of RLEP 2014 and the provisions of 2.6.2 of RDCP. The excavation to create a semi basement of such a scale for a low scale residential

ITEM 3 (continued)

development is excessive and unacceptable. The design response to the site's topography is not considered to be acceptable. This forms part of the recommendation for refusal.

- ***The garage and driveway are visually dominant and the scale of the structure is inappropriate***

Comment: Agreed. Concern is held regarding the proposed semi basement level, extent of excavation which necessitates retaining walls within the front setback and establishes the floor levels which results in unnecessarily elevated ground floor level when viewed from the streetscape.

11. Referrals**Engineering:**

Council's Senior Development Engineer has reviewed the proposal and has made the following comments:

"There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development."

12. Conclusion

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the proposal is not suitable for the subject site and is contrary to the public interest. The Section 8.3 Review has determined that the original reasons for refusal are still valid and there are additional grounds for refusal. The reasons for the decision are as follows:

- The site fails to comply with the frontage requirement to Mawarra Crescent and the applicants Clause 4.6 written variation is not well founded and fails to demonstrate consistency with the objective of the control, that the non-compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravention of the development standard.
- The development would be inconsistent with Council's desired future character of the area which is to limit dual occupancy developments to sites that have a minimum road frontage of 20 metres.

ITEM 3 (continued)

- The proposal exceeds the FSR development standard for Clause 4.4 and no Clause 4.6 variation has been sought.
- The proposal is not supported by sufficient information relating to excavation including long sections, solar access, BASIX Certificate compliance.

13. Recommendation

That the Ryde Local Planning Panel as the consent authority, maintain the determination of LDA2018/364 and refuse ALP2019/0007 proposing demolition of existing structures and construction of a two (2) storey attached dual occupancy on land at 34 Mawarra Crescent, Marsfield, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the provisions of Ryde Local Environmental Plan (RLEP 2014) in that:

Particulars:

- (a) The proposal is contrary to the objectives of the R2 – Low Density Residential Zone. The provision of an attached dual occupancy on a site that is contrary with Clause 4.1B, conflicts with objectives of the zone;
- (b) The proposed development does not comply with Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014 with a frontage of 17.55 metres.
- (c) The written request prepared by Urbanesque Planning and dated 5 July 2019 pursuant to Clause 4.6 of the Ryde Local Environmental Plan to vary the minimum frontage is not well founded. The request has not demonstrated that compliance with the standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening the development standard. In particular, the request fails to adequately demonstrate the following:
 - i. The proposal has not demonstrated that the proposal achieves the objectives of Clause 4.1B(1). The proposed development and variation from the standard is inconsistent with the objectives of the standard (cl.4.6(4)(a)(ii)).
 - ii. The written request fails to demonstrate that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the matters required to be demonstrated have not been adequately addressed (cl.4.6(3)(a) and cl.4.6(4)(a)(i)).
 - iii. The written request fails to demonstrate there are sufficient environmental planning grounds to justify contravening the development standard and the matters required to be demonstrated

ITEM 3 (continued)

have not been adequately addressed (cl4.6(3)(b) and cl4.6(4)(a)(i)).

- (d) The proposal is contrary to Control (a) of Part 2.3 Dual Occupancy (attached) and Part 2.2.1 Dwelling Houses of Ryde Development Control Plan 2014 regarding the scale, extent of excavation and insufficient information submitted.
- (e) The proposal does not comply with the development standard of Clause 4.4 Floor Space Ratio of Ryde Local Environmental Plan 2014. No Clause 4.6 variation has been sought.
- (f) The proposal is subject to a maximum FSR of 0.5:1 by Clause 4.4 Floor Space ratio. The proposal results in a FSR of 0.525:1 (356.31m²) and does not comply with the development standard and Part 2.7 Floor Space Ratio of Ryde Development Control Plan 2014.

- 2. The proposal has not been supported by a valid BASIX Certificate as required by State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.**

Particulars:

- (a) The proposal relies upon BASIX certificate 960957M_05 and dated 28 June 2019. The submitted BASIX Certificate is inconsistent with the submitted architectural plans.

- 3. The extent of cut and fill proposed is unreasonable and results in a built form inconsistent with the desired future character. The proposal is contrary to Clause 6.2 Earthworks of Ryde LEP 2014 and Section 2.6.2 Topography and Excavation controls of Ryde DCP 2014.**

Particulars:

- (a) The proposed development includes excavation to a depth of 2.39 metres to create an extensive basement level. The extent of excavation across the site has not been minimized and does not occur as a result of a site constraint, rather a design approach and could be minimized through redesign.
- (b) The proposal has not been supported by sufficient information demonstrating a long section, cross section at the front of the building or details regarding the destination of such extensive excavated material being removed from the site.

ITEM 3 (continued)

- (c) The proposal is not considered satisfactory with respect of Clause 6.2(3)(b), (c), (d), (e) and (h).
- (d) The proposal is contrary to the objectives of Part 2.6.2 Topography and excavation of Ryde DCP 2014 in that the development does not retain natural ground level and existing landform. The proposal does not minimise the extent of excavation.
- (e) The proposal is non compliant with Section 2.6.2 Topography and Excavation, Control (a), (b)(i)(ii) and (iii) and (e). The proposal is non compliant with control (c)(i), (ii) and (iii).

4. The proposed semi-basement garage results in an unacceptable streetscape impacts contrary to the desired future character of the locality and is contrary to the suite of built form controls of Ryde DCP 2014.

Particulars:

- (a) The proposal is contrary to the objective and Control (a) of Part 2.1 Desired Future Character.
- (b) The proposed design approach is not responsive to the natural topography of the site and excavation has not been minimised as required by Section 2.5.1(a) Section 2.6.2, Section 2.11.2 and Clause 6.2 Earthworks.
- (c) The proposal is contrary to the objectives of Section 2.11.1 Carparking and Part 2.11.2 Semi-basement, Control (c).
- (d) The proposed basement is non compliant with Section 2.6.2 Control (b)(i)(ii) and (iii).

5. The proposal is contrary to Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed development is not suitable for the subject site and approval of the development would be contrary to the public interest.

Particulars:

- (a) The proposal is not consistent with the provisions of the Ryde Local Environmental Plan 2014, and is contrary to Section 4.15(1)(a)(i) of the

ITEM 3 (continued)

Environmental Planning and Assessment Act 1979.

- (b) The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal does not comply with the provisions of Ryde Development Control Plan 2014 as detailed within the reasons for refusal.
 - (c) Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed attached dual occupancy is not suitable for the site.
 - (d) Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is contrary to the public interest.
- 6. The proposed development has not been supported by sufficient information to demonstrate an acceptable development which is consistent with the requirements of the Ryde Local Environmental Plan 2014 and Ryde Development Control Plan 2014.**

Particulars:

- (a) A Clause 4.6 variation to the development standard within Clause 4.4 Floor Space Ratio of Ryde Local Environmental Plan 2014 has not been submitted.
- (b) The BASIX Certificate 960957M_05 and dated 28 June 2019 is inconsistent with the submitted landscape plan MS005-18 Issue B-5 dated 27.06.19.
- (c) Insufficient details have been provided regarding the construction methods associated with the proposed cut and fill.
- (d) Insufficient sectional details have been submitted.
- (e) There is inconsistency between the submitted plans.
- (f) No demolition plans or waste management plan have been submitted with the subject application.
- (g) Insufficient shadow information has been submitted.

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ATTACHMENTS

- 1 Compliance Check
- 2 Clause 4.6 Variation
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

Kimberley Kavwenje
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Report Approved By:

Sandra Bailey
Manager - Development Assessment

Liz Coad
Director - City Planning and Environment

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ATTACHMENT 1

Compliance Check - Quality Certification

Assessment of a Dual Occupancy (attached), Single Dwelling House, Alterations & Additions to a Dwelling House and ancillary development.

