

**5 DECEMBER 2018**

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**NOTICE OF MEETING**

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You are advised of the following meeting:

**THURSDAY 13 DECEMBER 2018.**

**City of Ryde Local Planning Panel Meeting No. 8/18**

**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 չէք հասկանում սույն նամակի բովանդակությունը, խնդրում ենք այցելել 1 Pope Street, Ryde (որը գտնվում է Top Ryde Shopping Centre-ի մեջ), Ryde, քննարկելու այն ֆաղաքային 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 نمی‌توانید 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 می‌توانید 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 13 December 2018  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 5.00pm

**NOTICE OF BUSINESS**

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**ITEM 2 (continued)**

- 2 UNIT 33, 297 VICTORIA ROAD, GLADESVILLE**  
**MOD2018/0095: SECTION 4.55(1A) TO MODIFY THE ENTRANCE, FLOOR SPACE, INTERNAL OFFICE AND ACCESSIBLE BATHROOM.**  
**MOD2018/0123: SECTION 4.55(2) TO MODIFY CONDITIONS 34 & 35 TO ALLOW THE OPERATION OF THE GYM 24 HOURS A DAY, 7 DAYS A WEEK, AND ALLOW THE USE OF FREE WEIGHTS.**

**Report prepared by:** Senior Town Planner

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

**File Number:** GRP/09/6/12/1/2 - BP18/1326

**City of Ryde  
 Local Planning Panel Report**

<b>Application Number</b>	MOD2018/0095 and MOD2018/0123
<b>Site Address &amp; Ward</b>	Unit 33, 297 Victoria Road, Gladesville East Ward
<b>Zoning</b>	B4 Mixed Uses under RLEP 2014
<b>Proposal</b>	MOD2018/0095: Section 4.55(1A) to modify the entrance, floor space, internal office and accessible bathroom. MOD2018/0123: Section 4.55(2) to modify Condition 34 and 35 to allow the operation of the gym 24-hours a day 7-days a week, and allow the use of free weights.
<b>Property Owner</b>	Belle Vue Property Pty Ltd
<b>Applicant</b>	Stutch Pty Ltd
<b>Report Author</b>	Rebecca Lockart Senior Town Planner
<b>Lodgement Date</b>	MOD2018/0095: 5 April 2018 MOD2018/0123: 9 May 2018
<b>No. of Submission</b>	Notification of both applications: 28 May 2018 to 14 June 2018. MOD2018/0095: 14 individual submissions MOD2018/0123: 10 individual submissions
<b>Cost of Works</b>	Section 4.55 application – Not applicable
<b>Reason for Referral to LPP</b>	Development which received more than 10 submissions.
<b>Recommendation</b>	MOD2018/0095: Refusal MOD2018/0123: Refusal
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Peer Review of Acoustic Reports prepared by The Acoustic Group</li> <li>2. LDA2017/0057 Consent Conditions and Approved Plans</li> <li>3. MOD2018/0095 Architectural Plans</li> </ol>

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

The following report is an assessment of two separate Section 4.55 applications relating to an existing gym at Unit 33, 297 Victoria Road, Gladesville:

- **Modification Application No. MOD2018/0095:** Section 4.55(1A) to modify the entrance, floor space, internal office and accessible bathroom, resulting in a change of floor area from 441m<sup>2</sup> to 531m<sup>2</sup>.
- **Modification Application No MOD2018/0123:** Section 4.55(2) to modify Condition 34 and Condition 35 to allow the operation of the gym 24-hours a day 7-days a week, and allow the use of free weights.

The existing gym was approved under LDA2017/0057 on 9 May 2017 for *Internal fitout and change of use to a 24-hour fitness centre and signage*.

The gym commenced operations in August 2017, without obtaining a Construction Certificate (CC) or Occupation Certificate (OC). Soon after opening, Council started receiving complaints from residents living above the subject premises regarding noise, vibration and sleep disturbance.

Council proceeded with the issue of a Notice of Proposed Order (NPO) and subsequent Orders for occupation without a CC, operation and fitout not in accordance with the development approval, and use of the premises as a 24 Hour Fitness Centre causing noise disturbance to the neighbouring residential units above the subject premises throughout the day and night time.

In response the applicant lodged a Section 4.55(1A) application on 5 April 2018, being Modification No. MOD2018/0095, to seek retrospective approval for the layout of the gym, herein referred to as "MOD2018/0095 (layout)".

Conditions 34 and 35 of LDA2017/0057 limit the 24-hours a day 7-days a week operations and use of free weights in the gym to a trial period of 12 months, from the date of consent. Subsequently, the applicant lodged Modification No. MOD2018/0123, twelve (12) months after the date of consent, being 9 May 2018, seeking to amend Condition 34 and Condition 35 to allow the permanent operation of the gym 24/7 and to allow the unrestricted use of free weights. Herein referred to as "MOD2018/0123 (hours/weights)". The wording of the conditions were such that the lodgement of a subsequent Section 4.55 application prior to the end of the trial period was all that was required to meet the requirements of the condition, and as such the premises has continued to operate 24 hours a day during the assessment period, during which time Council has continued to receive complaints regarding the noise and vibration impacts from the use of the premises.

MOD2018/0123 (hours/weights) as originally submitted to Council was lodged as a Section 4.55(1A) application, however following a letter from Council dated 12 April 2018, where Council advised the applicant that the application could not be

**ITEM 2 (continued)**

considered to be of “minimal environmental impact” in view of the numerous complaints received from Council, the application was resubmitted as a Section 4.55(2) application.

The applications were notified concurrently with the notification period from 28 May 2018 to 14 June 2018. Council received 14 individual submissions raising concerns with MOD2018/0095 (layout), while 10 individual submissions were received objecting to MOD2018/0123 (hours/weights). Objections received are all from residents who reside in the residential apartments above the gym. Key issues raised in the submissions relate to:

MOD2018/0095 (layout):

- Noncompliance with the approved consent with regard to:
  - Location of the front door being internal of common area
  - Expansion of floor space without approval
  - Entrance and Car Park signage/CCTV
- Noise and vibration impacts – particularly at night time
- Safety and security concerns
- Sounding of the fire alarm as a result of members using the fire stairs to access the gym from the basement level
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk

MOD2018/0123 (hours/weights):

- Noise and vibration impacts – particularly at night time
- Change of the entrance to the building – compromises residents access
- Unsuitability of the use for the building
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk
- Use of the fire door and leaving it open
- Car park security
- Car park cleanliness
- The premises has already not complied with the existing conditions of consent
- Complaints have been made to Council and the gym owner, with no improvement to the impacts caused.

This report undertakes an assessment of each application under the relevant provisions of Section 4.55. The report addresses both applications concurrently as the key issues for the assessment of both are the same, and the outcome of each is interrelated with the other.

Assessment of both applications against the provisions of Section 4.55(1A) (MOD2018/0095 - layout) and Section 4.55(2) (MOD2018/0123 – hours/weight) identifies that the proposals do not meet the applicable requirements under these Sections with:

**ITEM 2 (continued)**MOD2018/0095 (layout) - Section 4.55(1A):

- Not considered to be of minimal environmental impact per Section 4.55(1A) (a) due to the increased impacts of noise, vibration, capacity and subsequent parking, from the additional floor space.
- Not substantially the same development per Section 4.55(1A)(b) due to the additional impacts associated with the increased floor area and intensification of the gym.
- Consideration of the submissions per Section 4.55(1A)(c) and (d) identifies numerous objections to the operation of the gym in its current layout and proposed layout relying on use of the common lift and foyer area to access basement parking.

MOD2018/0123 (hours/weights) Section 4.55(2):

- Not substantially the same development per Section 4.55(2)(a) due to the intensification of the use compared with the nature of the use as originally approved.
- Consideration of the submissions per Section 4.55(1A)(c) and (d) identifies numerous objections to the operation of the gym during the hours of operation as proposed and with the use of free weights.

Additionally, an assessment of both applications against section 4.55(3) in reviewing the reasons for the original approval, identifies that issues of noise, parking, safety and security were all integral considerations of the original approval. The trial period of the gym over 12 months has demonstrated that the current operations of the gym, both 24 hours a day and with an increased floor area, has caused constant and identifiable impacts to the residents by the gym via noise, parking, maintenance, safety and security. The original consent was for a gym that was prohibited from causing impacts on neighbouring residents via conditions of consent that have continued to be breached and should not be permitted to continue. To approve any extension of the hours of operation or unrestricted use of free weights, or with an increased floor area, which have been clearly causing impact to neighbouring residents, would be contrary to the original approval of the gym, and furthermore not be considered to be substantially the same development as that which was approved in either the case of MOD2018/0095 (layout) or MOD2018/0123 (hours/weights).

In the assessment of these applications Council engaged an independent acoustic consultant to undertake a peer review of the acoustic reports submitted with the subject application and the original application for the gym. This report is appended at **Attachment 1** and the findings of the report are referred to in the assessment of the subject applications.

The assessment contained in this report concludes that both applications are:

- Inconsistent with the B4 Mixed Use zoning objectives under clause 2.1 of Ryde Local Environmental Plan 2014 (Ryde LEP 2014) as the gym, with its an increased layout and 24/7 operations and use of free weights is an incompatible use in a residential flat building development.

## ITEM 2 (continued)

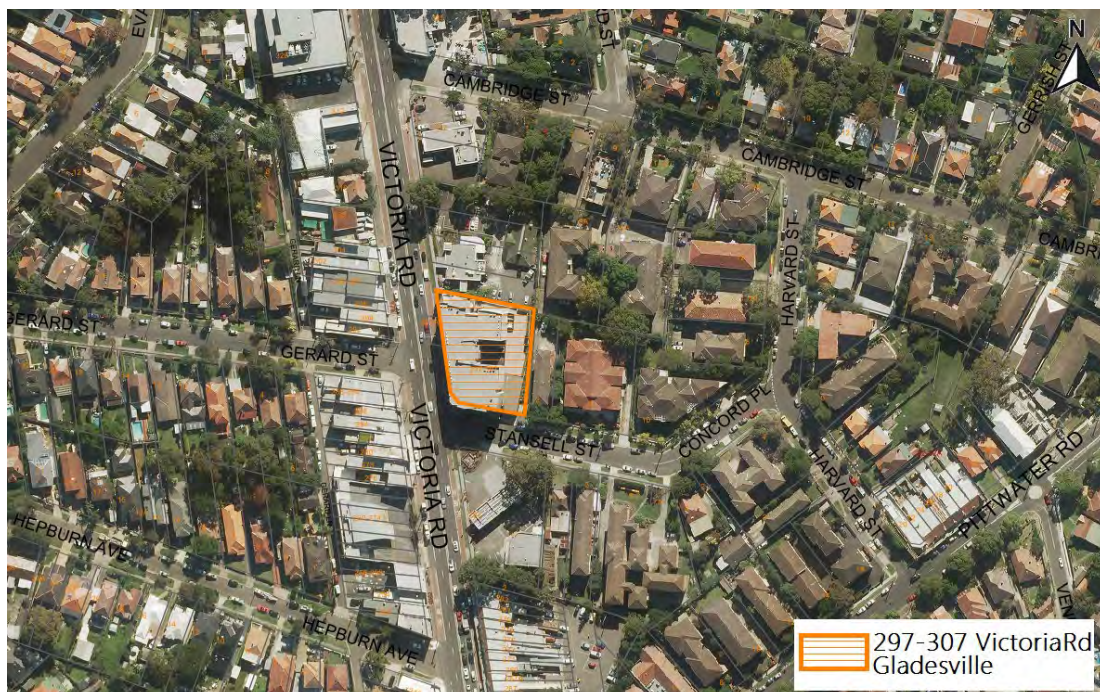
- Likely to continue to cause impacts on the neighbouring residential dwellings, with the mitigation measures inadequate to address the proposed layout, additional uses and 24 hour operations and use of free weights;
- Unsuitable for the site due to the impacts the development will cause,
- Not in the public interest as approval of the development would allow for the continued impact on residential neighbours.

This report recommends refusal of both applications.

## 2. The Site and Locality

The site is located within part of Lot 33 of SP87752, known as No. 33, 297-307 Victoria Road, Gladesville (**Figure 1**). Lot 33 encompasses the ground floor tenancy of a five (5) storey residential flat building. This tenancy is the only commercial tenancy of the premises and, with an area of 1090m<sup>2</sup>, has previously been entirely used as a supermarket and restaurant “Mercato e Cucina” as shown below at **Figure 9**.

Approval of the original gym consent - LDA2017/0057, sectioned off part of the lot to be used as a gym for Anytime Fitness, with the remaining portion to continue as Mercato e Cucina. Photographs of the subject gym and site are included at **Figure 2** to **Figure 8**.



**Figure 1. Aerial Photograph (Source: Ryde Maps)**



**ITEM 2 (continued)**



**Figure 2. External photograph of the common gym and residents entrance from Victoria Road (Source: Google Street View)**



**Figure 3. Photograph of front entrance of the gym from Victoria Road (Source: Site Visit 9.5.18)**



**Figure 4. Photograph of front entrance of the gym and common lift (Source: Site Visit 9.5.18)**

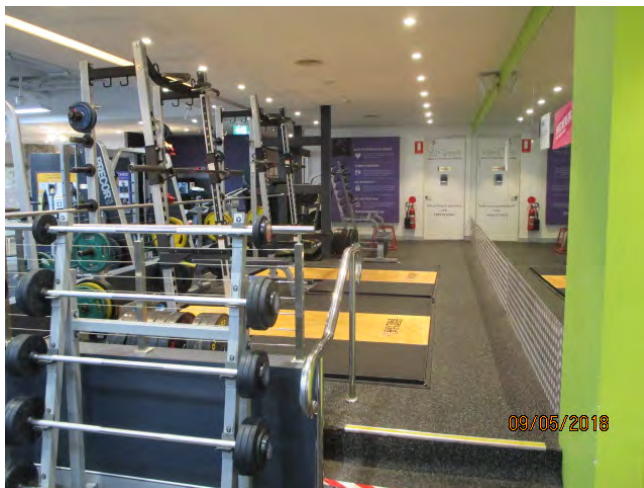
**ITEM 2 (continued)**



**Figure 5. Photograph of front entrance of the gym noting the common lift (Source: Site Visit 9.5.18)**



**Figure 6. Photograph of 'functional/training stretch' area of the gym (Source: Site Visit 9.5.18)**



**Figure 7. Photograph of 'free weights' area of the gym (Source: Site Visit 9.5.18)**



**Figure 8. Photograph of 'weight training' area of the gym (Source: Site Visit 9.5.18)**

**ITEM 2 (continued)**



**Figure 9. Photographs of the site May 2014 (Mercato e Cucina) and November 2017 (Anytime Fitness) (Source: Google Street View)**

**3. The Proposal**

**ITEM 2 (continued)****3.1 Modification Application No. MOD2018/0095**

This application is a Section 4.55(1A) to modify the entrance, floor space, internal office and accessible bathroom. It also seeks consent for the use of the 'goods lift' and resultant internal reconfiguration of the entrance and office room.

The application also includes the installation of noise mitigation measures per the submitted Noise and Vibration Assessment (prepared by Acoustic Dynamics, dated 16 August 2018, Document 4343R002.DS.180816, Rev 0).

Specifically changes to the layout include:

1. New toilet and change of 'office' to 'storage' room
2. Enlarged weight training area (+13m<sup>2</sup>)
3. New 'Free Weights' area (44m<sup>2</sup>)
4. Enlarged 'Functional Training' area (+15m<sup>2</sup>)
5. Relocation of Managers Office
6. Relocation of front door (retrospective approval of existing door location)
7. Use of existing 'Goods Lift' to allow access from the basement directly to the gym, and relocation of lobby (+14m<sup>2</sup>)
8. Larger Cardio space with positions for an additional 4 machines

The original approved floor area of the gym was 441m<sup>2</sup> with associated toilet and change room facilities (**Figure 10**). The modified application has a floor area of to 531m<sup>2</sup>. This is the floor area that has already been constructed as unauthorised works.

The plans as originally lodged reflected the development as currently constructed (**Figure 11**). This used the common entrance point with the residential units (as shown in **Figure 3** to **Figure 5**) and made a number of internal alterations to the layout and location of various uses within the gym. The amended plans submitted on 24 May 2018 changed this layout to use the 'goods lift' but retain the common entrance with the residential units. Error! Reference source not found. compares these proposed changes under the 24 May 2018 plans to the floor layout approved under the original LDA2017/0057 approval.

Through discussions with Council and the submissions received to the notification period, draft plans were received on 11 July 2018 which changed the front entrance door to be from a similar location to that approved under LDA2017/0057 (i.e. from Victoria Road). The applicant however has advised that these plans are still draft, and accordingly are not assessed in the report.

**ITEM 2 (continued)**



Figure 10. Approved floor plan under LDA2017/0057



Figure 11. Original lodged floor plan under MOD2018/0095 (layout)

**ITEM 2 (continued)**



**Figure 12. Comparison of floor plan proposed under MOD2018/0095 (layout) – 24 May 2018 plans and approved under LDA2017/0057**

**Retrospective approval**

**ITEM 2 (continued)**

It is noted that the proposal is for retrospective approval of existing works. Decisions in the Land and Environment Court have consistently held that the provisions of Section 4.55 (previously Section 96) can be used to modify a development consent where the works subject to the modification have already been carried out (*Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240 and *Willoughby City Council v Dasco Design and Construction Pty Ltd and Another* [2000] 111 LGERA 422). These two cases considered the power of Section 4.55 to retrospectively approve development that has already been carried out, concluding that it can be used, and subsequently the development can be considered on its merits.

Consequently for the purpose of this application, the power under Section 4.55 of the EP&A Act to modify an approved development is capable of being used to approve the development works, even in the case where the relevant works have already been carried out. With that power established, the application can then be considered on its merits. This report provides that detailed merit assessment.

**3.2 Modification Application No. MOD2018/0123**

Section 4.55(2) to modify Conditions 34 and 35 to allow operations 24 hours a day, 7 days a week and have unrestricted of free weights. The application seeks the following modification to the conditions:

**34. Limited consent of extended Hours of operation.**

- (a) ~~This consent permits the operation of the approved development for 24 hours / 7 days per week for a period of 12 months.~~
- (b) ~~An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.~~
- (c) ~~Should an application to modify the consent under Condition 34 (b) not be received by Council, the following hours of operation are to apply: 8am to 10pm Mondays to Sundays.~~

**35. Limited consent of Use of 'free weights'.**

- (a) ~~This consent permits the use of 'free weights', including but not limited to weights, bars, dumbbells and kettlebells, in the weight training area of the premises for a period of 12 months.~~
- (b) ~~An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.~~
- (c) ~~Should an application to modify the consent under Condition 35 (b) not be received by Council, no 'free weights' are to be used at the premises, with 'pin-loaded' weights only to be used.~~

Accordingly the conditions would read:

**34. Hours of operation.**

- (a) This consent permits the operation of the approved development for 24 hours / 7 days per week.

**ITEM 2 (continued)****35. Use of 'free weights'.**

- (a) This consent permits the use of 'free weights', including but not limited to weights, bars, dumbbells and kettlebells.

The applicant has advised that a further trial period of both/either Conditions 34 and 35 would be agreed to if recommended in the assessment of this application.

**3.3 Consideration of the Section 4.55 applications**

The assessment of the two modification applications is undertaken concurrently in this report, as four potential options are presented to the Local Planning Panel in the assessment of these applications:

1. Both the applications are approved, consenting to the enlarged floor area and layout, and allowing the continuation of the 24 hour operations and use of free weights at the gym – with or without further 'trial' period conditions.
2. Approval of MOD2018/0095 (layout) but refusal of MOD2018/0123 (hours/weights), thus allowing for an increased floor area with operations between 8am and 10am as intended under Condition 34(c).
3. Approval of MOD2018/0123 (hours/weights) but refusal of MOD2018/0095 (layout), thus allowing for the continued operation of the premises 24 hours a day, and the use of free weights, within the layout as originally approved under LDA2017/0057.
4. Refusal of both applications.

At present, the gym is constructed with the larger floor area as proposed under MOD2018/0095 (layout), with no Occupation Certificate issued for the operation of the premises. Each of the subject Section 4.55 applications are to be assessed individually on their merits according to Section 4.55, however given the noise, vibration and patron management complaints that have been received by Council, works are required to be undertaken as proposed under MOD2018/0095 (layout) to mitigate the existing impacts of the gym during the evening/early morning hours in order for MOD2018/0123 (hours/weights) to be supported. Accordingly option 3 as presented above, is unfeasible as the extension of hours, as outlined in this report, is unable to be supported without mitigation works being undertaken under MOD2018/0095 (hours/weights).

Accordingly the assessment of MOD2018/0095 (layout) not only reviews the proposal with the 24 hour operations as proposed under MOD2018/0123 (hours/weights), but also with the 'default' hours of 8am to 10pm which will apply should MOD2018/0123 (hours/weights) be refused.

**4. Background**



**ITEM 2 (continued)****1. BACKGROUND**

The existing gym was approved under LDA2017/0057 on 9 May 2017 for *Internal fitout and change of use to a 24-hour fitness centre and signage*. This application was given consent from the Strata Body Corporate for lodgement, with the approved layout shown at **Figure 10**.

This consent included Conditions 34 and 35 which read as follows:

34. *Limited consent of extended hours of operation.*
  - a. *This consent permits the operation of the approved development for 24 hours / 7 days per week for a period of 12 months.*
  - b. *An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.*
  - c. *Should an application to modify the consent under Condition 34 (b) not be received by Council, the following hours of operation are to apply: 8am to 10pm Mondays to Sundays.*
  
35. *Limited consent of use of 'free weights'.*
  - a. *This consent permits the use of 'free weights', including but not limited to weights, bars, dumbbells and kettlebells, in the weight training area of the premises for a period of 12 months.*
  - b. *An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.*
  - c. *Should an application to modify the consent under Condition 35 (b) not be received by Council, no 'free weights' are to be used at the premises, with 'pin loaded' weights only to be used.*

The gym commenced operations in August 2017. Soon after, Council started receiving complaints from residents living above the subject premises regarding noise, vibration and sleep disturbance.

On 8 December 2017 Council issued a Notice of Proposed Order (NPO) pursuant to Item 1(c) of Section 121B of the Environmental Planning and Assessment Act 1979 (the EP&A Act) as the premises had been occupied without a construction certificate, was not constructed in accordance with the development approval, and use of the premises as a 24 Hour Fitness Centre is causing noise disturbance to the neighbouring residential units above the subject premises throughout the day and night time. The amended layout had not been given consent from Council or the Strata Body Corporate.

Council received representations to the NPO by the applicant, to which Council determined on 23 February 2018 to proceed to serve the Order 1(c) as:

**ITEM 2 (continued)**

1. *Council continues to receive complaints relating to noise from the subject premises throughout the day and night.*
2. *There is no evidence presented to Council to indicate that your intention to comply with the development approval and conditions that relate to this consent.*
3. *There are significant discrepancies between the stamped approved plans and what has been constructed at the premises.*
4. *The use has been fitout and occupied without the issue of a construction certificate and occupation certificate.*
5. *The business continues to operate in breach of the Environmental Planning & Assessment Act 1979.*

In response on 5 April 2018, the applicant lodged a Section 4.55(2) application, being Modification No. MOD2018/0095 (layout), to seek retrospective approval for the layout of the gym. This application does not have approval from the Strata Body Corporate.

Condition 34 and 35 of LDA2017/0057 limited the 24/7 operations and use of free weights in the gym to a trial period of 12 months from the date of consent. Subsequently, the applicant lodged MOD2018/0123 (hours/weights), twelve (12) months after the date of consent, being 9 May 2018, seeking to delete Conditions 34(b) and (c), and 35 (b) and (c) to allow the permanent operation of the gym 24/7 and to allow the use of free weights. This application also does not have approval from the Strata Body Corporate.

MOD2018/0123 (hours/weights) as originally submitted to Council was lodged as a Section 4.55(1A) application. Following a letter dated 12 April 2018 from Council which advised the applicant that the application could not be considered to be of “minimal environmental impact” in view of the numerous complaints received from Council, the application was resubmitted as a Section 4.55(2) application.

The 12 April 2018 letter also advised the applicant that an amended acoustic report would be required, owners consent from the Strata Body Corporate for use of common property, and details regarding parking at night time in light of reliance on street parking during this time. The applicant responded to each of these items on 2 May 2018, resulting in a site visit by Council Development Assessment and Building Compliance staff on 10 May 2018.

Amended plans were received on 24 May 2018 which changed the configuration of the layout to utilise the internal “goods lift” for members to access the gym from the basement, but retained use of the front common residential entrance doors from Victoria Road.

The applications were notified concurrently with the notification period from 28 May 2018 to 14 June 2018. Council received 14 individual submissions raising concerns with MOD2018/0095 (layout), while 10 individual submissions were received objecting to MOD2018/0123 (hours/weights). The plans received on 24 May 2018 were the version notified.

**ITEM 2 (continued)**

In response to the submissions received by Council, and discussions the applicant had with the Strata Body Corporate, amended 'draft plans' were received by Council on 11 July 2018. These plans however were only ever in 'draft' form, with the applicant advising that he was still confirming with Strata which plans they would support.

Accordingly for the purpose of this report, the 24 May 2018 plans are the plans assessed.

Furthermore, during the assessment period, the applicant has also commenced fitness classes at the premises which run at 6am Monday to Wednesday and 8am Saturday.

**5. SECTION 4.55 – MODIFICATION OF CONSENT**

An assessment of each application in respect to Section 4.55 of the Environmental Planning and Assessment Act 1979 is detailed below.

**5.1 Section 4.55(1A) Modification Application No. MOD2018/0095 (layout)**

In accordance with Section 4.55(1A), Council may consider a modification of development consent provided:

- a) Council is satisfied that the proposed modification is of minimal environmental impact.
- b) The proposed development is substantially the same as the approved development.
- c) The application for modification has been notified in accordance with the regulations; and
- d) Council has considered any submissions regarding the proposed modification.

The proposed development is for changes to the floor layout and increase in the floor area of the existing gym from 441m<sup>2</sup> to 531m<sup>2</sup>, which generally includes the following as outlined in Section 3 above:

1. New toilet and change of 'office' to 'storage' room
2. Enlarged weight training area (+13m<sup>2</sup>)
3. New 'Free Weights' area (44m<sup>2</sup>)
4. Enlarged 'Functional Training' area (+15m<sup>2</sup>)
5. Relocation of Managers Office
6. Relocation of front door (retrospective approval of existing door location)
7. Use of existing 'Goods Lift' to allow access from the basement directly to the gym, and relocation of lobby (+14m<sup>2</sup>)
8. Larger Cardio space with positions for an additional 4 machines

**Minimal environmental impact**

Since the commencement of the gym's operations in August 2017, Council has received, and is continuing to receive, complaints from residents from the noise and

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vibration impacts from the current use of the premises – which has been constructed to the increased floor area proposed under this application. Based on the number of complaints and Council inspection of the residential units, it is demonstrated that the current operation of the premises is causing impact to the residential amenity of the residential units above the gym, this is also agreed by the applicant in the submitted SEE. Complaints are received at all hours, but predominantly of an evening and early morning.

The proposed development seeks retrospective approval for the increase in the floor area of the existing gym by 90m<sup>2</sup> (see **Figure 12**). It also proposes a new ‘free weights’ area, an enlarged ‘weight training’ area, and use of the internal ‘goods lift’ for use by members from the basement. An assessment of ‘impact’ needs to consider the effect of the increased floor area and amended layout of the premises compared with that which was originally approved. Accordingly, in assessing the impacts of the proposal, the following matters are of consideration:

- (i) whether the larger floor area would cause greater impact than the floor area and layout as approved; and
- (ii) the mitigation measures proposed and whether it would adequately reduce the existing impacts currently being caused by the gym at present with the larger floor area.

*Randall Pty Ltd v Leichhardt Council* [2004] NSWLEC 277 at 25-26 establishes the Planning Principal for *Extension or intensification of use which may impact on residential amenity* (herein referred to as ‘the Planning Principal’).

*Randall Pty Ltd v Leichhardt Council* related to the impact of an extension of the floor area of an existing hotel, and considered whether an increase in floor area would increase impacts of the hotel on residential amenity of the neighbourhood. MOD2018/0095 (layout) is for an extension and intensification of the gym as approved. The gym is currently causing impact on residential amenity, however proposes mitigation measures to reduce the impacts. Accordingly the Planning Principle is useful in answering the questions (i) and (ii) above.

The Planning Principal is as follows:

***Planning Principle - Extension or intensification of use which may impact on residential amenity***

25	<p><i>Principles for the assessment of an extension or intensification of a use which may have an adverse impact on residential amenity, such as a hotel, are:</i></p> <p><i>First, is the impact of the operation of the existing use on residential amenity acceptable?</i></p> <p><i>If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.</i></p>
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*Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?*

- 26 *In answering the first question, it is not sufficient to assume that a use operating in compliance with its approval has an acceptable impact. A hotel could be approved without limits on patron numbers or hours of operation and, while its operation complies with this approval, may not achieve an acceptable impact. Moreover, the surrounding area may change and the attitudes of the community as to what is acceptable may also change. An extension or intensification of use may provide opportunities to reduce the impact of the existing operation through limiting numbers or hours of operation. The overall impact of the development may then be neutral or result in a lesser impact.*

***First, is the impact of the operation of the existing use on residential amenity acceptable?***

The impact of the operation of the existing gym use on residential amenity is caused by:

- noise and vibration impacts of the premises, and
- other impacts from member behaviour which, according to submissions, has led to security concerns, overuse of the common/residential lift, and cleanliness problems in common areas.

The original approval required the implementation of acoustic mitigation measures to prevent impact of the use of the gym on neighbouring premises as follows:

- 22. Noise control measures.** All noise and vibration control measures nominated in the acoustical consultant's report (TTM Consulting Pty Ltd. Reference No. 17SYA0022 R01\_0, dated: 20 April 2017) and any related project documentation must be implemented.
- 37. Offensive noise.** The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

Additionally, the approved Patron Management Plan (dated 4.01.2017) under Condition 1 identified measures aimed to reduce impacts of members on the broader mixed-use building.

The issuance of NPOs and Orders, the submissions received to this application and the persistence of noise and vibration complaints being received by Council relating to the existing use of the premises, demonstrate the unacceptable nature of the existing use and impact on residential amenity, and the noncompliance of the premises with the existing conditions of consent. These impacts are being caused

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predominantly of an evening and early morning, but the behavioural/cleanliness issues are not restricted to a particular time of day/night.

Furthermore, in relation to Condition 22, review of this acoustical consultant's report by both the applicant, and Council's peer review of the report, has identified that the report was flawed, with the assessment methods unreliable, and thus the noise control measures under the original consent were inadequate to prevent impacts.

Accordingly the answer to this first question of the Planning Principal is 'no', the impact of the operation of the existing use on residential amenity is not acceptable.

***If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.***

An assessment of 'no overall increase in impact' is difficult to measure as the existing unauthorised use of the premises is currently causing impact which is being caused by noncompliance with the approved development consent, and ineffective noise control and vibration control measures under the existing consent. It can only be assumed that an increase in floor area, which will locate the premises beneath additional residential units, will cause a consequent impact on more residential receivers. This assessment however has not been provided by the applicant or the Noise and Vibration Assessment submitted with the application.

Subsequently, a consideration of 'measures proposed which would mitigate the existing impact' relates to the noise and vibration mitigation measures as outlined in the submitted Noise and Vibration Assessment, and management of visitor behaviour the gym as outlined in the amended Patron Management Plan.

*Noise and Vibration Mitigation*

The submitted Statement of Environmental Effects (SEE) for the application outlined measures proposed to mitigate the existing impact of the gym, stating:

*"During the first 6 months of operation there has been significant complaints from the residents of the property. The flooring and acoustic underlay were installed per the TTM Acoustic Engineer report in the original DA but this has proven to be unsuccessful.*

*We have made a number of changes to improve the noise impact but to date have not been able to "fix" the problem. On approval of this S96 we will implement a new flooring system that has proven successful in other Anytime Fitness locations".*

The submitted SEE dated 18 May 2018 identifies the measures over the past '8 months' which were included to address the acoustic impacts being caused.

**ITEM 2 (continued)**

The application is also supported by the Acoustic Dynamics Noise and Vibration Assessment which outlines the recommended upgrades that would mitigate the noise and vibration impacts of the gym use. These recommendations are for the installation of a new flooring system for functional training area and other areas of the gym as shown in the excerpts below:

**Table 6.1 - Recommended Floor Systems - Functional training area**

Option	Finished Floor Topping	Energy Absorbing Layer
1	8mm A1 Rubber topping	2 layers of 30mm A1 Shockpad (Increase from existing 1 layer)

**Table 6.2 - Recommended Floor Systems**

Areas	Finished Floor Topping	Energy Absorbing Layer
Free weights area	8mm A1 Rubber topping	3 layers of 30mm A1 Shockpad on Concrete Slab (Increase from existing 2 layers)
Free weights (mezzanine area)	8mm A1 Rubber topping	3 layers of 30mm A1 Shockpad (Increase from existing 2 layers)

The Noise and Vibration Assessment also makes recommendations for the management of gym noise and vibration emission including the following which are recommended to be included in the gym management plan:

1. *The use of free weights (dumbbells, barbell, kettlebell and plates, is to be restricted to areas within the gym where appropriate impact isolating flooring has been installed.*
2. *Put in writing and enforce a membership condition that allows management to revoke a patron's membership if they are found to repeatedly drop weights within the gym and cause a potential disturbance to the neighbouring occupants.*
3. *Communicate to staff the strict requirement that members must not conduct activities likely to generate excessive vibration (i.e. dropping weights or using weights in restricted areas).*
4. *Monitoring of members using weights (both free weights and weight machines) within the gym, providing immediate warnings to members that drop weights or allow weights to drop.*
5. *The erection of clearly visible signage throughout the gym advising members that they must not drop weights or allow weights to drop onto the gym floor, or use weights outside the allowed areas.*

Despite these recommendations however, the independent peer review of the submitted Noise and Vibration Assessment by The Acoustic Group has stated that *"the suggestion of different materials to achieve the Acoustic Dynamics incorrect and*

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*inappropriate objectives is of no assistance” (p.14), as the testing undertaken and conclusions made are fundamentally flawed due to:*

- The location that the measurements were undertaken being in the corridor outside the complainant’s premises, rather than within the dwelling;
- The report does not identify when testing was undertaken or what was the ambient noise level at the time of the measurements;
- The assessment criteria used to measure the impacts are not applicable to the type of noise generated;
- The vibration targets presented in the report are inappropriate for the complaints and location of the premises.

Accordingly, based on the review of the proposed mitigation measures as put forward in the Acoustic Dynamics report, it cannot be satisfied that there will be adequate measures proposed that would mitigate the existing impact. The Acoustic Group independent review concludes that *“In the intervening period it would appear that the gymnasium has expanded (without consent) and that there is no acoustic or vibration assessment with respect to the various apartments located over different areas/operation of the gymnasium. That modification application should be refused.”*

**Behaviour management**

The amended SEE (dated 18/05/2018) addresses the resident complaints and proposes solutions to the impacts raised. These are outlined below:

- **Problem:** *Use of the public/resident lift making mess and causing over use and security risk.*  
**Solution/Response:**  
*The proposed S96 revised plans proposed changed main entrance from the carpark. This involves having the good lift reinstated and creating a new “foyer” in the gym that leads to a secure door for the customers of the gym. If the body corporate wish the residents lift to be swipe only during night time hours this will enable customers to access the club without using the general lift.*

*In the short term we have the cleaners cleaning this lift and the common are every 2 days, with feedback to body corporate photos of this as often as practical.*

- **Problem:** *Change of the entrance to internal to the building.*  
**Solution/Response:** *As stated above at the time of making the change I was not aware of this being a big issue. This entrance meant not having to cut another hole in the front of the building and meant that the customers coming from the carpark were on camera as soon as they exited the lifts. The use of the proposed goods lift as the main access will significantly reduce the use of the current doors and these would only be used for walk in prospective customers or customers accessing from the street. When this was discussed with Body Corporate in March 2018 it was expressed that they did not want to have and additional entrance to the building.*



**ITEM 2 (continued)**

*We have also proposed to have an electronic strike on the front door of the building so that it can be key access only at night time. This will ensure the building is secure during the night providing the external sliding door is working.*

- *Problem: Use of the fire door and keeping it open.  
Solution/Response: We have installed a camera outside the entrance to the building and this captures the fire door area. We have actively reprimanded customers if using the fire door. However this is the access from the car park when the public lift is not in operation. It is difficult to pinpoint when exactly the fire door is being opened so we can introduce a reed switch that sets off an alarm and time so we can more accurately and effectively manage this situation.*

*We will also install more effective signage to the effect that it is being monitored.*

- *Problem: Carpark Security.  
Solution/Response: During the occupation of the gym (and prior to) there have been a number of car and property break ins. The existing building does not have any security monitoring system in place. We have been working with body corporate on a solution where by Anytime Fitness pays for all of the hardware and equipment and the owners corporation pay for the installation of the cameras and then they take ownership of the system. This way it is not linked to the gym but instead owned by the building. This solution would cover  
B1 – Entrance Ramp looking at cars/people entering the building  
B2 – General Overview of carpark x 2  
B3 - General Overview of carpark x 2*

*This system can be accessed by the body corporate or police as necessary and more cameras can be added if required.*

- *Problem: Carpark Cleanliness.  
Solution/Response: It is asserted that there is rubbish created from Anytime Fitness customers in the carpark. To date we have put bins out on each floor next to the lifts. We also have out contract cleaners about to start a weekly garbage pick up in the carpark. We have also requested that Mercado e Cucina do the same.*

The existing approval of the gym under LDA2015/0057 included conditions that were intended to address many of these concerns including:

- **Condition 1** – Compliance with the Patron Management Plan dated 04.01.2017 (Appendix 1 to SEE)

This report included details regarding member orientation, including the need to be 'respectful when leaving the gym, especially during the early hours', and a 'full overview of Gym Rules and Regulations including penalties, should any rules not be adhered to'.

**ITEM 2 (continued)**

The Patron Management Plan also outlined that there would be security systems of 24 hour video surveillance for all gym areas both internally and externally.

- **Condition 31** - Entrance and Carpark Signage. Appropriate signage shall be placed in the immediate vicinity of the premises (e.g. entry/exit to the fitness centre; in the car park near allocated parking spaces) to the effect that patrons are to minimise noise from this area, in consideration of the neighbours. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.
- **Condition 36** - Parking allocation. A minimum of 23 car parking spaces are to be provided and maintained to the fitness centre approved under this consent. Parking spaces are to be appropriately signposted or labelled restricting use to patrons or employees of the fitness centre at all times.