LDA No: LDA2018/0364	Date Plans: 27.06.19
Address: 34 Mawarra Cr Marsfield	
Proposal: Demolition of existing structures & construction of a new 2 storey dual occupancy (attached)	
Constraints Identified:	

COMPLIANCE CHECK

Ryde LEP 2014	Proposal	Compliance
4.1B(2)(a) & (b) Minimum lot sizes for dual occupancies and multi dwelling housing		
580m ²	677.9m ²	Yes
20m frontage	17.55m	No
4.3(2) Height		
9.5m	Roof RL (highest): RL 93.2 EGL (lowest) under: RL 84.54 Height of Building = 8.66m	Yes
4.4(2) & 4.4A(1) FSR		
0.5:1 (338.95m ²)	Basement Floor: 25.31m ² Ground Floor: 200.36m ² First Floor: 130.84m ² Total GFA: 356.51m ² FSR = 0.52: 1	No

DCP 2014	Proposed	Compliance
Part 3.3 - Dwelling Houses and Dual Occupancy (attached)		
Section 1.0 Introduction		
Part 1.6 Site Analysis		
Site analysis to be submitted.	Sheet 03 of 17 Site & Context Analysis Plan submitted	Yes
Section 2.0 General Controls		
2.1 Desired Future Character		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is not considered to be consistent with the future desired character of the area. The proposed design approach is not responsive to the natural topography of the site and excavation has not been minimised. The design	No

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
	<p>response results in an increased floor to ceiling height of 2.89 metres for access to the basement garage level. This is excessive and can readily be addressed through redesign. The proposal additionally includes an extensive basement level 148m² in area. The basement has been design to create additional floor space as designated storage areas and plant rooms, notwithstanding the proposed air conditioning condensers are shown on plan along the side boundaries above ground.</p> <p>The level adopted to create the basement level has lead to the design inconsistency with the desired character of the locality. The proposal results in extensive cut within the front setback to achieve the floor level or RL82.11. A semi basement garage would minimise the extent of excavation and be more characteristic of existing built form.</p>	
2.2 Dwelling Houses		
2.2.1 New Dwelling houses		
<ul style="list-style-type: none"> (a) Dwelling to have a landscape setting which includes significant deep soil areas at the front and rear (b) Maximum two storeys high (c) Dwellings address the street (d) Boundary between public and private space is clearly articulated (e) Garages and carports are not to be visually prominent features (f) Dwellings are to response appropriately to the site's constraints and opportunities identifies in site analysis 	<p>Three storeys proposed. Dwelling presents to Mawarra Crescent.</p> <p>Proposed floor to ceiling height of garage being 2.89m results in increased prominence.</p> <p>Proposed includes excessive excavation associated with the basement footprint.</p> <p>Proposal has been designed with direct access from the streetscape, resulting in increased cut and excessive retaining walls within the front setback as a result.</p>	No
2.3 Dual Occupancy (attached)		
<ul style="list-style-type: none"> (a) New dual occupancy buildings are to meet the controls for new dwelling houses set out in 2.2.1. (b) Alterations and additions to dual occupancy buildings are to meet the requirements of 2.2.2. 	<p>The proposal is non compliant with provisions of 2.2.1 as detailed within this table.</p>	No
2.4 Subdivision		
Minimum lot sizes apply under RLEP	Development consent is not being	N/A

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
Clause 4.1A	sought for subdivision.	
2.5 Public Domain Amenity		
2.5.1 Streetscape		
(a) Site design, building setbacks and the location and height of level changes are to respect the existing topographic setting of the street and the relationship of existing buildings in the street to the topography (b) The design of front gardens is to complement and enhance streetscape character (c) Dwelling design is to enhance the safety and amenity of the streetscape (d) Carports and garages visible from the public street are to: (i) Be compatible with the building design (ii) Be setback behind the dwelling's front elevation (e) Driveways and hard stand areas minimised, maximise deep soil areas and soft landscaping in the front garden, reduce the visual impact of driveways and hard surfaces from the street. (f) Dwellings, garages and carports are to be orientated to match the prevailing orientation of such buildings in the streetscape (g) Facades from the public domain are to be well designed.	The proposed design is not responsive to the site's topographic changes. The proposal seeks to directly enter the site and cut within the front setback resulting in an increased floor to ceiling height o the basement level, increased retaining walls within the front setback and a built form which is not characteristic of development anticipated by the suite of built form controls. The garage door width has been reduced, but the basement width which is readily visual from the streetscape, has a width of 11.87 metres.	No
2.5.2 Public Views and Vistas		
(a) A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Fence 70% open where height is >900mm. (b) Garages/carports and outbuildings are not to be located within view corridor if they obstruct view.	No views are impeded by the proposed development.	Yes
2.5.2 Pedestrian & Vehicle Safety		
(a) Car parking located to	No objection has been raised by	Yes

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>accommodate sightlines to footpath & road in accordance with relevant Australian Standard.</p> <p>(b) Fencing that blocks sight lines is to be splayed.</p> <p>(c) Refer to relevant AS when designed driveways</p>	<p>Council's Senior Development Engineer in this regard.</p>	
2.6 Site Configuration		
2.6.1 Deep Soil Areas		
<p>(a) 35% of site area min. (237.265m²)</p> <p>(b) Deep soil area must include:</p> <p>(i) Min 8x8m deep soil area in backyard.</p> <p>(ii) Front garden area to be completely permeable (exception driveway, pedestrian path and garden walls).</p> <p>(c) Dual occupancies need only one 8m x 8m in back yard</p> <p>(d) Deep soil areas to have soft landscaping</p> <p>(e) Deep soil areas to be 100% permeable to water and cannot be covered by structures, paving or the like, or have below surface structures such as stormwater detention elements.</p>	<p>Permeable (deep soil) area: 271.8m² (40% of site area). Applicant has included drainage easement along southern boundary + gravel +RW tanks in calculation this accounts for discrepancy in calculations.</p> <p>Rear DSA dimensions: 8m x 8m provided.</p> <p>Areas included the DSA calculation are 100% permeable, are not covered, no paving or the like, the drainage easement has been excluded.</p>	<p>Yes</p>
2.6.2 Topography & Excavation		
<p>(a) Building form and siting are to relate to the original topography of the land and of the streetscape.</p> <p>(b) The area under the building footprint may be excavated or filled so long as:</p> <p>(i) the topography of the site requires cut and/or fill in order to reasonably accommodate a dwelling</p> <p>(ii) the depth of excavation is limited to 1.2m maximum</p> <p>(iii) the maximum height of fill is 900mm</p>	<p>No long section has been provided to clearly demonstrate the extent of cut proposed is associated with the basement level.</p> <p>Within BF Max cut: 1.89 – 2.8m inconsistency on submitted documentation Max fill: No details of fill shown.no long section proposed.</p> <p>Outside BF Max cut: 1.49m Max fill: Not shown on plan</p> <p>Retaining wall height = 1.49m to facilitate excavation for driveway</p>	<p>No</p>

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(c) Areas outside the dwelling footprint may be excavation and/or filled so long as:</p> <ul style="list-style-type: none"> (i) the maximum height of retaining walls is not >900mm (ii) the depth of excavation is not >900mm (iii) the height of fill is not >500mm (iv) the excavation and filled areas do not have an adverse impact on the privacy of neighbours (v) the filled areas do not have an adverse impact on the privacy of neighbours (vi) the area between the adjacent side wall of the house and the side boundary is not filled (vii) the filled areas are not adjacent to side or rear boundaries <p>(d) Fill is not allowed in areas of overland flow. Refer to Part 8.2 stormwater management</p> <p>(e) Generally the existing topography is to be retained.</p>		
2.7 Floor Space Ratio (FSR)		
<ul style="list-style-type: none"> (a) FSR is 0.5:1 in accordance Clause 4.4 (b) A floor area of 36m² maybe excluded when this area accommodates 2 car space. An area of 18m² may be excluded when the area accommodates 1 parking space. 	<p>The proposal results in a FSR of 0.52:1 and does not comply. The proposal has single garages in excess of 18m².</p>	No
2.8 Height		
2.8.1 Building height		
<ul style="list-style-type: none"> (a) Building heights are to be as follows: - Maximum height of 9.5 metres for dwellings and dual occupancy. - Outbuildings including garages and carports maximum height 4.5 	<p>Roof RL (highest): RL 93.2 EGL (lowest) under: RL 84.54 Height of Building = 8.66m</p>	Yes