The Planning Principle states that in answering the first question of whether the extension or intensification would be unacceptable unless there are measures proposed which would mitigate the existing impact, it is *'not sufficient to assume that a use operating in compliance with its approval has an acceptable impact'*. It is clear that the existing operations of the premises with the existing Patron Management Plan and conditions of consent, have inadequate measures in place to mitigate the impacts caused by the gym at present, and furthermore the gym has had disregard to the existing consent conditions which intend to mitigate these impacts.

The question of whether the increased floor area directly results in an increase in these behavioural impacts, potentially through an increase of the number of patrons, is unable to be directly correlated, as the visitation data presented for the initial development approval under LDA2017/0057 related to anticipated rates of visitation using a North Parramatta comparison. However, the data submitted later in the amended SEE which relates to the Gladesville gym, is not presented in a manner that can be directly compared (with the data sets presented as a monthly average, rather than a specific daily usage by hour report).

Nonetheless, it is evident by the complaints and submissions to the subject modification application that the existing conditions of consent are inadequate to manage behaviour and mitigate impacts, and additional conditions would be required to mitigate the impacts should the application be approved. To assume that amending the Patron Management Plan or imposing new conditions of consent will improve matters is contradictory, as it is currently not being complied with.

Accordingly in line with the Planning Principal, *'An extension or intensification of use may provide opportunities to reduce the impact of the existing operation through limiting numbers or hours of operation. The overall impact of the development may then be neutral or result in a lesser impact'*. The matter of hours of operation is addressed in the assessment of MOD2018/0123 (hours/weights) which demonstrates that regardless of conditions that may be included to mitigate the impacts of the use of the gym through a reduction of hours or limitation on the use of the premises, there

**ITEM 2 (continued)**

will still be an impact on residential amenity. To have a neutral outcome would not be an acceptable outcome either, as the existing use of the premises is causing unacceptable impacts.

In assessing whether the proposal will have ‘minimal environmental impact’, Council cannot be satisfied that any mitigation of noise and vibration in line with the submitted Acoustic and Vibration Assessment, or behavioural management in line with the solutions suggested in the SEE will be adequate for the overall development to have a neutral or lesser impact than the approved development, or even than the existing unauthorised operations – no matter the hours of operation. Accordingly, the application cannot be supported.

**(b) Substantially the same development**

The assessment of what constitutes “substantially the same development” requires the subject matter of the modification to be comparatively assessed against the development as proposed to be modified: *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development, and requires both a qualitative assessment, as well as a quantitative assessment of the amendment.

Quantitatively the proposal includes an increase in gross floor area of 90m<sup>2</sup>, which is a 21% increase on the floor area to that which was originally approved. This quantitative increase results in a larger gym, with new uses which were not included in the original proposal including a dedicated ‘free weights’ area. It also results in the potential for additional visitors to that which was possible to originally attend the gym and an overall intensification of the use. As assessed previously in this Section of the report, the impacts caused by the gym as proposed, and as currently operating, are not in accordance with the existing consent, and the proposed mitigation measures are inadequate to reduce the impact to not cause ‘offensive noise’. Accordingly, the quantitative changes of the gym are not considered to be substantially the same development to that which was initially approved as the premises is unable to operate without causing impact – a requirement of the original consent. The proposal is ‘essentially or materially’ different to that which was originally approved as a more intensive use is proposed which is causing impacts greater than that of the original proposal.

Qualitatively, the Acoustic Report as approved with the development application (dated 20/04/2017, prepared by TTM), included a recommendation that “Provision of “pin loaded” instead of “free weights”, wherever possible”. To include specific areas for the use of free weights indicates a different use is being undertaken to that which was initially envisaged in the original approval. The 12-month trial period aimed to test the impact of the initial approved development, following which with the series of complaints received by Council regarding the ongoing operation of the premises, it cannot be concluded that the development as proposed is substantially the same either “essentially or materially” as that which was originally approved.

**ITEM 2 (continued)****(c) & (d) Submissions**

The application was notified from 28 May 2018 to 14 June 2018. Council received 14 individual submissions raising concerns with MOD2018/0095 (layout) in relation to:

- Noncompliance with the approved consent with regard to:
  - Location of the front door being internal of common area
  - Expansion of floor space without approval
  - Entrance and Car Park signage/CCTV
- Noise and vibration impacts – particularly at night time
- Safety and security concerns
- Sounding of the fire alarm
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk

These matters are further assessed in Section 6.10 of this report.

**5.2 Section 4.55(2) Modification Application No. MOD2018/0123 (hours/weights)**

In accordance with Section 4.55(2), Council may consider a modification of development consent provided:

- 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 seeks to permanently allow the 24 hour/7 day a week operation of the gym, and the use of free weights.

**(a) Substantially the same development**

The assessment of what constitutes “substantially the same development” requires the subject matter of the modification to be comparatively assessed against the development as proposed to be modified: *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development, and requires both a qualitative assessment, as well as a quantitative assessment of the amendment.

This proposed modification does not relate to a ‘material’ change, with no building works or physical change to the premises. ‘Essentially’ however, the changes to the hours and use of free weights, and means of use of the premises will have both qualitative and quantitative change to the development which was originally approved.

**ITEM 2 (continued)**

The approval of LDA2017/0057 was for a gym with a trial period of 12 months to demonstrate that the impacts of the gym operating 24 hours a day, with the use of free weights, would cause no unacceptable impacts on the adjoining residential units within the building. The assessment report for the original approval stated:

*“[Condition 35] will allow for impacts of the use of free weights within a mixed use development to be reviewed and modified should any noise or vibration complaints be received, and the impacts substantiated, within the first 12 months of operation”.*

Similarly, Condition 34 regarding limited consent for extended hours of operation was also applied in order to determine the level of impact from permitting 24 hour operations.

Quantitatively the operation of the gym 24 hours a day, as opposed to 8am to 10pm, is an additional 10 hours of operation or 42% extension of operating hours. With regard to the use of free weights, allowing for the use of free weights and loaded bars, whether on a weight lifting platform allows for the use of hard, heavy objects to be dropped onto the floor which is most likely to generate acoustic disturbances. Conversely, pin or plate loaded equipment are less likely to produce impacts of the same magnitude.

Qualitatively, the extension of operating hours is to allow operations during the most sensitive times of the evening and early morning, during which impacts are most likely to be caused. In this regard, the approved development included the approval of an Acoustic Report (prepared by TTM) which recommended measures to minimise impacts on the neighbouring residential units. The approved report identified that “it is practical and reasonable to have a 24/7 Anytime Fitness gym while keeping an appropriate acoustic amenity and controlled impact onto the local community”. However, the peer review of the TTM report by The Acoustic Group has identified that this report by TTM Report was “flawed and resulted in the inclusion of inadequate conditions”

The operation of the gym during the trial period has demonstrated that the residential amenity of neighbouring units has been detrimentally impacted and in light of this, has not been “essentially or materially” operating according to what was originally approved, which was a development that would keep an appropriate acoustic amenity and controlled impact onto the local community.

To permit the continued operations of the gym during the sensitive hours of the evening and early morning, would not be substantially the same development as that which was approved, as essentially what was approved was a trial period to demonstrate that operations during these hours would cause no impact, which has not been satisfactorily demonstrated.

Accordingly, the application cannot be supported as it is not essentially the same as that which was originally approved.

**ITEM 2 (continued)****(c) & (d) Submissions**

The application was notified from 28 May 2018 to 14 June 2018. Council received 14 individual submissions raising concerns with MOD2018/0123 (hours/weights) in relation to:

- Noise and vibration impacts – particularly at night time
- Change of the entrance to the building – compromises residents access
- Unsuitability of the use for the building
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk
- Use of the fire door and leaving it open
- Car park security
- Car park cleanliness
- The premises has already not complied with the existing conditions of consent
- Complaints have been made to Council and the gym owner, with no improvement to the impacts caused.

These matters are further assessed in Section 6.10 of this report.

*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.*

**6. SECTION 4.15(1) MATTERS FOR CONSIDERATION - GENERAL****6.1 Environmental Planning Instruments****(a) State Environmental Planning Instruments**

None applicable

**(b) Ryde Local Environmental Plan 2014****Clause 2.1 Zoning**

The subject site is within the B4 Mixed Use zone. The objectives of this zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

**ITEM 2 (continued)**

The application does not meet the first objective in relation to compatibility of its location. The Oxford Dictionary definition of 'compatible' is "able to exist or occur together without problems or conflict". The 24 hour a day operations, with the use of free weights and increased floor area and uses, is not operating 'without problems or conflict' with the neighbouring residential units. This in relation to both daytime operations (with impacts on the lift use, parking cleanliness and problems with use of the fire stairs), and night-time (noise and vibration and parking problems) therefore MOD2018/0123 (hours/weights) is not considered to facilitate a use that is consistent with the zone. Additionally, the layout and works proposed under MOD2018/0095 (layout) is not considered to achieve a premises that will be compatible with the surrounding land uses as the proposed mitigation measures to reduce the impacts are inadequate.

The use of the premises with an increased floor area, with unrestricted use of free weights and 24 hour operations, as demonstrated through its operations during the trial period and lack of supporting details to demonstrate that no impacts will be caused, is incompatible and unsuitable for the mixed-use residential flat building it is located. Accordingly, it is not considered to meet the objectives of the zone.

**Other mandatory clauses**

No other clauses apply to the subject proposals.

**6.2 Draft Environmental Planning Instruments**

There are no draft environmental planning instruments that affect the site.

**6.3 Development Control Plans****City of Ryde DCP 2014**

The following sections of Ryde DCP 2014 are of relevance, being:

- Part 4.6 – Gladesville Town Centre & Victoria Road Corridor
- Part 9.1 – Signage
- Part 9.3 – Car Parking

**Part 4.6 - Gladesville Town Centre & Victoria Road Corridor**

The original approval of the application under LDA2017/0057 considered the proposed use as a gym within an existing building to be consistent with Section 3.1.2 Active Street Frontages of this Part of the DCP. Neither MOD2018/0095 (layout), nor MOD2018/0123 (hours/weights), affect the original application's compliance with this Section.

There are no other relevant controls under this Part of the DCP.

**ITEM 2 (continued)**
**Part 9.1 Signage**

The proposal does not affect the signage as approved under LDA2017/0057.

**Part 9.3 – Parking Controls**
**MOD2018/0095 (layout)**

MOD2018/0095 (layout) increases the floor area of the gym. The table below compares the car parking provided and as approved under this Part of the DCP.

<b>Recreation Facilities (indoor) / Gymnasium.</b>	<b>Original Approval</b>	<b>Proposed amendment</b>
<b>Floor Area</b>	441m <sup>2</sup>	531m <sup>2</sup>
<b>Rate</b>	1-1.5 spaces / 20m <sup>2</sup>	1-1.5 spaces / 20m <sup>2</sup>
<b>Required spaces</b>	22.05 (23) - 33.075 (34) spaces	26.55 (27) - 39.825 (40)
<b>Provided</b>	<b>23 spaces</b>	<b>23 spaces</b>

The original approval identified that *at the time Mercato e Cucina was approved under LDA2012/311, the proposal required 44 spaces of car parking, with an additional 38 additional car parking spaces being allocated to the use surplus to the required amount under the applicable planning controls at the time.*

*It is therefore concluded that the proposed development will comply with the required parking spaces for the proposed gym, and will not affect the parking provisions allocated to the existing restaurant/supermarket use. The following condition is to be included on the draft consent:*

**Parking allocation.** *A minimum of 23 car parking spaces are to be provided and maintained to the fitness centre approved under this consent. Parking spaces are to be appropriately signposted or labelled restricting use to patrons or employees of the fitness centre at all times.*

The above condition was included as condition 36 on the consent requiring the allocation of 23 car parking spaces. It is noted however that the inspection of the site by Council officers identified that these spaces had not been signposted or labelled in the basement.

Based on the background that Mercato e Cucina provide a surplus of 38 spaces, and the gym has taken part of the floor area of the restaurant, it is considered that a minimum of 27 parking spaces would be possible to be allocated to the gym within the existing parking area. Accordingly any approval of MOD2018/0095 (layout)



**ITEM 2 (continued)**

should amend condition 36 to require a minimum of 27 parking spaces to be allocated to the gym tenancy.

The proposal also notes that as a security measure to respond to the basement and car park area security and cleaning objections, it is proposed to lock the basement access for resident only use overnight between 11pm and 5am. This would require visitors to the gym during these hours to park on the street.

The 'Average per Hour' month (March – April 2018) statistics provided by the applicant for the gym use shows that between these hours there are between 1 and 4 persons accessing the gym at 10pm to 3am, however from 4am to 5am there are 13 to 18 persons. To require up to this many visitors (on average) to park on the street, while also considering some may walk or take public transport to the gym, is considered unreasonable, considering this is one of the peak times of visitation to the gym. It also sets an undesirable precedent for any other overnight future uses within the Ryde local government area.

Accordingly, it is considered that inadequate parking provision will be provided for overnight visitors, and the application is recommended for refusal.

**6.4 Planning Agreements OR Draft Planning Agreements**

None applicable.

**6.5 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)**

Not applicable as no 'new' commercial floor area created to that which was already approved for the existing mixed-use residential flat building.

**6.6 Any matters prescribed by the regulations*****Environmental Planning and Assessment Regulation 2000***

Clause 115(1)(h) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) states that:

*(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:*

...

*(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

...

MOD2018/0095 (layout) relates to amending the front entrance of the gym from Victoria Road. As identified at Error! Reference source not found., this amendment will affect the location of the front entrance to be via the common entrance to the

**ITEM 2 (continued)**

residential units. Accordingly the consent from the Strata Corporation is required as the works will affect Common Property.

This consent has not been provided, and Council has been advised that the Strata Corporation opposes both MOD2018/095 (layout) and MOD2018/0123 (hours/weights). Accordingly, the consent authority has no power to approve the MOD2018/0095 (layout) as owners consent in accordance with Clause 15 of the EP&A Regulation 2000 has not been provided.

**6.7 The likely impacts of the development**

As assessed previously under Sections 5.1 and 5.2 of this Report, the proposed development under both MOD2018/0095 (layout) and MOD2018/0123 (hours/weights) is likely to have a detrimental impact on the surrounding residential properties with regard to noise and vibration impacts, continued impacts on the use of common areas including the common lift lobby and basement, and parking impacts from inadequate overnight parking provision.

The proposed amendments under MOD2018/0095 (layout) will have an unreasonable environmental impact on the residential amenity of adjoining units, which has not recommended suitable noise mitigation measures to ensure that the premises will not cause offensive noise. Furthermore, an assessment has not been provided to demonstrate that the enlarged floor area of the premises will not cause additional impacts, and based on the submissions and complaints to date, and the recommendations in the Peer Review of Acoustic Reports by The Acoustic Group, the likely impacts of the development are such that the application is recommended for refusal.

In addition to this, MOD2018/0095 (layout) has not demonstrated that the associated impacts of the use of the premises with regard to safety and security concerns in the basement, sounding of the fire alarm and use of the fire stairs will be adequately mitigated and accordingly the proposed amendments will not adequately address these likely impacts.

Conditions 34 and 35 intended to permit a trial period for the operating of the gym for 24 hours, 7 days a week and the unrestricted use of free weights, for a period of 12 months. After the trial period, or if the consent authority had refused an amended application to permit longer trading hours, the hours of operation would revert back to 8am to 10pm Mondays to Sundays.

The proposed amendment to the hours of operation and use of free weights under MOD2018/0123 (hours/weights) is unable to be supported as the existing use of the premises during the trial period has demonstrated that the use of the premises 24 hours a day, seven days a week, is causing detrimental impacts on neighbouring residential properties. As the noise mitigation measures proposed under MOD2018/0095 (layout) are inadequate to address these impacts, the operation of the gym with extended hours of operation and the use of free weights is likely to

**ITEM 2 (continued)**

continue to cause impacts, and accordingly MOD2018/0123 (hours/weights) is recommended for refusal.

**6.8 Site Suitability**

As detailed throughout this report, the development as proposed to be modified under MOD2018/0095 (layout) and MOD2018/0123 (hours/weights) is unsuitable for the location it is situated.

**6.9 The Public Interest**

Approval of either of these applications would not be in the public interest as unreasonable impacts are being caused on the amenity of residential units in the complex. Despite a trial period of 12 months from the date of approval plus an extended assessment period for both applications during which the applicant had the opportunity to demonstrate the suitability of the gym, complaints have continued to be received. The proposed mitigation measures are considered inadequate and unsuitable for the development and proposed uses to adequately address the impacts of the development. Approval of the continued operation of the gym with an increased floor area, use of free weights and 24 hour operations would not be in the public interest.

**6.10 Submissions**

The applications were notified concurrently with the notification period from 28 May 2018 to 14 June 2018. Council received 14 individual submissions raising concerns with MOD2018/0095 (layout), while 10 individual submissions were received objecting to MOD2018/0123 (hours/weights). Objections received are all from residents who reside in the residential apartments above the subject gym. Key issues raised in the submissions relate to:

**MOD2018/0095 (layout):**

- Noncompliance with the approved consent with regard to:
  - Location of the front door being internal of common area
  - Expansion of floor space without approval
  - Entrance and Car Park signage/CCTV
- Noise and vibration impacts – particularly at night time
- Safety and security concerns
- Sounding of the fire alarm
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk

**MOD2018/0123 (hours/weights):**

- Noise and vibration impacts – particularly at night time
- Change of the entrance to the building – compromises residents access

**ITEM 2 (continued)**

- Unsuitability of the use for the building
- Overuse of the common lift making mess and causing regular problems with the lift and causing a security risk
- Use of the fire door and leaving it open
- Car park security
- Car park cleanliness
- The premises has already not complied with the existing conditions of consent
- Complaints have been made to Council and the gym owner, with no improvement to the impacts caused.

The applications have been submitted with measures to address the submissions including acoustic treatment of the premises, management protocols, parking arrangements by restricting parking on the premises at night, regular cleaning and changing the front entrance of the premises to be from the external areas of the building, rather than sharing the common entry point with the residential component of the premises.

The original approval included conditions that aimed to condition the use of the premises and manage these very impacts. Since the gym began operations however, Council has continued to receive complaints regarding the use of the premises.

The gym has operated without an Occupation Certificate, and contrary to the approved Acoustic Report, Patron Management Plan and the existing conditions of consent for over 15 months. It is not adequate to assume that an updated Patron Management Plan, implementation of the Acoustic Report recommendations from the new report, or additional conditions of consent would address each of the submissions received, to either of the applications, to a satisfactory standard that the objections would be mitigated.

To approve either the extended hours of operation, use of free weights under MOD2018/0123 (hours/weights) or the increased floor layout under MOD2018/0095 (layout) would not be taking into consideration the extent and weight of the submissions made, and would not be in the public interest.

**7. Referrals****Environmental Health Officer:**

Council's Senior Coordinator, Environmental Health reviewed both applications with regard to acoustic impacts and the submitted Acoustic Report, stating the following:

***MOD2018/0095 (layout):***

Based on the information above it is clear that the use of the gym is interfering unreasonably with the comfort and repose of neighbouring residents and is causing offensive noise.

**ITEM 2 (continued)**

Furthermore, Council's acoustical consultant has raised serious concerns about the noise and vibration assessment carried out by Acoustic Dynamics and the adequacy of the proposed controls.

As a result, the application to modify the consent should be refused.

Action should also be taken to prevent further emissions of offensive noise as required by condition 16 of the consent.

**Recommendations:**

- (a) That the application to modify the consent be refused.
- (b) That appropriate action be taken to prevent the emission of offensive noise.

***MOD2018/0123 (hours/weights):***

Based on the information above it is clear that the use of the gym is interfering unreasonably with the comfort and repose of neighbouring residents and is causing offensive noise.

Furthermore, Council's acoustical consultant has raised serious concerns about the noise and vibration impact assessment carried out by TTM and the adequacy of the proposed controls.

As a result, the application to modify the consent should be refused and the use of the gym should be restricted to between 8am and 10pm.

Action should also be taken to prevent further emissions of offensive noise as required by condition 16 of the consent.

**Recommendations:**

- (a) That the application to modify the Consent be refused.
- (b) That the use of the gym be restricted to between 8am and 10pm.
- (c) That appropriate action be taken to prevent the emission of offensive noise.

**Independent Peer Review of Acoustic Report:**

Council engaged The Acoustic Group as an independent acoustic consultant to undertake a review of the submitted acoustic reports submitted for the premises to date, and make recommendations to Council regarding the subject section 4.55 applications.

The peer review concludes, in relation to both applications, that both should be refused. The review identifies significant flaws in the assessment provided in the original TTM Acoustic Report as approved under the initial consent, and

**ITEM 2 (continued)**

subsequent flaws in reports as a result of reliance on the initial findings. Furthermore, the updated Acoustic and Vibration Assessment prepared by Acoustic Dynamics is based on incorrect data and has not considered the consent issued for the development. A full copy of this review is included at **Attachment 1**.

Of particular note, the report finds the following:

*It is clear from the SEE and the two acoustic reports prepared in 2018 that the operators of the gymnasium are aware that there is a significant noise issue and has been an ongoing issue for an extended period of time. Such a situation should not be permitted to continue.*

**8. Conclusion**

After consideration of the development against the relevant section of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, both modifications are considered unsuitable for the site and approval of neither application would be in the public interest.

Neither application is considered to result in a development “substantially the same” as the gym that was originally approved and the additional floor area and uses proposed under MOD2018/095 (layout) will not cause ‘minimal environmental impact’. The site is zoned B4 Mixed Use under Ryde LEP 2014 which has a main objective to provide a mixture of compatible land uses. The ongoing complaints received by Council, the submissions received to the applications and the review of the submitted Acoustic and Vibration Assessment identifies the incompatibility of the development with the adjoining land uses.

The variation to the access to parking under MOD2018/0095 (layout) is not supported due to the undesirable precedent this will set for future applications with overnight uses, and put on unreasonable impacts on street parking.

The issues raised in the submissions have been considered and it is considered that imposition of additional conditions, management procedures or requirements would be insufficient to adequately address the concerns raised based on the past performance of the gym’s operation.

Refusal of the application is recommended to both MOD2018/0095 (layout) and MOD2018/0123 (hours/weights). Furthermore, the hours of operation are to be confirmed to be 8am to 10pm Monday to Sunday and no use of free weights.

**9. REASONS FOR REFUSAL**

**ITEM 2 (continued)**

***Modification Application No. MOD2018/0095: Section 4.55(1A) to modify the entrance, floor space, internal office and accessible bathroom, resulting in a change of floor area from 441m<sup>2</sup> to 531m<sup>2</sup>.***

In light of the assessment contained in this report, the proposed modification is recommended for refusal for the following reasons:

- 1) Per Clause 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, owners consent for the application has not been obtained for works that will impact on common property, and accordingly Council cannot approve the development.
- 2) The proposal is not of minimal environmental impact in accordance with Section 4.55(1A)(a).
- 3) The proposal is not substantially the same as the development consent which is to be modified in accordance with Section 4.55(1A)(b).
- 4) Approval of the application would not be in the public interest in consideration of the ongoing resident complaints received by Council and submissions received in accordance with Section 4.55(1A)(c) and (d).
- 5) The proposed development is inconsistent with the objectives of the B4 Mixed Use zone under RLEP 2014.
- 6) The gym will provide inadequate parking provision during the hours of 11pm and 5am which does not comply with Part 9.3 of Ryde DCP 2014.
- 7) In accordance with Section 4.15(b) the likely impacts of the development are unreasonable, and the proposed noise mitigation measures proposed are inadequate to mitigate the noise and vibration impacts caused by the premises.
- 8) In accordance with Section 4.15(1)(c) the site is unsuitable for the development due to the impacts the development will cause and incompatibility of the development with surrounding uses.
- 9) The approval of the proposed development is not in the public interest in accordance with Section 4.15(1)(e) as approval of the development would allow for the continued impact of neighbours.
- 10) Insufficient information has been received in order for Council to support the application.
- 11) The existing operation of the premises has demonstrated an inability to comply with the conditions of consent and therefore Council cannot be satisfied that additional conditions regarding the operation of the premises will satisfactorily mitigate and manage the use of the premises.

**ITEM 2 (continued)*****Modification Application No MOD2018/0123: Section 4.55(2) to delete Condition 34(a) and 35(a) to allow the operation of the gym 24-hours a day 7-days a week, and allow the use of free weights.***

In light of the assessment contained in this report, the proposed modification is recommended for refusal for the following reasons:

- 1) The proposal is not substantially the same as the development consent which is to be modified in accordance with Section 4.55(2)(a).
- 2) Approval of the application would not be in the public interest in consideration of the ongoing resident complaints received by Council and submissions received in accordance with Section 4.55(2)(b) and (c).
- 3) The proposed development is inconsistent with the objectives of the B4 Mixed Use zone under RLEP 2014.
- 4) Council cannot permit the use of the premises as inadequate parking will be provided during the hours of 11pm and 5am which does not comply with Part 9.3 of Ryde DCP 2014.
- 5) In accordance with Section 4.15(b) the likely impacts of the development are unreasonable, and the proposed noise mitigation measures proposed are inadequate to mitigate the noise and vibration impacts caused by the premises.
- 6) In accordance with Section 4.15(1)(c) the site is unsuitable for the development due to the impacts the development will cause and incompatibility of the development with surrounding uses.
- 7) The approval of the proposed development is not in the public interest in accordance with Section 4.15(1)(e) as approval of the development would allow for the continued impact of neighbours.
- 8) Insufficient information has been received in order for Council to support the application.
- 9) The existing operation of the premises has demonstrated an inability to comply with the conditions of consent and therefore Council cannot be satisfied that additional conditions regarding the operation of the premises will satisfactorily mitigate and manage the use of the premises.

**12. Recommendation**  
***MOD2018/0095 (layout)***

Pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act*



**ITEM 2 (continued)**

1979, the following is recommended:

- a. That the Ryde Local Planning Panel refuse Modification Application MOD2018/0095 to amend the approved layout of the gym at Unit 33, 297 Victoria Road for the reasons identified in Section 9 of this report.
- b. That the persons who made submissions be advised of this decision.
- c. That the matter be referred to the Building Compliance Team with regard to the outstanding Orders.

**MOD2018/0123 (hours/weights)**

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

- a. That the Ryde Local Planning Panel refuse Modification Application No. MOD2018/0123 to modify Conditions 34 and 35 for the reasons identified in Section 9 of this report.
- b. That the applicant be advised that the wording of Conditions 34 and 35 are amended to read as follows:

**34. Hours of operation.**

- a. *This consent permits the operation of the approved development between 8am to 10pm Mondays to Sundays.*

**35. Use of 'free weights'.**

- a. *This consent permits the use of 'pin loaded weights' only.*
- c. That the persons who made submissions be advised of this decision.

**ATTACHMENTS**

- 1 Peer Review Acoustic Report
- 2 LDA2017/0057 Consent Conditions & Approved Plans
- 3 Architectural Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Rebecca Lockart**  
**Senior Town Planner**

Report Approved By:

**Sandra Bailey**

**ITEM 2 (continued)**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 2 (continued)**

**ATTACHMENT 1**



48.5335.R1:MSC

13 November 2018

City of Ryde,  
Level 1, Building 0, Binary Centre  
3 Richardson Place  
**NORTH RYDE NSW 2113**

Attention: Mr P Kapetas

**PEER REVIEW OF ACOUSTIC ASSESSMENTS**

**24/7 GYMNASIUM USE**

**33/279 VICTORIA ROAD, GLADESVILLE**

A gymnasium identified as Anytime 24 Fitness has been operating on the ground floor of a mixed use building at 297 Victoria Road, Gladesville, and has given rise to disturbance to residents located in the tenancies above, with complaints being lodged with the Council.

The complaints reveal the operation of the gymnasium is in breach of the consent that requires the premises not give rise to offensive noise.

Conditions 34 & 35 of the consent provided a limited consent for 24 hour operation to which the applicant has requested removal of those two conditions.

I have been provided three acoustic reports for the subject premises to review:

*Noise Impact Assessment Report* by TTM Consulting Pty Ltd, ref 175YA0022 R01\_0 dated 20/4/17

*Anytime Fitness at 279 Victoria Road, Gladesville – Investigation of noise and vibration from gym to apartment upstairs*, by TTM Consulting Pty Ltd, ref 17YSYA0022 L02\_2 Acoustic Investigation Final, dated 19 February 2018

*Noise & Vibration Assessment, Anytime Fitness Gladesville, 33/297 Victoria Road, Gladesville, NSW* by Acoustic Dynamics, ref 4343R002.DS.180816 rev ) dated 16 August 2018.

The first TTM report relates to the original development application for the gymnasium.

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**6/62 ARGYLE STREET, SOUTH WINDSOR NSW 2756 AUSTRALIA**  
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**ITEM 2 (continued)**

**ATTACHMENT 1**

*Peer Review of Acoustic Reports for Anytime Fitness, Gladesville  
Ryde Council*

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The second TTM report accompanied a modification application to delete Conditions 34 & 35 from the original consent.

The Acoustic Dynamics report relates to an assessment of vibration and noise performance of the gym flooring system with respect to criteria nominated by that organisation and not with respect to the consent issued for the development.

On reviewing the three reports I find that they have not addressed the requirement for the gymnasium to not create offensive noise and have presented measurement data that is not in the appropriate format to address the complaints received by Council.

The second and third reports identified above reveal non-compliance with the consent and as such part (c) of conditions 34 & 35 require the 24 hour operations to be reduced to 8am – 10pm and that further works are required to bring the premises into acoustic compliance.

**TTM report of April 2017**

The original development application (LDA 2017/057, which was granted on May 2017 was based upon an acoustic assessment prepared by TTM Consulting Pty Limited that provided predicted noise levels for the operation of the proposed gym.

However, there are significant issues with the relevance of the TTM report for the proposed gymnasium, as subsequently identified by complaints and the second TTM report.

The acoustical assessment indicates the conduct of noise measurements in a hallway above a test area of the proposed gym (identified as strength training) to determine the impact that would be received by residents above.

In TTM's opinion, the measurement location was deemed to be representative of the noise and vibration impact inside residential apartments without the provision of any evidence to that fact.

The TTM report indicates that the primary issue of concern is related to the dropping of weights and the resultant impact noise that residents would perceive.

Figure 3 of the report reveals the "weight drop test location" did not agree with the nominated method for the testing of the proposed weight training area.

*The Acoustic Group Report 48.5335.R1:MSC  
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The TTM assessment for the original development application involved a number of tests of dropping a weight from knee height onto different floor constructions in the gym, resulting in the conclusion that the use of the 68 mm rubber mat would result in the noise from weight dropping to be inaudible, although at the same time claiming the airborne LAeq level (energy average level) was similar to background levels. This appears to be technically incorrect.

The TTM assessment does not indicate the time period over which the LAeq level was determined, which is relevant in the presentation of the results when comparing with a noise target also expressed in LAeq and a maximum noise level for trains.

If noise from weight dropping was inaudible, then the comment in Table 6.2 for test N6 that the airborne is LAeq similar to background levels is not correct.

The acoustic assessment from TTM by focusing on noise criteria associated with railway noise therefore indicates that the degree of acoustic amenity proposed by TTM for residents above the gym was on the basis that such persons occupying those residences would be impacted as result of the operation of the gym.

The acoustic assessment did not consider other noise sources in the gym, such as music associated with the use of the premises or PA systems for training classes and more importantly failed to identify what the ambient background levels would occur in residential dwellings (or for that matter incorrect hallway location) at night.

There is an expectation, in a general sense that the acoustic environment of receptor locations during the night time period would be less than that in the day.

As a result of the material presented by TTM I am unable to agree with the Conclusion of the report.

**Consent LDA2017/0057**

Notwithstanding the assessment undertaken by TTM, the conditions of consent from Council for the original application presented in Condition 16:

**Offensive noise.** The use of the premises must not cause the emission of 'offensive noise' ss defined in the *Protection of the Environment Operations Act 1997*.

*The Acoustic Group Report 48.5335.R1:MSC  
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Offensive noise is defined in the Act as being noise:

- (a) That, by reason of its level, nature, character or quality, or at the time at which it is made or any other circumstances:
  - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) That is of a level, nature, character or quality prescribed by the regulation or that is made at a time, or in any other circumstances prescribed by the regulations.

Condition 17 relates to Plant and Equipment Noise:

**Plant and Equipment Noise.** The operation of any plant or machinery installed on the premises must not cause:

- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at the most affected noise sensitive location in the vicinity. Modifying factor corrections must be applied for tonal, impulsive, low-frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
- (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian Standard *AS/NZS 2107: 2000 Acoustics - Recommended design sound levels and reverberation times for building interiors*.
- (c) The transmission of vibration to any place of different occupancy.

The plant and equipment noise (which is identified as plant or machinery installed on the premises) would normally be considered to refer to plant and equipment associated with ventilation/air conditioning or ancillary pumps.

*The Acoustic Group Report 48.5335.R1:MSC  
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I would not normally expect an Applicant to consider Condition 17 sets out the noise and/or vibration issues with respect to equipment used in the gymnasium by the patrons of the gymnasium. However, if such a concept was to be proposed then reference to AS 2107 would identify that with respect to noise issues the operation of the gym could not be assessed by that Standard.

If the Applicant was to consider Condition 17 applied to vibration generated from the use of the gymnasium then the application of part (c) which requires no transmission of vibration to any place of different occupancy would impose a more stringent criterion than that used, or reference to, in the acoustic reports.

It is noted that since the issue of the development consent the *Industrial Noise Policy* has been replaced by the *Noise Policy for Industry* and that with respect to "modifying factor corrections" there is no difference with the new noise policy to that specified in part (b) of Condition 17.

It is noted at the time that the Consent was issued (9 May 2017) that the current version of AS 2107 was a version issued in 2016, and not the 2000 version as identified in the Consent.

If utilising the practice of adopting the latest version of a Standard, then reference to Section 2.2 of AS 2107 – 2016 is relevant in relation to the subject premises where the Standard states.

**2.2 Limitation**

**This Standard is not intended for –**

- (a) use in evaluating occupancy noise, or noise due to specialist equipment associated with specific user requirements including fume cupboards (see AS 2243.8), dust extractors, and similar items of equipment;
- (b) application to sounds which are not categorised as steady-state or quasi-steady-state;
- (c) either the assessment or prescription of acceptable recommended noise levels from transient or variable noises outside the building such as –
  - (i) aircraft noise (see AS 2021 or NZS 6805);
  - (ii) construction noise such as jackhammers and pile drivers (see AS 2436 or NZS 6803);
  - (iii) railway noise;  
Note: AS 2377 gives methods of measurement for railway noise.
  - (iv) road noise (see AS 3671 or NZ 6806);
  - (v) crowd noise, e.g. from parades and sporting events;

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- (vi) **emergency vehicle** audible warning devices; and
- (vii) industrial and commercial noise.
  
- (d) **spaces in which acoustic performance is critical and need specialist design;**
- (e) **spaces where high-performance specifications are a user choice, e.g. luxury hotels and apartments;**
- (f) **design of building systems or services, noise control measures including acoustic masking;**
- (g) **spaces for building services which are not intended for occupation;**
- (h) **spaces inside buildings used for sleeping during daylight hours;**
- (i) **spaces inside buildings with essential features enabling ventilation, cooling or heating that when operated, compromise design sound levels and reverberation control, e.g. opening windows and/or doors for natural ventilation**
- (j) **spaces where the composition and surface materials used to achieve design sound level or reverberation control may have critical implications for infection control, hygiene, or sterility requirements of users; and**
- (k) **spaces with high levels of low-frequency noise and/or vibration.**

Clause 4.5 of AS 2107:2016 identifies *quasi-steady-state sounds* are sounds whose average characteristics substantially represent a steady-state sound, whilst *steady-state sounds* are identified in Clause 4.7 as sounds whose average characteristics remain relatively constant in time.

Accordingly, if there is suggestion that noise of the dropping of weights, the operation of weight training machines, or the provision of music or amplified instructions for training are taken are to fall under Condition 17, then, from the above, those types of intermittent noise are not applicable for AS 2107:2016.

If there was to be a suggestion that AS2107:2000 was to apply (instead of the 2016 version) then I note that Section 1 of the 2000 version of the Standard states:

**This Standard is applicable to steady-state or quasi-steady-state sounds.**

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In Section 2 under the heading of "Application" of AS 2107:2000, is stated:

**The Standard is not intended for either the assessment or prescription of acceptable noise levels from transient or variable noises such as –**

- (i) **aircraft noise (see AS 2021 [ NZS 6805]);**
- (ii) **construction noise such as jackhammers and pile drivers (see AS 2436 [NZS 6803]);**
- (iii) **railway noise;**
- (iv) **crowd noise, e.g. from parades and sporting events;**
- (v) **emergency vehicle audible warning devices; and**

Accordingly, with respect to the consent issued by Council, in my view that consent sets out the operation of the premises must operate in accordance with Condition 16.

I note that Condition 22 requires the implementation of all noise and vibration control measures nominated in the TTM report, but this does not exclude compliance with Condition 16.

Under operational conditions, the Consent permits in Condition 34 operations for 24-hour seven days a week for a 12 month trial period, and required an application to modify the consent to extend the trial period (or for permanent operations) but if there was no modification of the Consent received by Council, then the hours of the gym reverted to 8 am to 10 pm Mondays to Saturdays.

I assume that if a modification to operate 24 hours/7 days a week was refused then the hours would revert to 8am to 10 pm Mondays to Sundays.

Condition 35 of the consent provide a limitation on the use of 'free weights' in the weight training area of the premises for a period of 12 months, subject to an application to modify the consent to extend the trial period (or to make the consent permanent).

The provision of the limited consent allows the impacts for the 24/7 operations and use of free weights within a mixed use development to be reviewed by Council and modified, should any noise or vibration complaints be received, and the impact substantiated within the first 12 months of operation.

I am instructed that the Council has received complaints of disturbance from the operation of the gymnasium and that consideration of 24/7 operations is a live issue.

*The Acoustic Group Report 48.5335.R1:MSC  
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**ATTACHMENT 1**

*Peer Review of Acoustic Reports for Anytime Fitness, Gladesville  
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**Modification Application to LDA 2017/0057**

I am instructed that one modification application seeks to modify the development consent LDA 2017/0057 to allow for the expansion of the gymnasium (which has already occurred without approval) into an adjoining retail tenancy (application MOD 2018/95) and another modification application to the deletion of conditions 34 and 35 (application MOD 2018/123).