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DCP 2014	Proposed	Compliance
metres.		
<u>Maximum wall plate</u> - 7.5m max above FGL <i>or</i> - 8m max to top of parapet NB: TOW = Top of Wall EGL = Existing Ground Level - FGL = Finished Ground Level	TOW RL: 90.8 EGL below: RL 84.16 TOW Height = 6.64m	Yes
<u>Maximum number of storeys:</u> - 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL). - 1 storey maximum above attached garage incl semi-basement or at-grade garages	2 storeys above basement level. Basement does not protrude more than 1.2m underneath first floor	No
2.8.2 Ceiling Height		
(a) Habitable rooms to have 2.4m floor to ceiling height (min).	2.89m basement floor 2.74m ground floor 2.76m first floor	Yes
2.9 Setbacks		
2.9.1 Front setbacks		
(a) Dwellings are generally to be set back 6m (b) N/A (c) Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1m from the dwellings front façade (d) The front setback free of structures, exception car parking structures which comply with 2.11. (e) N/A. (f) The outside face of wall built above a garage which faces street is to align with the outside face of the garage wall below.	Dwelling setback in excess 6m. Proposed basement is not setback 1m behind façade. Front setback contains retaining walls and stairs. Ground floor does not align with garage.	No
2.9.2 Side Setbacks		
(a) One storey dwellings setback 900mm (b) Two storey dwellings setback 1.5m (c) Second storey addition to a single storey dwelling set back 1.5m (d) .N/A	1.66m from northern and 2.2m from southern	Yes
2.9.3 Rear Setbacks		

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(a) The rear of the dwelling is to be setback a minimum of 25% of the site length or 8m, whichever is greater. (b) N/A (c) N/A	A rear setback of 8.78m is 25% of site length. Proposed rear setback is 8.057m	No
2.11 Car Parking and Access		
2.11.1 Car Parking		
(a) Dwelling house up to 2 spaces. Dual occupancy 1 space/dwelling (b) Parking spaces can be enclosed or roofed. (c) Garages to be setback 1m behind facade. (d) Front of an existing dwelling if: (i) there is no other suitable position (ii) no vehicular access to the rear of side of the site (iii) it is preferred that it is single car width. (e) Garages doors are to be solid. No expanded mesh doors. (f) N/A (g) Width of driveways to be minimised. Driveways should be single car width except where needed to be widen to double garage access. (h) Driveways cannot be roofed. (i) Minimum width to street of 6m or 50% of the frontage whichever is less (j) Total width of garage doors not be >5.7m (k) N/A (l) Garage doors not be recessed more than 300mm (m) Garage windows >900mm from boundaries (n) Free standing garages maximum GFA 36m ² (o) Design and materials to complement dwelling (p) Setback at least 1m from building's front façade (q) N/A	Proposal provides 2 x 1 parking space. Semi basement garage proposed. Garage not setback 1m behind façade (Dwelling B) Garage doors solid. Driveway width has been minimised. Driveway is not roofed. 5.64m width nominated for the garage door openings. However, the basement extends an additional 2.045m to the north and 4.065m to the south. Results in an overall width of 11.87 metres. Garages exceed 36m ² . Garage doors recessed 230mm. No garage windows. Basement extends beyond dwellings walls.	No
2.11.2 Semi basement Car Parking		
(a) Ramps must start at least 2m back from street boundary. Ramps cannot be located on public land.	The proposed basement extends outside of the walls of the dwelling above.	No

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(b) The walls of semi basement car parks are not to extend beyond the walls of the dwelling above.</p> <p>(c) Semi basement car parking can only be used where it is appropriate with regard to the topography of the site.</p>	<p>The proposed basement car park is not considered appropriate in this circumstance.</p>	
2.13 Landscaping		
<p>(a) Major trees to be retained where practical</p> <p>(b) N/A</p> <p>(c) Provide useful outdoor spaces</p> <p>(d) Physical connection between dwelling and external ground level where there is a level difference</p> <p>(e) Provide landscape front garden. Hard paved areas no more than 40%.</p> <p>(f) Pathway along one side boundary connecting front to rear. Not to be blocked by ancillary structures. Not required where there is rear lane access or corner allotment.</p> <p>(g) Landscape elements in front garden to be compatible with scale of dwelling.</p> <p>(h) Front garden at least 1 canopy tree at least 10m in height</p> <p>(i) Mature tree at least 15m in rear garden with the DSA.</p> <p>(j) Locate and design landscaping to increase privacy between dwellings.</p> <p>(k) Hedge planting on boundary no greater than 2.7m</p> <p>(l) N/A</p> <p>(m) OSD not to be located within front setback unless it is underneath driveway</p> <p>(n) Landscaping to include POS</p> <p>(o) Designed to improve energy efficient of building and micro climate of external living areas.</p>	<p>There is a level difference between ground level of RL85.00 and adjoining ground level of RL84.50. The submitted plans do not provide for a connection between these areas in response to the level difference of 500mm.</p> <p>Proposal does not provide pathway along both side boundary. Pathway along southern boundary is impacted by rainwater tank.</p> <p>Proposal provides for 2 x Tuckeroos within front garden and 2 x Water Gums in the rear yard.</p>	<p>No</p>
2.14 Dwelling Amenity		
2.14.1 Daylight and Sunlight Access		
<p>(a) Living areas are to be predominantly located to the north where possible</p>	<p>Dwelling A is located adjacent to the northern side boundary and has a setback of 1.66m and the rear of</p>	<p>No</p>

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(b) Sites with northern side boundary to have increased setback of 4 metres is preferred.</p> <p><u>Subject Dwelling</u></p> <p>(c) Windows to north facing living areas of subject dwellings are to receive at least 3 hours of sunlight between 9am to 3pm on June 21.</p> <p>(d) Private open space is to receive at least 2 hours sunlight between 9am to 3pm on June 21.</p> <p><u>Neighbouring properties:</u></p> <p>(e) For neighbouring properties: (i) sunlight to 50% of principal areas of ground level POS is not reduced to less than 2 hours between 9am to 3pm on 21 June (ii) windows to north facing living areas to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of surface, where can be reasonably maintained given orientation and topography.</p>	<p>the dwelling where the living room and alfresco is sited being setback 3.6 metres to the alfresco and the family room in excess of 4.0 metres.</p> <p>The family room associated with Dwelling B is located at the south-eastern corner and has an eastern elevation window.</p> <p>The submitted plans do not contain any details of the overshadowing to Dwelling A by the adjoining dwellings at 32 and 32A Mawarra Crescent. Dwelling A is located to the south of these properties and lower than these sites and would likely be subject to overshadowing. The proposal has not demonstrated the amount of sunlight received to this dwelling.</p> <p>Dwelling B contains a single window within the eastern elevation associated with the family room. This window is cast in shadow from 12 noon and would not receive 3 hours sunlight.</p> <p>The proposed dwellings have been designed with a secondary lounge area at the front of the dwellings and the amended proposal includes provision of 4 skylights associated with this room. The submitted shadow diagrams indicate continued sunlight is achieved to these skylights, however as discussed above the proposal has not taken into consideration the adjoining dwelling's shadow cast.</p> <p>The submitted shadow diagrams Sheet 07 demonstrates reasonable sunlight is provided to 36 Mawarra Crescent between 12 noon and 2pm to the north facing opening. This opening is subject to self shadowing at 3pm and would not receive meaningful sunlight access.</p>	
<p>2.14.2 Visual Privacy</p>		

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(a) Orientate the windows of main living spaces (living room, dining, kitchen, family etc) to the front and rear</p> <p>(b) Orientate terraces, balconies and outdoor living areas to front or rear and not side boundary</p> <p>(c) Terraces and balconies are not to overlook neighbour's living areas and POS</p> <p>(d) Living and kitchen windows, terraces and balconies are not to allow direct view into neighbouring dwelling or POS</p> <p>(e) Side windows are to be offset by sufficient distance to avoid visual connection between dwellings.</p> <p>(f) Splayed walls with windows are not to be located above ground level where the windows provide views into adjoining property.</p>	<p>The windows associated with the family room are located in the eastern rear and northern side boundary. Adequate separate and level difference is achieved between the proposal and properties to the north to achieve the desired outcome between properties.</p> <p>The secondary lounge rooms are orientated towards Mawarra Crescent and not side boundaries.</p> <p>The proposed openings associated with the kitchen and living rooms and balconies do not have direct views into the neighbouring dwellings or POS.</p> <p>The proposed balconies are orientated to the front of site.</p>	<p>Yes</p>
2.14.3 Acoustic Privacy		
<p>(a) Noise of air conditioners, pump or mechanical equipment must not exceed background noise by more than 5dB(A) when measured in or on any premises in vicinity of the item.</p> <p>(b) N/A</p> <p>(c) N/A</p> <p>(d) Dual occupancies are to be designed to reduce noise transmission between dwellings.</p>	<p>Proposed air conditioning condensers along side boundaries. If recommended for approval, could be conditioned to comply with acoustic requirements.</p>	<p>Yes</p>
2.14.4 View Sharing		
<p>(a) The siting of development is to provide for view sharing.</p>	<p>There are no views available from the subject site and therefore the proposal does not interfere with view corridors.</p>	<p>N/A</p>
2.14.5 Cross Ventilation		
<p>(a) The plan layout, including the placement of openings, is to be designed to optimise access to prevailing breezes and provide for cross ventilation.</p>	<p>Proposal includes windows in each elevation at ground and first floors.</p>	<p>Yes</p>
2.15 External Building Elements		
2.15.1 Roofs		
<p>(a) Relate roof design to the desired built form by: (i)articulating the roof</p>	<p>Minimum 450mm eaves. Tile roof form. Roof is not trafficable.</p>	<p>Yes</p>

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<ul style="list-style-type: none"> (ii) roof is consistent with the architectural character of dwelling (iii) eaves min 450mm overhang on pitched roofs (iv) compatible roof form, slope, material and colour to adjacent buildings (v) roof height is in proportion to the wall height of the building (b) The main roof is not to be a trafficable terrace. (c) N/A (d) Skylights to be minimised on roof planes visible from the public domain. Skylights are to be symmetrical. (e) The front roof plane is not to contain both dormer and skylight. Dormers are preferred. (f) Balconies and terraces are not to be set into roofs. (g) Scale of the roof is to be in proportion with the scale of the wall below. (h) N/A 	<p>Two skylights in north western front elevation roof form. One skylight provided in south western and north eastern elevation.</p> <p>No dormers proposed.</p>	
2.16 Fences		
2.16.1 Front and return Fences and Walls		
<ul style="list-style-type: none"> (a) Reflect the design of the dwelling (b) Materials compatible with the house and other fences in streetscape (c) Solid fence or wall max 900mm. Open light weight fence (timber picket) can be 1m. (d) Return fence is to be no higher than front fence (e) Fences maximum 1.8m in height is 50% open with solid base no higher than 900mm (f) Fences along arterial road may be solid and maximum 1.8m (g) Front and return fences are not to be Colorbond or timber paling. (h) Retaining walls which are part of front or return fence maximum height of 900mm (i) Overland fencing shall be open so does not impede flow 	<p>The proposal does not nominate any front fencing. However, the landscape plan indicates masonry letterbox. The letter box is 600mm in width and 1.0m in height and would not comply with the control requirements.</p>	<p>No</p>

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
of water (j) Fence piers to have a maximum width of 350mm.		
2.16.2 Side and Rear Fences and Walls		
(a) Maximum height for side and rear fence is 1.8m (b) Overland flow all fencing to be open so not to impede flow of water (c) Barbed wire, broken glass or other dangerous elements not permitted. (d) Fencing forward of the foreshore building line shall be open and permeable.	Landscape plan nominates a 1.8m boundary fence along the northern side boundary to comply with Council guidelines. There is an existing Colorbond fence shared with 32A Mawarra Crescent so it is not clear how this fencing will be provided. Council is not a regulator of the Dividing Fences Act and this is a civil matter between property owners. Development consent is not being given.	Yes
Part 7: Environment		
7.1: Energy Smart, Water Wise		
3.0 The information Guide		
3.2 Required information		
(a) Energy efficiency performance report (b) Site analysis	The submitted BASIX Certificate 960957M_05 and dated 28 June 2019 is not consistent with the submitted plans, particularly in relation to landscape area/	No
Part 7.2 Waste Minimisation and Management		
2.3 All developments		
(a) Developments must provide space for onsite sorting and storage of waste containers (b) The size of storage areas and number of storage containers must be sufficient to handle and store the waste likely generated. (c) Additional space to be provided for storage of bulk waste where appropriate. (d) Storage of green waste provided (e) Stored within the boundaries of the site. (f) Site Waste Minimisation and Management Plan (SWMMP) to be submitted and location and design details of waste storage facilities on the site. (g) Should be located to provide easy, direct and convenient access. Permit easy transfer of bins to collection point. Do not intrude on car parking landscaping, access and turning areas. do not reduce amenity and maximum	The landscape plan nominates the provision of 2 bin receptacles along the side boundaries. The proposal does not provide for all the required bins. The submitted plans do not include a path for wheeling the bins to the kerbside for collection. There is specific concern, given the proposed level difference at the front of the site is 2 metres over a 6 metre length.	No

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>protection of trees and significant vegetation.</p> <p>(h) Where visible from street should complement the development and streetscape.</p> <p>(i) No incineration devices.</p> <p>(j) Collection point identified on plan.</p> <p>(k) Path for wheeling bin collection not less than 1:14:</p>		
2.4 Demolition and Construction		
<p>(a) Demolition must comply with AS and WorkCover</p> <p>(b) Demolition work plan submitted</p> <p>(c) Dedicated area on site for stockpile of materials taking into account environmental factors and amenity impacts.</p> <p>(d) Construction materials to be stored away from the waste materials on site.</p>	<p>A demolition plan was submitted as part of LDA2018/364. The plan is a highlighted copy of the site survey.</p> <p>The benching plan Sheet 02 of 17 shows the stockpile of materials on plan.</p>	<p>Yes</p>
2.5 Residential Developments comprising 1 or 2 Dwellings		
<p>(a) Space must be provided inside each dwelling for receptacles for garbage, recycling.</p> <p>(b) Space must be provided outside the dwellings to store the minimum number of Council's garbage, recycling and green waste bins. The space is to be screened from the street with east access to wheel the bins to the kerbside for collection.</p>	<p>The proposal locates the bin receptacles along the side boundaries. The bins due to their siting will not be visible from the streetscape. It is considered though, given the level changes within the front setback access to the kerbside will be compromised.</p>	<p>Yes</p>
Part 8: Engineering		
8.1 Construction Activities		
2.1.2 Erosion and Sediment Control Plan		
<p>Erosion and sediment control plan to be submitted.</p>	<p>Erosion and sediment control plan Ref:C01.01 Issue A prepared by Engineering Studio and dated 01.08.2018</p>	<p>Yes</p>
Part 8.2 Stormwater and Floodplain Management		
2.0 Stormwater Drainage		
<p>(a) Drainage is to be piped in accordance with Section 2.0 Stormwater Drainage</p> <p>Application has been consideration satisfactory by Development Engineering and City Works.</p>	<p>Proposal includes OS. Drains to Mawarra Crescent. Stormwater plans prepared by Engineering Studio. Proposal has been considered acceptable by Council's Development Engineer.</p>	<p>Yes</p>
Part 8.3 Driveways		

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
3.0 Existing footway crossings		
3.2(a) disused footway crossing slabs that become redundant are to be removed and footway restored.	The proposal does not rely upon the existing crossing and if the application were considered to be acceptable would be conditioned to restore the redundant crossing.	Yes
4.0 Designing internal access roads and parking spaces		
4.1 (a) the design of all parking spaces, circulation roads and manoeuvring areas on the property must confirm to the minimum requirements of AS2890.1-2004.		Yes
4.2 Design of Parking Spaces		
(b) Provision to enable vehicles (85 th percentile) to enter and leave designated parking space in a single 3 point turn manoeuvre. A 996 th percentile vehicle shall be used for disabled vehicles. (c) All vehicles must be able to enter and leave in a forward direction. This may be waived where the garage is located at the front of a dwelling and there is insufficient space within the front setback to provide a turning area.	Vehicles are not able to exit in a forward direction. However, given the siting of the garage, proposed setback and irregular frontage it is not possible to provide for a turning area within the front setback. The proposal has been considered acceptable by Council's Development Engineer.	Yes
S2.0 Design Standards		
S2.2 Vehicular crossing widths		
(a) Minimum 3.0m and maximum of 5.0m. (b) Footway crossings with a maximum width of 6m permitted to facilitate accessing two adjacent garages if the distance between the space and the street frontage is less than 5.0m		Yes
Part 9.2 Access for People with Disabilities		
4.1.2 Class 1 Buildings		
Accessible path required from the street to the front door, where the level of land permits.	The proposal relies upon pedestrian access along the driveways to the front of the site. There is a level difference of 2.89 metres between the patio (dwelling entrance) and the proposed driveway. The proposal does not provide for an accessible path given the proposed design.	No
Part 9.3 Parking Controls		
2.2 Residential Lane Uses		
- Dwelling houses up to 2	Basement plan indicates one (1)	Yes

ITEM 3 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
spaces/dwelling - Dual occupancy 1 space/dwelling	parking space per dwelling. However, the proposed design and layout of the basement area and associated storage area for Dwelling B suggests a secondary parking space will be provided which is unacceptable.	