The modification to expand the gymnasium does not have an acoustic assessment to ascertain compliance with the current consent and therefore cannot be approved.

With respect to the proposal to remove conditions of consent 34 and 35, a Statement of Environmental Effects prepared by Stuch Pty Ltd dated 07/05/2018 indicates on page 4 that there have been a significant number of noise issues in relation to the operation of the gym requiring modification of the operations and removal of various items/practices generating noise.

Page 5 of the SEE refers to the conduct of a week-long testing in apartment #5 for noise issues which was being reviewed, but no results of that review were provided.

The SEE also refers to a proposed change of flooring from the original solution for the free weights area proposed by TTM. There is also a proposal to provide a vibration isolated flooring to the functional training area (not identified as being required in the original TTM report).

The Conclusion of the SEE refers to a belief by TTM and Anytime Fitness that the additional steps will achieve acceptable noise levels "as published by the World Health Organisations Guidelines for Community Noise".

As to what are acceptable noise levels for gymnasiums published by WHO there is no criteria or reference to such criteria provided in the SEE.

A global search of the WHO *Guidelines for Community Noise* (1999) does not reveal any reference to "gym" or "gymnasium". Similarly, a global search of the WHO *Night Noise Guidelines for Europe* (2009) does not reveal any reference to "gym" or "gymnasium".

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I note that the majority of the noise studies identified in the two WHO Guidelines identified above relate to traffic noise (road, rail and aircraft) impacts and not to intermittent short duration noises.

Of relevance to Condition 16 on the consent is that the WHO 2009 *Night Noise Guidelines for Europe* identify in Figure 4.3 that ongoing noise exposure that gives rise to sleep disturbance can lead to health effects, that automatically would be deemed to be *offensive noise*.

Appended to the SEE is a report dated 19 February 2018 from TTM.

**TTM Report of February 2018**

The TTM February 2018 report refers to complaints from residents regarding noise emanating from the gym, especially in the night-time period, resulting in testing being undertaken on 30 January 2018.

The report identifies that measurements were taken in Apartment 8 directly above part of the rear section of the gym noting that the majority of the free weights area was below an open garden area.

Section 2 of the report identifies that when Mr Pass was present in the apartment no noise from the gym could be detected and no vibration was noticeable. However, when Mr Pass left, further measurements identified audible noise which was attributed to a gym member dropping kettle ball weights in the functional training area, with an acknowledgement that the dropping of weights in that area of the gym was not expected or permitted.

Section 3 of the report refers to testing was undertaken with Mr Pass artificially causing noise and vibration by dropping weights on the floor and forcefully activating the weight machines and equipment.

Figure 1 in the TTM report refers to locations where weights were dropped and/or machine/equipment were operated. Contrary to the suggestion in the text of the report, whilst Figure 1 identifies various locations in the gym, there is no specific identification of where weights were dropped, and where was the equipment that was operated. It may be suggested, but not specifically identified in the report that weights were only dropped in areas 2 and 5.

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There is no material in the report to place in context the measurement locations with respect to the various source locations or general areas nominated for testing.

The subsection dealing with vibration assessment identifies that in the adjacent coffee shop vibration did give rise to measurable increases above the ambient but not being detected. The same section in dealing with the apartment concludes that the vibration levels did not show an increase above the background levels therefore concluding that the complaints by the residents are not due to noticeable vibration from the use of the gym. On this basis it was assumed that the noise complaints relate noise detected in the apartments which could be a transmission of noise between the spaces but more than likely regenerated noise as a result of vibration induced into the building.

The measurement results provided in Table 1 would appear by reason of the text in previous sections to only relate to measurements conducted in apartment 8.

Table 1 identifies noise levels from various our machine/tests that gave rise to maximum noise levels significantly above a background level (between 23 and 26 dBA) recorded in "the apartment".

The results in the table that show noise levels clearly exceeding the background level would appear to contradict the comments in section 2 of the report that indicate the operation the gym was inaudible, other than the gym member dropping kettle bell weights in the functional training area.

From the results in Table 1 that referred to the locations appearing in Figure 1, then it would appear that a number of the noise source event activities did not occur directly below the apartment, i.e. subject to an offset. Accordingly, the testing may not represent the impact that a person in an apartment above such an area may experience, because the TTM report does not provide the context of what has been tested, or the location of the receiver measurement position relative to the test positions in the gym.

The absence of appropriate documentation is of concern in that, in Table 1 the right-hand column identifies maximum noise levels. The operations that were tested identify in all cases noise levels significantly above the background levels recorded, identified in the paragraph below the table as being between 23 and 26 dB(A).

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Whilst TTM might consider that the background level in the apartment is quite low, that is the situation that occurred. TTM have not commented on or referred to the suggested background level in the original TTM assessment, which only provided an LA maximum and a LAeq level with the suggestion that the background level was similar to the airborne LAeq level, identified as 39 dB(A).

The TTM measurements for the DA assessment were conducted in a corridor (and not in an apartment).

A difference between a background level of 39 dB(A) versus 23 dB(A) is significant and indicates the inadequacy of the original development application acoustic assessment, i.e. using a background level in a corridor of 39 dB(A) for the DA assessment when the background inside the apartment is in the order of 24 dB(A) provides an incorrect assessment, as evident by the complaints lodged with Council.

The TTM report does not provide material to verify or substantiate the complaints. TTM claim 'normal' operations are inaudible. If that is the case, then what is giving rise to the complaints – or what activities/operations in the gymnasium generate disturbance?

By reference to the last column in Table 1 in the TTM report that was appended to the SEE for deletion of conditions 34 and 35 it is apparent that a very significant impact can occur.

If as suggested in the "Vibration Assessment" portion of the report there is no measurable increase above the ambient levels then the basis of the maximum noise levels provided in Table 1 requires an explanation, particularly as there is a recommendation to upgrade the floor mats, restriction in use of kettlebells at night, further rubber pads on hooks, education of members and video surveillance.

Such controls suggest TTM have no explanation as to the basis of disturbance reported by the complainant.

The concept of suggesting the reference to background levels in a remote countryside location would be approximately 20 dB(A) at night is of no assistance in this matter because most people, even in remote countryside sleep inside their dwellings at night. A background level of 20 dB(A) outside is expected to have a lower background level inside. It is not uncommon in such dwellings to record ambient background levels between 10 and 15 dB(A).

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Conducting testing at 5.30pm (in the afternoon peak traffic period) would not appear to be an appropriate time for assessing potential sleep disturbance as the background level at night could be less than 23 dB(A).

The operation of the gymnasium, as reported by residents, creates offensive noise. Such levels (to generate a complaint) and give rise to interference with the rest and repose of a person would be audible in the apartment, which is contrary to the suggestion by TTM for 'normal' operations.

The relevance of the TTM report attached to the SEE for the retention of Conditions 34 and 35 is significant. The SEE identifies on-going noise disturbance and the TTM report requires further noise controls based in the results for Apartment 8 that is located over part of the approved (and non-approved) portions of the gymnasium.

It is noted that the SEE is dated May 2018 and the TTM report dated February 2018.

On the basis of the SEE and the TTM report attached to the SEE it is clearly the case that offensive noise has been generated by the operation of the gym, not just exclusively at night and has continued to create disturbance without the matter being resolved.

It is clearly the case that TTM in conducting the original assessment did not comprehend the complexity of addressing structure borne noise emission from a gymnasium that operates on a 24-hour basis. The concept of using a corridor for assessment purposes is totally unacceptable and has led to incorrect noise controls being installed in the gymnasium that now need to be further upgraded without fully understanding the problem that is occurring as there is no confirmation as to what activities or events have been giving rise to the complaints. At the present time the additional controls provided by TTM are not based upon factual materials or identification of the actual problem and therefore could be inadequate.

The SEE refers to additional monitoring that was conducted in April 2018, but the results of that monitoring have not been provided to Council.

Accordingly, Conditions 34 and 35 should remain (and not be deleted). Based on the SEE and TTM material that has been provided activation of part (c) of both conditions should apply in restricting the gym to only operate between 8 AM and 10 PM, until such time as it can be demonstrated that the effectiveness of the proposed controls achieves compliance with Condition 16.

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**Acoustic Dynamics Report**

A report provided by Acoustic Dynamics in relation to the in Anytime Fitness premises at Gladesville is identified as an investigation into noise and vibration performance of the existing gym floor system.

The report does not refer to the conditions of consent issued by the Council and instead seeks to introduce an Acoustic Dynamics version of "appropriate Standards" that would apply to the subject gym.

The report does not refer to testing undertaken by TTM and unfortunately relies upon the conduct of measurements in a residential corridor on level 1 of the subject building, adjacent to the complainant's apartment.

Bearing in mind the difference in ambient noise levels reported by TTM between a corridor and inside a complainant's apartment automatically renders the measurements conducted by Acoustic Dynamics to be irrelevant, noting the requirement on the consent to ensure offensive noise is not generated.

This is particularly relevant in that in relation to Conn Health Pty Ltd (Applicant) v Woollahra Municipal Council (Respondent), L & EC Proceedings 2017/00078364 in relation to the F45 Functional Training centre in Double Bay, Acoustic Dynamics (for the Applicant) undertook measurements in a corridor outside the complainant's premises and obtained higher ambient noise levels and lower gym noise than obtained in the complainant's premises two floors above the gym.

The report does not identify when the testing was undertaken or what was the ambient noise level at the time of the measurements.

The report proposes in Section 3 assessment criteria for noise related to Australian Standard AS 2107 utilising the LAeq parameter which as identified earlier in this document is not applicable for the type of noise generated by the subject gym.

The nature of having an intermittent peak noise level that it is then averaged over time to produce an LAeq level (where the time period of the averaging is not identified) gives rise to noise data that is of no assistance in determining compliance with the consent that requires there be no offensive noise.

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The provision of measurement results set out in Section 5.1 of the report claims that the results have been presented in accordance with the requirements of the assessment criteria from AS 2107 without identifying the maximum levels, the time period of the measurement and the time period for the resultant LAeq levels. Furthermore, the assessment has failed to identify the limitations set out in the Standard that identify the Standard and therefore the criteria in the Standard are not applicable to the type of noise that is generated.

Accordingly, the suggestion of different materials to achieve the Acoustic Dynamics incorrect and inappropriate objectives is of no assistance.

The vibration results set out in Section 5.2 provides targets with respect to EPA vibration guideline (or more correctly the Department of Environment and Conservation assessing vibration: a technical guideline).

The criteria presented in the DEC guideline are based on International and British Standards with respect to the evaluation of human exposure to whole-body vibration that provide criteria with respect to human annoyance and/or complaints about interference with activities. The vibration limits presented in those Standards do not identify limits to sleep disturbance or offensive noise.

Section 1.4 of the DEC Guideline "When this guideline should be used and who should use it" states:

**This guideline is designed to be used in evaluating and assessing the effects on amenity of vibration emissions from industry, transportation and machinery. It also has a useful role in assisting planning decisions for proposed developments (e.g. setting conditions of consent). It is directed towards offices of the DEC and to proponents (and their consultants) of developments that require a DEC licence. Local councils and other regulatory authorities, planners and others who are responsible for the evaluation or control of vibration emissions and their effects on the community will also benefit from the guideline.**

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**This guideline is a useful reference:**

**During the land-use planning stage to reduce conflicts of vibration can cause, such as the determination of railway corridors and the design of building footings**

**In assessment of vibration impacts caused by the construction or operation of new developments (e.g. industrial or transport)**

**In assessments of the extent of any problem from an existing situation, and the necessity for implementation of a management plan to address and mitigate existing vibration.**

Examine of the above extract reveals that there is no mention of noise or vibration from gymnasiums. A further examination of the document indicates that the guideline is not intended to be used for the subject application and not for addressing the issue of offensive noise which is a fundamental requirement set out in the development consent.

In any event it would appear that the vibration measurements set out in the report indicate that vibration levels were detected by the dropping of various weights although again (as for the TTM reports) there is no material to identify the location of the vibration source and the receiver to gauge the relevance of the material that has been provided.

The relevance of the Acoustic Dynamics report, with respect to the complaints that have been generated, in consideration of restriction on the operating hours of the premises is that Section 6 of the report provides recommendations to be incorporated into the development "as a minimum" to reduce vibration emission and associated regenerated noise.

The requirement to implement further noise control measures for an average noise target that is not applicable to the subject site and does not address the requirement to ensure there is no offensive noise reveals that the Anytime Fitness operations at Gladesville are non-compliant with the conditions of consent.

The Acoustic Dynamics report reveals that there are issues with the existing operations. As such, it follows that this report indicates there has been a noise issue from the Anytime Fitness operations at Gladesville for a considerable amount of time such that the removal of Conditions 34 and 35 cannot be permitted.

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**Conclusions**

The original acoustic assessment for the proposed gymnasium at 33/297 Victoria Road, Gladesville that was prepared by TTM Consulting Pty Ltd was flawed and resulted in the recommendation of inadequate noise control measures.

One of the fundamental issues with the original assessment was the use of a corridor for assessment purposes and not apartments above the intended gymnasium. The second TTM report identifies the ambient background level in the corridor (for the original assessment) is in the order of 15 dB(A) higher than the daytime ambient background level obtained in apartment 8 (identified in the second TTM report).

The original acoustic assessment assumed that the primary issue of concern was structure borne vibration that was induced into the building elements then becoming regenerated noise in the apartments. With the noise control measures for the flooring system based upon an incorrect ambient background level it then follows that there would be a greater degree of noise disturbance in the apartments than that that would occur in a corridor.

In the intervening period it would appear that the gymnasium has expanded (without consent) and that there is no acoustic or vibration assessment with respect to the various apartments located over different areas/operation of the gymnasium. That modification application should be refused.

The conduct of noise or vibration measurements over a portion of the gymnasium where the specific activity/operation being tested occurs in entirely different area is an incorrect procedure.

As a result of the second TTM report there is a proposal to upgrade/change the flooring system for various areas of the gymnasium. However, based upon the second TTM report there are questions raised as to the suitability of the proposed controls based upon both the noise targets nominated by TTM and more importantly condition 16 of the consent for the premises to not create offensive noise.

A report from Acoustic Dynamics is expressed as being a review of the effectiveness of the flooring system nominates different solutions to that from TTM. The testing undertaken by Acoustic Dynamics does not identify the location of source and receiver, the time of the measurements and absence of maximum levels of the individual tests and leads one to question the validity of the results or the recommendations so provided.

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However, the Acoustic Dynamics report is based on incorrect criteria and has not considered the consent issued for the development.

The SEE provided by the Applicant for deletion of Conditions 34 and 35 of the existing consent identifies an ongoing situation of noise disturbance which has not been resolved. The SEE and the TTM report appended to the SEE reveal the necessity for maintaining Conditions 34 and 35.

Based upon the acoustic reports and the SEE that have been provided there is clear identification that with respect to the trial period of the gymnasium that the operations have given rise to disturbance, generated complaints and the acoustic issues have not been resolved.

In light of non-compliance with the offensive noise condition and that there is an unsatisfactory trial period it is recommended that clause (c) of Conditions 34 and 35 be invoked and that the operating hours of the gymnasium be reduced so as to avoid activities during the night-time period and thereby give residents respite.

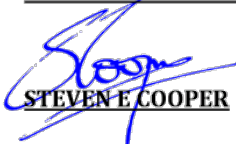
With respect to the reduced hours that would be permitted under the existing consent there is still the issue of offensive noise and that there is no solution provided by the applicant to achieve compliance with that condition of consent.

It is clear from the SEE and the two acoustic reports prepared in 2018 that the operators of the gymnasium are aware that there is a significant noise issue and has been an ongoing issue for an extended period of time. Such a situation should not be permitted to continue.

Council should consider a time period (for example not more than three months) in which the gymnasium is to implement the appropriate noise/vibration control measures to achieve full compliance with the consent and eliminate the generation of offensive noise. Failure to achieve such compliance would lead to injunctive proceedings and/or significant fines.

Yours faithfully,

**THE ACOUSTIC GROUP PTY LTD**

  
**STEVEN E. COOPER**

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**ATTACHMENT 2**

City of Ryde  
1 Pope Street, Ryde  
Locked Bag 2069, North Ryde NSW 1670  
Facsimile 9952 8070  
Telephone 9952 8222



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**Development Consent**

**Applicant:** Stutch Pty Ltd  
Attn: Stuart Pass  
Po Box 1017  
GLADESVILLE NSW 2111

**Consent No:** LDA2017/0057

**Consent Date:** 9 May 2017

**Valid until:** 9 May 2022

The City of Ryde, as the consent authority under the provisions of the Environmental Planning and Assessment Act, 1979 hereby consents to the development as follows:

**Property:** 33/297 Victoria Rd Gladesville Lot 33 SP 87752

**Development:** Internal fitout and change of use to a 24-hour fitness centre and signage.

subject to the conditions 1 to 48 specified in this consent.

You are advised that failure to observe any condition of approval set out in the consent is an offence and legal proceedings may be instituted by Council.

This Consent does not guarantee compliance with the Disability Discrimination Act and you should, therefore, investigate your liability under the Act.

You are advised of your right of appeal to the Land and Environment Court under Section 97 of the Environmental Planning & Assessment Act and your right to request a review of the determination to Council under Section 82A of the Environmental Planning & Assessment Act within 6 months after you have received the Consent.

  
**Rebecca Lockart**  
Assessment Officer

**COPY**

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The fees quoted at the time of issue of this Consent may be subject to variation. Council's annual fees and charges are published in the Management Plan. To confirm fees please contact Customer Service on 9952-8222.

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**Conditions of Consent for LDA2017/0057 :-**

**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
Existing Tenancy Plan	25.01.2017	DA01, Revision A
Proposed Tenancy Plan	25.01.2017	DA02, Revision A
External Elevation & Signage	25.01.2017	DA04, Revision A
Patron Management Plan	04.01.2017	Appendix 1 to submitted Statement of Environmental Effects.
Noise Impact Assessment Report	20.04.2017	Issued to client – Revision 0 Reference: 17SYA0022 R01_0

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. **Energy Efficiency.** The fittings, fixtures and materials installed in association with the development (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.
4. **Fire Safety Matters/Changes in building use**
- (a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.
- NOTE: The obligation under this clause to comply with Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.
- (b) This clause does not apply to the extent to which an exemption is in force under clause 187 and 188 in the Environmental Planning and Assessment Regulations 2000.
- (c) In this case clause, "Category 1 fire safety provision" has the same meaning as it has in Clause 3 in the Environmental Planning and Assessment Regulations 2000 subject to any terms of any condition or requirement referred to in Clause 187(6) or 188(4).
5. **Signage – not approved unless shown on plans.** This consent does not authorise the erection of any signs or advertising structures not indicated on the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is "exempt development".
6. **Prohibited signs.** The proposed signage must not have or use:

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**Conditions of Consent for LDA2017/0057 :-**

- (a) Flashing lights;
- (b) Electronically changeable messages;
- (c) Animated display, moving parts or simulated movement;
- (d) Complex displays that holds a drivers attention beyond 'glance appreciation'
- (e) Displays resembling traffic signs or signals; and
- (f) A method or level of illumination that distracts or dazzles.

- 7. **Security Grilles.** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.
- 8. **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.
- 9. **Hoardings.** Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
- 10. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 11. **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.
- 12. **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.
- 13. **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.
- 14. **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.

**Plumbing and Drainage**

- 15. **Plumbing and drainage work.** All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation and the NSW Department of Fair Trading.

**Noise Pollution**

- 16. **Offensive Noise.** The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

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**Conditions of Consent for LDA2017/0057 :-**

**Plant and Equipment Noise**

17. **Plant and Equipment Noise.** The operation of any plant or machinery installed on the premises must not cause:
- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at the most affected noise sensitive location in the vicinity. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.

**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.

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. **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 release of the **Construction Certificate**. (~~category: other building with no delivery of bricks or concrete or machine excavation~~)
20. **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
21. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments

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**Conditions of Consent for LDA2017/0057 :-**

Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.

**Noise Pollution**

22. **Noise control measures.** All noise and vibration control measures nominated in the acoustical consultant's report (TTM Consulting Pty Ltd. Reference No. 17SYA0022 R01 0, dated: 20 April 2017) and any related project documentation must be implemented.

**Mechanical Ventilation**

23. **Mechanical Ventilation Detail.** Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**. Such details must include:
- (a) Plans (coloured to distinguish between new and existing work) and specifications of the mechanical ventilation systems;
  - (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
  - (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications.

**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.

**24. 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.

**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



**ITEM 2 (continued)**

**ATTACHMENT 2**

**Conditions of Consent for LDA2017/0057 :-**

requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

25. **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*.
26. **Noise from construction work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from construction work.
27. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
28. **Construction materials.** All materials associated with construction must be retained within the site.
29. **Site Facilities**  
The following facilities must be provided on the site:
  - (a) toilet facilities in accordance with WorkCover 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.
30. **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.

**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.

31. **Entrance and Carpark Signage.** Appropriate signage shall be placed in the immediate vicinity of the premises (e.g. entry/exit to the fitness centre; in the car park near allocated parking spaces) to the effect that patrons are to minimise noise from this area, in consideration of the neighbours. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**Conditions of Consent for LDA2017/0057 :-**

32. **Fire safety matters.** At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the Fire and Rescue NSW.

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Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Each year the Owners must send to the Council and the Fire and Rescue NSW an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

**Mechanical Ventilation**

33. **Certification of Mechanical Ventilation Work.** Where any mechanical ventilation systems have been installed or altered, a certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an **Occupation 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.

34. **Limited consent of extended hours of operation.**
- (a) This consent permits the operation of the approved development for 24 hours / 7 days per week for a period of 12 months.
  - (b) An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.
  - (c) Should an application to modify the consent under Condition 34 (b) not be received by Council, the following hours of operation are to apply: 8am to 10pm Mondays to Sundays.
35. **Limited consent of use of 'free weights'.**
- (a) This consent permits the use of 'free weights', including but not limited to weights, bars, dumbbells and kettlebells, in the weight training area of the premises for a period of 12 months.
  - (b) An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.
  - (c) Should an application to modify the consent under Condition 35 (b) not be received by Council, no 'free weights' are to be used at the premises, with 'pin loaded' weights only to be used.
36. **Parking allocation.** A minimum of 23 car parking spaces are to be provided and maintained to the fitness centre approved under this consent. Parking spaces are to be appropriately signposted or labelled restricting use to patrons or employees of the fitness centre at all times.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**Conditions of Consent for LDA2017/0057 :-**

37. **Offensive noise.** The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
38. **Signage – English language.** All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.

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Any translated message must be accurate and complete.

No amendment to the size of a sign will be permitted to allow for both the English and translated language to be displayed.

39. **Internal Illumination of Signs.**
- (a) The internally illuminated signs must not adversely affect the amenity of any nearby residences due to unacceptable glare or light output.
  - (b) The internal components of the sign must be of a type whereby the intensity of illumination can be adjusted if necessary (i.e. fitted with a dimming dial, switch or the like).
40. No approval is granted in this consent for general or third party advertising which is prohibited.

**Waste Storage and Handling Facilities**

41. **Storage and disposal of wastes.** All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
42. **Waste storage/disposal – hours of collection.** Waste and recyclable material generated by these premises must not be collected between the hours of 9pm and 8am on any day.
43. **Waste storage/disposal – method.** All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
44. **Waste storage/disposal – containers.** An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
45. **Waste storage/disposal – recycling.** Wastes for recycling should be stored in separate bins or containers and transported to a facility where the wastes will be recycled or re-used.
46. **Delivery and loading/unloading – hours.** No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 7am on any day.
47. **Delivery and loading/unloading – location.** All loading and unloading in relation to the use of the premises shall take place wholly within the property.
48. **Loading areas.** Loading areas are to be used for the loading and unloading of goods, materials etc. only and no other purpose.

**End of consent**

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**3 102 ADELAIDE STREET, MEADOWBANK (MEADOWBANK PARK) - SECTION 4.55(1A) TO MODIFY THE APPROVED HOURS OF OPERATION OF THE OF THE NETBALL COURTS IN MEADOWBANK PARK TO PERMIT USE BETWEEN 4.30PM AND 7.00PM ON SATURDAYS DURING MARCH TO AUGUST - MOD2018/0257 TO LDA2009/0726**

**Report prepared by:** Creative Planning Solutions

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

**File Number:** GRP/09/6/12/1/2 - BP18/1343

**City of Ryde  
Local Planning Panel Report**

<b>Application No.</b>	MOD2017/0257 to LDA2009/0726
<b>Site Address &amp; Ward</b>	102 Adelaide Street, Meadowbank (aka Meadowbank Park) Central Ward
<b>Zoning</b>	RE1 Public Recreation
<b>Proposal</b>	Section 4.55 (previous Section 96(1A)) to modify the approved hours of operation of the netball courts in Meadowbank Park to permit use between 4.30pm and 7.00pm on Saturdays during March to August.
<b>Lodgement Date</b>	10 November 2017
<b>Property Owner</b>	City of Ryde Council
<b>Report Author</b>	Ben Tesoriero – Consultant Planner
<b>Applicant</b>	City of Ryde Council
<b>No. of Submission</b>	Five (5) submissions
<b>Cost of Works</b>	Nil
<b>Reason for Referral to the RLPP</b>	Conflict of Interest – development for which the applicant or land owner is the council. <i>Schedule 1, Part 3 of Local Planning Panels Direction</i>
<b>Recommendation</b>	Approval

**1. Executive Summary**

Agenda of the City of Ryde Local Planning Panel Report No. 8/18, dated Thursday 13 December 2018.

**ITEM 3 (continued)**

Consent was granted to LDA2009/0726 on 7 September 2010 for lighting and night time use of the netball courts at Meadowbank Park. Notably, Condition 10 of this consent limited the hours of operation and use of the courts for night netball to weekdays only.

This report considers a modification to the aforementioned development consent to augment the approved hours of operation of the netball courts in Meadowbank Park to permit use between 4.30pm and 7.00pm on Saturdays during March to August.

The application to modify LDA2009/0726 was notified in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014) and five (5) submissions were received objecting to the proposed development on the following grounds:

- Noise Impacts – concerns were raised in relation to the noise that is associated with the use of the courts.
- Traffic and Parking – concerns were raised that the proposal will increase traffic impacts on the surrounding areas, and reduce parking availability in the locality.

A preliminary assessment of the DA was undertaken, and on 22 January 2018 an email was issued to the applicant requesting the following additional information:

- Traffic and Parking – an updated traffic impact assessment focusing on the traffic conditions on Saturday afternoon was required given the traffic report prepared for LDA2009/0726 had not taken into account the traffic and parking on Saturdays.
- Number of Netball Courts – a query was raised on the number of netball courts that were subject to the proposed modification, given 28 courts were observed at Meadowbank Part during a site inspection, yet the documentation submitted with the modification referred to only 22 courts.

On 28 September 2018 the updated traffic impact assessment was provided by the applicant to Council.

On 21 November 2018 a response was received in relation to the number of netball courts being subjected to additional operating hours. The applicant confirmed that MOD2017/0257 only relates to the 22 illuminated netball courts that were approved for use under LDA2009/0726.

Following the submission of the requested additional information, the proposal has now been assessed against the matters for consideration under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

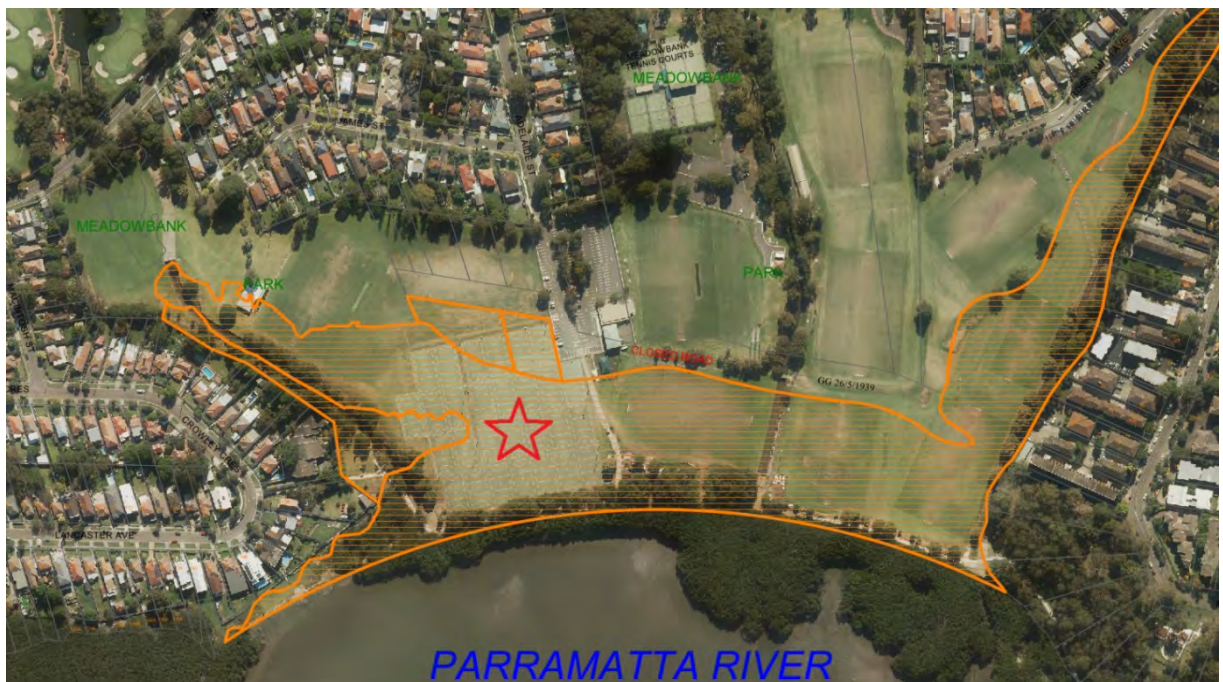


### ITEM 3 (continued)

The assessment has determined that the development is considered to be substantially the same application, the impacts of the proposal are satisfactory, that the proposal is suitable for the site, and that approval of the modification application would be in the public interest.

As a result, this assessment recommends MOD2017/0257 to LDA2009/0726 be approved.

## 2. The Site and Locality



**Figure 1** – Aerial Image of the subject site and surrounds. The location of the netball courts which are the subject of MOD2017/0257 are indicated by the red star.

Meadowbank Park has an address of 102 Adelaide Street, Meadowbank, and is one of the City of Ryde's major sporting and recreation areas. The park includes multiple playing fields used mainly for soccer and cricket, as well as netball hard courts and tennis courts. The park also includes three playgrounds and walking and cycling paths along the Parramatta River as part of the Ryde Riverwalk.

The twenty-two (22) netball courts which are the subject of this application are located in the southern portion of the park, adjacent to the Parramatta River.

To the north of the netball courts is an open grassed area within the park. Beyond is the rear boundaries of the adjacent low density residential area fronting James Street. The residential boundary is around 75-110m from the northern edge netball courts. Also to the north is the car parking area and Eastwood Ryde Netball Association clubhouse.

**ITEM 3 (continued)**

To the east of the netball courts is an open grassed area and playing fields. Beyond is the rear boundaries of the adjacent high density residential area fronting Meadow Crescent. The residential boundary is around 300-400m from the eastern edge netball courts.

Immediately to the south of the netball courts is mature trees and the Ryde Riverwalk. Beyond is the Parramatta River, which is approximately 30m from the southern edge of the netball courts.

To the west of the netball courts is Archer Creek and the Ryde Riverwalk which are lined by mature trees. Beyond is low and medium density residential accommodation that is approximately 50m from the western edge of the netball courts.

Photographs of the site inspection are included below.



**Figure 1** – Image of the subject site and surrounds viewed from the west with the clubhouse building shown in in the centre of the image behind the courts. Source: CPS, November 2018

**ITEM 3 (continued)**



**Figure 2** – Image looking towards the north, taken from the eastern edge of the court facilities, with the properties on James Street shown on the left, behind the trees in the background. Source: CPS, November 2018



**Figure 3** – Image looking towards the west, taken from the eastern edge of the court facilities, with the properties on Crowley Crescent/Lancaster Avenue not visible in the image, but located behind the trees in the background on the opposite side of the Ryde Riverwalk. Source: CPS

**ITEM 3 (continued)****3. The Proposal**

Consent was granted to LDA2009/0726 on 7 September 2010 for lighting and night time use of the netball courts at Meadowbank Park. Notably, Condition 10 of this development consent limited the hours of operation and use of the courts for night netball to weekdays only.

The current wording of Condition 10 is as follows:

**10. *Hours of Operation*** - *The hours of operation and use of the courts for night netball are to be in accordance with the following:*

- (1) *Training. 6.30 pm – 9.30pm Mondays to Thursdays during the winter season (March to August). The lights are to be turned off as early as practicable after completion of training and in any case no later than 9.30 pm.*
- (2) *Competition. 6.30 pm – 9.30 pm Mondays and Tuesdays during the summer season (September to mid December). The lights are to be turned off as early as practicable after the completion of competition and in any case no later than 9.30 pm. A minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.*

MOD2017/0257 seeks to modify the approved hours of operation under Condition 10 by permitting use of the courts between 4.30pm and 7.00pm on Saturdays during March to August. – i.e. the winter netball season.

The wording of Condition 10, as modified, would be as follows:

**10. *Hours of Operation*** - *The hours of operation and use of the courts for night netball are to be in accordance with the following:*

- (1) *Training. 6.30 pm – 9.30pm Mondays to Thursdays during the winter season (March to August). The lights are to be turned off as early as practicable after completion of training and in any case no later than 9.30 pm.*
- (2) *Competition. 6.30 pm – 9.30 pm Mondays and Tuesdays during the summer season (September to mid December) **and from 4.30pm to 7.00pm on Saturdays during the winter season (March to August).** The lights are to be turned off as early as practicable after the completion of competition and in any case no later than 9.30 pm. A minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.*

### **ITEM 3 (continued)**

The applicant has verbally agreed to this amendment.

#### **4. Background**

On 7 September 2010 consent was granted to LDA2009/0726 for lighting and night time use of twenty-two (22) netball courts at Meadowbank Park.

On 10 November 2017 MOD2017/0257 was lodged to modify Condition 10 of LDA2009/0726 to augment the approved hours of operation of the netball courts in Meadowbank Park.

On 17 November 2017 the application to modify LDA2009/0726 was notified in accordance with DCP2014, and five (5) submissions were received objecting to the proposed development on the following grounds:

- Noise Impacts – concerns were raised in relation to the noise that is associated with the use of the courts.
- Traffic and Parking – concerns were raised that the proposal will increase traffic impacts on the surrounding areas, and reduce the availability of parking in the locality.

On 22 January 2018 a preliminary assessment of the DA was completed, and an email was issued to the applicant requesting the following additional information:

- Traffic and Parking – an updated traffic impact assessment focusing on the traffic conditions on Saturday afternoon, given the traffic report prepared for LDA2009/0726 had not taken into consideration the traffic conditions on Saturdays.
- Number of Netball Courts – a query was raised on the number of netball courts that are subject to the proposed extended hours of use, given twenty-eight (28) courts were identified at Meadowbank Part, and the documentation submitted with the modification application refers to only twenty-two (22) courts.

On 28 September 2018 the updated traffic impact assessment was provided by the applicant.

On 21 November 2018 a response was received in relation to the number of netball courts being subject to additional operating hours. The applicant confirmed that MOD2017/0257 only relates to the twenty-two (22) illuminated netball courts that were approved for use under LDA2009/0726.

#### **5. Planning Assessment**

##### **5.1 Section 4.55 (1A) Modifications involving minimal environmental impact**

**ITEM 3 (continued)**

The Consent Authority may consider a modification of development consent under Section 4.55(1A) of the Act, provided the following criteria are met

**a) *The proposed modification is of minimal environmental impact.***

The proposed modifications include a minor extension to the hours of illumination and use of the netball courts during the winter months (March to August) of 150 minutes each Saturday. As such, the proposal will increase the availability for use of the netball courts throughout part of the year, and therefore impose the inherent impacts associated with the use of the court on to neighbours for longer durations – i.e. light spill, noise, and traffic/parking impacts.

Despite this, it is noted that the modifications will not change the size of the approved light pole structures, nor will they increase the intensity of their illumination. Further the modifications will not facilitate the use of the courts for more people at any given time.

All other existing conditions of consent that were imposed to ameliorate the impacts of the development are proposed to remain in place.

For these reasons, the proposal has been assessed as being of minimal environmental impact when considered as a modification to the existing DA approval.

**b) *The proposed development is substantially the same as the approved.***

The original DA granted approval for the installation of outdoor netball court lighting. Conditions of consent currently limit the hours of operation for the use of the netball court lighting.

No changes are proposed to the general purpose, use or appearance of the approved netball court lighting. The modifications will not result in a change of land use at the site, or the general layout of the site. Accordingly, the development as proposed to be modified is considered to be substantially the same as the DA approval, both from a quantitative and qualitative perspective.

**c) *The application for modification has been notified in accordance with:***

- (i) *the regulations, if the regulations so require, or***
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

The MOD2017/0253 was placed on public notification from 17 November 2017 to 6 December 2017 in accordance with DCP2014.

**ITEM 3 (continued)**

- d) Council has considered any submissions concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

In response to the notification period, five (5) submissions were received objecting to the proposal on the basis of noise, traffic and parking impacts. The submissions are discussed in more detail later within this assessment report.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.**

The following is an assessment of the proposal having regard to the matters referred to in Section 4.14(1) of the Act.

## 5.2 Environmental Planning Instruments

### Ryde Local Environmental Plan 2014

The subject site is zoned 'RE1 – Public Recreation' under the provisions of the *Ryde Local Environmental Plan 2014* (LEP2014) – refer to **Figure 5** below. The proposed development is considered to be best described as "recreation facilities (outdoor)", which is a development that is permissible with consent within the zone.

**Note:** Portions of Meadowbank Park are zoned E2 Environmental Conservation under the provisions of LEP2014, however the netball court to which the modification application relates is located in the adjacent RE1 zone.