ITEM 3 (continued)

ATTACHMENT 2



CLAUSE 4.6 VARIATION

- Property:** 34 Mawarra Crescent Marsfield
- Proposal:** Demolish existing dwelling and construct attached dual occupancy
- DA No.:** LDA2018/0364
- Lot No. Plan:** Lot 10 DP 260270
- Site Area:** 677.90sqm
- Zoning:** R2 – Low Density Residential under the Ryde Local Environmental Plan 2014
- Development Standard:** Road Frontage equal to or greater than 20m – Clause 4.1B(2)(b) RLEP 2014.

BACKGROUND

Urbanesque Planning has been engaged by the applicant, Sett Homes Pty Ltd to prepare a written request pursuant to Clause 4.6(3) of the Ryde Local Environmental Plan 2014 (the LEP) to provide justification to vary a development standard concerning the specified road frontage to erect a dual occupancy. Development consent must not be granted for development that contravenes a development standard unless Council is satisfied as to the matters under Clause 4.6(4) of the LEP. It is the onus of the applicant to address the matters under Clause 4.6(3) of the LEP which is addressed through this written request.

It is proposed to demolish the existing single dwelling and to construct a two storey attached dual occupancy development with parking beneath. The site is irregular in shape due to the subdivision pattern and its location in a 90 degree bend in Mawarra Crescent (refer to Figure 1). The road frontage is curved and the physical frontage width is 17.55m. The allotment gradually widens towards the rear where the width is 22.6m. The site has a width of 20m approximately mid block. The frontage has a shortfall of 2.45m or 12.25% if expressed as a percentage.

IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.1B(2)(b) under the Ryde Local Environmental Plan 2014 (the LEP) provides:-

- (2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:
 - (a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
 - (b) the road frontage of the lot is equal to or greater than 20 metres.**

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

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ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

A development standard is defined in s 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The road frontage requirement falls under subsection (a), therefore the control is a development standard.

CLAUSE 4.6 OF THE RYDE LOCAL ENVIRONMENTAL PLAN

Clause 4.6 of the Ryde LEP is a variations clause that is similar in effect to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1.

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
 - (c) clause 5.4,

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

- (ca) clause 4.3, to the extent that it applies to the land identified as “Town Core” on the Ryde Town Centre Precincts Map,
- (cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),
- (cc) clause 6.9.

THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate:-

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007). The five tests under *Wehbe* are tabulated below. Only *one* of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

TESTS UNDER WEHBE	COMMENTS
<p>1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>The objective of the road frontage standard is expressed at Clause 4.1B(1):-</p> <p>“The objective of this clause is to achieve planned residential density in certain zones.”</p> <p>The two development standards contained in Clause 4.1B(2) are intended to work together to ensure lots sizes are sufficient in area and width to accommodate dual occupancy development, thereby achieving the desired residential density.</p> <p>To achieve numerical compliance, an allotment must have both an area of at least 580m² and a road frontage of at least 20m. Numerical compliance with these two development standards will achieve the objective of the control. In other words, numerical compliance is a means to an end, the end being the objective of the control.</p> <p>In the present case, the site area is 677.9m² which exceeds the minimum lot size for a dual occupancy by 97.9m². The first of the two development standards is satisfied numerically.</p> <p>The nature of the road frontage control is to ensure a site has sufficient width to allow development of two dwellings resulting in development deemed to achieve the planned residential density. In one sense, the residential density is expressed as a floor space ratio. The floor space ratio applying to the land is 0.5:1. The controls intend that the desired residential density for dual occupancy development should only be achieved on sites with the specified area and road frontage unless a variation is justified. As the desired site area is achieved and the floor space ratio is compliant, the focus of this request is on the suitability of site and the proposed development having regard to the road frontage.</p>

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

	<p>In relation to the road frontage development standard, it should be noted that the control is a 'blunt instrument' in that it does not take into account other factors that may influence the site and its suitability for dual occupancy development. For example, the development standard does not contemplate the shape of an allotment in considering suitability. A Clause 4.6 variation allows such other factors to be taken into account in deciding the merits of the non-compliance with the numerical standard.</p> <p>In the present case, the site is irregular in shape, having a curved road frontage of 17.55m to Mawarra Crescent however the site broadens gradually and has a rear width of 22.6m. The average site width is 20.075m. The site is 20m wide approximately mid-block. Also as mentioned, the site area exceeds the minimum by 97.9m².</p> <p>The frontage width is a result of the configuration of the road and the lot which is identified as immutable physical environmental planning constraint which cannot be changed or complied with. As such the land requires a site responsive design so that the objectives of the development standard may be satisfied. The application must demonstrate that the site can be developed with an acceptable environmental outcome notwithstanding the frontage width. We contend that it does.</p> <p>The <i>existing</i> dwelling takes full advantage of the site width and presents minimal side setbacks along the northern and southern boundaries. The rear setback is also relatively close and non-compliant by present DCP standards.</p> <p>By comparison, the proposed dual occupancy will have compliant front, rear and side setbacks and will therefore result in a better environmental planning outcome on the site compared to the existing development. The floor space ratio and height controls are compliant. The resulting built form is proportionate to the site area and the dimensions of the land. Therefore, the built form of the development properly relates to both the geometry of the site and the surrounding built environment. Importantly, the landscaped area in the front setback is 62.5% (79.9m²) which exceeds Council's control of 60%. This ensures a satisfactory and supportable outcome for the public domain which is compatible with the streetscape. The front setbacks areas may also support medium height trees.</p> <p>The proposed development is demonstrated to achieve the desired residential density through appropriate site planning and built form, notwithstanding non-compliance with the numerical road frontage development standard. Therefore, the site is considered suitable to support the proposed development and the objective of the control is achieved.</p> <p>Pursuant to Cl.4.6(4)(a)(i), compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case.</p> <p>Secondly, pursuant to Cl.4.6(4)(a)(ii), the matters preceding are considered to provide sufficient environmental planning grounds to justify contravening the development standard.</p>
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ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION	
	<p>It is worth pointing out that in <i>Four2Five Pty Ltd v Ashfield Council</i> (2015) Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.</p> <p>In a follow up judgement on further appeal, the Chief Judge, upheld the <i>Four2Five</i> decision but expressly noted that the Commissioner’s decision on that point (that she was not “satisfied” because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are “sufficient environmental planning grounds to justify contravening the development standard” is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.</p> <p>An excellent example of how an irregular site with a frontage of 18m may be successfully developed with a dual occupancy in accordance with the controls is that of No. 205 Vimiera Road Marsfield which is at the rear of the subject site. Refer to Figure 2.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	The objective of the standard would not be defeated or thwarted if compliance was required.
4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION



Figure 1: Aerial view of 34 Mawarra Crescent noting the shape of the site.



Figure 2: No. 205 Vimiera Road Marsfield. This site has an 18m frontage and an irregular lot shape. This approved dual occupancy demonstrates that such sites may be successfully developed in an acceptable manner, meeting the qualitative outcomes of the development controls rather than the numerical.

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. Refer to Initial Action Pty Ltd v Woollahra Municipal Council (2018).

In assisting the consent authority in its satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), we refer to the objectives for development within the zone in which the development is proposed to be carried out. The land is within the R2 Low Density Residential Zone. The zone objectives are:-

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a variety of housing types.

The development provides for the housing needs of the community in a low density residential environment through the supply of one additional dwelling on the land. As a dual occupancy, the development provides housing choice. The development thereby demonstrates compatibility with the relevant zone objectives.

CONCLUSION

The proposal seeks a variance to the road frontage development standard to enable the development of the site with an attached dual occupancy. The development standard is strictly numerical in nature and fails to take into consideration any site constraints or qualitative aspects of the development or of the particular circumstances of a site that are environmental planning grounds to allow flexibility. Clause 4.6 of the Ryde LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to indirectly form the opinion that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



Eugene Sarich
Urbanesque Planning Pty Ltd

Dated: 5 July 2019

4 78 EAST PARADE, DENISTONE - SECTION 4.55(1A) APPLICATION TO CONVERT PITCHED ROOF GARAGE TO FLAT ROOF OPENABLE CARPORT - MOD2019/0117

Report prepared by: Assessment Officer

Report approved by: Senior Coordinator - Fast Track Team; Manager - Development Assessment; Director - City Planning and Environment

Report dated: 28 August 2019

**City of Ryde
Local Planning Panel Report**

Section 4.55 Number	MOD2019/0117
Site Address & Ward	78 East Parade, Denistone, West Ward
Zoning	R2 Low Density Residential under RLEP 2014
Proposal	Section 4.55 (1A) Application to: <ul style="list-style-type: none"> Convert pitched roof garage to flat roofed openable carport
Property Owner	B & E Purcell
Applicant	Bernard Purcell
Report Author	Oliver King – Assessment Officer
Lodgement Date	5 July 2019
No. of Submission	Nil
Cost of Works	\$228,020.00 (Original Estimate)
Reason for Referral to RLPP	<ul style="list-style-type: none"> Conflict of Interest – The property is owned by a Councillor.
Recommendation	Approval
Attachments	<ol style="list-style-type: none"> Original approved plans (LDA2013/0521). Second Section 4.55 Plans (MOD2019/0117)

1. Executive Summary

The development involves a modification to LDA2013/0521 which proposed alterations and additions to the dwelling and replacement of the existing garage. The works under the Section 4.55 application include the following:

- Conversion of a pitched roof on the garage to a flat roof
- Removal of front wall + roller door and conversion to open carport

A previous report to the Local Planning Panel relating to the same property (MOD2018/0130) was approved on the 12 October 2019. The previously approved application sought retrospective approval for the following works:

- Replacement of approved hard stand to the north by a deck;
- Replacing a paved patio to the rear with grass and pavers; and
- Modification to associated retaining walls.