#### Aims and objectives for the RE1 – Public Recreation zone:

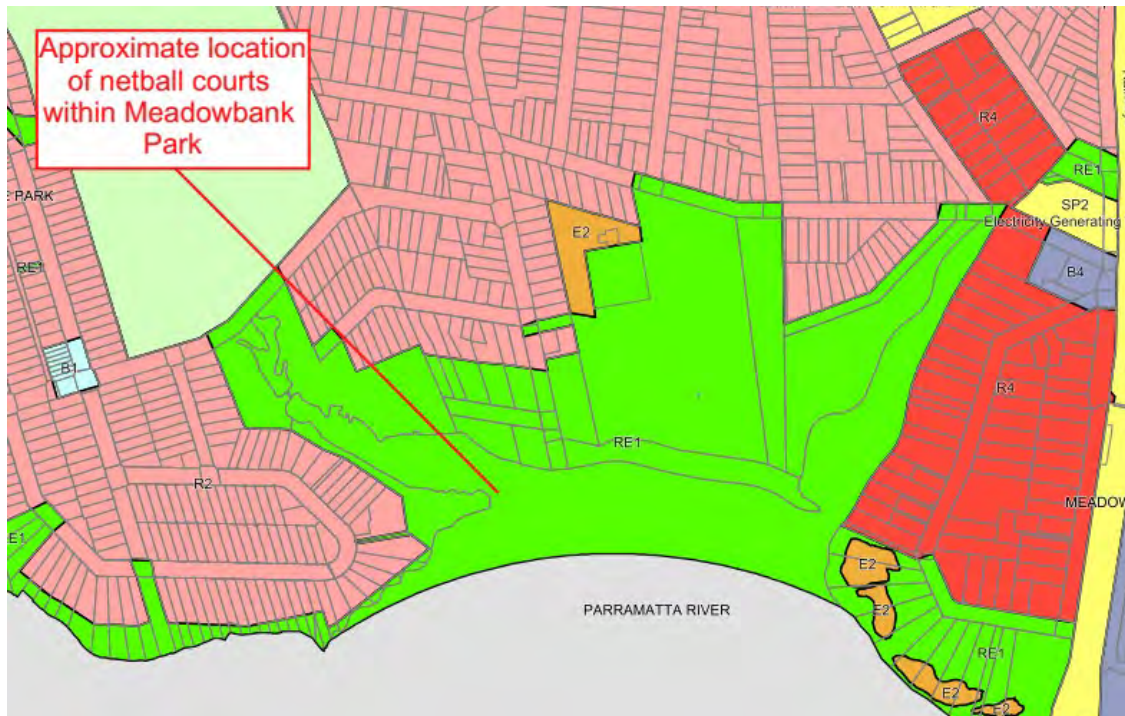
- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed modification will ensure the approved development continues to satisfy the objectives for the RE1 Public Recreation zone as it:

- will continue to improve the use of Meadowbank Park for public open space and recreational purposes.
- will provide for, and allow an expansion of, the recreational activities to be undertaken at Meadowbank Park that are considered compatible with surrounding land uses.

### ITEM 3 (continued)

- is not considered to detract significantly from the natural environment of Meadowbank Park or its surrounds.



**Figure 4** – LEP2014 Zoning map extract. Meadowbank Park is located within the central portion of the above image and the land for which the proposal relates is zoned RE1 Public Recreation zone.

### 5.3 Draft Environmental Planning Instruments

No draft environmental planning instruments are identified as being applicable to the proposed Section 4.55(1A) modification.

### 5.4 Development Control Plans

#### Ryde Development Control Plan 2014

A review of the *Ryde Development Control Plan 2014* (DCP2014) having regard to the proposed modification has not revealed any specific development controls that would be applicable to the extended use of the lighting. The proposed development is considered to satisfy the general objectives of the DCP2014 for the following reasons:

- The modification will enhance the existing amenity of the City of Ryde by providing improved opportunities for its residents to participate in organised sport programs and activities at Meadowbank Park.
- The proposal can help contribute to the vibrancy of the area by servicing demand for sporting facilities that can be made available to local sporting groups of an



**ITEM 3 (continued)**

evening. Additionally, the extra illumination of the courts will allow curtilage areas of the netball court to be used by other persons for other general recreational purposes.

- The proposed modification is considered appropriate for its location given the existing use of the land as netball courts used for organised sport. The modification will only seek to enhance the usability of this community space.

**5.5 Planning Agreements OR Draft Planning Agreements**

No planning agreements or draft planning agreement exist for this development.

**5.5 Any matters prescribed by the regulations**

No relevant provisions of the Regulations have been identified as pertinent in the assessment of the proposed development on the subject site.

**6. The likely impacts of the development**Built Environment Impact

The proposed modification application will allow for the expansion in the use of the netball courts within Meadowbank Park, which would enable further evening use of the courts during the winter months.

The proposed modification must be considered in terms of its impact on the surrounding built environment.

- The additional illumination time does not change the use of Meadowbank Park as a public recreation area – accordingly no impact on the built environment in terms of the nature of the land use is anticipated.
- In regard to the impact on traffic and parking, Council Traffic Engineer has identified that the changeover period between matches is the primary cause of disruption for the local road network. Condition 10 of the approval of LDA2009/726 requires that ‘a minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.’ The retention of this part of the condition will minimise the likelihood of such disruptions to the local traffic network.

The extended hours will create additional localised peaks as part of the ‘turn over’ between matches. These peaks will not be as pronounced as similar peaks occurring earlier in the day, and compliance with Condition 10 would also be required during this period.

**ITEM 3 (continued)**

The intersection that is impacted directly by this additional traffic generation is the roundabout controlled intersection of Adelaide Street and Andrew Street. It has been demonstrated by the use of traffic modelling as part of an updated traffic report from Bitzios Consulting (dated 24 September 2018) that the intersection performance will not result in extensive delays on the local road network.

- In relation to car parking, the applicant has demonstrated via an updated parking occupancy survey contained within the aforementioned updated report, that sufficient off street parking capacity exists within the L H Waud sports field carparks (i.e. the carpark adjoining the courts and the carpark further to the northeast adjoining the fields) at the proposed times to accommodate demand generated by the proposed use.

Furthermore, prior to the approval of the lighting structures, the netball courts would be expected to be able to be used during daylight hours throughout the year, which includes weekends, and summer weeknights up until sunset. The approved use of the lighting also allows for the use of the courts for an additional 150 minutes within the winter season. Therefore, the existing traffic and parking impacts are likely to already be established in this locality from the day time usage. The traffic and parking impacts associated with the proposal are unlikely to be dissimilar to the impacts already experienced throughout other times of day. With an increasing population throughout the Ryde LGA, it is expected that the demands on community facilities, such as public parks and sporting facilities would increase over time, and the associated impact on parking is not unexpected in streets surrounding local sports facilities.

The extension of the available hours for use may initially also assist in easing congestion and improving on-street parking availability. This is because the courts are typically used by local organised sports clubs who need to distribute limited court availability amongst registered members of different teams and age groups. Increasing court availability through the expanded use of the lights may allow local clubs to better spread their members' use of the court throughout each Saturday.

- Sports court lighting has the potential to impact on the built environment in terms of the obtrusive effects of outdoor lighting, particularly on other aspects of the built environment such as nearby residential accommodation.

*'Australian Standard AS4282-1997 – Control of the obtrusive effects of outdoor lighting'* sets out guidelines for control of the obtrusive effects of outdoor lighting and gives recommended limits for the relevant lighting parameters to contain these effects within tolerable levels.

Table 2.1 within AS4282-1997 outlines the recommended maximum values of light for the control of obtrusive light both during pre-curfew hours and curfew hours. Curfew hours within the City of Ryde have generally been established to be after 10:00pm.

**ITEM 3 (continued)**

The lights are currently approved for use as late as 9:30pm and the proposed modification to enable their use on Saturdays would not result in any use of the lights during curfew hours. Moreover, the proposed hours of use on Saturdays will fall comfortably short of the latest time during which the lights are currently approved for use during other days of the week.

Condition 12 of the consent requires that light spill be compliant with the requirements of AS4282. Therefore, based on the existing conditions associated with the use of the lights, the light spill affects are already mitigated to be within acceptable limits.

It is also noted that Condition 11 of the existing consent required automatic light switches be fitted to the lights with a timing device that ensures the lights do not stay illuminated beyond their approved usage times. This existing condition is to remain in place and will ensure the lights do not provide a disturbance beyond the evening periods in which they are approved to operate.

- Sports court lighting can impact on the built environment in terms of the obtrusive effects of noise associated with the use of the courts to be illuminated. The proposed modification would allow for the courts to be used for approximately 150 minutes longer each Saturday during winter – i.e. the winter netball season.

This modification application is accompanied by the Acoustic Assessment Report prepared by Arup Acoustics that accompanied LDA2009/0726. The Acoustic Report details the environmental noise criteria for sporting events. The report indicates that different intrusive noise levels apply for existing and new activities.

The closest residences to the courts are on James Street and Crowley Crescent. For residences at James Street, the predicted noise levels are between 35-45 dB, with the screening criterion being 49dB. For residences at Crowley Crescent the noise levels are predicted to be between 38-46 dB, with the screening criterion being 48 dB.

The screening criterion would be met in each of the two closest streets containing residential properties. This indicates that there is capacity for expansion of the illumination hours of the netball courts, whilst maintaining compliance with the recommendations of the Acoustic Assessment Report. Council's Environmental Health Officer has reviewed this application and does not raise any objection to the proposal.

A more detailed discussion on acoustic impact, is covered later in this assessment report when responding to public submissions (see Section 9.0).

**Natural Environment Impact**

**ITEM 3 (continued)**

While there will be minimal physical change to the park, the proposed modification must be considered in terms of its potential impact on the surrounding natural environment.

- The illumination of Meadowbank Park does not change the use of park – accordingly there is no impact on the natural environment in this regard as there will be no vegetation removal or change of use to the public recreation area.
- The lighting will not require any earthworks, given that the proposal would seek to utilise existing lighting structures.
- Illuminating lights have the potential to impact on the natural environment in terms of the obtrusive effects of outdoor lighting on the park and the areas surrounding the park, all of which may contain flora and fauna. The lighting is currently approved for use up until 9:30pm during the winter months and the proposed use on Saturdays will be limited to as late as 7:30pm. Throughout the vast majority of the night-time period, Meadowbank Park will not be illuminated by the lights, thus it is not expected that the proposal will generate significant impacts on local flora and fauna beyond that already consented to under the originally approved DA.

Social Impact

The proposed modification seeks an extension to the approved illumination times for Meadowbank Park. The proposed modification must be considered in terms of its social impacts.

The City of Ryde conducted an audit of existing playing court lighting and identified the need for better sport field court lighting in the Ryde LGA. This has been established through a thorough process including significant community consultation. The improved availability of the subject courts would respond to the need that was identified through this process.

The proposed lighting will extend the overall availability of the park, benefiting not only the sporting teams that will use the courts during these hours but also the members of the wider public that will also be able to use the courts and curtilage areas. This will create a range of social benefits such as additional capacity for sporting teams in Ryde, and the associated physical and mental health benefits of participation in sports.

Given the above assessment it is considered that, on balance, the social impacts of the proposal are positive.

Economic Impact

The proposed modification must be considered in terms of its economic impacts.

**ITEM 3 (continued)**

The proposed lighting is likely to contribute to a range of economic benefits in the Ryde LGA through:

- More efficient use of land resources, existing infrastructure and existing services; and
- Additional sports team capacity in the area due to the proposal increasing the availability of lit netball courts.

Given the above assessment it is considered that, on balance, the economic impacts of the proposal are positive.

**7. Suitability of the site for the development**

A review of Council's maps associated with the LEP2014 identifies that the site is affected by potential acid sulfate soils. The proposal does not seek any physical works on the site, and as such the presence of potential acid sulfate soils on the site is not relevant to the proposal. No other environmental constraints would inhibit the extended use of the netball courts. The proposal will continue to help facilitate recreational activities on land zoned for public recreational purposes.

**8. The Public Interest**

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

**9. Submissions**

On 17 November 2018 MOD2017/0257 was notified to neighbouring properties in accordance with the provisions of the DCP2014. In response to the notification, five (5) submissions were received in objection to the proposal.

The objections raised in the submissions are covered below, followed by a comment from the assessing planner:

- **Noise impacts**

Concerns were raised in relation to the noise that is associated with the use of the courts impacting upon the amenity of residences neighbouring Meadowbank Park.

Comment

**ITEM 3 (continued)**

Included within the modification application, is the Acoustic Assessment Report prepared by Arup Acoustics that accompanied LDA2009/0726.

Outlined within the Acoustic Report when discussing the environmental noise criteria for sporting events is the following:

*“The Department of Environment, Climate Change and Water’s Environmental Noise Control Manual (ENCM) provides the following noise criteria for assessing the level of impact from a sporting facility:*

- *For existing activities, a criterion of the intrusive noise level  $L_{A10}$  not exceeding the background noise level  $L_{A90}$  by more than 10 dB(A)*
- *For new events, a criterion of the intrusive noise level  $L_{A10}$  not exceeding the background noise level  $L_{A90}$  by more than 5 dB(A)*

*Noise levels for “new event” are more stringent than noise levels for existing events, because new venues/events offer more scope for site planning to minimize noise or for noise mitigation measures to be applied than existing events.*

*Hours of operation for the sporting events are recommended based on whether sporting noise levels exceed the above “screening criteria”.*

*If noise levels do not exceed the screening criteria, operation of the sporting facility is recommended up to 10pm six nights per week (Monday to Saturday).”*

Outlined within the Acoustic Report when covering the assessment of effects is the predicted sporting noise levels. For residences at James Street this is predicted to be 35-45 dB, with the screening criterion being 49dB. For residences at Crowley Crescent the sporting noise levels are predicted to be 38-46 dB, with the screening criterion being 48 dB.

At both sensitive receiver locations the screening criterion is met. As such, the predicted sporting noise levels comply with the ENCM screening criteria, and the operation of the sporting facility can occur up to six (6) nights per week (Monday to Saturday). No objection was raised by Council’s Environmental Health Officer.

The proposed amendments to Condition 10 will see the netball courts being utilised for a maximum of five (5) days per week during the winter season, and two (2) days per week in the summer season.

In both seasons the netball courts are being utilised less than six (6) nights per week (Monday to Thursday and Saturday) and are therefore within the recommendations of the Acoustic Assessment Report.

**ITEM 3 (continued)****• Traffic and Parking**

Concerns were raised that the proposal will increase traffic impacts on the surrounding areas, and reduce the availability of parking in the locality.

Comment

The proposed modification application will enable the use of the netball courts on Saturdays during the winter season (March to August) from 4:30pm to 7:00pm.

In regard to the impact on traffic and parking, Council Traffic Engineer has identified that the changeover period between matches is the primary cause of disruption for the local road network. Condition 10 of the approval of LDA2009/726 requires that 'a minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.' The retention of this part of the condition will address minimise traffic impacts during this period.

The extended hours will create additional localised peaks as part of the 'turn over' between matches. These peaks will not be as pronounced as similar peaks occurring earlier in the day. The intersection impacted directly by this additional traffic generation is the roundabout controlled intersection of Adelaide Street and Andrew Street. It has been demonstrated by the use of traffic modelling that the intersection performance will not result in extensive delays on the local road network.

In relation to car parking, the applicant has demonstrated, by a parking occupancy survey, that sufficient off street parking capacity exists within the L H Waud sports field carparks (i.e. the carpark adjoining the courts and the carpark further to the northeast adjoining the fields) at the proposed times to accommodate demand generated by the modified use.

Prior to the approval of the lighting structures, the netball courts would be expected to be able to be used during daylight hours throughout the year, which includes weekends, and summer weeknights up until sunset. The approved use of the lighting also allows for the use of the courts for an additional 150 minutes within the winter season. Therefore, the existing traffic and parking impacts are likely to already be established in this locality from the day time usage. The traffic and parking impacts associated with the proposal, are unlikely to be dissimilar to the impacts already experienced throughout other times of day.

With an increasing population throughout the Ryde LGA, it is expected that the demands on community facilities, such as public parks and sporting facilities, would increase over time, and the associated impact on parking is not unexpected in streets surrounding local sports facilities.

The extension of the available hours for use may initially also assist in easing congestion and improving on-street parking availability. This is because the courts are typically used by local organised sports clubs who need to distribute limited court availability amongst registered members of different teams and age groups.

**ITEM 3 (continued)**

Increasing court availability through the expanded use of the lights may allow local clubs to better spread their members' use of the court throughout each Saturday.

**10. Referrals****City Works (Traffic)**

The application was referred to the Traffic section of Council's City Works Department. The following comments have been provided:

*"The simultaneous change over period between matches is the primary cause of disruption for the local road network.*

*This issue was addressed in condition 10 of the approval of LDA2009/726 'A minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.' It is imperative that this portion of the condition remain without alteration.*

*The traffic report indicates that 30 minutes is provided for this purpose. Alteration to this time between matches (a reduction) will have a significant adverse effect on traffic movements and parking demand.*

*In terms of extending the operational times from 4.30pm to 7pm on Saturdays the applicant has demonstrated, by parking occupancy survey, that sufficient off street parking capacity exists within the L H Waud sports field carparks at the proposed times to accommodate demand generated by the proposed use.*

*Given the proximity and access of these carparks to the netball courts it is not unreasonable to assign all generated parking to the existing off street parking provided. As such this proposal is not considered to have a significant adverse impact on residents due to parking generation.*

*In regards to traffic generation the extended hours will create additional localised peaks as part of the 'turn over' between matches. These peaks will not be as pronounced as similar peaks occurring earlier in the day.*

*The intersection impacted directly by this additional traffic generation is the roundabout controlled intersection of Adelaide Street and Andrew Street. It has been demonstrated by the use of traffic modelling that the intersection performance will not result in extensive delays on the local road network.*

*There are no objections to this proposal on traffic grounds, **subject to the existing change over period** [i.e. 20 minutes] **remaining in the conditions.**"*

Therefore, the amended times are supported subject to the retention of the 20 minute spacing.



**ITEM 3 (continued)****Environmental Health**

The application was referred to Council's Environmental Health Department. The following comments have been provided:

*"The applicant has indicated that the modification complies with the Department of Environment and Climate Change and Water's Environmental Noise Control Manual (ENCM) guidance which identifies that, for "Athletic Events" (including team sports such as netball), the hours of operation of a sporting venue are recommended based on whether sporting noise levels exceed above a screening criteria. If noise levels do not exceed the screening criteria, operation of sporting facility can be considered up until 10pm six nights per week (Monday to Saturday).*

*The existing sports noise levels when assessed for the original Development Application (ArupAcoustic - Job No.220150 dated April 2010) complied within the ENCM screening criteria.*

*The applicant has also stated that the requested modification would result in an increase in hours of operation by a maximum total of 90 minutes for any given week from March to August with no change in the type of use or expected noise impact of the sporting event.*

*Accordingly, following the guidelines outlined by the ECNM, no adverse impacts would be expected from the increased operation of the Meadowbank Park Netball Court as proposed from 4.30pm to 7.00pm on Saturdays from March to August.*

*To date Council has not received any recent complaints about the use of the netball courts at Meadowbank Park."*

Therefore, the amended times are supported and no additional conditions were imposed.

**11. Conclusion**

After consideration of the development against section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest.

Therefore, it is recommended that the application be approved for the following reasons:

1. The proposal is consistent with the objectives and planning controls contained within the provisions of LEP2014 and DCP2014.

**ITEM 3 (continued)**

2. The impacts on the natural and built environment have been assessed to be satisfactory, with the existing conditions of consent remaining satisfactory to mitigate impacts that have the potential to arise.
3. The proposal will continue to help facilitate recreational activities on land zoned for public recreational purposes, and is therefore a suitable use of the site.
4. The development is considered to be in the public interest.

**12. Recommendation**

That the application for modification of Local Development Application No. LDA2009/0726 be modified as follows:

**A. Amend Condition 10 to read as follows:**

- 10 Hours of Operation** - The hours of operation and use of the courts for night netball are to be in accordance with the following:
- (1) Training. 6.30 pm – 9.30pm Mondays to Thursdays during the winter season (March to August). The lights are to be turned off as early as practicable after completion of training and in any case no later than 9.30 pm.
  - (2) Competition. 6.30 pm – 9.30 pm Mondays and Tuesdays during the summer season (September to mid December) and from 4.30pm to 7.00pm on Saturdays during the winter season (March to August). The lights are to be turned off as early as practicable after the completion of competition and in any case no later than 9.30 pm. A minimum of 20 minutes is to be maintained between sessions to facilitate the efficient use of off street parking spaces.

**ATTACHMENTS**

There are no attachments for this report.

Report Prepared By:

**Ben Tesoriero Planning Consultant  
Creative Planning Solutions**

Report Approved By:

**Tony Collier  
Acting Senior Coordinator - Assessment**

**Sandra Bailey**

**ITEM 3 (continued)**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**4 7 NORTH ROAD, RYDE - ALTERATIONS & ADDITIONS TO EXISTING RESIDENTIAL AGED CARE FACILITY (SAN ANTONIO DA PADOVA NURSING VILLAGE), INCLUDING INSTALLATION OF A NEW LIFT AND ALTERATIONS TO THE TERRACE AREA ON LEVEL 2 WITH A NEW GLAZED PAVILION WITH AN OPENABLE ROOF - LDA2018/0339**

**Report prepared by:** Assessment Officer - Town Planner

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

**File Number:** GRP/09/6/12/1/2 - BP18/1331

**City of Ryde  
Local Planning Panel Report**

<b>DA Number</b>	LDA2018/0339
<b>Site Address &amp; Ward</b>	7 North Road, Ryde (Lot 1 DP 1197755) Central Ward
<b>Zoning</b>	R2 Low Density Residential
<b>Proposal</b>	Alterations and additions to the existing residential aged care facility (San Antonio da Padova Nursing Village), including the installation of a new lift and alterations to the existing terrace areas at level 2 with a new glazed pavilion with an openable roof.
<b>Property Owner</b>	S Antonio Da Padova Protettore Di Poggioreale Trap
<b>Applicant</b>	Restifa & Partners Pty Ltd
<b>Report Author</b>	Kevin Kim – Assessment Officer
<b>Lodgement Date</b>	24 August 2018
<b>No. of Submissions</b>	None
<b>Cost of Works</b>	\$492,000.00
<b>Reason for Referral to RLPP</b>	<ul style="list-style-type: none"> <li>• Exceedance of Building Height by more than 10%</li> <li>• Non-compliance to the minimum landscaping required under the SEPP (Housing for Seniors) 2004</li> </ul>

**ITEM 4 (continued)**

Recommendation	Approval
Attachments	<b>Attachment 1: Draft conditions of Consent</b> <b>Attachment 2: Compliance Table</b> <b>Attachment 3: Clause 4.6 Variation - Height</b> <b>Attachment 4: Architectural Plans</b>

**1. Executive Summary**

This application seeks approval for alterations and additions to the existing residential aged care facility, namely 'San Antonio da Padova' Nursing Village on land known as 7 North Road, Ryde legally described as Lot 1 DP 1197755.

The building works involve the installation of a new external lift shaft and alterations to the existing terrace area at Level 2 and include a new glazed pavilion with an openable roof.

The development does not propose to increase the capacity of the existing residential care facility in respect to the number of beds, number of storeys, or intensify the use of the building on the site.

The proposal is to occur within the existing internal central courtyard and roof top terrace in the eastern wing of the existing residential aged care facility. The proposed lift shaft and roof top pavilion are fully glazed structures that are transparent on all sides and are not readily visible from both the primary street frontage to North Road and the secondary street frontage to Aeolus Road. As such the proposal is considered to have minimum visual impact upon the streetscape of the area.

The development proposes a maximum height of 10.23m for the lift overrun and a maximum ceiling height of 8.35m for the roof top pavilion. The variation to the maximum height of 8.0m permitted under the *State Environmental Planning Policy (SEPP – Housing for Seniors 2004)* is 27.9% for the lift overrun and 4.4% for the roof top pavilion.

Despite the increased height for the lift overrun of the new lift shaft, the proposal is considered suitable and appropriate in terms of accessibility and useability of the existing roof top terrace on the north eastern side of the building and is unlikely to result in any adverse amenity impacts on the adjoining properties (particularly the existing residential flat buildings to the east of the site).

The development also results in a reduction of 11.6m<sup>2</sup> in landscaping (4.6m<sup>2</sup> in deep soil landscaping). Whilst the development further reduces the existing landscaping, it does not reduce the on-site amenity for the occupants.

## ITEM 4 (continued)

The proposal was notified in accordance with Council's Development Control Plan. During the notification period (from 29 August 2018 to 14 September 2018) Council did not receive any submissions in response to this application.

Given the reasons detailed in this report, the development application is recommended for approval.

## 2. The Site and Locality

The subject site consists of one allotment legally described as Lot 1 in DP 1197755 and is known as No. 7 North Road Ryde (also known as San Antonio da Padova Nursing Village).

The site is located at the eastern side of the intersection of North Road and Blaxland Road, is irregularly shaped with a combined frontage of 108.98m to North Road and Blaxland Road, northern frontage of 39.75m to Aeolus Avenue, average depth of 85.9m along the eastern side boundary and has a total site area of 5,458m<sup>2</sup>. See **Figure 1** below. The subject site has a direct frontage to North Road, which is an item of heritage significance, listed on Schedule 5 of the Ryde Local Environmental Plan (RLEP) 2014.



**Figure 1** - Aerial photograph of site in context

Existing site improvements include a 3 storey residential aged care facility with basement car park. Vehicular access is obtained from Aeolus Avenue frontage.

#### ITEM 4 (continued)

The eastern wing of the building is three storeys where the development is to occur. A central courtyard is provided between the eastern and western wings of the building fronting Aeolus Avenue as shown in **Figure 2**.



**Figure 2** Photo shows the existing building currently occupying the site, viewed from Aeolus Avenue.

The site adjoins an established low-medium density residential development to the east containing four storey residential flat buildings at No. 1 Aeolus Avenue and a public administration building (former RMS site) on the opposite side of the intersection of North Road and Blaxland Road.

The site adjoins a Council owned reserve, namely 'Adventure Park', and multi dwelling housing development further south of the site (Refer to **Figure 1**).

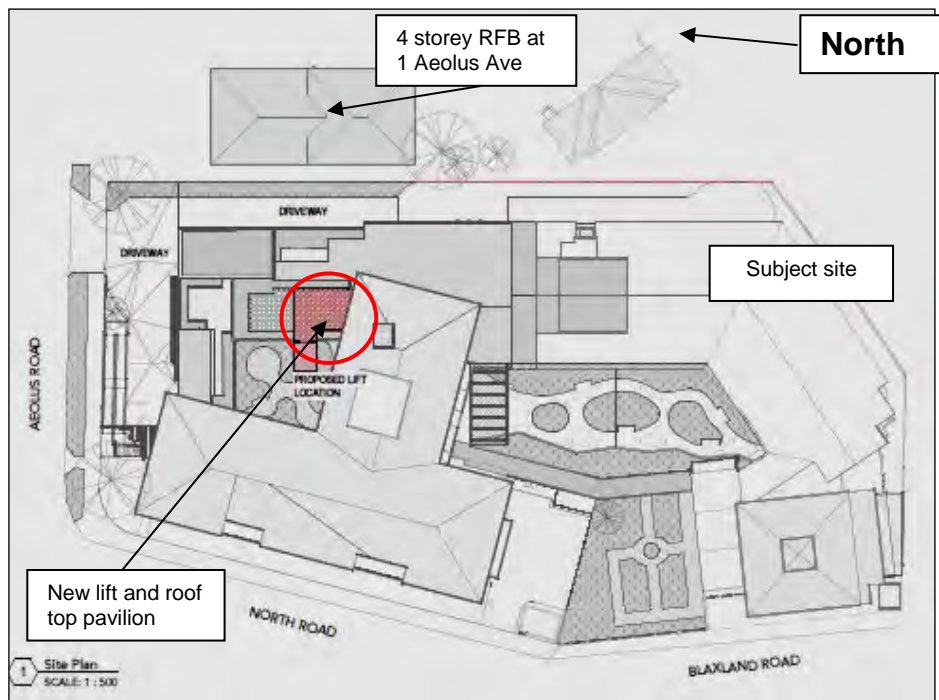
### 3. The Proposal

The proposal seeks approval for alterations and additions to the existing residential aged care facility, namely 'San Antonio da Padova' Nursing Village on land known as 7 North Road, Ryde.

## ITEM 4 (continued)

Details of the development are as follows:

**Figure 3** below illustrates the location of the lift and glass pavilion in relation to the existing building on the site.



**Figure 3** Roof/site plan showing the non-compliances submitted with the application

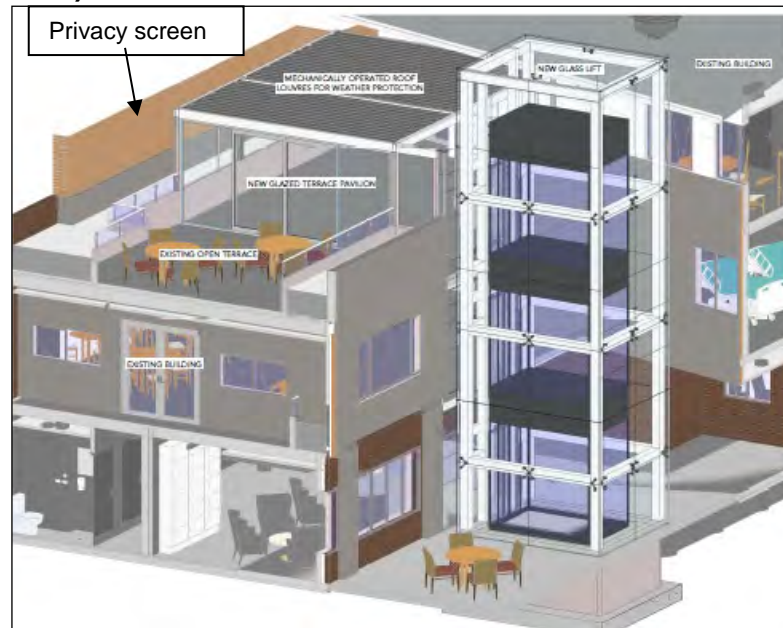
- **Installation of a new glass lift shaft**

A new glass lift shaft is to be placed within the existing central courtyard between the eastern and western wings of the building. The lift will service all floor levels of the building including the altered roof top terrace area (see separate description below).

The western side wall of the eastern wing of the building (where the lift is to be installed) is to be partially demolished in order to provide openings for the new lift.



**ITEM 4 (continued)**



**Figure 4** Perspective showing the new lift and roof top pavilion

**Figure 4** above shows the perspective of the lift and roof top pavilion viewed from the central courtyard.

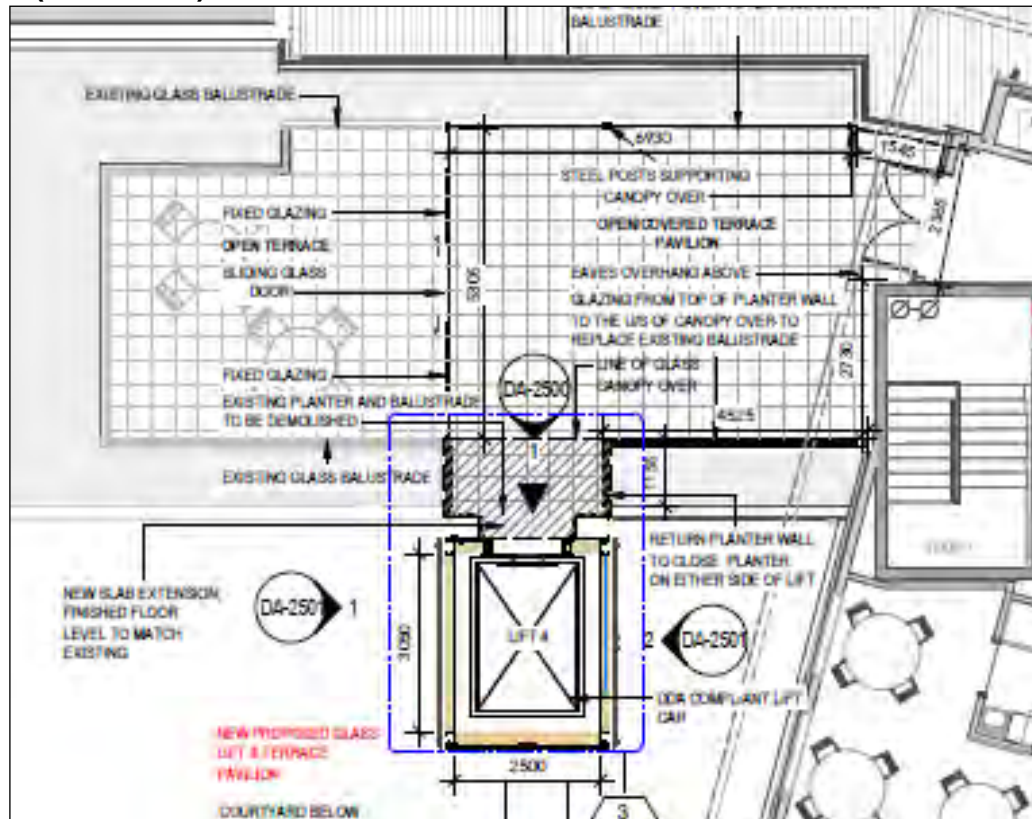
It is noted that there is an existing lift access within the internal corridor area of the main residential beds/private area of the facility. The new lift will provide service to the public areas, such as a communal library, dining area and roof top terrace on this side of the building

- **Alterations to existing roof top terrace at Level 2**

A new fully glazed pavilion is proposed to cover part of the existing roof top terrace to provide weather protection for the terrace area between the new lift and existing side access from the main residential beds of the facility.

The roof of the pavilion comprises openable louvres and glazed enclosures on all sides and is to be located below the eave level of the existing building.

**ITEM 4 (continued)**



**Figure 5** Roof terrace plan showing the pavilion and lift

**4. Background**

LDA2012/247

Alterations and additions (increase 50 beds to 106 beds) to the San Antonio da Padova Nursing Home was approved by Council on 17 September 2013.

MOD2013/0189

Section 96(1A) modification to amend certain conditions was approved by Council on 13 January 2014.

Under this modification, the Nursing Home operator (San Antonio) was determined to be a “social housing provider”.

MOD2014/153

Section 96(1A) modification to convert single rooms into double rooms approved by Council. This modification increased the number of beds to 112 as currently provided within the facility.

**ITEM 4 (continued)**
**MOD2016/0175**

Section 96(1A) modification to amend the landscape plan was approved by Council on 26 July 2017.

**5. Planning Assessment**
**5.1 State Environmental Planning Instruments**
**State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

Clause 14 of the SEPP (HSPD) 2004 states the objective of the SEPP as follows:

*The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.*

The development is for minor alterations and additions to the existing residential care facility on the site and is mainly to improve the accessibility and useability of the existing roof top terrace on the north eastern side of the building.

Part 2 – *Site related requirements* of the SEPP (HSPD) 2004 are deemed to be satisfied as the development is for the existing residential aged care facility on the site.

Part 3 of the SEPP (HSPD) 2004 contains design requirements that a development is required to satisfy. These have been addressed in detail in **Attachment 2**. The proposed development complies with all of these design principles.

**Clause 40 – Development Standards – Minimum sizes and building heights**

The following compliance table is a summary of the development standards under the SEPP (HSPD) 2004.

Clause	Proposal	Compliance
<b>40(2) Site size</b>		
The size of the site must be at least 1,000 square metres.	Not applicable – see Clause 40(5) below.	N/A
<b>40(3) Site frontage</b>		
The site frontage must be at least 20 metres wide measured at the building line.	Not applicable – see Clause 40(5) below.	N/A
<b>40(4) Height in zones where residential flat buildings are not permitted</b>		
If the development is proposed in a		No (see below)

**ITEM 4 (continued)**

Clause	Proposal	Compliance
<p>residential zone where residential flat buildings are not permitted:</p> <p>a) the height of all buildings in the proposed development must be 8 metres or less, and</p> <p>b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and</p> <p>Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.</p> <p>c) a building located in the rear 25% area of the site must not exceed 1 storey in height.</p>	<p><u>Lift shaft</u>  <b>10.23m</b> (+ 2.23m or 27.9%)</p> <p><u>Lift car</u>  <b>8.35m</b> (+ 0.35m or 4.4%)</p> <p><u>Roof top pavilion</u>  <b>8.35m</b> (+ 0.35m or 4.4%)</p> <p>Part b is not relevant as the development is located in the centre of the site. Regardless the lift and glass pavilion with an openable louvres do not constitute a 'storey' under the dictionary of the SEPP.</p> <p>Not applicable – see Clause 40(5) below.</p>	<p>N/A</p> <p>N/A</p>
<b>40(5) Development applications to which clause does not apply</b>		
<p>Subclauses (2), (3) and (4)(c) do not apply to a development application made by any of the following:</p> <p>a) the Department of Housing,  b) any other social housing provider.</p>	<p>The Nursing Home operator (San Antonio) was determined to be a "social housing provider" under MOD2013/0189.</p> <p>Therefore, Subclauses (2), (3) and (4)(c) of Clause 40 do not apply to this application.</p>	<p>Yes</p>

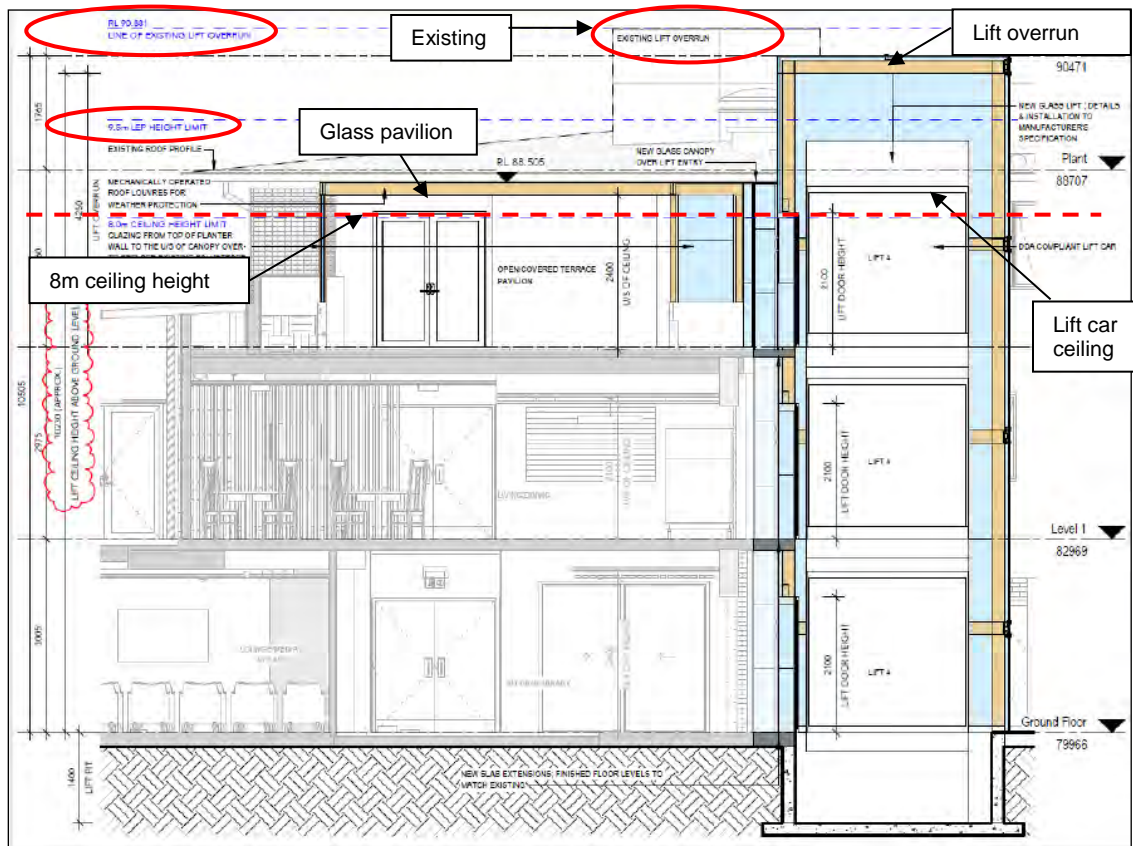
**Clause 40(4)(a) – Building height**

The variations to the building height standard under Clause 40(4)(a) of the SEPP (HSPD) 2004 has been considered under the Clause 4.6 of the RLEP 2014.

The maximum height of a residential aged care facility under Clause 40(4)(a) – *Heights in zones where residential flat buildings are not permitted* is 8m above the existing ground level.

**Figure 6** below illustrates the 8m height plane and extent of non-compliances.

**ITEM 4 (continued)**



**Figure 6** Section showing the non-compliances submitted with Clause 4.6 variation

It is worth noting that the proposed lift is not counted as storeys as detailed in the above table and has its lift car ceiling level to align with the level of the pavilion as illustrated above in **Figure 6**.

**Clause 4.6 Exceptions to development standards (RLEP 2014)**

Assessment of Clause 4.6 variation request

The applicant's town planning consultants, City Plan Services has provided a written request for the increased building height and response to the seven (7) main matters for consideration under Clause 4.6 of the RLEP 2014 as contained in **Attachment 3** (under separate sub-headings) as follows:

**1. A written request must be provided**

The applicant has provided a written request seeking to justify the variation to the development standard contained in Clause 40(4)(a) of the SEPP (Housing for Seniors) 2004 in respect to the maximum building height for a residential care facility. In respect to the Clause 4.6 variation the following key questions need to be addressed:

**ITEM 4 (continued)****2. Extent of variation**

The applicant has provided the following comments:

*“The subject development, being a residential aged care facility to which the Seniors Housing SEPP applies, has a maximum building height standard of 8 metres to its upmost ceiling and 2 storey adjacent a boundary.*

*The portion of the building above the height standards is the new enclosed roof terrace on level 2 of the existing building. Whilst it is arguable whether the standard applies to lift overruns, we have also addressed the 'variation' in the height standard caused by the proposed new lift.*

*The proposed maximum building heights, as measured from 'existing' ground level, are therefore as follows:*

- *To the ceiling of the roof terrace pavilion, which also represents a 3rd storey: 8.35m,*
- *To the 'ceiling' of lift car on Level 2: 8.35m (2.4m internal lift car ceiling).”*

**Comment**

To clarify the exact extent of the non-compliance with the building height, the Dictionary under the SEPP (HSPD) 2004 has been cited which defines Height as:

*“Height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.”*

In light of the above, the proposed lift shaft has a ceiling which exceeds the maximum allowed by 2.23m (10.23m above the EGL) and this increased height represents 27.9% variation to Clause 40(4)(a) of the SEPP (HSPD) 2004.

**3. Compliance with the standard is unreasonable or unnecessary in the circumstances of the case**

The applicant has provided the following comments:

*“Compliance with the building height development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of this case if it can be demonstrated that the objectives of the development standard are achieved, notwithstanding noncompliance with the standard.*

*In the case of Clause 40 of the Seniors SEPP, there are no explicit objectives identified for at least paragraph (a), although the note to the paragraph (b) does provide an indication as to its intent, being "to avoid an abrupt change in the scale of development in the streetscape".*

**ITEM 4 (continued)**Comment

The applicant's written request to vary the development standard has been considered and it is concluded that the applicant has justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

This conclusion has been reached for the following reasons:

- Variations to the height are for the semi-transparent glass lift overrun, the glass pavilion and lift car which are located either in the centre of the building or away from the main street frontage (refer to **Figures 3 and 4**). When viewed from the street the additional heights of the semi-transparent structures are not likely to permanently obscure the façade of the Aeolus Avenue frontage.
- The purpose of these semi-transparent structures is to provide direct lift access from the ground floor communal areas to the roof top terrace without the need of gaining lift access from the private bed areas on the other side of the roof top terrace and to provide useable and functional roof top on this side of the building with weather protection.
- The additional height to the development does not result in any additional shadow impacts to adjoining developments. The additional shadows from the increased height of the building cast mainly on the roof of the development itself.
- The additional height to the development does not result in any additional privacy impacts to adjoining developments with the provision of full ceiling height privacy screens as exist along the eastern side of the roof top terrace (refer to **Figure 4**).
- The floor space ratio of the development complies with the relevant development standard which demonstrates that the height of the development is not a result of the exceedance of floor area to the development.
- The proposal is to occur a minimum 13.7m from the closest adjoining property at No 1 Aeolus Avenue (4 storey residential flat building), whilst the lift shaft is located at least 20.9m away from this side boundary of the site. Therefore the proposal provides sufficient building separation between the subject and adjoining properties.
- The proposed development is considered to be consistent with the existing residential aged care facility on the site and 4 storey RFB located immediate to the east of the site (being the closest boundary).

**4. There are sufficient environmental planning grounds to justify contravening the development standard**

**ITEM 4 (continued)**

The applicant has provided the following comments:

*“The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that there are sufficient environmental planning grounds to support the development.*

*There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.*

*Some specific environmental grounds to justify the breach of the standard are summarised as follows:*

- *The breach allows improved access and amenity for the residents of the Residential Aged Care Facility that would not be possible if strict compliance was required.*
- *The breach does not exceed the maximum height of the current building on the site.*
- *The roof terrace pavilion is lower than the maximum building height (9.5 metres) that would apply to any other type of development on this site under the Ryde Local Environmental Plan 2014. Whilst the top of the proposed lift shaft will exceed the LEP maximum height by approximately 1 metre, such variations are commonly allowed. As such, the proposed built form is consistent with that which would generally be expected to be permitted on the site (subject to ordinary considerations of development impacts) for most forms of development. As such, the proposal is compatible with the desired future character of the area, notwithstanding the variations to the Seniors Housing SEPP standard.*
- *The proposal does not involve a variation to the maximum allowable floor space ratio for the development under the Seniors Housing SEPP.”*

Comment

The floor space ratio of the development complies with the relevant development standard which demonstrates that the height of the development is not a result of the exceedance of the floor area to the development.

The proposed development is considered to be an improvement to the existing residential aged care facility and consistent with this type of development envisaged in the area.

The development is unlikely to cause any detrimental impacts on the adjoining properties with the increased building height.



**ITEM 4 (continued)**

The positive outcome of the new lift and rooftop pavilion for the development as functional communal space with weather protection outweigh the minimal benefit of a full compliant built height with no such provision for access and use of the building.

Therefore it is considered that there are sufficient planning grounds to justify contravening the development standard and strict compliance with the building height standard is considered unnecessary and unreasonable in this instance.

**5. Consent authority is satisfied that development is 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 applicant has provided the following comments:

*“It is necessary to infer what the objectives of the standard are, in order to assess whether the objectives are met despite the variation.*

*In these circumstances, even though the height standard within the Ryde LEP 2014 does not apply due to its inconsistency with the standard in the 'higher order' SEPP, it is nonetheless instructive to consider the objectives applying the maximum height standard in Clause 4.3 of the LEP.*

*Therefore, for the purposes of this request, we have assessed the proposed variation against the inferred objectives, as shown in Table 1 (below).”*

<b>Clause 4.3 – Height of Buildings (RLEP) Objectives</b>	<b>Discussion</b>
<p>1(a) <i>To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.</i></p>	<p><i>Nearby the site is a variety of development types. Whilst there are single detached houses opposite, the site adjoins 4 storey residential flat buildings fronting Aeolus Street and a motor registry opposite on North Road. The maximum building height on the site and surrounding areas under the Ryde LEP is 9.5 metres. The site itself already contains large buildings of variable height up to 11.16m.</i></p> <p><i>As such, the character of nearby development, whilst varied, includes large buildings up to 4 storeys.</i></p> <p><i>The proposed roof pavilion and lift do not exceed the maximum height of proximate parts of the existing building on the site and will not be highly visible within the site context. The lift is centrally located on the site and not at a street frontage. As such, street frontages of development are in proportion with and in keeping with the character of nearby development notwithstanding the</i></p>

**ITEM 4 (continued)**

<b>Clause 4.3 – Height of Buildings (RLEP) Objectives</b>	<b>Discussion</b>
	variation.
<p>1(b) To minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.</p>	<p>Because the breaches occur centrally within the building footprint, and do not exceed the maximum height of the current building, there would be no material impact on the existing neighbouring dwellings.</p> <p>As detailed in the SEE, the lift is of contemporary design that will be compatible with current buildings of the site and the area generally. Furthermore, the lift overrun is only visible from certain parts of the road frontage.</p>
<p>1(c) To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport and infrastructure.</p>	<p>The proposed lift does not alter the current land use, or transport development, and will improve the sustainability of the land use as a residential aged care facility by improving the access to the proposed communal space on the 2nd floor.</p>
<p>1(d) to minimise the impact of the development on the amenity of surround properties.</p>	<p>The proposed lift is setback from the street within an internal courtyard to reduce its impact on surrounding development. The roof terrace pavilion is also well set back from property boundaries and obscured from its closest neighbours by an existing privacy wall.</p> <p>It is important to note that the properties to the North are separated by Aeolus Rd and the properties to the West are separated by North Rd, which further assists in providing separation between the properties.</p> <p>There will be no adverse amenity impacts to the properties located in the R2 zone in terms of overshadowing, over-looking, noise, or views as a result of the breach of the height standard.</p>
<p>1(e) to emphasise road frontages along road corridors.</p>	<p>As referred to above, the lift is not located on the road frontage and therefore has no impact on the road frontage.</p>

**Table 1** showing the objectives of the building height development standard submitted with Clause 4.6 variation

Comment

The development is for an upgrade of the existing residential aged care facility in order to improve the amenity and access of the facility to cater for the day to day needs of the residents of the facility. Thus the development is consistent with the zone objectives in terms of improving the quality of the residential aged care facility and care for the community, which is permitted within the low density residential area.

There are no underlying objectives of the standard within Clause 40(4)(a) of the SEPP (HSPD), therefore it is appropriate for the purpose of this assessment to use

**ITEM 4 (continued)**

the underlying objectives as prescribed by Clause 4.3 – ‘Height of Buildings’ of the RLEP 2014 to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives Clause 4.3 – ‘Building Height’ are considered below:

- (a) *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.*

Comment

As mentioned earlier, the increased building height of the building occurs either in the centre of the building or away from the main street frontage. Also these ancillary lift and roof top pavilion are of semi-transparent glass structures, which are placed below the existing uppermost ceiling level (non-complaint height) of the building.

As such the additional heights would not fully obscure the façade of the Aeolus Avenue frontage and are not readily visible, when viewed from the street.

Therefore the development is unlikely to have any adverse visual impact and the proportion is considered acceptable upon the streetscape.

- b) *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.*

Comment

Generally, the proposal is considered to achieve compliance with the requirements of this objective as the proposed non-compliance occurs either in the centre of the building or north eastern corner of the building.

As noted the additional overshadowing from the variation is minimal and will not adversely impact on any adjoining properties.

- c) *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.*

Comment

The existing building is deemed to achieve the urban design principles that encourage sustainable transport and pedestrian connectivity.

- d) *to minimise the impact of development on the amenity of surrounding properties.*

Comment

It has been discussed that the proposal is acceptable with regard to overshadowing and amenity impacts on the surroundings. This is primarily due to the primary areas of non-compliance are located in the centre and north eastern side of the site, limiting the total extent of overshadowing impacts.

#### **ITEM 4 (continued)**

e) *to emphasise road frontages along road corridors.*

#### Comment

The affected area by the proposal is sited away from the main road corridor, being North Road and Blaxland Road.

In summary, the proposed development is considered to be consistent with the above objectives identified in Clause 4.3 - 'Height of Buildings' under the RLEP 2014.

#### **6. Non-compliance with the development standard does not raise any matter of significance for State or Regional environmental planning**

The applicant has provided the following comments:

*"There is no identified outcome that would be prejudicial to planning matters of state or regional significance arising as a consequence of varying the development standards as proposed by this application."*

#### Comment

The development is unlikely to raise any matter of significant for State or Regional environmental planning.

#### **7. There is no public benefit of maintaining the standard**

The applicant has provided the following comments:

*"The breach of the standard is minor and represents a relatively minor enclosure of an existing roof terrace and a lift over-run, which provide improved amenity and equitable access to the existing building.*

*Maintaining the standards would have the following implications:*

*In relation to the lift, it would not enable easy access by residents to the second floor facilities in this part of the building because the lift would be required to stop at the first floor in order to stay within the height standard.*

*In relation to the roof terrace, it would prevent its enclosure, thus maintaining the current situation where the use of the space by residents is severely compromised by weather conditions, such as when it is too hot, too sunny, too cold, too wet or too windy.*

*Accordingly, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the standard.*

*We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit."*

**ITEM 4 (continued)**Comment

The development is considered appropriate considering the orientation and siting of the proposed structures which result in minimal amenity impacts on the adjoining properties.

Furthermore, the development is considered to result in improved amenity and access with the new structures serving the public/communal areas and acting as a transitional area that delineates the communal areas and private beds area of the facility.

Given the minor nature of the development and minimal impacts on the adjoining properties generated by the increased building heights, the development is considered acceptable particularly when balanced against the overall benefits of the development.

**Conclusion**

The proposal is considered to be a better outcome in terms of amenity for the current and future residents of the existing facility whilst having minimal impacts on the surroundings.

The proposal is considered to be an improvement and appropriate use of the land, which is consistent with the zone objectives and height objectives. Furthermore no material planning impacts are generated by this variation.

The proposed variations will allow appropriate and equitable access and weather protection to the existing communal open space located on the roof. The development is unlikely to cause any unreasonable impacts on the adjoining properties. For this reason there are sufficient planning grounds to justify the non-compliant height of the dwelling.

The height of the proposed development will not result in any additional impacts to adjoining developments and does not compromise any views or heritage items (of which there are none in the vicinity of the site).

Therefore strict compliance with the maximum building height is considered to be both unreasonable and unnecessary for the proposed development.

The submitted Clause 4.6 variation is considered to be well founded, and compliance with the development standard is unreasonable in the circumstances of the proposal for the reasons stated in this report. It is also noted that in supporting this Clause 4.6 variation that it is considered unlikely to generate an undesirable precedent within the area given the generally positive outcome of the proposal.

***Clause 48 - Standards that cannot be used to refuse development consent for residential care facilities***

**ITEM 4 (continued)**

The following compliance table is a summary of discretionary Development Standards under the SEPP (HSPD) 2004 applicable to Residential Care Facilities.

Clause	Proposal	Compliance
<b>48(a) Building Height</b>		
All proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)	<u>Lift shaft</u> <b>10.23m</b> (+ 2.23m or 27.9%)  <u>Lift car</u> <b>8.35m</b> (+ 0.35m or 4.4%)  <u>Roof top pavilion</u> <b>8.35m</b> (+ 0.35m or 4.4%)	<b>No</b> (discussed under the "SEPP No. 1" section of this report)
<b>48(b) Density and Scale</b>		
Site area = 5,458m <sup>2</sup>  Maximum FSR = 1:1	<u>Existing</u> FSR = 0.96:1  <u>Proposed</u> <b>FSR = 0.97:1</b> (enclosed glass pavilion on the roof top terrace)	Yes
<b>48(c) Landscaped Area</b>		
A minimum of 25m <sup>2</sup> of landscaped area per residential care facility bed is provided  112 beds x 25m <sup>2</sup> = Min. 2,800m <sup>2</sup> of landscaping required	<u>Existing:</u> Landscaped area = 2,552m <sup>2</sup>  <u>Proposed:</u> Landscaped area = <b>2,540.4m<sup>2</sup></b> (-11.6m <sup>2</sup> /new lift within the central courtyard)	<b>No</b> See commentary below
<b>48(d) Parking for Residents and Visitors</b>		
(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and  (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and  (iii) 1 parking space suitable for an ambulance.	No change to the number of beds  No change to the number of staff  No change to the existing car parking arrangement for the facility	N/A

**Clause 48(c) – Landscaped area**

#### ITEM 4 (continued)

The installation of the new lift shaft within the central courtyard will reduce the existing landscaped area by 11.6m<sup>2</sup> (including pavers) and consequently the existing deep soil landscaping by 4.6m<sup>2</sup> as shown in **Figure 7** below.



**Figure 7** Ground floor plans showing existing central courtyard (left) and proposed lift (right)

The Statement of Environmental Effects accompanying the application provides justification for these non-compliances as follows:

*“There is no proposed change to the number of beds. A VPA was entered into to address the current shortfall of landscaped area, involving a contribution of \$225,000 to upgrade adjoining Adventure Park. The very minor additional reduction (11.6 m2), representing less than half the requirement for a RAC bed, does not represent any identifiable reduction in landscape amenity for the development that is not already compensated by the existing VPA improvements.”*

#### Comment

The non-compliant landscaped area resulting from the installation of the new lift shaft within the central courtyard does not warrant any amendment to the Voluntary Planning Agreement (VPA) that applied to the existing non-complaint landscaping given the extent and minor nature of the non-compliance to landscaping.

Council’s Contributions Coordinator has reviewed the proposal and raised no objection to the reduced landscaping with respect to the ongoing status of the VPA.

Notwithstanding, the reduced landscaped area within the central courtyard is considered to be acceptable for the following reasons:

- By comparison of the existing and proposed landscaped areas, the deficit of landscaping equates to approximately 10 beds based on the rates applied to landscaping calculation under the SEPP (HSPD) 2004.

**ITEM 4 (continued)**

A breakdown of the non-compliance is as follows:

Minimum landscaped area required = 2,800m <sup>2</sup> (25m <sup>2</sup> per bed)	Extent of variation (no of beds) 112 beds (existing facility)
<u>Existing:</u> Landscaped area = 2,552m <sup>2</sup>	Existing non-compliance = 248m <sup>2</sup> (equates to <b>9.92 beds</b> based on landscaping rates)
<u>Proposed:</u> Landscaped area = 2,540.4m <sup>2</sup> (-11.6m <sup>2</sup> /new lift within the central courtyard)	Proposed = 259.6m <sup>2</sup> (equates to <b>10.38 beds</b> based on landscaping rates)

- The installation of the new lift shaft within the central courtyard will reduce the existing landscaped area by 11.6m<sup>2</sup> (including pavers) and consequently the existing deep soil landscaping by 4.6m<sup>2</sup> and does not involve removal of significant trees or vegetation from the central courtyard.

Due to the minor extent and nature of non-compliance with the development, it is unlikely that it will result in any adverse landscape amenity for the occupants of the facility.

- The majority of the central courtyard is retained and a continuous accessible path of travel along the southern side of the courtyard as depicted in **Figure 7**. The development improves the useability of the roof top terrace with the lift access and weather protection with the glazed pavilion.

**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 site is not likely to produce any contamination which would otherwise prevent ongoing residential development.

**5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)**

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

**Part 2 – Permitted and Prohibited Development**



#### ITEM 4 (continued)

Under Ryde LEP 2014, the property is zoned R2 Low Density Residential, and the proposed ancillary structures to an existing residential care facility are permissible with Council's consent.

The proposal is considered to satisfy the objectives for residential development.

#### Part 4 – Applicable Development Standards

The following compliance table is a summary of other relevant clauses under Ryde LEP 2014 applicable to the development.

Clause	Proposal	Compliance
<b>4.3(2) Height of Buildings</b>		
9.5m  <b>NB:</b> This standard does not strictly apply to the development because of its inconsistency with the height standards in the Seniors SEPP, which prevail in these circumstances.	Lift shaft = 10.23m (over 0.73m or 7.7%)  Lift car = 8.35m Roof top pavilion = 8.35m Discussed under 'Clause 4.6'	N/A (refer to SEPP – HSPD 2004)
<b>4.4 Floor Space Ratio</b>		
Site area = 5,458m <sup>2</sup> Maximum FSR = 0.5:1  <b>NB:</b> This standard does not strictly apply to the development because of its inconsistency with the <b>FSR of 1:1</b> in the Seniors SEPP, which prevail in these circumstances.	Existing FSR = 0.96:1  Proposed FSR = 0.97:1	N/A (refer to SEPP – HSPD 2004)

#### 5.10 Heritage Conservation

Great North Road between Bedlam Point and Eastwood is listed as an item of heritage significance on Schedule 5 of the Ryde LEP 2014. The subject site has a direct frontage to North Road along its western side of the site.

Accordingly the application was referred to Council's Heritage Advisor who raised no objection to the proposal.

#### 6.4 Stormwater Management

The application was referred to Council's Senior Development Engineer who raised no objection to the proposal.

**ITEM 4 (continued)****5.3 Draft Environmental Planning Instruments**

There are no draft environmental planning instruments of relevance to the assessment of the application.

**6. Development Control Plans****Ryde Development Control Plan 2014**

There are no Ryde Development Control Plan 2014 requirements of relevance to the assessment of the application: the SEPP (HSPD) 2004 is the prevailing EPI to the local planning controls contained in RDCP 2014.

**7. Planning Agreements or Draft Planning Agreements**

As noted earlier in the report, the application is not the subject of any new planning agreements or draft planning agreements.

**8. Any matters Prescribed by the Regulations**

All matters prescribed by the regulations have been considered in the assessment of the application.

**9. The Likely Impacts of the Development**Natural Environment

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The development is considered satisfactory in terms of environmental impacts.

Built Environment

The proposal is unlikely to have adverse impacts on the built environment for the reasons stated in this report.

Social and Economic Impacts

The development will generally result in positive social and economic benefits to the existing residential aged care facility as it improves the accessibility and useability of the facility. The increased building height of the development is unlikely to set an undesirable precedent in the area.

**10. Suitability of the Site for the Development**

The subject site is not identified as being affected by Acid Sulfate soil, slope instability, overland flow or bushfire, as well as the site is not located within a heritage conservation area or urban bushland and does not contain a heritage item.

**ITEM 4 (continued)**

As there are no unknown risks that constrain the proposal being carried out, the site is considered suitable for the proposed development.

**11. The Public Interest**

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

**12. Submissions**

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the application was notified from 29 August 2018 to 14 September 2018.

Council did not receive any submissions in response to this application.

**13. Referrals****Development Engineer**

A referral was made to Council's Development Engineer, and the following comment has been made:

*"There are no objections to the proposed development with respect to the engineering components."*

**Heritage Advisor**

A referral was made to Council's Heritage Advisor, and the following comments were received:

*"Reason for the Heritage Referral:*

*The development proposal has been referred for heritage consideration as the subject has direct frontage to North Road, which is an item of heritage significance, listed on Schedule 5 of the Ryde LEP 2014.*

*Consideration of the heritage impacts:*

*The site has direct frontage to North Road, which is part of the alignment of the Great North Road, extending from Bedlam Point to the Hunter Valley.*

*The significance of the roadway is largely embodied in its historical alignment rather than the present physical fabric of the roadway. While there may be some archaeological potential, the road pavement has been modified and resurfaced multiple times over and with a cement kerb and guttering in the late 20th century. In this manner, the archaeological potential within the road alignment in this precinct is considered to be low.*

**ITEM 4 (continued)**

*Regardless, the proposed works involve the construction and installation of a lift, which is centrally positioned on the site and largely obscured from view from the streetscape.*

*In this manner, the proposed development will result in any adverse heritage impacts on the Great North Road.*

*The proposal is acceptable on heritage grounds accordingly,*

*Recommended conditions*

*There are no conditions recommended.”*

**14. Conclusion**

That development consent be granted to LDA2018/0339 for the following reasons:

1. The proposed development is a permissible use within R2 – Low Density residential zone and the development is consistent with the relevant objectives of the zone and numerical standards of the RLEP 2014.
2. The variation to the height standard requested under Clause 4.6 is justified for the following reasons:
  - The development will not result in an abrupt change in the scale of the development in the streetscape and is in keeping with the character of nearby developments.
  - The breach occurs centrally within the building footprint and there would be no material impact on the existing neighbouring properties.
  - The breach will allow an improved access and amenity for the residents of the Residential Aged Care Facility.
  - The development is considered to satisfy the zone objectives and height objectives.
3. The proposed development generally complies with the site related requirements and design principles contained in the SEPP (HSPD) 2004 with the exception of the variation to the height standard.

The overall scale and height of the development is unlikely to detract from the existing streetscape with variable heights ranging from single storey dwellings to four storeys residential flat buildings.

The development is also sufficiently setback from the street frontage and common boundary with adjoining properties so as to reduce the visual and amenity impacts on the neighbouring properties.

4. No public submissions were received in respect to the application.

**ITEM 4 (continued)****12. Recommendation**

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, the following is recommended:

- a) That the Ryde Local Planning Panel grants consent to development application LDA No. LDA2018/0339 for alterations and additions to the existing residential care facility at 7 North Road Ryde subject to the conditions in **Attachment 1** of this report.

**ATTACHMENTS**

- 1** Draft Conditions of Consent
- 2** Compliance Check
- 3** Clause 4.6 Variation - Height
- 4** Architectural Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

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Report Approved By:

**Sandra Bailey**  
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**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 4 (continued)**  
**LDA2018/0339 – DRAFT CONDITIONS**

**ATTACHMENT 1**

**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	25/06/18	DA-0000 Revision A
Ground Floor Plan	25/06/18	DA-1000 Revision A
Level 1 Floor Plan	25/06/18	DA-1001 Revision A
Level 2 Floor Plan	25/06/18	DA-1002 Revision A
Glass Lift Details	25/06/18	DA-1500 Revision A
Glass Lift Detail Elevations – 1	25/06/18	DA-2500 Revision A
Glass Lift Detail Elevations – 2	25/06/18	DA-2501 Revision A
Glass Lift Detail Section 1	25/06/18	DA-3500 Revision A
Glass Lift Detail Section 2	25/06/18	DA-3501 Revision A
Glass Lift Perspective	25/06/18	DA-9000 Revision A

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. **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.
4. **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.
5. **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.

**PRIOR TO CONSTRUCTION CERTIFICATE**

**ITEM 4 (continued)**

**ATTACHMENT 1**

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.

6. **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**.
7. **Access for Persons with a Disability.** Access for persons with disabilities to all proposed pathways and renovated areas of the residential aged care facility must comply with AS 1428.1 as required by the SEPP Code for Housing for Seniors or People with Disabilities and the Premises Standards. Details must be submitted with the Construction Certificate Application for approval.
8. **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**.
9. **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 Certifier prior to the release of the **Construction Certificate**.
10. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**.
11. **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 Certifier prior to the issuing of the **Construction Certificate**.

**ITEM 4 (continued)**

**ATTACHMENT 1**

12. **Stormwater Drainage.** All roof waters and surface waters from the proposed development are to be disposed of to the existing stormwater system by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015.
13. **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
14. **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](http://www.sydneywater.com.au/tapin) to apply.

**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.

15. **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.
16. **Excavation adjacent to adjoining land**
  - (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
  - (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.



**ITEM 4 (continued)**

**ATTACHMENT 1**

- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
17. **Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
18. **Erosion and Sediment Control.** The applicant shall install erosion and sediment control measures 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.
19. **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.
20. **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 Principal Certifier 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 work must not be carried out unless the Principal Certifier for the development to which the work relates has given the Council written notice of the updated information (if Council is not the Principal Certifier).

**DURING CONSTRUCTION**

**ITEM 4 (continued)**

**ATTACHMENT 1**

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.

21. **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*.
22. **Noise from construction work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from construction work.
23. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
24. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(6) of the Environmental Planning and Assessment Act 1979 in a sum determined by reference to Council's Management Plan prior to the release of the Construction Certificate. (category: other building with no delivery of bricks or concrete or machine excavation)
25. **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 Certifier prior to the issuing of the Construction Certificate.
26. **Construction materials.** All materials associated with construction must be retained within the site.
27. **Site Facilities**  
The following facilities must be provided on the site:
  - (a) toilet facilities in accordance with WorkCover 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.
28. **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.

**PRIOR TO OCCUPATION CERTIFICATE**

**ITEM 4 (continued)**

**ATTACHMENT 1**

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.

29. **Slip Resistance.** At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps to the affected areas of the proposed development to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
30. **Offensive noise.** The use of any equipment on the premises (air conditioning motors or the like) must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

**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.

31. **Lighting.** General Nuisance - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.

Flashing, moving or intermittent lights or signs are prohibited.

32. **Annual Fire Safety Statement.** The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:

- (a) Within 12 months after the date on which the fire safety certificate was

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- received.
- (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
  - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
  - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
33. **Amenity of the neighbourhood.** The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste

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## Compliance Check - Quality Certification

### Assessment of alterations and additions to an existing residential care facility

<b>LDA No:</b> LDA2018/0339	<b>Date Plans Rec'd:</b> 24 Aug 2018
<b>Address:</b> 7 North Rd Ryde	
<b>Proposal:</b> Alterations and additions to the existing residential aged care facility. The works involve. <ol style="list-style-type: none"> <li>1. Installation of a new lift.</li> <li>2. Alterations to existing terrace area at level 2 with a new glaze pavilion with an operable roof.</li> </ol>	
<b>Constraints Identified:</b> None	

#### State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

<b>Part 3. Design Requirements</b>	<b>Comment</b>	<b>Comply</b>
<b>Clause 30. Site Analysis</b> <i>A Site Analysis Diagram is required.</i>	A site analysis plan has been submitted and accompanies the application.	Yes
<b>Design Principles</b>	<b>Comment</b>	<b>Comply</b>
<b>Clause 33. Neighbourhood amenity and streetscape</b> <i>(a) recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area and,</i>	Minor alterations and additions to the existing residential aged care facility.	N/A
<i>(b) retain, complement and sensitively harmonise with any heritage conservation</i>	The site is not located within a heritage conservation area and does not contain a heritage item.	N/A

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<p><i>areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i></p>		
<p><i>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</i></p> <p><i>(i) providing building setbacks to reduce bulk and overshadowing, and</i></p> <p><i>(ii) using building form and siting that relates to the site's land form, and</i></p> <p><i>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i></p> <p><i>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i></p>	<p>No adverse amenity impacts on the adjoining properties through overshadowing, visual and acoustic privacy and visual impacts.</p> <p>The increased building height of the proposal is considered to be compatible with the existing building (increased building height also) and 4 storey RFB to the east.</p>	<p>Yes</p>
<p><i>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</i></p>	<p>The design of the proposal is considered to be acceptable.</p>	<p>Yes</p>
<p><i>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</i></p>	<p>No new planting proposed or removal of significant trees or vegetation from the site.</p>	<p>N/A</p>
<p><i>(f) retain, wherever reasonable, major existing trees, and</i></p>	<p>No major existing trees within the affected areas by the proposal.</p>	<p>N/A</p>
<p><i>(g) be designed so that no building is constructed in a riparian zone.</i></p>	<p>Not located within a Riparian zone.</p>	<p>N/A</p>
<p><b>Clause 34. Visual and acoustic privacy</b> <i>The proposed development</i></p>		

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<p><i>should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</i></p> <p><i>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</i></p> <p><i>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</i></p>	<p>Sufficient privacy screening provided (existing full ceiling height screens along the eastern side of the roof top terrace)</p> <p>No new bedrooms provided.</p>	<p>Yes</p> <p>N/A</p>
<p><b>Clause 35. Solar access and design for climate</b></p> <p><i>The proposed development should:</i></p> <p><i>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</i></p> <p><i>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</i></p>	<p>Yes</p> <p>Yes</p>	<p>Yes (no change to the existing solar access)</p>
<p><b>Clause 36. Stormwater</b></p> <p><i>The proposed development should:</i></p> <p><i>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising</i></p>	<p>No new connection is required with the proposal. Council's Senior Development Engineer has raised no objection.</p>	<p>Yes</p>

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<p><i>paved areas, and</i></p> <p><i>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</i></p>		
<p><b>Clause 37. Crime prevention</b></p> <p><i>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</i></p> <p><i>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</i></p> <p><i>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</i></p> <p><i>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</i></p>	<p>The development does not compromise the existing level of security of the building.</p>	<p>Yes (acceptable)</p>
<p><b>Clause 38. Accessibility</b></p> <p><i>The proposed development should:</i></p> <p><i>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</i></p> <p><i>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and</i></p>	<p>Direct lift access provided with this development which is considered an improvement for the existing facility.</p>	<p>Yes</p>



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<p>visitors.</p>		
<p><b>Part 4. Development standards to be complied with</b></p>	<p><b>Comment</b></p>	<p><b>Comply</b></p>
<p><b>Clause 40((4). Height in zones where residential flat buildings are not permitted</b></p> <p><i>If the development is proposed in a residential zone where residential flat buildings are not permitted:</i></p> <p><i>(a) the height of all buildings in the proposed development must be 8 metres or less, and</i></p> <p><b>Note.</b> <i>Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).</i></p> <p><i>(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and</i></p> <p><b>Note.</b> <i>The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.</i></p> <p><i>(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.</i></p>	<p>Lift shaft = 10.23m (+ 2.23m or 27.9%), however it is located below the existing lift overrun with an increased height of 10.91m (+2.91m or 36.4%)</p> <p>Lift car = 8.35m (+ 0.35m or 4.4%)</p> <p>Roof top pavilion = 8.35m (+ 0.35m or 4.4%)</p> <p>Lift shaft and pavilion with an openable louvres are not considered 'storey' as defined under the SEPP (refer to the report).</p> <p>The proposed structures are located within the eastern side of the site not the rear of the site.</p>	<p><b>N/A</b></p>
<p><b>Clause 40((5). Development applications to which</b></p>	<p>The Nursing Home operator (San Antonio) was determined to be a "social housing provider"</p>	<p><b>Yes</b></p>

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<p><b>clause does not apply</b></p> <p><i>Subclauses (2), (3) and (4)(c) do not apply to a development application made by any of the following:</i></p> <p><i>a) the Department of Housing,</i></p> <p><i>b) any other social housing provider.</i></p>	<p>under MOD2013/0189.</p> <p>Therefore, Subclauses (2), (3) and (4)(c) of Clause 40 do not apply to this application.</p>	
<p><b>Division 2. Residential care facilities</b></p>	<p><b>Comment</b></p>	<p><b>Comply</b></p>
<p><i>(a) <b>building height:</b> if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or</i></p>	<p>Lift shaft = 10.23m (+ 2.23m or 27.9%), however it is located below the existing lift overrun with an increased height of 10.91m (+2.91m or 36.4%)</p> <p>Lift car = 8.35m (+ 0.35m or 4.4%)</p> <p>Roof top pavilion = 8.35m (+ 0.35m or 4.4%)</p>	<p><b>No</b></p>
<p><i>(b) <b>density and scale:</b> if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,</i></p>	<p>Existing: FSR = 0.96:1</p> <p>Proposed: <b>FSR = 0.97:1</b> (enclosed glass pavilion on the roof top terrace)</p>	<p><b>Yes</b></p>
<p><i>(c) <b>landscaped area:</b> if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,</i></p>	<p>Existing: Landscaped area = 2,552m<sup>2</sup></p> <p>Proposed: Landscaped area = 2,540.4m<sup>2</sup> (-11.6m<sup>2</sup>/new lift within the central courtyard)</p>	<p><b>No (justifiable)</b></p>
<p><i>(d) <b>parking for residents and visitors:</b> if at least the following is provided:</i></p> <p><i>(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and</i></p>	<p>Proposed:</p> <p>No change to the number of beds</p> <p>No change to the number of staff</p> <p>No change to the existing car parking arrangement for the facility</p>	<p><b>N/A</b></p>

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<p>(ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and</p> <p>(iii) 1 parking space suitable for an ambulance.</p>		
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**Ryde Local Environmental Plan 2014 (RLEP 2014)**

Clause	Proposal	Compliance
<b>4.3(2) Height of Buildings</b>		
9.5m  <b>NB:</b> This standard does not strictly apply to the development because of its inconsistency with the height standards in the Seniors SEPP, which prevail in these circumstances.	Lift shaft = 10.23m (over 0.73m or 7.7%)  Lift car = 8.35m Roof top pavilion = 8.35m	N/A (refer to SEPP – HSPD 2004)
<b>4.4 Floor Space Ratio</b>		
Site area = 5,458m <sup>2</sup> Maximum FSR = 0.5:1  <b>NB:</b> This standard does not strictly apply to the development because of its inconsistency with the <b>FSR of 1:1</b> in the Seniors SEPP, which prevail in these circumstances.	Existing FSR = 0.96:1  Proposed FSR = 0.97:1	N/A (refer to SEPP – HSPD 2004)

**Summary of Issues/Non compliances:**

- Building height (SEPP 1 objection and Clause 4.6 - justifiable)
- Landscaped area (justifiable)

**Certification**

I certify that all of the above issues have been accurately and professionally examined by me.

Name                      Kevin Kim

Signature 

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Date                    12 November 2018

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CITY  
PLAN  
SERVICES



**Clause 4.6 Variation Request**  
**Height of Buildings (Clause 40(4) – State**  
**Environmental Planning Policy (Housing for**  
**Seniors or People with a Disability) 2004**

305 Blaxland Road, Ryde

Submitted to Ryde Council  
On behalf of Restifa and Partners

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July 2018 | 18128

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1. Introduction

This request has been prepared in accordance with clause 4.6 of the *Ryde Local Environmental Plan 2014* to support a development application submitted to Ryde Council for the alterations and additions to the existing San Antonio Nursing Village at 305 Blaxland Road, Ryde ("the site").

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

The development application involves a variation to the building height development standard in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("the Seniors Housing SEPP"), which states:

**(4) Height in zones where residential flat buildings are not permitted**

*If the development is proposed in a residential zone where residential flat buildings are not permitted:*

*(a) the height of all buildings in the proposed development must be 8 metres or less, and*

*(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*

**Note.**

*The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

*(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.*

In the particular circumstances of this case we have considered that it is arguable that the proposed development breaching the standard is not adjacent to a boundary of the site, however, for due caution, we will nonetheless address paragraph (4)(b) of the standard. We note however, that in the assessment report for the building the subject of this variation, Council took the front of the site to be Aeolus Street and as such, paragraph (4)(c) is not relevant to the current application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal<sup>1</sup>.