The rear half of the site includes an area identified by Council's mapping system as including endangered species. However, as the development takes place entirely within the front setback of the site, the development will not impact upon any trees.

Notification of the application for fourteen (14) days did not attract any submissions from nearby properties.

The proposed development satisfies the provisions of Section 4.55 (1A) of the Environmental Planning & Assessment Act 1979 and does not raise any further issues under Section 4.15 of the EP&A Act.

The development is considered to be minor and will not result in any adverse impact to the subject site, nor neighbouring properties or general streetscape.

The property is owned by a Councillor and is therefore referred to the Ryde Local Planning Panel under the provisions of Schedule 1, Clause 1(b) of the Local Planning Panels Direction – Development Applications.

Given the minor nature of the proposal and minimal environmental impact, the proposal is recommended for approval.

2. The Site and Locality



Figure 1: Aerial view of the subject site in its context.

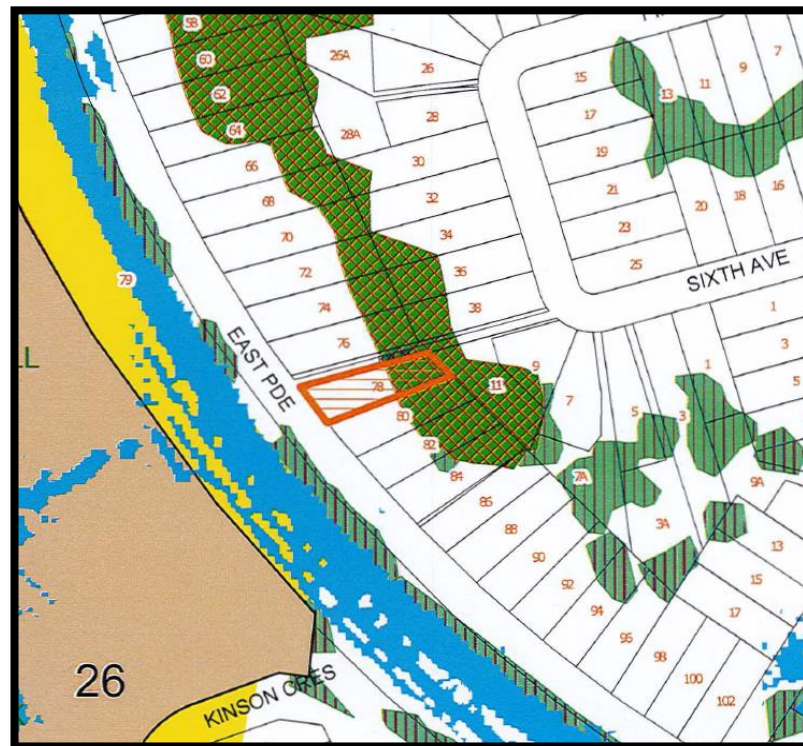


Figure 2: Subject site constraints show Endangered Urban Bushland to the rear of the site.

The site is located on the eastern side of East Parade and is legally known as Lot 48 DP 12367 78 East Parade.

The site is generally rectangular in shape and has a site area of 706.2m², frontage of 17.49m to East Parade and a site depth of 50.85m.

Currently, the site accommodates a two storey dwelling with a partly constructed detached garage adjacent to the street.

Site constraints are minimal (See **Figure 2**) with identified Endangered Urban Bushland to the rear of site which will not be impacted by the proposed modification.

The site adjoins residential dwellings to either side boundary (No. 76 & 80 East Parade) as shown in **Figure 1**.

As the site is located within an R2 Low Density Residential zone, surrounding development includes detached dwellings varying in age, scale and architectural style, with the locality presenting dominating dwellings exemplified by the natural topography of the area.

The site slopes significantly from the rear boundary to East Parade with a maximum difference of approximately 10.69m.

Figures 3 to 6 show photographs of the subject site and surrounds.



Figure 3: No. 78 East Parade with constructed walls for carport.



Figure 4: No. 76 East Parade with setback attached garage.



Figure 5: No. 84 East Parade with setback detached carport.



Figure 6: No. 86 East Parade with detached single garage with above patio close to street boundary.
3. The Proposal

The proposal involves the modification of Local Development Application No. LDA2013/0521 issued on 28 February 2014 for alterations and additions to the dwelling and replacement of the existing garage.

The modification application MOD2019/0117 lodged 5 July 2019 which this report will assess involves the removal of the approved pitch roof garage and construction of a flat roofed carport.

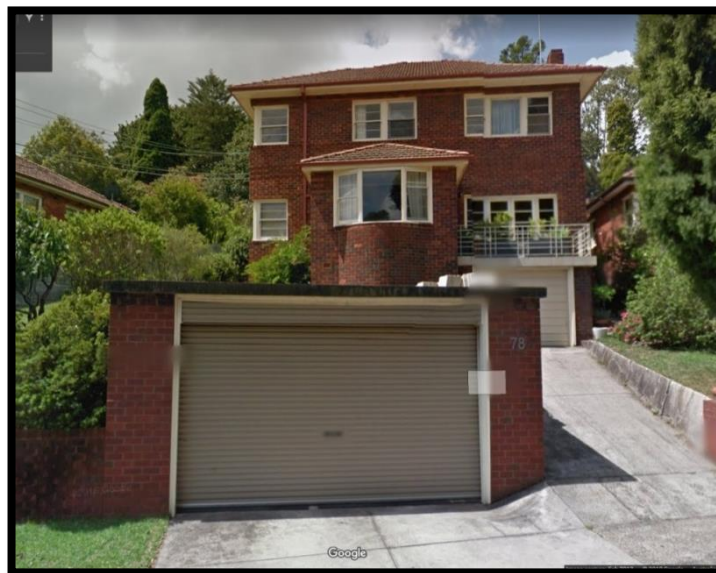


Figure 7: No. 78 East Parade original garage before approval of LDA2013/0521



Figure 8: The existing dwelling and proposed carport. This photograph demonstrates that part of the approved garage has been constructed in accordance with the original development consent. **Figures 9 & 10** show the approved garage and the proposed carport. The amended proposal results in a significantly less imposing structure than the previously approved garage.

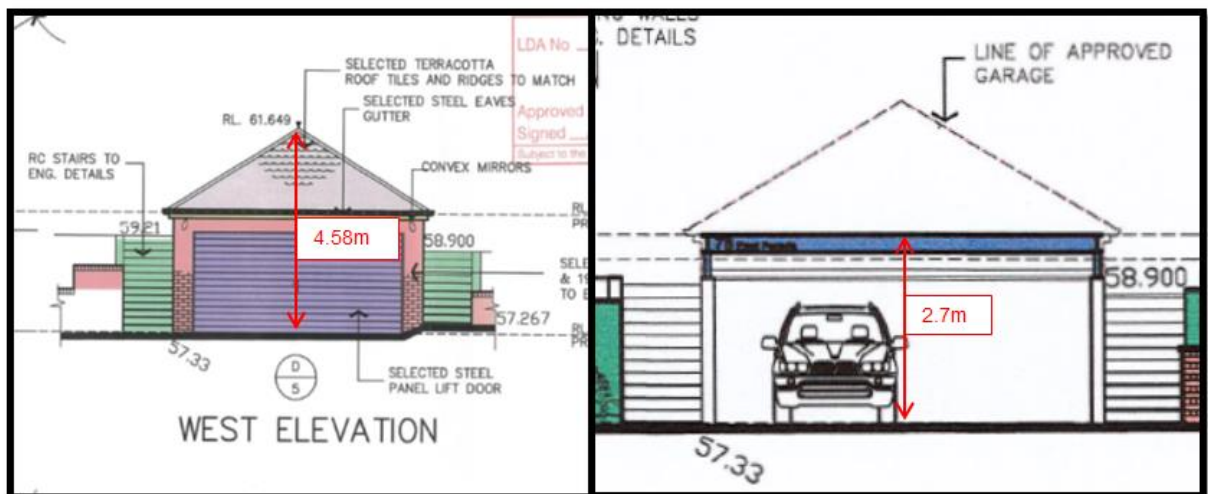


Figure 9: Approved street elevation (West) of the garage as per LDA2013/0521 and the amended carport. The dotted line shows the reduction in height (totalling 1.88m difference.)