<sup>1</sup> Relevant decisions include: *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 Pty Ltd v*

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In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

The following request demonstrates that the consent authority may be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

**2. Extent of variation**

The subject development, being a residential aged care facility to which the Seniors Housing SEPP applies, has a maximum building height standard of 8 metres to its upmost ceiling and 2 storey adjacent a boundary.

The portion of the building above the height standards is the new enclosed roof terrace on level 2 of the existing building. Whilst it is arguable whether the standard applies to lift overruns, we have also addressed the 'variation' in the height standard caused by the proposed new lift.

The proposed maximum building heights, as measured from 'existing' ground level, are therefore as follows:

- To the ceiling of the roof terrace pavilion, which also represents a 3<sup>rd</sup> storey: 8.35m,
- To the 'ceiling' of lift car on Level 2: 8.35m (2.4m internal lift car ceiling).

The extent of the height breach is shown in **Figures 1-4** below by Team2 Architects.

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*Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248; and Moskovich v Waverley Council [2016] NSWLEC 1015.*



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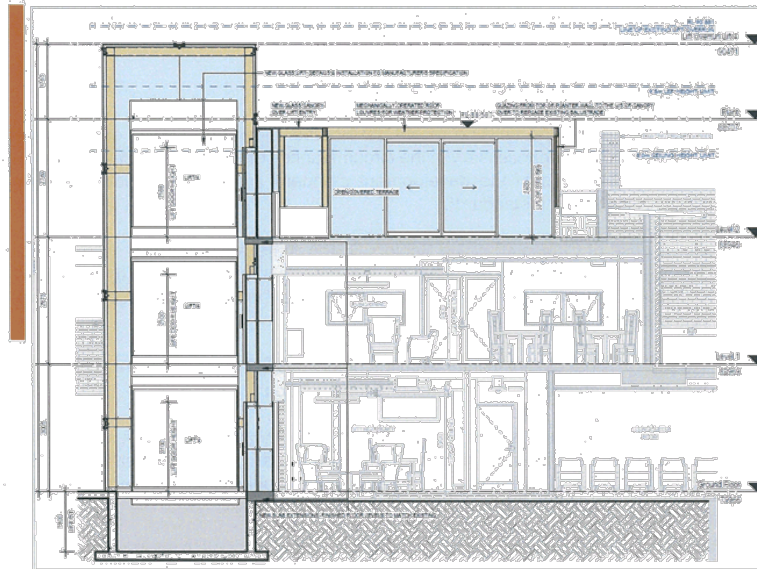


Figure 1: Extract from Glass Lift Detail: Section 1 (Source: Team2 Architects)

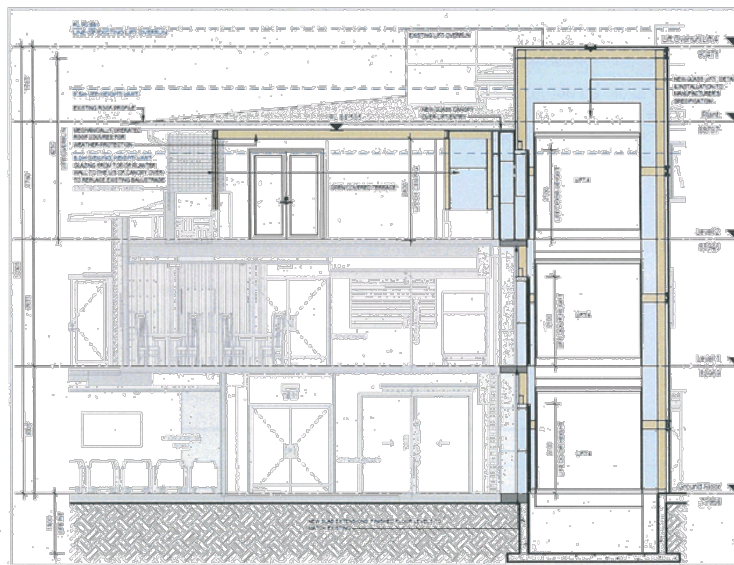


Figure 2: Extract from Glass Lift Detail: Section 2 (Source: Team2 Architects)

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3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

**Achieves the objectives of the standard**

Compliance with the building height development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of this case if it can be demonstrated that the objectives of the development standard are achieved, notwithstanding non-compliance with the standard<sup>2</sup>.

In the case of Clause 40 of the Seniors SEPP, there are no explicit objectives identified for at least paragraph (a), although the note to the paragraph (b) does provide an indication as to its intent, being "to avoid an abrupt change in the scale of development in the streetscape".

As such, it is necessary to infer what the objectives of the standard are, in order to assess whether the objectives are met despite the variation.

In these circumstances, even though the height standard within the Ryde LEP 2014 does not apply due to its inconsistency with the standard in the 'higher order' SEPP, it is nonetheless instructive to consider the objectives applying the maximum height standard in Clause 4.3 of the LEP.

Therefore, for the purposes of this request, we have assessed the proposed variation against the inferred objectives, as shown in Table 1 (below).

Table 1 - Achievement of Development Standard Objectives

Objective	Discussion
To avoid an abrupt change in the scale of development in the streetscape (Senior SEPP)	<p>The proposed roof terrace is 13.795m from the closest adjoining property at No. 1 Aeolus Street, whilst the lift shaft is 20.920m away from this boundary.</p> <p>Both features, as viewed from the street, will sit within the built form of the existing development on the site, being lower in height than the buildings behind them.</p> <p>The existing building already steps down as it comes closer to the boundary and the proposed building elements will not alter this general configuration. As a result, the current relationship of the buildings on the subject site and those adjoining will not alter to any identifiable extent and the objective of avoiding an abrupt change in the scale of development in the streetscape will be met notwithstanding the variation.</p>

<sup>2</sup> In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 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 the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.

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<p>1(a) To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development (Ryde LEP):</p>	<p>Nearby the site is a variety of development types. Whilst there are single detached houses opposite, the site adjoins 4 storey residential flat buildings fronting Aeolus Street and a motor registry opposite on North Road. The maximum building height on the site and surrounding areas under the Ryde LEP is 9.5 metres. The site itself already contains large buildings of variable height up to 11.16m.</p> <p>As such, the character of nearby development, whilst varied, includes large buildings up to 4 storeys.</p> <p>The proposed roof pavilion and lift do not exceed the maximum height of proximate parts of the existing building on the site and will not be highly visible within the site context. The lift is centrally located on the site and not at a street frontage. As such, street frontages of development are in proportion with and in keeping with the character of nearby development notwithstanding the variation.</p>
<p>1(b) To minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area (Ryde LEP).</p>	<p>Because the breaches occur centrally within the building footprint, and do not exceed the maximum height of the current building, there would be no material impact on the existing neighbouring dwellings.</p> <p>As detailed in the SEE, the lift is of contemporary design that will be compatible with current buildings of the site and the area generally. Furthermore, the lift overrun is only visible from certain parts of the road frontage.</p>
<p>1(c) To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport and infrastructure (Ryde LEP).</p>	<p>The proposed lift does not alter the current land use, or transport development, and will improve the sustainability of the land use as a residential aged care facility by improving the access to the proposed communal space on the 2nd floor.</p>
<p>1(d) to minimise the impact of the development on the amenity of surround properties (Ryde LEP).</p>	<p>The proposed lift is setback from the street within an internal courtyard to reduce its impact on surrounding development. The roof terrace pavilion is also well set back from property boundaries and obscured from its closest neighbours by an existing privacy wall.</p> <p>It is important to note that the properties to the North are separated by Aeolus Rd and the properties to the West are separated by North Rd, which further assists in providing separation between the properties.</p> <p>There will be no adverse amenity impacts to the properties located in the R2 zone in terms of overshadowing, over-looking, noise, or views as a result of the breach of the height standard.</p>
<p>1(e) to emphasise road frontages along road corridors (Ryde LEP)</p>	<p>As referred to above, the lift is not located on the road frontage and therefore has no impact on the road frontage.</p>

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4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that there are sufficient environmental planning grounds to support the development. There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Some specific environmental grounds to justify the breach of the standard are summarised as follows:

- The breach allows improved access and amenity for the residents of the Residential Aged Care Facility that would not be possible if strict compliance was required.
- The breach does not exceed the maximum height of the current building on the site.
- The roof terrace pavilion is lower than the maximum building height (9.5 metres) that would apply to any other type of development on this site under the Ryde Local Environmental Plan 2014. Whilst the top of the proposed lift shaft will exceed the LEP maximum height by approximately 1 metre, such variations are commonly allowed. As such, the proposed built form is consistent with that which would generally be expected to be permitted on the site (subject to ordinary considerations of development impacts) for most forms of development. As such, the proposal is compatible with the desired future character of the area, notwithstanding the variations to the Seniors Housing SEPP standard.
- The proposal does not involve a variation to the maximum allowable floor space ratio for the development under the Seniors Housing SEPP.

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

In Section 2 (above), it was demonstrated that the proposal is consistent<sup>3</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of Zone R2 Low Density Residential under the Ryde Local Environmental Plan 2014, as explained in Table 2 (below).

Table 2 - Consistency with Zone Objectives

Objective	Discussion
To provide for the housing needs of the community within a low density residential development	The proposal provides improved access and communal areas for the residential care facility. The breach of the standard does not result in an inconsistency with this objective. In fact, the breach of the standard more appropriately achieves this objective by providing improved amenity for a facility that houses some of the most vulnerable people in the community.
To enable other land uses that provide facilities or services to meet the day to day needs of residents	The breach of the standard does not result in an inconsistency with this objective. The roof top terrace provides important day to day recreational and

<sup>3</sup> In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'.

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	therapeutic benefits for the residents of the aged care facility.
To provide for a variety of housing types	The breach of the standard provides improvements to amenity and accessibility for a type of housing, residential aged care, that is particularly important for the growing proportion of aged and disabled people within the community.

As can be seen from Table 2, the proposal is consistent with the objectives of the standard and the objectives of the zone, and is therefore in the public interest.

**6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]**

There is no identified outcome that would be prejudicial to planning matters of state or regional significance arising as a consequence of varying the development standard as proposed by this application.

**7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]**

The breach of the standard is minor and represents a relatively minor enclosure of an existing roof terrace and a lift over-run, which provide improved amenity and equitable access to the existing building.

Maintaining the standard would have the following implications:

In relation to the lift, it would not enable easy access by residents to the second floor facilities in this part of the building because the lift would be required to stop at the first floor in order to stay within the height standard.

In relation to the roof terrace, it would prevent its enclosure, thus maintaining the current situation where the use of the space by residents is severely compromised by weather conditions, such as when it is too hot, too sunny, too cold, too wet or too windy.

Accordingly, there is no public benefit<sup>4</sup> in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the standard.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

<sup>4</sup> *Ex Gratia P/L v Dungog Council (NSWLEC 148)* established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

**ITEM 4 (continued)**

**ATTACHMENT 3**

**8. Conclusion**

This request demonstrates, as required by Clause 4.6 of the Ryde Local Environmental Plan 2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the R2 Low Density Residential Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

**5 28-30 TWIN ROAD, NORTH RYDE - CONSTRUCTION OF A NEW MULTI-DWELLING HOUSING DEVELOPMENT COMPRISING 5 DWELLINGS, 12 CAR PARKING SPACES AND STRATA SUBDIVISION - LDA2018/0321**

**Report prepared by:** Assessment Officer- Town Planner

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

**File Number:** GRP/09/6/12/1/2 - BP18/1329

**City of Ryde  
Local Planning Panel Report**

<b>DA Number</b>	<b>LDA2018/0321</b>
<b>Site Address &amp; Ward</b>	<b>28 - 30 Twin Road, North Ryde East Ward</b>
<b>Zoning</b>	<b>R2 Low Density Residential</b>
<b>Proposal</b>	<b>Construction of a new multi-dwelling housing development comprising 5 dwellings - 2 x 2 storey, 5 bedroom dwellings at the front and 3 x single storey, 3 bedroom dwellings at the rear, 12 car parking spaces including strata subdivision.</b>
<b>Property Owner</b>	<b>James Hull</b>
<b>Applicant</b>	<b>Otford Holdings PTY LTD</b>
<b>Report Author</b>	<b>Hussein Bazzi – Assessment Officer</b>
<b>Lodgement Date</b>	<b>10 August 2018</b>
<b>No. of Submissions</b>	<b>10 submissions including one (1) petition</b>
<b>Cost of Works</b>	<b>\$1,511,202</b>
<b>Reason for Referral to LPP</b>	<b>Contentious Development – Development is the subject of 10 or more unique submissions by way of objection</b>
<b>Recommendation</b>	<b>Approval</b>
<b>Attachments</b>	<b>Attachment 1 - Compliance Table Attachment 2 – Draft Conditions Attachment 3 - Plans</b>

## ITEM 5 (continued)

### 1. Executive Summary

The following report is an assessment for the construction of a new multi-dwelling housing development comprising 5 dwellings - 2 x 2 storey, 5 bedroom dwellings at the front and 3 x single storey, 3 bedroom dwellings at the rear, 12 car parking spaces including strata subdivision.

The application was lodged on 10 August 2018. The proposal was advertised in the Northern District Times and owners of surrounding properties were given notice between 24 August 2018 and 19 September 2018.

In response to the public notification period, the proposal attracted 10 submissions, objecting to the application with the most common concerns related to traffic, car parking, privacy, overshadowing, noise, boundary fencing and overdevelopment.

The application has been assessed in respect of the relevant planning instruments and was found to be non-compliant with the following development control plan requirements:

- The development results in a minor breach with the maximum extent of excavation allowable under Council's Controls within small portions of the site and has been supported to accommodate vehicle and parking accessibility.
- The development encroaches the minimum allowable front setback for the porches and balconies for Units 1 and 5. Despite being non-compliant, a variation is supported as they are open structures that are visually permeable, provides articulation and minimises the bulk of the development.
- The solar access to the private open space of Unit 2 does not achieve numerical compliance, which has been considered to be difficult and impractical in this situation as the site is constrained by a north west and south east orientation.
- The proposal failed to comply with the desired roof form of multi dwelling housing developments. However, the roof design is supported considering that it is consistent with the existing development within the streetscape, satisfying the objective of the control.

Further details regarding the non-compliances are detailed later in this report.

On balance, it is considered that the development is acceptable on planning grounds as the proposal is consistent with the desired future character of the area and is within the relevant statutory provisions.

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



## ITEM 5 (continued)

### 2. The Site and Locality



**Figure 1** - Aerial photograph of site in context

The site is located on the south side of Twin Road, consists of two (2) allotments and is legally known as Lots 1 and 2 in DP 9571 known as 28 to 30 Twin Road, North Ryde.

The site is rectangular shaped with a site area of 1,681m<sup>2</sup>. The boundary dimensions of the site consist of a combined frontage of 33.53m to Twin Road, depths of 50.29m at the North Western and South Eastern boundaries and a 33.53m width along the rear boundary.

The site slopes downward from the rear boundary to the street by approximately 3.23m.

The site currently accommodates two (2) single storey residential dwellings and associated outbuildings within a landscaped setting (see **Figure 2** below).

The site is currently accessed from Twin Road via two separate driveways.

The site is located adjacent to the Arndell Special School and within close proximity to the Cox's Road Neighbourhood Centre, Blenheim Road Small Centre, East Ryde Public School, North Ryde Public School, New Horizons Aged Care facility and Wallamumatta Nature Reserve.

Surrounding development includes detached dwellings varying in age, scale and architectural style within domestic landscaped settings. As noted above, the Arndell Special School is located directly opposite the site and contains predominantly single storey buildings within a parkland setting.

**ITEM 5 (continued)**

It is further noted that the adjoining property at 32 Twin Road is an existing multi-dwelling housing development (See **Figure 3** below).

**Figure 2** below shows existing detached dwellings on the subject site.



**Figure 2:** Existing dwellings at 28 and 30 Twin Road.

**Figure 3, 4 and 5 and 6** illustrate the existing development and landscape setting along Twin Road.



**Figure 3:** Existing multi dwelling development at 32 Twin Road.

**ITEM 5 (continued)**



**Figure 4:** Existing detached dwellings at 36 and 38 Twin Road.



**Figure 5:** Existing detached dwellings at 56 and 60 Twin Road.



**Figure 6:** Landscape setting with Twin Road.

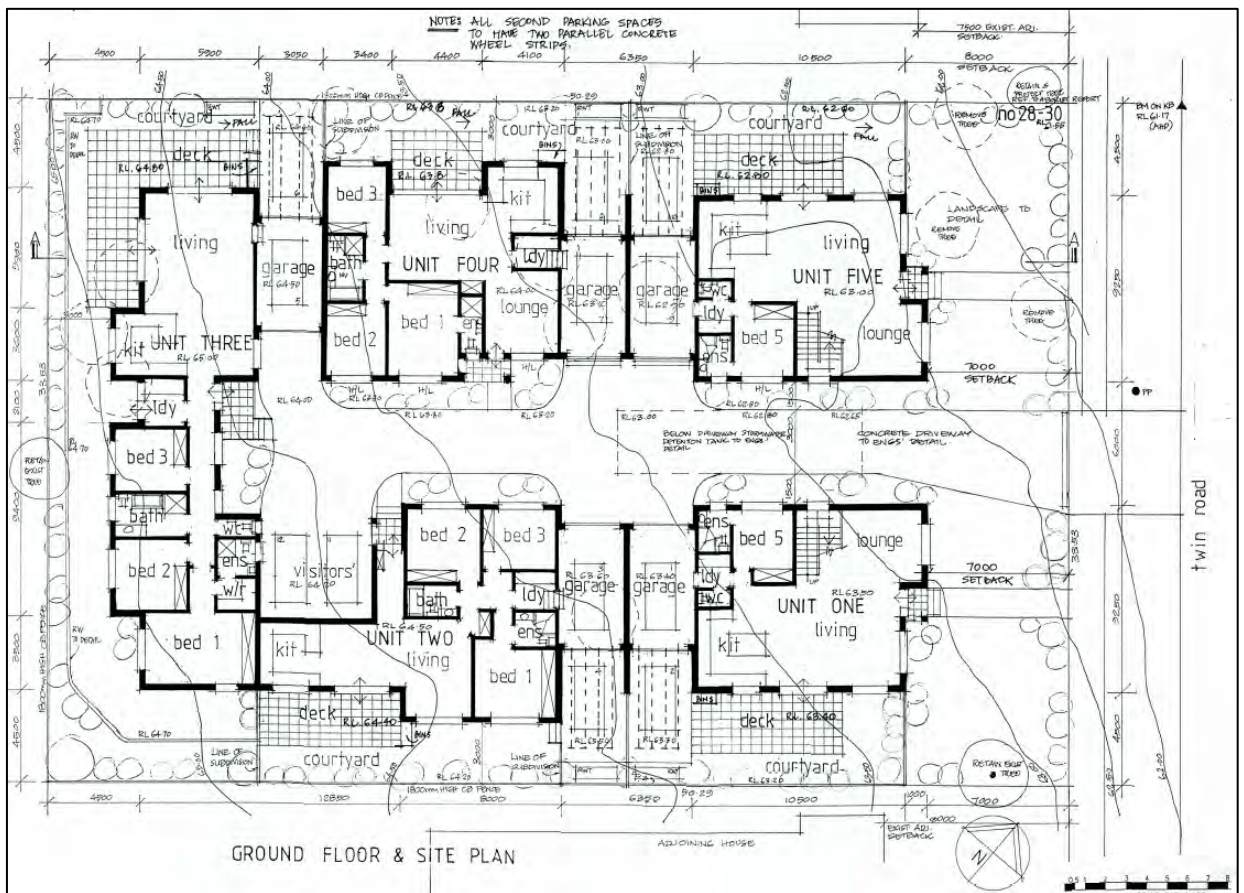
**ITEM 5 (continued)**

**3. The Proposal**

The proposal seeks consent for the construction of a new multi-dwelling housing development comprising a total of 5 dwellings. The proposal also includes strata subdivision and two (2) visitor parking spaces.

Details of the development (as amended) are as follows:

Note: For the purposes of clarity, **Figure 7** below shows the layout of the development.



**Figure 7:** Proposed site layout.

Unit 1 and Unit 5

Units 1 and 5 are both two (2) storey dwellings consisting of identical internal room layouts.

The ground floor contains the following:

- Living area;
- Lounge room;

**ITEM 5 (continued)**

- Kitchen;
- Bedroom;
- Bathroom;
- Laundry;
- Deck within the courtyard; and
- One (1) lockup garage with a tandem parking space immediately behind.

The first floor contains the following:

- Four (4) bedrooms (Bedroom 1 contains a walk-in robe and ensuite);
- Bathroom;
- Study;
- Retreat; and
- Balcony fronting Twin Road.

Unit 2

- Three (3) bedrooms (Bedroom 1 contains a ensuite);
- Living area;
- Kitchen;
- Bathroom;
- Laundry;
- One (1) lockup garage with a tandem parking space immediately behind; and
- Deck within the courtyard.

Unit 3

- Three (3) bedrooms (Bedroom 1 contains a walk-in robe and ensuite);
- Living area;
- Kitchen;
- Bathroom;
- Laundry;
- One (1) lockup garage with a parking tandem space immediately behind; and
- Deck within the courtyard.

Unit 4

- Three (3) bedrooms (Bedroom 1 contains a ensuite);
- Living Area;
- Lounge;
- Kitchen;
- Bathroom;
- Laundry;
- One (1) lockup garage with a tandem parking space immediately behind; and
- Deck within the courtyard.

**ITEM 5 (continued)**

Figure 8 below shows the elevations of the development.



**Figure 8:** Elevations of the proposed development.

**4. Background**

The development application was submitted to Council on 10 August 2018.

A letter was forwarded to the applicant on 30 October 2018 identifying issues identified during assessment:

- Clause 3.4(b) of RDCP 2014 *Part 3.4: Multi Dwelling Housing* requires multi dwelling developments to provide a minimum 35% pervious area. According to

**ITEM 5 (continued)**

Council's calculations the proposed total pervious area was equal to 29.4%. This issue required the applicant to amend the plans to provide a total pervious area equal or greater to 35%.

- The applicant was made aware that the front setback did not comply with the Controls outlined in Clause 3.5.1 of RDCP 2014 *Part 3.4: Multi Dwelling Housing*, which required further amendments to be made.
- The proposed roof design was not in accordance with Clause 4.3 of DCP 2014 *Part 3.4: Multi Dwelling Housing*. This required the roof pitch to increase a minimum of 22 degrees and required the applicant to justify the use of hipped roofs fronting Twin Road in lieu of the use of gables.
- The applicant was requested to provide the location of storage areas for waste.
- The applicant was requested to provide clarification regarding plan inconsistencies between the site, landscape and drainage plan.

The applicant submitted amendments and information on 7 November 2018 that satisfactorily addressed the above issues. The amendments are outlined below:

- The amended plans increased the total pervious area to 35.9%; this was achieved through providing wheel strips in lieu of pavers for the tandem car parking spaces within each Unit.
- The front setback was amended, providing 7.0m for 56% of the walls for Units 1 and 5. Despite still being non-compliant the applicant justified that the front setback was consistent with the existing development along Twin Road, including the 6% encroachment being limited to permeable structures.
- The roof design was amended to consist of a 22.5 degree roof pitch, however the use of gables fronting Twin Road was not provided. This matter was justified as gable roofs in this situation will contribute to the overall bulk of the development.
- The waste storage areas were provided on the plans, illustrating that the bin storage areas are located within the courtyards.
- The architectural plans were updated, amending the inconsistencies.

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 original and did not result nor increase the impact on adjoining properties.

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

A BASIX Certificate (Certificate No. 948641M dated 27 July 2018) has been submitted with the application.

**ITEM 5 (continued)**

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	41
Thermal Comfort	Pass	Pass
Energy	50	50

An appropriate condition (See **Conditions 3** and **61**) is included in the draft conditions to ensure this is addressed.

**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.

**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.

Under RLEP 2014, the property is zoned R2 Low Density Residential, and the proposed development is permissible with Council's consent.

Aims and objectives for the R2 Low Density Residential zone

The objectives of the zone are as follows:

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

The development will 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.***

This objective is not applicable to the proposed development.



**ITEM 5 (continued)**

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

The provision of a multi dwelling housing development will satisfy the objective for providing a variety of housing types.

The development satisfies the above objectives for R2 Low Density Residential zones.

Part 4 – Principle Development Standards

The following table below provides a summary of the applicable Clauses in respect to the principle development standards outlined under Part 4 of RLEP2014:

Clause	Proposal	Compliance				
<b>4.1B Minimum lot sizes for dual occupancies and multi dwelling housing</b>						
(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 = 1681m <sup>2</sup>  Total frontage to Twin Road = 33.53m	Yes				
<table border="1"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> </tr> </thead> <tbody> <tr> <td>Multi dwelling housing</td> <td>900m<sup>2</sup></td> </tr> </tbody> </table>	Column 1	Column 2	Multi dwelling housing	900m <sup>2</sup>		
Column 1	Column 2					
Multi dwelling housing	900m <sup>2</sup>					
<b>4.3(2) Height of Buildings</b>						
9.5m	Unit 1: 7.85m Unit 5: 7.6m	Yes				
<b>4.3A(2) Exceptions to height of buildings</b>						
Despite clause 4.3, the maximum height of a dual occupancy (attached) and a multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	Unit 3: 4.6m Unit 2: 4.95m Unit 4: 5.0m	Yes				
<b>4.5A Density controls for Zone R2 Low Density Residential</b>						
Development consent must not be granted to the erection of multi dwelling housing on land in Zone R2 Low Density Residential unless:	Unit 1: 5 Bedroom Unit 2: 3 Bedroom Unit 3: 3 Bedroom					

**ITEM 5 (continued)**

Clause	Proposal	Compliance
(a) The site area for the building is not less than:	Unit 4: 3 Bedroom Unit 5: 5 Bedroom	
(i) For each 1, 2 or 3 bedroom dwelling: 300m <sup>2</sup> , and	Total area required = 1,630m <sup>2</sup>	Yes
(ii) For each 4 or more bedroom dwelling: 365m <sup>2</sup> , and	Total site area proposed = 1,681m <sup>2</sup>	
(b) Each dwelling will have its own contiguous private open space.	Each dwelling contains its own contiguous private open space.	Yes

**Other Relevant Clauses**
Clause 6.2 - Earthworks

Clause 6.2 requires consideration of the impact of earthworks in relation to environmental functions, processes, neighbouring uses, cultural and heritage items and features of the surrounding land.

The following matters are required to be considered:

**(a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.***

The site is not located within an overland flow area.

**(b) *The effect of the development on the likely future use or redevelopment of the land.***

The proposed extent of excavation is to facilitate the future development of the site.

The proposed plans indicate that the extent of excavation will be limited between 300mm to 500mm to accommodate the proposed driveway, building footprint and workable private open spaces.

**(c) *The quality of the fill or the soil to be excavated, or both.***

The subject site is not identified as contaminated land.

**(d) *The effect of the development on the existing and likely amenity of adjoining properties.***

The plans provided with the application provide sufficient detail to the level of excavation required to accommodate the proposal. The extent of excavation is considered not to contain a detrimental impact on adjoining properties.

**ITEM 5 (continued)****(e) *The sources of any fill material and the destination of any excavated material.***

The site is not identified as contaminated land. No information is provided in regard to the destination of excavated materials; however this matter is appropriately addressed under a condition of consent. (See **Condition 12**).

**(f) *The likelihood of disturbing relics.***

Given the location of the site and previous development, it is unlikely that any relics would be disturbed.

**(g) *The proximity to and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.***

Subject to adequate sedimentation measures during construction, the proposal is unlikely to impact any waterway and it will not impact any drinking water catchment or environmentally sensitive area.

**(h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.***

A condition will be imposed on the consent addressing sedimentation measures during construction. (See **Condition 34**)

**Clause 6.4 - Stormwater Management**

Clause 6.4 addresses Stormwater management and requires the following matters to be considered:

- (a) *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***
- (b) *Includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and***
- (c) *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.***

The proposed stormwater management system for the development discharges to the kerb in Twin Road and incorporates an onsite detention system located underneath the driveway complying with Councils requirements.

**ITEM 5 (continued)**

In addition, the applicant has provided rain water tanks for each unit within the development containing a capacity of 2000L per unit as an alternate supply for water re-use.

**5.3 Draft Environmental Planning Instruments**

There are no draft environmental planning instruments of relevance to the assessment of the application.

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

The proposal is subject to the provisions of the following parts of Council's DCP:

- 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.

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 Traffic Engineer.

Part 3.4 is addressed below.

**Part 3.4 – Multi Dwelling Housing**

The development is subject to Part 3.4: Multi Dwelling Housing of RDCP 2014.

Clause 1.3 – Objectives

The objectives of Part 3.4 are:

1. *To ensure multi dwelling housing developments complement existing development and streetscape;*
2. *To encourage dispersal of multi dwelling housing developments within neighbourhoods throughout the City of Ryde;*
3. *To require multi dwelling housing developments be designed to the highest possible aesthetic standard;*

**ITEM 5 (continued)**

4. *To ensure multi dwelling housing developments meet the needs of all households including older persons;*
5. *To provide for a mix of housing types throughout the City of Ryde;*
6. *To ensure that multi dwelling housing designs promote security and safety of residents;*
7. *To ensure that land used for multi dwelling housing development has adequate provision or daylight, privacy, landscaping and car parking;*
8. *To ensure the amenity of occupants of adjoining land is not adversely affected by any multi dwelling housing development;*
9. *To require the scale of any multi dwelling housing development be related to the character of the area;*
10. *To provide for the retention of heritage significant buildings and those identified as contributing to the character of Ryde; and*
11. *To ensure that multi dwelling housing developments occur in suitable areas only, that is areas where the development meets the needs of all residents, does not have adverse environmental impact or an adverse impact on the character of an area.*

Comment

It is considered that the development satisfies the objectives set out in Clause 1.3.

A full assessment of the proposal under DCP 2014 is illustrated in the compliance table held at **Attachment 2**.

Four (4) non-compliances have been identified in the table which are assessed below.

**Non-Compliances**

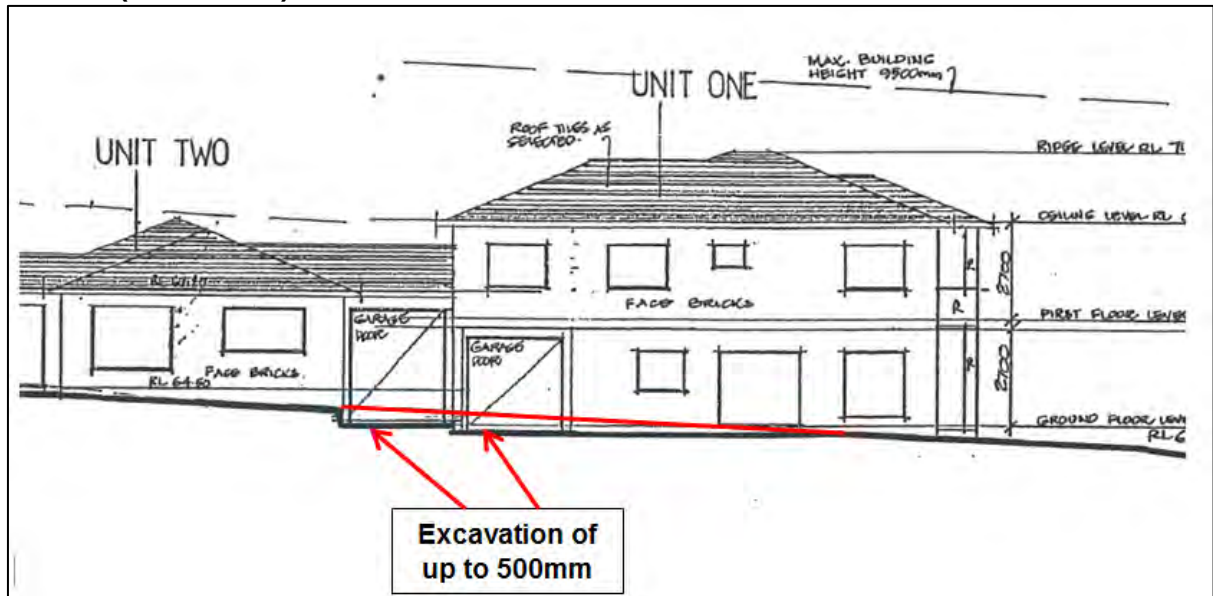
Clause 3.2 (b) – Altering site levels (Supported on merit)

Clause 3.2 (b) states the levels of the site should not be altered by more than 300mm, this relates to all areas of the site not covered by the building floor envelope such as driveways, courtyards and landscaped areas.

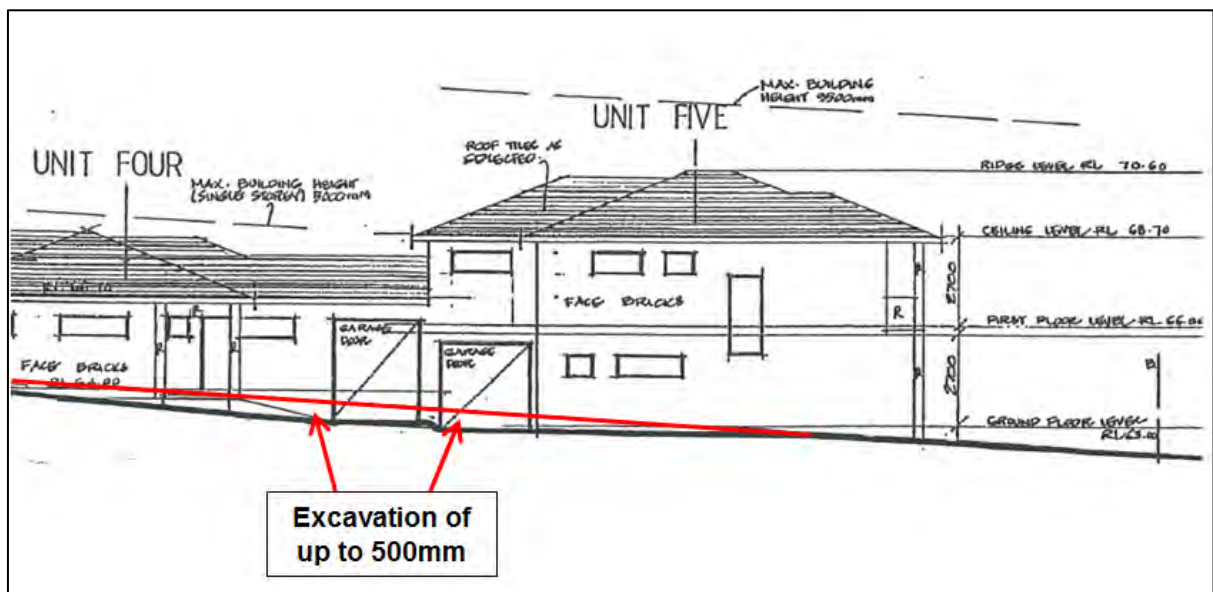
A review of the proposal reveals that the development will require up to 500mm outside the buildings envelope. This extent of excavation occurs within the tandem parking spaces of Units 1 and 2 and within the driveway adjacent to Units 4 and 5.

**Figures 9 and 10** below demonstrate the extent of the non-compliance.

**ITEM 5 (continued)**



**Figure 9:** South eastern side elevation demonstrating the extent of cut to accommodate the tandem arrangements for Units 1 and 2.



**Figure 10:** South eastern internal elevation illustrating the extent of excavation for the driveway adjacent to Units 4 and 5.

Although exceeding the maximum allowable extent of excavation, the non-compliance is supported for the following reasons:

- The extent of excavation exceeding the above development control is within small portions of the site being limited to the driveway adjacent to Units 4 and 5 and tandem parking spaces for Units 1 and 2 (see **Figures 9** and **10** above), as such the variation can be considered minor.
- The proposed development is considered not to be unsympathetic with the natural topography of the site and adjoining properties.

**ITEM 5 (continued)**

- Despite not meeting compliance with the following control, the extent of excavation will not result in a loss in amenity for future occupants of the proposed development.
- The amenity of neighbours will not be impacted as a result of excavation.
- The extent of excavation proposed will establish usable parking spaces for Units 1 and 2, whilst achieve an appropriate driveway grad for vehicle accessibility within the site through levelling out those portions.

Clause 3.5.1 – Front setback (Supported on merit)

Clause 3.5.1(a)(i) requires multi dwelling housing development to have a front setback which is 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 2.0m.

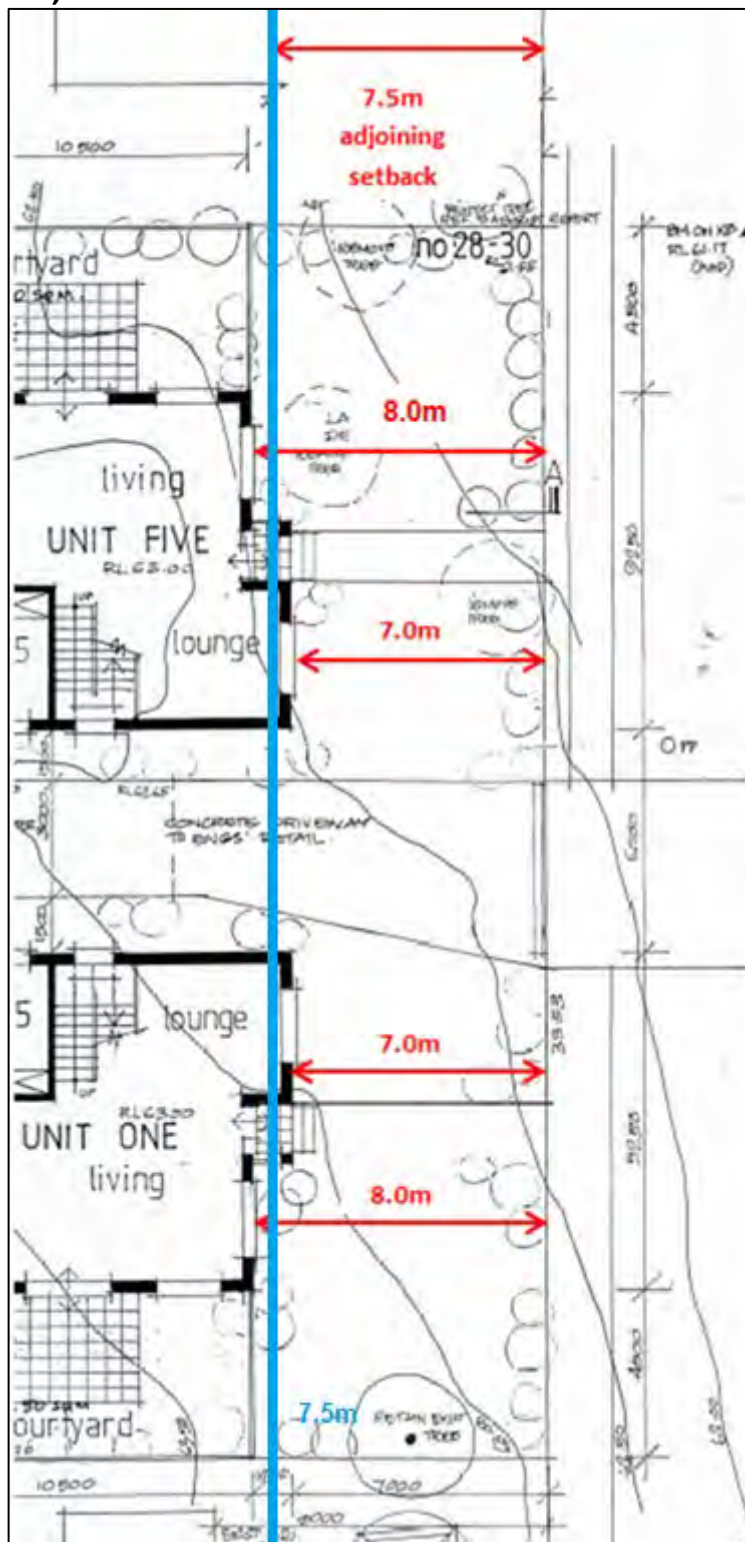
A review of the submitted plans has revealed that the distance between the adjoining setbacks at 26 and 32 Twin Road is 1.5m, with the adjoining setback to 32 Twin Road being 7.5m and 26 being 9.0m. Therefore based on the DCP requirement, the difference between the adjoining setbacks is not greater than 2.0m and the development was permissible to consist of a 7.5m front setback.

Notwithstanding the above, Clause 3.5.1(b) permits Council to consider a setback of 1.0m less than the above requirement for not more than 50% of the front elevation of the building to provide architectural interest to the development and streetscape.

The applicant has provided a front setback (to Units 1 and 5) of 8.0m for 39% of the wall and 7.0m for 61% for the remaining portions.

**Figure 11** below illustrates the proposed front setback (the adjoining setback of 7.5m is detailed in blue).

**ITEM 5 (continued)**



**Figure 11:** Proposed front setback

A further review has shown a non-compliance with the above mentioned control where 61% of the front setback will be less than the minimum



**ITEM 5 (continued)**

required 7.5m, which is a result of the front porches accounting for the 11% encroachment.

Despite being non-compliant, the proposed front setback has been supported for the following reasons:

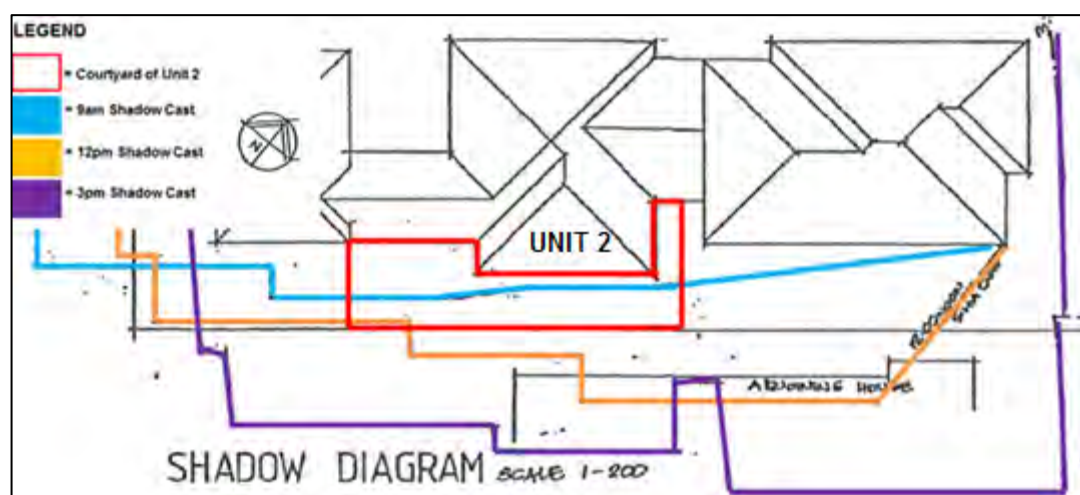
- An assessment of the proposed development in relation to the existing surrounding development has revealed that the proposed front setback will be in keeping within the existing streetscape.
- The porches and balconies above are open structures that are visually permeable which provides additional articulation that minimises the bulk of the buildings when viewed from the street.
- The applicant has provided a sufficient landscape setting which maximises the pervious area within the front setback and moderates the built form which positively responds to the landscape setting within Twin Road.
- The variation provides architectural interest to the streetscape.

Therefore, the proposed front setback is supported.

Clause 3.9 - Overshadowing and Access to Sunlight (Supported on merit)

Clause 3.9(b) states that multi dwelling developments must provide sunlight to at least 50% of each courtyard within the development for not less than two hours between 9am and 3pm on June 21 (Winter Solstice).

A review of the proposal in respect to overshadowing reveals that the sunlight to the courtyards is generally compliant. However, it is noted that the courtyard of Unit 2 will not achieve the numerical amount of sunlight required (See **Figure 12** below).



**Figure 12:** Extent of overshadowing the courtyard of Unit 2 (outlined in red).

Upon further consideration of the proposal, it is considered that achieving numerical compliance with the following control for Unit 2 would be difficult in this instance as the courtyard in question is located to the south eastern side of a single storey

**ITEM 5 (continued)**

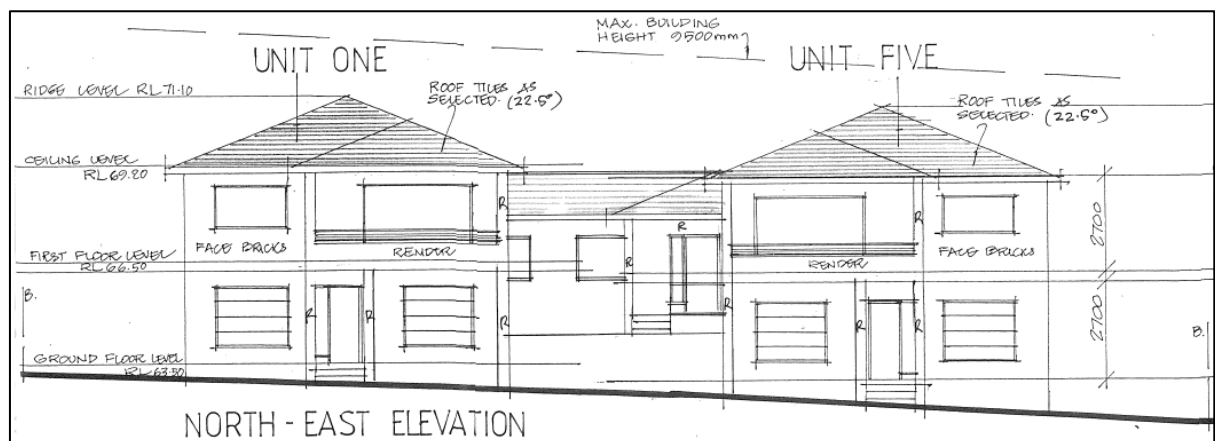
component within the development which has a complaint building height and side setback.

Therefore, the proposed variation is supported.

Clause 4.3 - Roofscape (Supported on merit)

Clause 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 proposed development is at variance of the above control where Units 1 and 5 fronting Twin Road include hipped roofs with a pitch at 22.5 degrees (See **Figure 13** below).



**Figure 13:** North Western elevation illustrating the proposed hipped roof fronting Twin Road.

Although not complying with Council's desired roof form, this minor non-compliance is supported for the following reasons:

- The design of the overall bulk and scale of the building is considered to be compatible with the existing streetscape as seen below in **Figures 14, 15 and 16**.
- Architectural features have been incorporated into the design, as well as articulation to the façade of each dwelling adding interest to the appearance of the development which compliments the existing streetscape, satisfying the objectives of control.
- 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, minimising the bulk of the development.

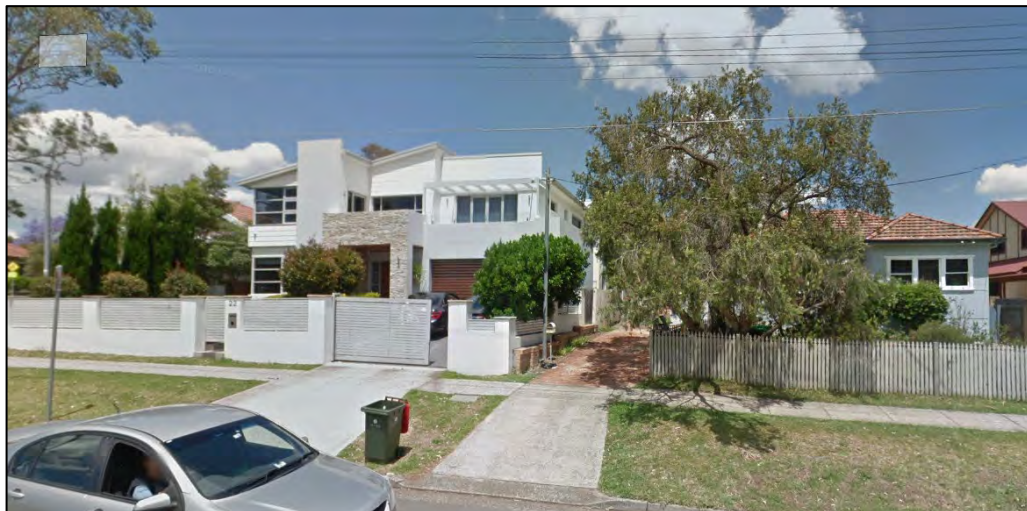
**ITEM 5 (continued)**



**Figure 14:** 36 and 38 Twin Road consisting of hipped roofs fronting the street.



**Figure 15:** 40, 42 and 44 Twin Road with hipped roofs fronting the street.



**Figure 16:** Image of 22 Twin Road consisting of a mix with a skillion and parapet roof including 24 Twin Road with a hipped roof.

### ITEM 5 (continued)

Therefore the variation is supported.

#### 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	\$12,683.22
Open Space & Recreation Facilities	\$31,223.55
Civic & Urban Improvements	\$10,619.73
Roads & Traffic Management facilities	\$1,448.58
Cycleways	\$904.86
Stormwater Management Facilities	\$2,876.10
Plan Administration	\$243.96
<b>The total contribution is</b>	<b>\$60,000.00</b>

Condition on the payment of Section 7.11 Contribution of **\$60,000.00** has been included in the Conditions of Consent. (See **Condition 19**)

#### 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

The following discusses the likely impacts of the development within the local area.

#### Built Form

The proposed bulk and scale of the development is considered to be suitable for the site which complements the existing streetscape and offers diversity in housing options within the North Ryde locality.

**ITEM 5 (continued)**

The design of the proposal is within Council's provisions for multi dwelling housing with no detrimental impact to adjoining properties and surrounding environment.

This has been achieved as the proposal is consistent with the envisaged guiding principles and objectives for multi dwelling housing as outlined in Clause's 1.2 and 1.3 of *RDCP 2014 - Part 3.4: Multi Dwelling Housing*.

Overshadowing and Solar Access

The impact to adjoining properties is considered to be satisfactory as 3 Meta Street and 26 Twin Road will not be greatly impacted to their private open space or north facing living area windows.

Despite a non-compliance related to the Courtyard of Unit 2, Council has supported the proposal on the grounds that it is impractical for numerical compliance to be achieved as result of the constraints imposed by the orientation of the site.

Overall the development is satisfactory with regards to overshadowing solar access.

Visual Privacy

The proposal is considered to protect the privacy of not only adjoining dwellings but also between future occupants. This has been achieved by the applicant incorporating a design where the living areas are separated sufficient distances from adjoining properties and other units within the complex.

The private open space for each unit will neither provide opportunities for overlooking as the areas will be concealed by the 1.8m high boundary fence.

With further regard to the two (2) storey components being Units 1 and 5, the windows located on the first floor orientated to the side boundaries service bedrooms which are not considered to be of such significance as opposed to living areas.

Therefore the proposal will not result in any detrimental impact in respect to visual privacy.

Traffic

The traffic generation for the proposed development is expected to be approximately three (3) to four (4) vehicle trips per hour during the morning peak period (7am – 9am) and afternoon peak period (2.45pm – 3.45pm).

The net increase in traffic generation from the proposal will be two (2) additional vehicle trips per hour. Council's Traffic Engineer has advised that this impact is minor as the existing residential dwellings generate about two (2) vehicle trips per hour.

Therefore, it is considered that additional traffic generated by the development is minimal and will not have any significant impact on the existing road network.

**7. Suitability of the site for the development**

## ITEM 5 (continued)

As detailed above within this report, the development is within the relevant planning controls whilst responding to the surrounding environment and is permissible within the R2 zones.

### 8. The Public Interest

Having regarded the assessment contained in this report it is considered that the proposal is within the relevant applicable planning controls, notwithstanding the minor non-compliances which will contain no detrimental impact to future occupants or adjoining properties.

On balanced consideration, it is considered that approval of the development is within 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 24 August 2018 and 19 September 2018.

In response to the public notification periods, 10 submissions and one (1) petition was received, from the following:

Address
Address not provided
26 Twin Road, North Ryde
24 Moncrieff Drive, North Ryde
2/32 Twin Road, North Ryde
3/32 Twin Road, North Ryde
4/32 Twin Road, North Ryde
5/32 Twin Road, North Ryde
6/32 Twin Road, North Ryde
45 Badajoz Road, Ryde
Address not provided

The submissions and petition raised the following issues:

- **Unacceptable increase in density and overdevelopment within the North Ryde area**

Several objections raised a concern for unacceptable density within the North Ryde area.

#### Comment

**ITEM 5 (continued)**

Multi dwelling housing developments are permissible in R2 Low Density Residential Zones under the Ryde LEP 2014.

The proposal has complied with the site and density requirements outlined in RLEP 2014. In addition, the development responds positively to the overall site and streetscape.

Furthermore, there are no controls limiting the amount of multi dwelling developments within any particular area.

This issue does not warrant the refusal of the application.

- **Precedent for multi dwelling housing**

Concern was raised that the use will set a precedent for multi dwelling housing within the locality.

Comment

Multi dwelling developments are a form of residential development that are permissible within the R2 zones and will therefore, not create a precedent.

Therefore, this issue does not warrant refusal of the application.

- **Existing development at 24 and 24a Twin Road**

An objection was raised on the grounds that 24 and 24a Twin Road consists of two (2) dwellings on one (1) lot.

Comment

No. 24 and 24a Twin Road is a subdivided battle axe lot which consists of separate privately owned properties.

The subdivision of the allotment does not relate to the subject proposal and this issue does not warrant the refusal of the application.

- **Lack of parking for number of residents proposed**

Objectors raised a concern about the lack of car parking provided for the proposed development.

Comment

In accordance with RDCP 2014 *Part 9.3: Parking Controls* the proposal is required to provided two (2) off street parking spaces per dwelling and one (1) visitor space per four (4) dwellings.

**ITEM 5 (continued)**

In this instance the development includes five (5) dwellings containing a minimum of three (3) bedrooms per dwelling. The proposal has provided a total of 10 off street car spaces (2 per dwelling) and two (2) visitor spaces, complying with Council's car parking requirements.

This issue does not warrant the refusal of the application.

- **Car parking along Twin Road**

Concerns were raised for the lack of on street car parking along Twin Road.

Comment

Observations of Twin Road have revealed that the primary generators of parking in the area are the schools and hospital.

The main spaces for on street car parking occurs adjacent to the residential properties on the southern side of Twin Road between Badajoz Road and Nerang Street, however the northern side of the road, adjacent to Ryde Common is effectively vacant throughout the day.

It is acknowledged the on street parking occupancy is low, however the proposal has satisfied Council's minimum off street car parking requirements and this issue does not warrant the refusal of the application.

- **Garages within the complex**

An objection raised a concern regarding the access and positioning to the proposed garages, including the capacity of the garages to accommodate two (2) vehicles.

Comment

At least one (1) car space per dwelling is a private lock up garage with a tandem arrangement immediately behind for each dwelling to accommodate two (2) vehicles.

Council's Development Engineer is satisfied that the development provides sufficient space in accordance with the Australian Standard for the provision of turning circle for vehicles to enter and leave in a forward direction.

Furthermore, the dimensions for all car parking spaces are generally in accordance with the requirements outlined in *AS2890.1 Parking Facilities – Part: 1 Off Street Car Parking*.

This issue does not warrant the refusal of the application.

- **Traffic congestion**

A number of submissions raised concerns for the increase in traffic congestion along Twin Road and surrounding streets.



**ITEM 5 (continued)**Comment

The traffic generation for the development is anticipated to be approximately three (3) to four (4) vehicle trips per hour during the morning peak period (7am – 9am) and afternoon peak period (2.45pm – 3.45pm).

When taking into account the existing residential dwellings which are expected to generate about two (2) vehicle trips per hour the net increase in traffic would be, at most, two (2) additional vehicle trips per hour during these peak periods.

Therefore, the impacts on traffic generated by the development are considered to be relatively minor and will not warrant the refusal of the development application.

- **Increased traffic during seasonal events**

A submission raised a concern regarding the traffic generation during seasonal events at North Ryde Common and East Ryde Public School.

Comment

As noted above, the traffic generated by the development on the local road network is considered to be minimal (i.e. two (2) additional vehicle trips per hour during peak periods).

Therefore, the subsequent impact upon traffic generated by seasonal events at the North Ryde Common and East Ryde Public School is also considered to be minimal.

This issue does not warrant the refusal of the application.

- **Impact on traffic during construction**

A submission raised a concern on the impact on traffic during construction.

Comment

Council acknowledge that there will always be some impact on the local community as a result of any construction. To try and limit the traffic impact, especially given that there is a local school within the locality; a condition has been imposed on the consent requiring the submission of a Construction Traffic Management Plan.

This plan requires that there be no heavy vehicle movements or construction activities affecting vehicle and/or pedestrian traffic to occur during the school zone hours. (See **Condition 35**)

This issue does not warrant the refusal of the application.

- **Vehicles speeding**

A concern was raised with vehicles speeding along Twin Road with the proposed development resulting in a potential unsafe outcome.

**ITEM 5 (continued)**Comment

The driving practices of individuals on public roads is not a matter for consideration under s.4.15 of the *Environmental Planning and Assessment Act, 1979*. Rather, this matter is legally and appropriately dealt with by the NSW Police.

This issue does not warrant the refusal of the application.

- **Loss of on street parking during waste collection**

A concern was raised with loss of on-street parking due to the placement of garbage bins during waste collection.

Comment

Council considers that it is inevitable that there will be the loss of on-street parking during periods of waste collection; however, this is temporary as Council's waste management vehicle moves along the street.

It should be noted that the development is reducing the number of crossovers from two (2) to one (1) thereby increasing the amount of continuous frontage and providing further on-street parking.

This issue does not warrant the refusal of the application.

- **Storage of garbage areas**

A submission raised a concern for the location of garbage areas.

Comment

As required under *RDCP 2014 - Part 3.4: Multi Dwelling Housing - Clause 4.8*, the storage areas for garbage will be located behind each dwelling within the courtyard.

The storage areas will not be visible from public spaces.

This issue does not warrant the refusal of the application.

- **Damage to vehicles parked on Twin Road.**

Submissions raised objections based on previous experiences of their vehicles being damaged by other travelling vehicles along Twin Road.

Comment

There is no correlation between damage caused to vehicles and the proposed development.

This issue does not warrant the refusal of the application.

**ITEM 5 (continued)****• Character of the Area**

An objection raised a concern that the development is inconsistent with the existing character of the area.

Comment

An inspection of Twin Road reveals that the existing streetscape consists of a landscape setting with residential development varying in scale with single and two (2) storey developments including an existing multi-dwelling development immediately adjacent to the subject site at 32 Twin Road.

The proposal includes both single and two storey buildings the two x 2 storey dwellings fronting Twin Road.

Upon consideration of the proposal in respect to the existing character, the proposal is deemed to satisfy the objectives for the desired future character of the area through providing a design with well-proportioned elevations, satisfactory level of amenity and an acceptable landscape setting that will contribute to the overall characteristics along Twin Road.

In this regard, the development is considered to be compatible with the existing character of Twin Road.

This issue does not warrant the refusal of the application.

**• Loss of Privacy**

Concerns were raised for the loss of privacy to adjoining dwellings at 26 and 32 Twin Road.

Comment

A review of the proposal has revealed that the development will not have a detrimental impact to the privacy of the adjoining dwellings at No. 26 and No. 32 Twin Road.

This is achieved by incorporating a design whereby the living areas are separated sufficient distance from adjoining properties and by providing the private open space for each unit generally at ground level.

The proposal also includes decks which are slightly elevated; however any opportunity for overlooking is prevented by the 1.8m high boundary fence.

Objections also raised concerns regarding the loss of privacy from the first floor windows orientated to the side boundaries of Units 1 and 5.

A review of the plans has shown that these windows service bedrooms and are not considered to be of such significance as opposed to living area windows. This

**ITEM 5 (continued)**

conclusion has been derived from the Land and Environment Court case *Meriton v Sydney City Council [2004] NSWLEC 313*, 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.**”*

Therefore, these windows will not require additional treatment or relocation.

This issue does not warrant the refusal of the application.

- **Overshadowing**

Concerns were raised on the impacts of overshadowing as result of the development.

Comment

The properties impacted by the shadows of the development are No. 3 Meta Street and No. 26 Twin Road.

With respect to Clause 3.9 of RDCP 2014 *Part 3.4: Multi Dwelling Housing*, a review of the shadow diagrams reveals that No. 3 Meta Street will receive a compliant level of sunlight to its private open space from 11am onwards on 21 June (Winter Solstice).

No. 26 Twin Road will receive at least 3 hours sunlight to a portion of the surface for its North Western facing window between 9am and 12pm and will also receive over 2 hours sunlight to 50% of its private open space on 21 June (Winter Solstice).

**Figure 17** below demonstrates the extent of overshadowing to adjoining properties.

ITEM 5 (continued)

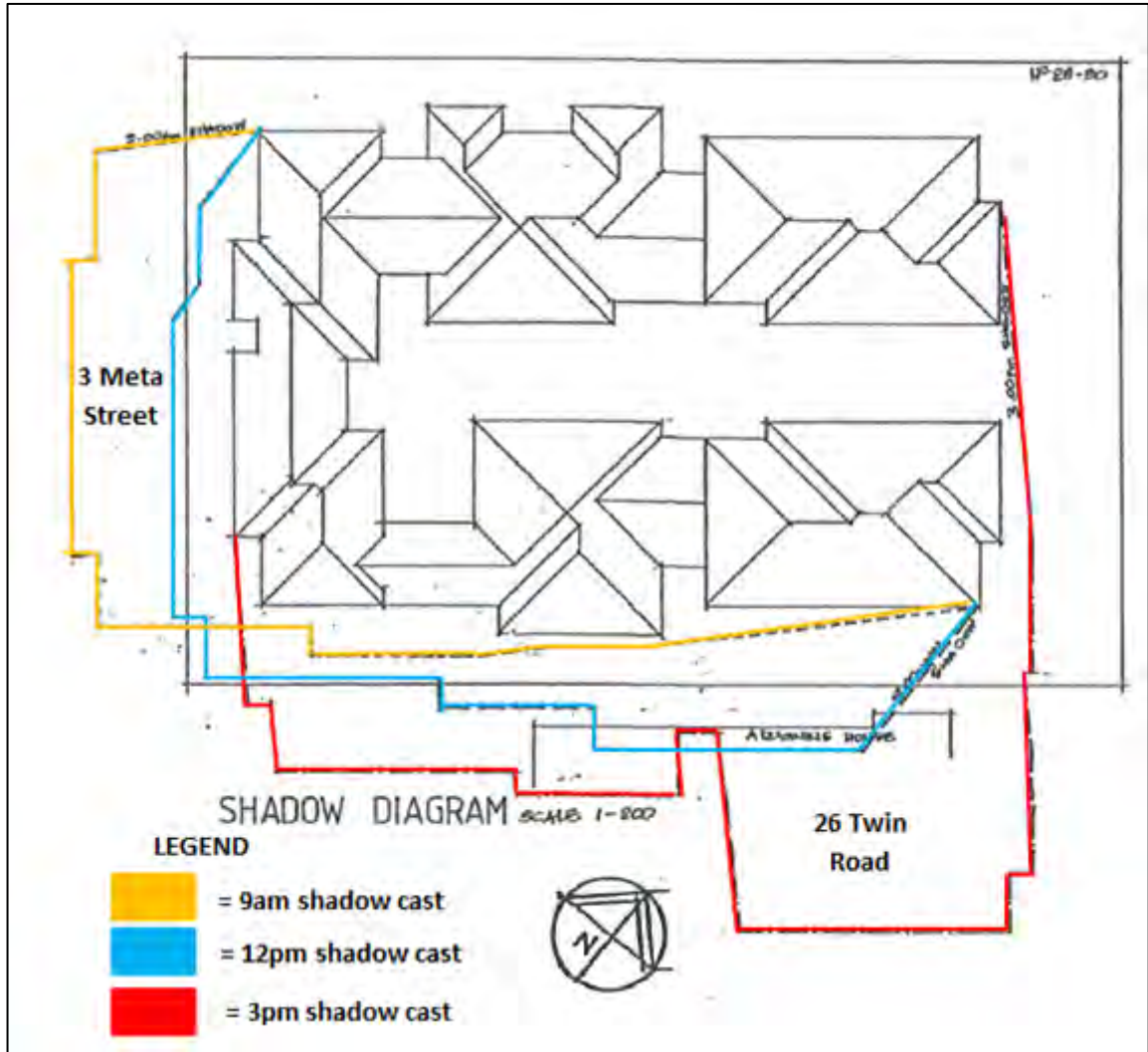


Figure 17: Extent of overshadowing to adjoining properties on 21 June (Winter Solstice)

This issue does not warrant the refusal of the application.

- **Demolition**

A number of submissions have raised concerns about demolition and the removal of hazardous materials such as asbestos.

Comment

The proposal submitted to Council seeks development consent for the construction of a new multi-dwelling housing development, associated car parking and strata subdivision.

Demolition is not proposed with this application and will be subject to separate approval. It is the responsibility of the owner and contractors to ensure the removal of any hazardous waste is undertaken in a safe and legal manner in accordance with WorkCover and the Australian Standards.

**ITEM 5 (continued)**

This issue does not warrant the refusal of the application.

- **Fencing**

A number of submissions raised concerns regarding the boundary fence between the subject sites and adjoining properties.

Comment

The proposal will seek to establish a new 1.8m high timber lapped and capped boundary fence around the subject site.

A condition has been included on the consent to ensure that the replacement of the boundary fence is to be replaced at the cost of the applicant. (See **Condition 63**)

This issue does not warrant the refusal of the application.

- **Noise**

A number of submissions raised concerns regarding the noise generated by the construction and ongoing future residential use of the development.

Comment

The proposal seeks consent for the construction of a multi dwelling housing development within an R2 zone where it is considered that the noise emitted from the development will be limited from general household activities.

Any noise emitted from ancillary items such as air conditioning units or the like are subject to a condition of consent 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. (See **Condition 13**)

In addition, appropriate conditions in respect to working hours and noise mitigation have been imposed on the consent to ensure that the noise during the construction phase is kept to a minimum where practical (See **Conditions 5 and 47**).

This issue does not warrant the refusal of the application.

- **Visual outlook and views**

Concern has been raised on the visual outlook and views from the private open space of No. 26 Twin Road.

Comment

The proposal complies with Council's requirements regarding height, bulk and scale.

**ITEM 5 (continued)**

Currently, No. 26 Twin Road is adjacent by a single storey dwelling on the subject site. The construction of Unit 1 will introduce a new two storey built form which will change the outlook of No. 26 Twin Road when viewed directly across the side boundary to the north. However, the built form of this new two storey building would be no different to that of a detached two storey dwelling house which is permitted in the zone.

The outlook to the front, rear and a large part of the northern side boundary of No. 26 Twin Road will remain unaltered.

A site inspection revealed that there are no significant views or vistas from No. 26 Twin Road.

This issue does not warrant the refusal of the application.

- **Tree Planting.**

Concern is raised to the planting of two (2) '*Elaeocarpus Reticulus*' (Blueberry Ash) on the boundary adjoining No. 26 Twin Road.

Comment

The planting of two (2) '*Elaeocarpus Reticulus*' (Blueberry Ash) will have some potential future impact to the property at No. 26 Twin Road.

In this respect, a condition has been imposed to relocate these trees to the front setback to achieve a more amenable outcome for the landscape setting along Twin Road. (See **Condition 36**).

This issue does not warrant the refusal of the application.

- **Levels at the top of the roof ridges to be shown on the plans**

A submission requested that the levels of the roof ridges for Units 2, 3 and 4 to be shown on the plans.

Comment

The top of the roof ridges have now been provided on the amended plans and demonstrate that Units 2, 3 and 4 will comply with the overall height requirement under Clause 4.3A(2) of RLEP 2014.

This issue does not warrant the refusal of the application.

- **Insufficient infrastructure has been proposed with the development**

An objection was raised to the development in respect that no additional infrastructure is proposed.

## ITEM 5 (continued)

### Comment

It is considered that the imposed condition for s.7.11 contributions and the requirement for the construction of a footpath are satisfactory to provide Council infrastructure. (See **Condition 19** and **42**).

This issue will not warrant the refusal of the application.

## 10. Referrals

### Internal Referrals

#### Development Engineer

The application was referred to Council's Development Engineer who has provided the following comments:

#### “Stormwater Management

*The proposed stormwater management system for the development discharges to the kerb in Twin Road and incorporates an onsite detention system complying with Councils requirements.*

*The plans completed by StormCivil Pty Ltd, drawing number 303014 D1 and D2, Issue A, dated 24<sup>th</sup> July 2018 are generally in accordance with Council's DCP requirements and can be dealt within the standard condition of consent regarding stormwater management.*

#### Vehicle Access and Parking

*The designated car spaces 2, 4, 6, 8 and 10 is shown to be permeable area on the Landscape Plan. It is recommended that a hard surface for the length and width of the space be utilised, thus increasing the impervious area.*

*The proposed residential development falls under the medium density, and thus the parking rates found in Section 2.2 of Part 9.3 from Council's DCP 2014 have been applied.*

Allocation	DCP (max)	Proposed	Compliance
Residential	10	10	Yes
Visitor	2	2	Yes

*Total car spaces provided within the site is 12, which meets Council's requirements.*

*At least one car space per dwelling entails a private lock up garage which satisfies Part 3.4 of Council's DCP.*

*All parking dimensions are generally in accordance with AS2890.1 requirements.*



**ITEM 5 (continued)**

*It is recommended that for all vehicles utilising the site must enter and exit in a forward direction. No swept path diagrams submitted for review with the application, however it appears this requirement can be achieved. To ensure compliance, a condition of consent prior to the issue of a construction certificate will be implemented to ensure the dedicated turning areas are in accordance with AS2890.1 requirements.*

**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.”*

*(See **Conditions 14 to 17, 31 to 34, 42, 59 to 60, 65 to 70, 72, 73, 80 and 85**)*

**Landscape Architect**

The application was referred to Council’s Landscape Architect providing the following comments:

**“Existing Trees**

*An Arboricultural Impact Assessment has been submitted with the application prepared by HRC Group dated 29/07/2018*

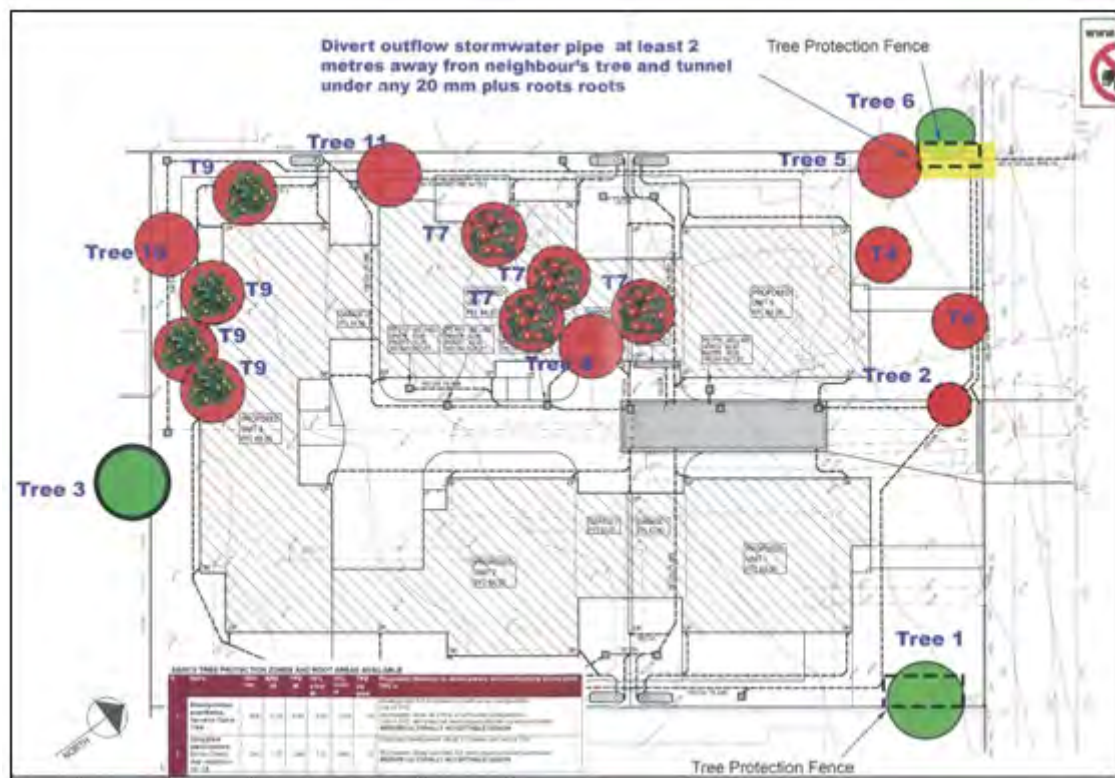
*A summary of the existing trees identified by the Arborist are show in the table below:*

<b>Tree No.</b>	<b>Species “Common name”</b>	<b>Proposed recommendation by Arborist</b>	<b>Comment</b>
1	<b><i>Brachychiton acerifolius,</i></b> Illawarra Flame Tree	Retain	Agree
2	<b><i>Camellia japonica,</i></b> Camellia	Remove	Agree
3	<b><i>Syzygium paniculatum,</i></b> Scrub Cherry rear neighbour No. 28	Retain	Agree
4	<b><i>2X Tibouchina granulosa</i></b> Tibouchina front yard No. 30	Remove	Agree
5	<b><i>Magnolia sargentiana</i></b> Magnolia	Remove	Agree
6	<b><i>Callistemon viminalis</i></b> Bottle Brush Neighbour’s No. 32 Twin	Retain	Agree
7	<b><i>4X Camellia japonica,</i></b> Camelli	Remove	Agree
8	<b><i>Tibouchina granulosa</i></b> Tibouchina rear yard No. 30	Remove	Agree
9	<b><i>Rear yard fruit trees; - Lemon, Lime, Mandarin</i></b>	Remove	Agree

**ITEM 5 (continued)**

Tree No.	Species "Common name"	Proposed recommendation by Arborist	Comment
	<b>Orange and Mango</b>		
10	<b>Rothmannia globosa Tree</b> <b>Gardenia</b>	Remove	Agree
11	<b>Ceratopetalum gummiferum,</b> NSW Christmas Bush	Remove	Agree

Refer to **Figure 14** for location of trees.



**Figure 14:** Tree Location Plan

Landscape Plan

The Landscape plan is generally satisfactory. The plan provides for:

- Screen planting along the neighbouring boundaries incorporating small native trees.
- Landscape strips have been provided between the driveway and the wall of the dwelling where possible.

However *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*

**ITEM 5 (continued)**

*The two best Camellia japonicas located in 30 Twin Road are to be transplanted into the proposed garden bed along the front boundary in front of Unit 1. In this new location the Camellias 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 under the driveway. This has been achieved an underground tank under the driveway.*

*The stormwater pipes are generally compatible with retention of the existing trees to be retained.*

Recommendation

*There is no objection subject to conditions imposed.”  
(See **Conditions 36, 44, 45, 53 to 57 and 62**)*

**City Works and Infrastructure (Traffic Engineer)**

The application was referred to the Traffic section of Council's City Works Department for consideration. The following comments have been provided:

*“The proposed development is for construction of multi-dwelling housing consisting of five dwellings (i.e. two 5-bedroom and three 3-bedroom dwellings).*

*Traffic generation for the proposed development (i.e. 5 townhouses) is expected to be about 3-4 vehicle trips per hour during the peak period. The existing residential dwellings are expected to generate about 2 vehicle trips per hour.*

*Therefore, the net increase in traffic would be, at most, two (2) additional vehicle trips per hour during the peak periods. Additional traffic generated by this development will not have significant detrimental impact on the exiting road network.*

*The bulk of traffic in this area is, primarily generated by the residential areas in East Ryde accessing Lane Cove Road via Twin Road.*

*This area has a definitive peak time for traffic associated with commuter movements (7am-9am), and a secondary peak during school times particularly in the afternoon (2:45pm-3:45pm).*

*In terms of parking the primary generators of parking in the area are the schools and the hospital. Observations of the site show that parking occupancy on this section of Twin Road is very low.*

**ITEM 5 (continued)**

*Some parking occurs adjacent to the residential properties on the southern side of Twin Road between Badajoz Road and Nerang Street.*

*The northern side of the road, adjacent to Ryde Common is effectively vacant throughout the day.*

*Overall this development is not considered to have any significant traffic impacts.*

*The proposal consists of 12 car parking spaces in total. Refer to Development Engineer's comments/conditions regarding the adequacy of car parking provision and compliance of car park layout.*

*Traffic department has no objection to the approval of this application subject to conditions"*

**(See Conditions 18, 35 and 43)**

**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 minimal 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 Zones.
- The proposal is considered to respond to existing and desired future character of the area through enhancing the characteristics of the streetscape.
- Notwithstanding the variations outlined above within this report, the development generally complies with the relevant provisions outlined in *RDCP 2014 Part 3.4: Multi Dwelling Housing* which provides acceptable amenity for future occupants and adjoining properties.
- The proposal is considered to be in the public interest.