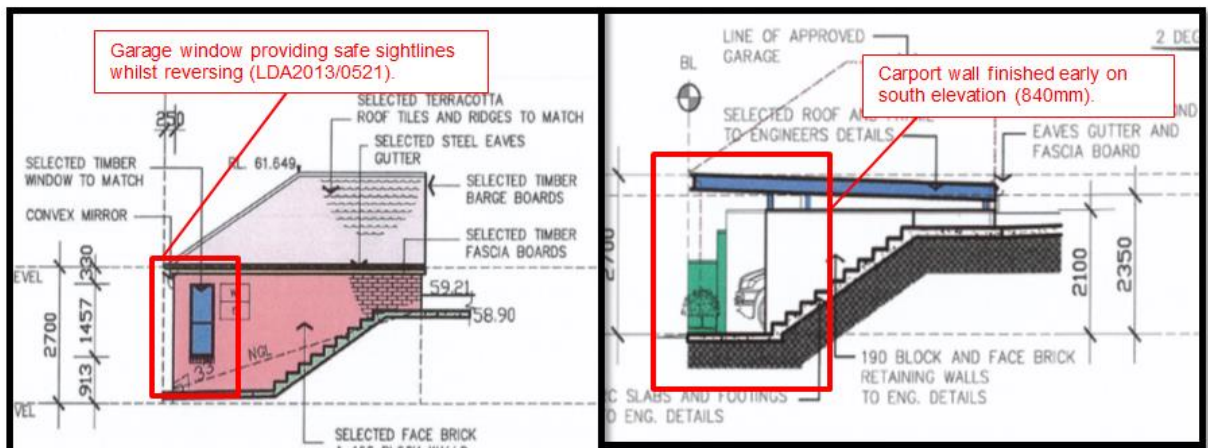


Figure 10: Side (South) Elevation comparison of the approved garage and the amended carport. This image demonstrates both the reduction in height of 1.88m and the maintained reversing sightlines

4. Background

Site History

28 February 2014 – Local Development Application LDA2013/0521 for alterations and additions to dwelling and replace existing garage approved by Council.

10 November 2015 - Construction Certificate (CC2015/00983) related to LDA2013/0521 was approved by Essential Certifiers.

12 October 2018 - Section 4.55 Application MOD2018/0130 for replacement of hard standing area with a deck, replacement of patio with grass and associated retaining walls and stormwater drainage approved by the Local Planning Panel. This aforementioned work was all located to the rear of the dwelling.

9 April 2019 - Amended Construction Certificate (PCA2019/0119) approved by Essential Certifiers.

5 July 2019 – Second section 4.55 modification application MOD2019/0117 lodged with Council for the conversion of the pitched roof garage to a flat roofed carport and adjacent front yard landscaping.

5. Planning Assessment

5.1 Section 4.55 – Modification of Consents

In accordance with Section 4.55(1A), Council may consider a modification of development consent provided:

- The proposed modification is of minimal environmental impact;
- The proposed development is substantially the same as the approved;
- The application for modification has been notified in accordance with the regulations; and

- Council has considered any submissions regarding the proposed modification.

The proposed modification will be constructed within the footprint of the approved development and will not involve any changes to the slab level of the carport. For this reason, it is concluded that the Section 4.55 will result in minimal environmental impact.

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

The Section 4.55 proposes the conversion of a garage to a carport. There will be no changes to the building envelope of the dwelling. Furthermore, the intended use of the carport is still to accommodate two on-site vehicles. A comparison of the Section 4.55 plans against the approved plans would conclude that the development is substantially the same as the approved development.

No submissions were received in response to the notification.

In this regard, it is considered that the Section 4.55 Application satisfies the requirements of the above provisions.

Section 4.55(3) requires the consent authority to consider relevant matters referred to in Section 4.15(1) in assessing and application for modification of development consent. The consent authority must also consider the reasons given for the grant of the consent that is sought to be modified.

5.2 State Environmental Planning Instruments

The original proposal was assessed against the following environmental planning instruments:

- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Ryde Local Environmental Plan 2014; and
- Ryde Development Control Plan 2014.

The proposed modification under this application will generally not affect compliance with the relevant planning provisions. Discussion with respect to the relevant planning provisions affected by the modifications is provided below.

State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

The modifications are to the approved garage only.

Therefore, an amended BASIX Certificate is not required.

State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 requires consideration of whether a site is potentially contaminated and whether any such contamination makes the site unsuitable for the proposed form of development or whether remediation works are required to make the site suitable for the form of development proposed.

Given the established residential use, the proposal is not likely to result in contamination and the site is suitable for the proposed development without need for remediation.

5.3 Ryde Local Environmental Plan 2014 (RLEP 2014)

The development does not include any changes which would otherwise require reassessment against the provisions of the RLEP 2014 that were not already considered under LDA2013/0521 and MOD2018/0130.

The proposed modification has been assessed against the following criteria and is deemed to be substantially similar to the original proposal.

Zoning – The site is zoned R2 Low Density Residential. The amended development is considered to satisfy the following objectives for residential developments:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a variety of housing types.

Floor Space Ratio – FSR remains unchanged and compliant.

Height – The maximum height permitted on the site is 9.5m. The garage had a maximum height of 4.58m whereas the amended carport height is 2.7m. The amended development will reduce the height of the carport by 1.8m and will significantly soften the bulky character of the structure as viewed from East Parade.

Clause 6.4 - Stormwater Management

Clause 6.4 addresses Stormwater management and requires the following matters to be considered:

- is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Council's Development Engineer has reviewed the application and has raised no objection to the proposed modification.

5.4 Draft Environmental Planning Instruments

Draft Remediation of Land State Environmental Planning Policy

The Draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. The subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is consistent with the provisions of the draft SEPP.

5.5 Development Control Plans

Ryde Development Control Plan 2014

Part 3.3 – Dwelling Houses and Dual Occupancy (Attached)

The development is subject to the provisions of Part 3.3 – Dwelling Houses and Dual Occupancy (Attached) under the RDCP 2014.

With exception to Clause 2.11.1 (i), (o) & (q) – 'Car Parking' the development does not include any changes which would otherwise require reassessment against the provisions of the RDCP 2014 that were not already considered under LDA2013/0521 and MOD2018/0130.

Clause 2.11.1 (i), (o) & (q) – Car Parking

Clause 2.11.1 (i), (o) & (q) requires that:

- (i) *Garages and carports facing the public street are to have a maximum width of 6 m or 50% of the frontage, whichever is less.*

Comment: Given that the site has a frontage to East Parade of 17.49m, the maximum width of the carport to the street is 6m. The proposed carport seeks a total width visible from the public domain of 6.029m which does not comply with the above control.

However, due to the minimal degree of non-compliance (29mm) that will not be discernible from the East Parade streetscape, this non-compliance is deemed to not cause undue impact and is considered permissible.

- (o) *The design and materials of garages and carports are to complement the dwelling.*

Comment: The design and materials of the proposed carport - colorbond eaves and fascia board coupled with face brick - alongside the associated landscaping, will blend and complement the existing two storey dwelling and will not result in any unsightliness.

- (q) *Carports must not be enclosed.*

Comment: In accordance with the **Building Code of Australia**, the proposed carport is 40% openable and is not considered to be an enclosed structure.

5.5 Planning Agreements OR Draft Planning Agreements

The application is not the subject of any planning agreements or draft planning agreements.

5.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

The development is not subject to Section 7.11 contributions.

5.7 Any matters prescribed by the regulations

All matters prescribed by the regulations have been considered in the assessment of the application.

6. The likely impacts of the development

Economic: The development will not result in any adverse economic impact.

Social: The development will not result in any adverse social impact.

Natural Environmental: The site is located within an area which is identified by Council's mapping as including 'Endangered Urban Bushland' however as the

modification relates solely to the front setback and associated garage, there will be no adverse environmental impacts caused to the urban bushland (See **Figure 2** above).

Built Environment: The impact of the amended development upon the built environment is relatively minor and will not significantly alter the reasons behind original development approval.

To ensure adequate pedestrian and vehicle safety, the following condition was placed on the original application consent for LDA2013/0521:

“Access & Parking. All internal driveways, vehicle turning areas, garage opening widths and parking space dimensions must comply with AS2890.1-2004

With respect to this, the following revision(s) must be undertaken;

a) Clear sight clearance splays must be provided on both sides of the garage entry adequate sight distances between pedestrians and drivers exiting the property. This will require modification to the side walls on either side of the garage entry to provide a window or void (with minimum 50% sight permeability), not less than 1.8m in height and no greater than 1m above ground level, to comply with the aforementioned standard.”

As shown in the above **Figure 10** Condition 1(a) ‘Access & Parking’ has been satisfied by the additional setback nature of the southern portion of the carport. The above condition is no longer necessary and can be deleted from the consent.

7. Suitability of the site for the development

The site is considered to be suitable for the development as outlined in the above assessment.

8. The Public Interest

Given the above assessment, it is considered that approval of the application would be in the public interest.

9. Additional consideration – Reasons consent to be modified was originally granted – S4.55(3)

The proposed modification will not affect any of the reasons for the original determination.

10. Submissions

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the application was notified between 9 July 2019 and 26 July 2019.

No submissions were received in response.

11. Referrals

Development Engineer – 9 August 2019. Council's Senior Development Engineer has reviewed the application and has commented the following:

"The modification has sought modification of the previous / original garage to be located at the front of the site, instead providing an open carport and amendment to the front boundary fence. A review notes the following:

- *The internal dimensions of the parking area are compliant with AS 2890.1 for a double parking space.*
- *The original garage parking configuration drew concern with the lack of sight distance splays on either side of the entry and required additional measures to address. The proposed modifications present a significant improvement by opening the side of the parking area and lowering the adjacent boundary fences on either side to less than 1m in height. Overlaying the required splays (see below) notes that there is a slight encroachment of some 100mm into the area however this may be accepted given;*
 - *The modification is a considerable improvement over the original proposal,*
 - *The garden bed is up to 1m in height. The Standard stipulates a driver's eye level to be taken as 1.15m above the carport surface, a driver therefore will have sight over the structure,*
 - *The footpath is offset 1.4m from the boundary and so when applying the splays in this location, the arrangement is fully compliant with the Standard,*
 - *The region of greatest encroachment (east side) has the footpath grading up, extending a drivers range of vision along the footpath area.*

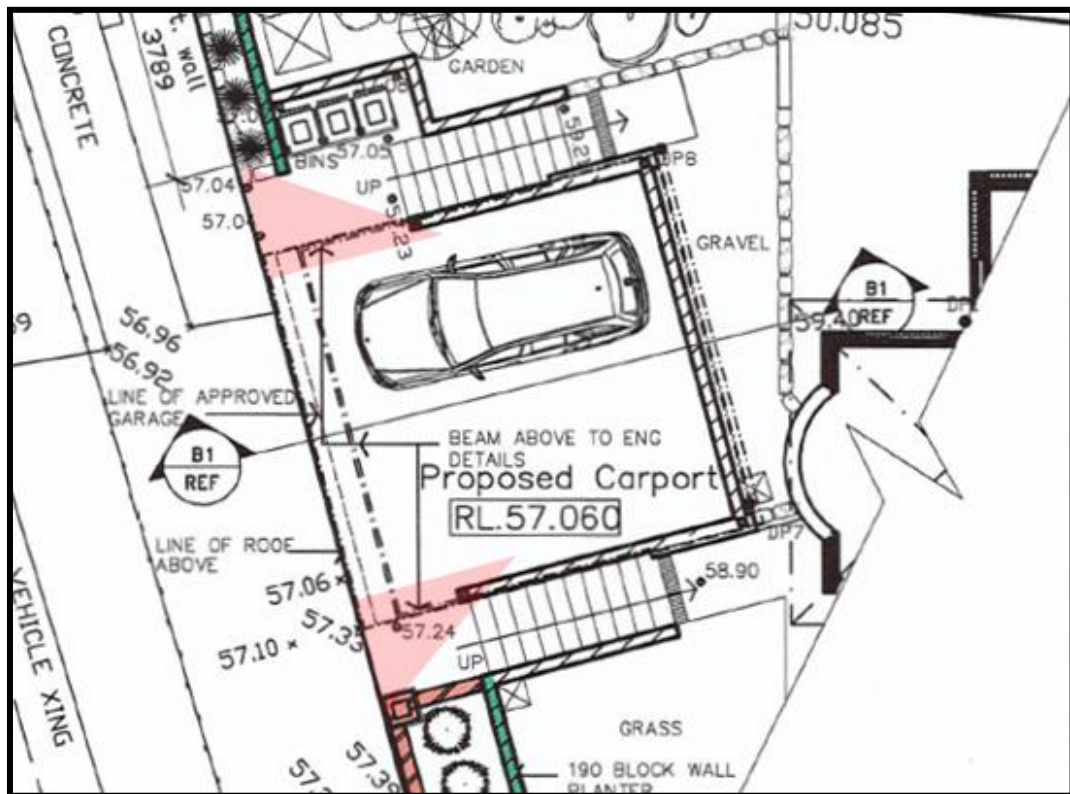


Figure 14 – Reversing lines of sight.

In summary there are no objections to the proposed modification with respect to the engineering components. It is advised that Condition 1 (a) (Access & Parking) may be deleted and is no longer required.”

12. Conclusion

Upon consideration of the development against Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other relevant statutory provisions, the proposal is considered to be suitable for the site and is in the public interest.

Therefore the application MOD2019/0117 is recommended for approval for the following reasons:

- i. The amended development is consistent with the objectives of the relevant provisions of the RLEP and RDCP 2014 with minimal impact to adjoining properties.
- ii. The proposed carport will result in less bulk and scale than the previously approved garage. This will improve the streetscape of East Parade by softening the built form.
- iii. No submissions were received objecting to the proposal.

13. Recommendation

That the application for the modification of Local Development Application No. LDA2013/0521 be modified as follows:

- Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following

plans (stamped approved by Council) and support documents.

Note: The following conditions are to be amended as outlined below with **bold italics** identifying additional wording and ~~strikethrough~~ identifying words to be deleted.

Drawing No.	Date	Prepared By
Architectural Plans		
130802 – Site Plan (Sheet 1 of 15) 130802 – Site Plan Sheet 1 of 3 Rev 3	24/06/2017 24/05/2019	Frank Serra
130802 – Existing Basement (Sheet 2 of 15)	15/11/2013	Frank Serra
130802 – Existing Ground Floor (Sheet 3 of 15)	15/11/2013	Frank Serra
130802 – Existing First Floor (Sheet 4 of 15)	15/11/2013	Frank Serra
130802 – Demolition Ground Floor (Sheet 5 of 15)	15/11/2013	Frank Serra
130802 – Ground Floor (Sheet 6 of 15)	24/06/2017	Frank Serra
130802 – Proposed Garage (Sheet 7 of 15) 130802 – Garage Floor Plan Sheet 2 of 3 Rev 3	15/11/2013 24/05/2019	Frank Serra
130802 – Sections (Sheet 8 of 15)	15/11/2013	Frank Serra
130802 – South Elevation (Sheet 9 of 15)	10/10/2014	Frank Serra
130802 – North Elevation (Sheet 10 of 15)	10/10/2014	Frank Serra
130802 – East Elevation (Sheet 11 of 15)	10/10/2014	Frank Serra
130802 – Garage Elevations (Sheet 12 of 15) 130802 – Garage Elevations Sheet 3 of 3 Rev 3	15/11/2013 24/05/2019	Frank Serra
130802 – Waste Management Plan (Sheet 13 of 15)	15/11/2013	Frank Serra
130802 – Floor Area Calculations (Sheet 14 of 15)	15/11/2013	Frank Serra
Stormwater Concept Plans		
Dwg No. EP78 Sheets 1 & 2 Rev B	07/07/2017	Hydro Civil Engineers Pty Ltd.
Specialist Reports		
Geotechnical Assessment	15/12/2013	Kamen Engineering

- Condition 1(a) – ‘Access & Parking’ – **To be deleted.**

ATTACHMENTS

- 1 Original DA A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER
- 2 MOD A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

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