**12. Recommendation**

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*,

**ITEM 5 (continued)**

the following is recommended:

1. The Local Planning Panel grant consent to the following development application LDA2018/0321 for the construction of a multi-dwelling housing development for 5 dwellings - 2 x 2 storey, 5 bedroom dwellings at the front and 3 x single storey, 3 bedroom dwellings at the rear, 12 car parking spaces including strata subdivision, subject to conditions of consent outlined in **Attachment 1** of this report.
2. The objectors be advised of the decision.

**ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Compliance Check
- 3 Architectural Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Hussein Bazzi**  
**Assessment Officer- Town Planner**

Report Approved By:

**Sandra Bailey**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 5 (continued)**

**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
Ground Floor and Site Plan	02.11.2018	Project No. 2481, DWG No. DA01 <sup>A</sup> , Issue A
First Floor Plan	02.11.2018	Project No. 2481, DWG No. DA02 <sup>A</sup> , Issue A
Roof Plan	02.11.2018	Project No. 2481, DWG No. DA03 <sup>A</sup> , Issue A
Elevations	02.11.2018	Project No. 2481, DWG No. DA04 <sup>A</sup> , Issue A
Elevations and Section A-A	June 2018	Project No. 2481, DWG No. DA05 <sup>A</sup>
Legend, Notes, Details, Calculations	24.07.2018	Job No. 303014, DWG No. D1, Issue A
Stormwater Management Plan	24.07.2018	Job No. 303014, DWG No. D2, Issue A
Erosion and Sediment Control Plan	24.07.2018	Job No. 303014, DWG No. E1, Issue A
Landscape Concept Plan	30.07.2018	DWG No. LCP1, Issue A
Landscape Concept Plan Notes and Details	30.07.2018	DWG No. LCP2, Issue A
Arboricultural Implication Assessment	29.07.2018	Arboricultural Implication Assessment and Tree Protection Specification prepared by Horticultural Resources Consulting Group, Issue A

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 948641M, dated 27 July 2018.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.
5. **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

**ITEM 5 (continued)**

**ATTACHMENT 1**

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.

**6. Hoardings.**

- (a) A hoarding or fence must be erected between the work site and any adjoining public place.
- (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

**7. 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.

**8. 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.

**9. 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.

**10. 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.

**11. Imported fill – type.** Any imported fill must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.

**12. Disposal of excavated material.** Any excavated material must be transported to a facility or place that is lawfully used as a waste facility.

**13. 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.

**14. Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, 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.

**15. Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.

**ITEM 5 (continued)**

**ATTACHMENT 1**

16. **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.
17. **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 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.
18. **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 2009 and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities.

**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.

19. **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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<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$12,683.22
Open Space & Recreation Facilities	\$31,223.55
Civic & Urban Improvements	\$10,619.73
Roads & Traffic Management facilities	\$1,448.58
Cycleways	\$904.86
Stormwater Management Facilities	\$2,876.10
Plan Administration	\$243.96
<b>The total contribution is</b>	<b>\$60,000.00</b>

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>.

20. **Wheel Strips.** As shown on the Architectural Plans the wheel strips for the tandem car parking arrangements as are to be reflected on the Drainage and Landscape Plans. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the **Construction Certificate**.
21. **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**.
22. **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**.

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23. **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 release of the **Construction Certificate**. (Category: Other buildings with delivery of bricks or concrete or machine excavation).
24. **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
25. **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**.
26. **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**.
27. **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](http://www.sydneywater.com.au/tapin) to apply.
28. **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**.
29. **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.
30. **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:
  - (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.

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**ATTACHMENT 1**

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.

31. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- a) Swept path diagrams demonstrating compliance with forward entry and exit to the site is required. The swept path diagrams must show vehicles entering each parking space and then exiting the site in a forward direction. The swept path diagrams must include a manoeuvring clearance in accordance with Paragraph B3.2 of AS/NZS 2890.1: 2004 and a further 300 mm clearance to obstructions in accordance with Clause 2.5.2(c) of AS/NZS 2890.1: 2004.
  - b) Minimum lines of sight for pedestrian safety must be provided in accordance Figure 3.3 of AS/NZS 2890.1:2004.
32. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to Twin Road, generally in accordance with the plans by StormCivil Pty Ltd, drawing number 303014 D1 and D2, Issue A, dated 24<sup>th</sup> July 2018.

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and 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 WSUD measures, 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 Council's 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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- Onsite detention must be incorporated in the stormwater management system having a minimum SSR of 32.6 m<sup>3</sup> and a maximum PSD of 24.7 L/s. Any variations to these values attributed to changes required by conditions of this consent, must be in accordance with Council's DCP requirements for onsite detention and must be validated in the certification of the design required by this condition.
33. **Reconstruction of Vehicle Footpath Crossing.** The existing footpath crossing is not in accordance with Council specifications and is likely to dilapidate during construction of the development. Accordingly the driveway crossover must be replaced with a crossing which conforms with Council's requirements in terms of design, materials and construction details. Finished levels shall conform with property alignment levels issued by Council and all grades and gradient transitions must comply with AS 2890.1.
34. **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.

35. **Construction Traffic Management Plan.** For all works and construction activities, including transportation of demountable buildings, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by Council prior to issue of any Construction Certificate.

**ITEM 5 (continued)**

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The CTMP must specify that due to the proximity of the site adjacent to Ryde East Public School, no heavy vehicle movements or construction activities effecting vehicle and/or pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).

The footpath along the frontage of the site must remain open and traversable by pedestrians without impediment at all times.

36. **Amended Landscape Plan.** The following need to be shown on an amended Landscape plan:

- The *Murraya Paniculata* proposed to be planted, has become a weed in bushland and should not be planted. A native shrub is to be substituted for the following species.
- The two (2) *Camellia Japonicas* located under the existing carport are to be transplanted into the proposed garden bed along the front boundary. In this new location the *Camellias* will not interfere with proposed stormwater pipes and building works.
- The two (2) proposed *Elaeocapus Reticulatus* are to be relocated to the front setback and to be planted a minimum of 3m from the side boundaries.
- The proposed decomposed granite as ground cover for the private open spaces as shown on the Landscape Plan is to be replaced with grassed turf.

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

**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.

37. **Site Sign**

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.

**ITEM 5 (continued)**

**ATTACHMENT 1**

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.

38. **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.
39. **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 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).

40. **Excavation adjacent to adjoining land**

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days' notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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41. **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.
42. **Footpath Works.** The applicant shall, at no cost to Council, excavate and/or fill the footpath adjacent to the subject property so the levels of the footpath comply with the levels specified by Council's City Works & Infrastructure Department. All work which is necessary to join the new footpath levels with the levels in front of the adjoining properties in a satisfactory manner shall be carried out by the applicant. The cost of reconstructing footpath paving or adjusting any services that may be affected shall be borne by the applicant.
43. **Implementation of Construction Traffic Management Plan.** All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.
44. **Tree Retention.** As identified in the Arborist Assessment prepared by HRC Group dated 29/07/2018. The following trees on site and the adjoining site are to be retained and protected:

Tree No.	Species "Common name"
1	<b><i>Brachychiton acerifolius</i></b> , Illawarra Flame Tree
3	<b><i>Syzygium paniculatum</i></b> , Scrub Cherry rear neighbour No. 28
6	<b><i>Callistemon viminalis</i></b> Bottle Brush Neighbour's No. 32 Twin Road

Tree protective fencing is to be installed before demolition and construction commences as indicated on the "Tree Management Plan" prepared by HRC Group dated 29/07/2018

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 <b>Issue a Certification of Compliance</b> of tree protection measures being in place and soil rehabilitation undertaken
Construction	Liaison with site manager,	Maintain or amend protective measures

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PROJECT PHASE	ACTIVITIES	PROJECT ARBORIST
work	compliance and any deviation from approved plan	Supervision and monitoring formal notification of any deviation from approved tree protection plan
Stormwater connection installation through TPZ, Implement hard and soft landscape works	<b>Supervise</b> 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 <b>Issue a Certificate of Compliance</b>
Practical Completion	Tree vigour and structure Assessment and undertake soil rehabilitation for all retained trees	Remove all remaining tree Protection measures <b>Certification of tree protection and soil rehabilitation for Protected Trees</b>
Defects liability / maintenance period	Tree vigour and structure	Undertake any required remedial tree works <b>Certification of tree protection if necessary</b>

45. **Tree Removal.** As identified in the Arborist Assessment prepared by HRC Group dated 29/07/2018. The following trees on site are to be removed:

Tree No.	Species "Common name"
2	<b>Camellia japonica,</b> Camellia
4	<b>2X Tibouchina granulosa</b> Tibouchina front yard No. 30
5	<b>Magnolia sargentiana</b> Magnolia
7	<b>4X Camellia japonica,</b> Camelli
8	<b>Tibouchina granulosa</b> Tibouchina rearyard No. 30
9	<b>Rear yard fruit trees; - Lemon, Lime, Mandarin Orange and Mango</b>
10	<b>Rothmannia globosa Tree Gardenia</b>
11	<b>Ceratopetalum gummiferum,</b> NSW Christmas Bush

**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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46. **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*.
47. **Noise from construction work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from construction work.
48. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
49. **Construction materials.** All materials associated with construction must be retained within the site.
50. **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.
51. **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.
52. **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".
53. **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.
54. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.
55. **Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.

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56. **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.
57. **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.
58. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.
59. **Erosion and Sediment Control.** The applicant shall install erosion and sediment control measures in accordance with the approved plan by StormCivil Pty Ltd, drawing number 303014 E1, Issue A, dated 24<sup>th</sup> July 2018, 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.
60. **Public Domain Works - Construction.** The public domain infrastructure works specified in this consent must be constructed in accordance with the approved civil infrastructure plans, documentation and any associated conditions as issued by Council’s Civil Infrastructure & Integration Department under the provisions of Section 138 of the Roads Act and Local Government Act.

**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.

61. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 948641M, dated 27 July 2018.
62. **Landscaping.** All landscaping works approved by Condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.

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63. **Boundary Fencing.** Prior to the issue of the Occupation Certificate, all boundary fences are to be replaced at the applicants expense. The fencing is to be 1.8m high, timber lapped and capped.
64. **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.
65. **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.
66. **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 standard terms for such systems, as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7 and to the satisfaction of Council. The positive covenant must be registered on the title prior to the release of any Occupation Certificate for development works for which the system(s) serve.
67. **Stormwater Management – Maintenance program.** To ensure the approved onsite detention system is designed for the ongoing life of the development, without imposition on the public domain, the applicant is to prepare a drainage system maintenance plan (DSMP) which is to contain;
  - (a) The DSMP is to incorporate a master schedule and plan identifying the location of all stormwater components crucial to the efficient operation of the trunk drainage system on the development lot. This is to include (but not be limited to) pump/sump systems, WSUD components and all onsite detention systems. The master plan is also to contain the maintenance schedule for each component.
  - (b) The DSMP is also to include safe work method statements relating to access and maintenance of each component in the maintenance schedule.
  - (c) Signage is to be placed in vicinity of each component, identifying the component to as it is referred in the DSMP (eg. OSD – 1), the reference to the maintenance work method statement and maintenance routine schedule.

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- (d) Designate areas inside the property in which the maintenance operation is to be undertaken for each component. Maintenance from the road reserve or public domain is not accepted. Areas are to be demarcated if required.
- (e) Locate a storage area for maintenance components / tools to be stored on site. The location is to be recorded in the DSMP.

The DSMP is to be prepared by a suitably qualified and practising drainage engineer in co-operation with a workplace safety officer (or similar qualified person) and all signage/line markings are to be implemented prior to the issue of any Occupation Certificate.

68. **Redundant Footpath Crossing.** The existing footpath crossing(s) and associated gutter crossover(s) which are not accessing approved vehicle access points must be removed and restore kerb and gutter, verge and footway to match existing adjoining sections. All new levels and materials must be flush and consistent with adjoining sections and all costs are to be borne by the applicant. The works must be completed to Council's satisfaction, prior to the issue of any Occupation Certificate.

69. **Engineering Compliance Certificates.** 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 Council's DCP 2014 Part 9.3 (Parking Controls).
- b) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's 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.
- c) 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.
- d) 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

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Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).

- e) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.
70. **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 Council's 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).
71. **Consolidation of Allotments.** Prior to issue of an occupation certificate, a copy of the plan of consolidation registered by the Land and Property Information this consolidates the allotments. The subject of the development in to one allotment shall be submitted to the Principal Certifying Authority.

**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.

72. **Parking Allocation.** Both the owner and occupier of the development must provide and maintain the minimum parking allocation as follows:
- 10 residential spaces, and
  - 2 visitor space.
73. **Stormwater Management – Implementation of maintenance program.** The stormwater management system components are to be maintained for the ongoing life of the development by the strata management/ owners corporation, as per the details in the approved drainage system maintenance plan (DSMP).

**PRIOR TO SUBDIVISION CERTIFICATE**

The following conditions in this Part of the consent apply to the Subdivision component of the development.

All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

74. **Final Occupation Certificate.** The final occupation certificate associated with Development Consent DA2018/321 and any related 4.55 applications, must be issued for the entire development prior to the release of the Subdivision Certificate.
75. **Final Plan of Subdivision.** The submission of a final plan of subdivision plus three copies suitable for endorsement by the Authorised Officer.

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76. **Final plan of subdivision - title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land
77. **Certification of Building Works.** If Council is not the PCA then certification that all building and drainage works **as detailed** in Local Development Consent No 2018/321 and all related 4.55 applications if any, have been completed in accordance with that consent and final Occupation Certificate is ready to be issued.
78. **Existing Easements and Restrictions.** The applicant must acknowledge all existing easements and restrictions of the use of land on the final plan of subdivision.
79. **On-site Stormwater Detention Certification.** The submission of certification by a suitably qualified Civil Engineer for the on-site stormwater detention system, attesting the storage volume, discharge rate and satisfactory operation of the system prior to the release of the Subdivision Certificate.
80. **Removal of encroachments.** All structures, services etc. are to be wholly contained within the legal property boundaries of each lot. All existing structures and services etc are either to be demolished, relocated and/or have appropriate easement/s registered over the encroachment to ensure their legal operation. Prior to issue of Subdivision Certificate, a certificate shall be obtained from a registered surveyor and submitted to the Principal Certifying Authority to confirm this requirement has been met.
81. **Registration of easements.** The registration of all necessary easements is required to ensure all proposed lots will have legal access to all utility services, drainage and vehicular access. Prior to release of the Subdivision Certificate, certification shall be obtained from a registered surveyor and submitted to Council confirming the above requirement will be met upon registration of the linen plan at the Land and Property Information.
82. **Sydney Water – Section 73 Compliance Certificate.** A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water will determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. A Section 73 Compliance Certificate must be completed before the issue of any Occupation Certificate. Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator. Go to [www.sydneywater.com.au/section73](http://www.sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.
83. **Utility provider – compliance.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc).

**ITEM 5 (continued)****ATTACHMENT 1**

84. **88B Instrument.** If required, the submission of an instrument under Section 88B of the Conveyancing Act 1919 with 2 copies, creating any Easements, Positive Covenants and Restrictions on use, the City of Ryde being the authority empowered to release vary or modify the same.
85. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to Section 88 of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption (*delete as appropriate*) 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 88 E instrument are to be in accordance with the Council's draft terms for these systems as specified in Council's DCP 2014 Part 8.4 (Title Encumbrances) Section 7 and to the satisfaction of Council.

**End of Consent**

**ITEM 5 (continued)**

**ATTACHMENT 2**

**Attachment 2**

**RDCP2014 Part 3.4: Multi Dwelling Housing - Compliance Table**

**PART 2.0 – Site Analysis, Location Number and Type of Dwelling**

DCP 2014	Proposed	Compliance
<b>2.2 Minimum allotment size</b>		
Frontage and site area not less than 20m and 900sqm respectively.	Combined Frontage = 33.53m Combined Site Area = 1681m <sup>2</sup>	Yes
<b>2.3 Non-Preferred Locations</b>		
Is the proposed development within a non-preferred location?	The subject site is not identified to be within a non-preferred location.	Yes
<b>2.5 Density controls in R2 zone</b>		
Clause 4.5A RLEP 2014 (a) Site Area not less than: i) 300sqm for 1, 2, 3 bedders, and ii) 365sqm for 4 or more bedder.	Unit 1: 5 Bedroom Unit 2: 3 Bedroom Unit 3: 3 Bedroom Unit 4: 3 Bedroom Unit 5: 5 Bedroom  Total Area required = 1630m <sup>2</sup> Combined Site Area = 1681m <sup>2</sup>	Yes
(b) Each dwelling to have own contiguous private open space.	Each dwelling contains its own contiguous private open space.	Yes
<b>2.6 Number of Dwellings</b>		
Not more than 12 x Dwellings	5 Dwellings.	Yes
<b>2.7 Type of Dwellings</b>		
1. a) If 4 or more dwellings on site, not more than 75% should have same number of bedrooms. (Round down)  b) Slop, proposed levels, building height, site coverage, landscaping, setbacks, accessibility and shadowing to be considered when assessing:  i. Will development complement existing neighbourhood, and  ii. Will development meet needs of householders including older persons with disabilities.	60% of dwellings = 3 bedrooms 40% of dwellings = 5 bedrooms  It is considered that the development will complement and enhance the existing neighbourhood including meet the needs of all house holders. Further details of compliance are assessed below in this table.	Yes  Yes

**PART 3.0 Site Planning**



**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>3.1 Slope of Site</b>		
a. Dwellings present to street. At least one entrance visible.	Units 1 and 5 are orientated to present to Twin Road, with visible entrances.	Yes
b. Sites with slope greater than 1:6 unacceptable.	Site slope will be no greater than 1:15.	Yes
c. Site that slope up from street more than 1:6 unacceptable.	The site will not slope greater than 1:6.	Yes
d. Cross fall more than 1:14 not acceptable.	Site consists of a cross fall of 1:22	Yes
<b>3.2 Altering the Levels of the Site</b>		
a. No altering of levels of site (not covered by building envelope) more than 300mm	The proposal will seek to excavate approximately 500mm to accommodate the proposed driveway.	No - Supported
b. No basement garages and minimal retaining walls.	At grade garages proposed for each dwelling.	Yes
c. Private open space provided at ground level.	Private open space is generally provided at ground level.	Yes
<b>3.3 Storey and Height</b>		
<b>3.3.1 Storeys</b>		
a. Street facing dwelling may be two storeys provided:		
i. Two storey dwelling not attached to any other two storey dwelling.	Two story dwellings are not attached.	Yes
ii. Two storey dwelling is suitable within streetscape.	Units 1 and 5 fronting twin road are considered to be suitable within the streetscape.	Yes
<b>3.3.2 Height</b>		
a. As per Clause 4.3 and 4.3A (2) of RLEP 2014.	<p><b>Unit 1:</b> Ridge: 71.10 EGL below: 63.25 Overall height: 7.85m</p> <p><b>Unit 2:</b> Ridge: 69.20 EGL below: 64.25 Overall height: 4.95m</p> <p><b>Unit 3:</b> Ridge: 69.10 EGL below: 64.50 Overall height: 4.6m</p> <p><b>Unit 4:</b> Ridge: 68.60 EGL below: 63.60</p>	Yes

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	Overall height: 5m  <b>Unit 5:</b> Ridge: 70.60 EGL below: 63.00 Overall height: 7.6m	
<b>3.4 Site Coverage</b>		
Site coverage < 40% Pervious area > 35%	<b>Site Coverage:</b> $\frac{669.3m^2}{1681m^2}$ = 39.8% (40%)  <b>Pervious Area:</b> $\frac{604.62m^2}{1681m^2}$ = 35.9%	Yes   Yes
<b>3.5 Setbacks</b>		
<b>3.5.1 Front Setbacks</b>		
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.	Adjoining setbacks: 32 Twin Road = 7.5m 26 Twin Road = 9m Difference = 1.5m  Required Setback = Minimum 7.5m  Provided setback is 7.0m to 8.0m  Application of Control (b): Adjoining setback to 32 Twin Road = 7.5m Length of wall = 18.5m 50% = 9.250m  Total 8.0m setback = 39% Total 7.0m setback = 61%	No - Supported
<b>3.5.4 Side and Rear Setbacks</b>		
a. Min 4.5m unless vehicular access is included in this area, then min 6m.  b. Must be adequate to provide appropriate solar access.  c. Ensure existing substantial trees not within proposed courtyard areas.  d. Min 3m up to 50% permitted.	North Western side (Applied 50% variation):  Length of wall = 40.100 50% = 20.050 Length of wall equal to 3m = 7.5m (18.7% (19%) of the wall consists of a 3m side setback and remainder of wall equals 4.5m)  South Eastern side (Applied 50% variation):  Length of wall = 40.100	Yes   Yes

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	50% = 20.050 Length of wall equal to 3m = 8m (19.9% (20%) of the wall consists of a 3m side setback and remainder of wall equals 4.5m)	
<b>3.5.5 Internal Setbacks</b>		
a. Habitable windows do not overlook habitable windows of another dwelling.  b. Min 9m separation provided between habitable windows within development.	Although habitable windows do not contain the minimum 9m separation the windows of each dwelling have been designed to not overlook into the windows of other habitable windows within the proposed development. This is considered to be acceptable.	Yes
<b>3.6 Private Outdoor Space</b>		
a. Minimum: i. 30sqm for 2 bed. ii. 35sqm for 3 or more bed.  b. POS min 4m dimensions.  c. Courtyards do not contain existing substantial trees.  d. Access other than through dwelling to POS and not less than 1m wide.  e. Private outdoor space securely enclosed and visible from living area.  f. Must be one area.  g. Courtyards not in front setback.  h. Min 1.2m wide landscape privacy strip between courtyard and adjoining property.	Each Unit will contain a courtyard greater than 35m <sup>2</sup>  Minimum 4m dimension provided per dwelling.  Courtyards do not contain any existing substantial trees.  Access to private open space other than through the dwellings has been provided through the garages for each dwelling.  Each POS is securely enclosed and visible from living areas.  Each unit contains POS which is one area.  No courtyards within the front setback.  A landscape strip of 1.2m wide is provided between the courtyard and adjoining properties at 26 and 30 Twin Road.	Yes  Yes  Yes  Yes  Yes  Yes  Yes
<b>3.7 Landscaping</b>		
a. Landscape plan submitted.  b. Landscaping completed prior to occupation.	Submitted with application.  Completion of landscape works will be imposed as a condition of consent. (See <b>Condition 62</b> )	Yes  Yes

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
c. Existing trees retained and buildings setback appropriately.	No tree to be retained. Trees removed are supported to be removed by Council's Landscape Architect.	Yes
d. Existing substantial trees not located within courtyards.	No existing substantial trees located within courtyards.	Yes
e. Tree location must not cause damage to building.	The location of proposed trees will not result in damages to the building.	Yes
f. Arboriculture assessment where significant tree/s impacted.	Submitted with the application addressing all trees related to the development.	Yes
g. Landscape strips for privacy not more than 1.2m wide and shrubs be 3 to 4m high.	Landscape strips provided and shrubs complying with Council's controls.	Yes
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. The driveway is located at the centre of the site.	N/A
i. Landscape strip not less than 1m between driveway and wall of dwellings.	Applicant has provided a 1m landscape strip between the driveway and the walls of dwellings.	Yes
j. Edge between driveway and paths edged with concrete, not timber.	Proposed edging will be constructed out of concrete, as noted on the Landscape Plan.	Yes
k. Rolled edge between driveway and garden/lawn areas.	The edge between the driveway and garden/lawn areas will be rolled.	Yes
l. Trees within footpath to be protected.	None impacted.	Yes
m. OSD tanks and above ground OSD not located in front setback. Driveway preferable. In landscape area, min 300mm soil cover.	OSD will be located underneath the driveway, as shown on the plans.	Yes
<b>3.8.1 Car Parking</b>		
<b>Car Parking</b>		
a. Number of parking spaces, refer to Part 9.3 of DCP: <ul style="list-style-type: none"> <li>- 1 space per 1 or 2 B dwelling,</li> <li>- 2 spaces per 3+B dwelling,</li> <li>- 1 visitor space per 4 dwellings.</li> </ul>	Number of spaces required: 10 Residential (2 per dwelling) 2 Visitor spaces  Proposed: 10 Residential with 2 spaces per dwelling. 2 visitor spaces.	Yes

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
b. At least 1 space per dwg must be lockable garage (round up).	Each dwelling consists of a space with a lockable garage.	Yes
c. Garages not located between dwellings and street frontage.	Garages not located between the dwellings and the street frontage.	Yes
d. Garages and parking spaces do not dominate streetscape.	Garages and parking spaces do not dominate the streetscape as contained within the complex not fronting the street.	Yes
e. Garage (doors) should be designed to reduce visual prominence.	Garage doors are attached to the dwellings and not facing the street to reducing their dominance within the streetscape.	Yes
f. Tandem parking not permitted in front of a garage.	Tandem arrangements are not within the front of the garages and located to the rear of each units courtyard.	Yes
g. Garages and parking areas convenient.	Parking spaces are considered to be located within a convenient location.	Yes
h. Garages separate dwellings.	Proposal has incorporated the garages to separate dwellings.	Yes
<b>3.8.2 Manoeuvrability</b>		
a. Vehicles enter and leave in a forward direction.	Vehicles can enter and leave in a forward direction.	Yes
b. Tandem arrangement permitted where no impact on manoeuvrability.	Tandem arrangements will not impact on manoeuvrability as located behind garages within courtyards.	Yes
c. Enter and leave parking spaces in a single 3 point turn.	The design of the driveway allows vehicles to enter and leave parking spaces in a single 3 point turn.	Yes
d. Comply with AS 2890.1.	Complies with AS 2890.1.	Yes
<b>3.8.3 Driveways</b>		
a. Driveways paved and extent minimised appropriately.	Extent of driveway is considered to be appropriate for the scale of the development.	Yes
<b>3.8.4 Driveway crossings</b>		
a. Up to 10 spaces – 4m More than 10 – not more than 6m	Driveway crossover = 5m	Yes
<b>3.9 Overshadowing and Access to Sunlight</b>		
a. Habitable room windows face	Habitable windows are not closer than	Yes

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<p>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 &gt;2hrs between 9am and 3pm on June 21</p> <p>c. Shadow diagrams must indicate extent of shadowing within development and adjoining properties</p>	<p>1.5m to facing walls.</p> <p>At 2 hours access to sunlight for least 50% of the courtyards for all units. However, a concern is raised for the POS of Unit 2 which does not achieve the minimum of 2 hours to its and principal ground level open space</p> <p>Extent of shadowing to adjoining properties is considered acceptable. 3 Meta Street will receive adequate sunlight to it's private open space from 11am onwards on 21 June (Winter Solstice).</p> <p>26 Twin Road will receive at least 3 hours sunlight to a portion of the surface for it's North Western facing window between 9am and 12pm. 26 Twin Road will also receive over 2 hours sunlight to 50% of it's private open space on 21 June (Winter Solstice)</p> <p>This is considered acceptable.</p>	<p>No - Supported</p> <p>Yes</p>
<b>3.10 Visual and Acoustic Privacy</b>		
<p>a. Min 9m separation between facing habitable room windows.</p> <p>b. No direct views between living area windows or adjacent dwellings (otherwise screening or obscuring necessary).</p> <p>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.</p> <p>d. Living and sleeping areas protected from high levels of external noise?</p> <p>e. Noise levels of air con pool pumps etc must not exceed</p>	<p>As stated above habitable windows do not contain the minimum 9m separation the windows of each dwelling have been designed to not overlook into the windows of other habitable windows within the proposed development. This is considered to be acceptable.</p> <p>The development will contain no direct views between living area windows to adjacent dwellings.</p> <p>No living areas contain direct views to the open space of other dwellings within the complex and adjoining properties.</p> <p>Living and sleeping areas are protected from high levels of noise.</p> <p>To be a condition of consent. (<b>See</b></p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

**ITEM 5 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
background noise level by more than 5dB(A)	<b>Condition 13)</b>	

**PART 4.0 Building Form**

DCP 2014	Proposed	Compliance
<b>4.1 Appearance</b>		
a. Complement streetscape.	It is considered that the development compliments the existing streetscape within Twin Road.	Yes
b. Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick.	The proposed design includes a pitched roof with eaves, vertically orientated windows, porches and will be constructed out of face brick.	Yes
<b>4.2 Ceiling Height</b>		
a. Floor to Ceiling min 2.7m	Floor to ceiling heights of 2.7m provided.	Yes
<b>4.3 Roofscape and Roof Materials</b>		
a. Pitch 22-30 degrees where visible from a public place.	Pitch visible from the street for Units 1 and 5 is 22.5 degrees.	Yes
b. Eaves of at least 300mm.	Eaves will overhang generally 450mm	Yes
c. Gables fronting street is required and hip roofs generally not permitted.	Roof will not contain a gable fronting the street.	No – Supported
d. Variation in roof line.	Variation in the roof line is provided.	Yes
e. Use materials consistent with traditional materials.	The proposed use of materials is consistent with traditional materials.	Yes

- 6 102-104 BOWDEN STREET, MEADOWBANK - DEMOLITION OF THE EXISTING BUILDINGS AND CONSTRUCTION OF A FIVE (5) STOREY RESIDENTIAL APARTMENT BUILDING COMPRISING 43 DWELLINGS WITH TEO (2) LEVELS OF BASEMENT PARKING WITH 59 CAR SPACES. VEHICLE ACCESS TO THE DEVELOPMENT IS PROPOSED VIA BASEMENT LINKS BETWEEN THE PROPOSED DEVELOPMENT AND THE ADJOINING STAGE 7 BUILDING OF THE SHEPHERD'S BAY REDEVELOPMENT LOCATED AT 37-53 NANCARROW AVENUE, MEADOWBANK - LDA2018/0048**

**Report prepared by:** Acting Senior Coordinator - Major Development

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

**File Number:** GRP/09/6/12/1/2 - BP18/1327

### City of Ryde Local Planning Panel Report

<b>DA Number</b>	LDA 2018/48
<b>Street Address &amp; Ward</b>	102-104 Bowden Street, Meadowbank Central Ward
<b>Zoning</b>	B4 Mixed Use under the provisions of the RLEP 2014
<b>Proposed Development</b>	Demolition of the existing buildings and construction of a five (5) storey residential apartment building comprising 43 dwellings with two (2) levels of basement parking below the building, providing a total of 59 car spaces. Vehicle access to the development is proposed via basement links between the proposed development and the adjoining Stage 7 Building of the Shepherd's Bay Redevelopment located at 37 - 53 Nancarrow Avenue, Meadowbank
<b>Owner</b>	Bayone Projects P/L
<b>Applicant</b>	Holdmark P/L
<b>Report Author</b>	Sandra McCarry Senior Town Planner
<b>Lodgement Date</b>	8 February 2018
<b>Number of Submissions</b>	21 February 2018 to 14 March 2018 <ul style="list-style-type: none"> <li>• 11 submissions received objecting to the proposal.</li> </ul>
<b>Cost of Works</b>	\$15, 391,477
<b>Reason for Referral to Local Planning Panel</b>	<ul style="list-style-type: none"> <li>- Sensitive Development – Development to which State Environmental Planning Policy No 65 – Design Quality of Residential Apartment</li> </ul>



**ITEM 6 (continued)**

	<p>Development applies.</p> <ul style="list-style-type: none"> <li>- Development applications seeking to depart by more than 10% from a development standard.</li> <li>- Development which received more than 10 submissions.</li> </ul>
<b>Recommendation</b>	Approval
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Draft Conditions of Consent</li> <li>2. Clause 4.6 Variation – Height</li> <li>3. Amended Plans</li> </ol>

**1. Executive Summary**

The following report is an assessment of a development application for the construction of a five (5) storey residential apartment building at 102-104 Bowden Street, Meadowbank legally described as Lot 1 DP 730371 and SP 20107.

The development application (as amended) proposes demolition of the existing buildings and the construction of a residential apartment building containing 43 residential units comprising of 1 x studio, 15 x 1 bedroom apartments; 23 x 2 bedrooms and 4 x 3 bedrooms with two levels of basement carparking for 59 parking spaces.

The site's eastern boundary shares a common boundary with part of the approved Concept Plan MP09\_216 (Mod 2) known as the "Shepherd's Bay Redevelopment", as illustrated in Figure 1 below. Specifically, the land located east of the site, known as 37-53 Nancarrow Avenue, Meadowbank forms the approved Stages 6 and 7 of the approved Shepherd's Bay Redevelopment. The subject application, whilst it does not form part of the approved Shepherd's Bay Redevelopment is referred to as 'Stage 7A' and the proposal includes a shared vehicular access via a basement link from Nancarrow Avenue with Stage 7 and garbage collection via Stages 6 & 7.

The application also includes landscaping works around the buildings including the creation of common open space areas.

**ITEM 6 (continued)**



**Figure 1: Stages of the Shepherd's Bay Redevelopment site which identifies the boundary of the Concept Plan site and the subject site in red.**

During the notification period (from 21 February 2018 to 14 March 2018) Council received 11 individual submissions raising concerns about the proposed development. Amended plans were received on 3 August 2018 however these amendments were not required to be renotified as the amendments were an improvement to the original proposal, resulting in better amenity to the apartments, compliance with building separation, improvement to landscaping and access and details of waste collection.

The submissions raise various concerns including non compliances with the height limit, overdevelopment in the area, decreased privacy to adjoining units and overshadowing. All of the issues raised have been addressed in the report.

A variation under Clause 4.6 of the LEP in respect to building height has been submitted. The variation to height control is supported as the applicant's Clause 4.6 written variation satisfies the provisions of the clause. The additional height is not a consequence of additional floor space, (the development fully complies with the floor space ratio) and provides amenity to the occupants of the building by providing access to the roof top

**ITEM 6 (continued)**

communal open space and will not result in any adverse impacts to the character or amenity of the area.

Assessment of the amended application against the relevant planning framework, and consideration of various design matters by Council's Technical Departments have not identified any fundamental issues of concern. The proposal has been amended in accordance with the Urban Design Review Panel (UDRP) recommendations and consequently this report concludes the application is sound in terms of its design, function, and relationship with its neighbours.

The development has been assessed in respect of the relevant planning instruments and the application is non-compliant with the following:

- Building height in the RLEP. A variation to the height control of 2.1m to the building and 2.3m for the lift over run (maximum variation of 14.8%).
- Building depth in the Apartment Design Guide (ADG) (variation of 1m).
- Setback along the eastern boundary as required by the ADG. However the development complies with the building separation requirements.
- Non compliance with top floor being indented as required by Part 4.2 - Development Control Plan 2014.
- Communal Open Space in the ADG (shortfall of 47m<sup>2</sup> however a 65m<sup>2</sup> community room is also proposed).
- Car parking as required by the ADG (over by one space – conditioned to comply).
- Number of apartments not receiving solar access as required by the ADG (over by 1 apartment).
- Common circulation core as required by the ADG (more than 8 apartments off a single corridor).
- Not a mixed use building as required by Part 4.2 of DCP 2014.
- Floor to ceiling height on the ground floor as required by Part 4.2 of DCP 2014.
- Provision of on site loading facilities as required by Part 4.2 of DCP 2014.

The above non compliances are discussed in detail in the report with some of the non compliances being relatively minor or conditioned to comply. The non-compliances in the side setback on the ground floor & Levels 1 to 3, common open space, apartment width and common circulation area are considered to be acceptable in the context of the development and are discussed in the body of the report. The development fully complies with the floor space ratio and provides adequate amenity to future residents whilst maintaining amenity to the adjoining residential properties to the south and west.

This report recommends deferred commencement consent be granted to this application, in accordance with conditions provided at **Attachment 1**. The deferred commencement conditions requires the creation of a drainage easement as well as documentary evidence that Rights of Ways that address the intended vehicular access and site servicing have been created on the adjoining Stage 6 & 7 buildings lot.

## ITEM 6 (continued)

### 2. Site Description

The development comprises of two regular shaped allotments (Lot 1 DP 730371 & SP 20107) with a total site land area of 1,946m<sup>2</sup>. The site is located at the corner of Bowden Street and Constitution Road and is approximately 300m from the Parramatta River to the south.

- Lot 1 in DP 730371 is rectangular in shape. It is approximately 15.7m in width, 66.6m in depth, with site area of 1,044m<sup>2</sup>. It has a maximum north east to south east gradient of 5.6m.
- SP 20107 is rectangular in shape, approximately 15.6m in width, 62.1m in depth with site area of 974m<sup>2</sup>.

**Condition 127** has been imposed requiring the two allotments to be consolidated.

Currently existing on site is a single storey and two storey industrial buildings with a ramped concrete driveway and bitumen car park on the sites frontage. A single immature eucalyptus tree is located to the rear of the site.



Figure 2: Aerial view of the site (outlined in red) and its context.

### ITEM 6 (continued)



Figure 3: Existing buildings at 102-104 Bowden Street.

### 3. Site Context

The subject site is surrounded by a mixture of residential apartments, light industrial/commercial developments and detached housing as follows:

- The land located north of Constitution Road is primarily comprised of single and two storey residential dwellings, as illustrated in Figure 4.
- To the east of the subject site is 37 to 53 Nancarrow Avenue, which is referred to as Stage 6 and 7 in the approved Concept Plan MP09\_216 (Mod 2). Development consent (LDA2015/0032) was granted on this site for the construction of two residential apartment buildings, as illustrated in Figure 1 above. Construction has commenced.
- To the immediate south of the subject site are single or two storey industrial buildings, as illustrated in Figure 5.
- As shown in the Concept Plan, further to the south of the site, across Nancarrow Avenue are Stages 8 and 9 in the Concept Plan. Development consent (LDA2015/0031) was granted for the construction of three residential flat buildings with a maximum height of 10 storeys. Construction has commenced.
- To the immediate west, directly opposite at 115 Bowden Street is a 7-storey mixed use building currently under construction, see Figure 6 below. The property located at 117 Bowden Street is also approved for a 7 storey apartment building (LDA2015/0220).

The Precinct is undergoing rapid renewal. This transition has been aided by amendments to the Ryde Local Environmental Plan 2014 which rezoned land within the precinct to B4 Mixed Use, increased maximum building heights and increased permissible floor space ratios as well as the approval of the Concept Plan known as Shepherd's Bay Redevelopment.

**ITEM 6 (continued)**



**Figure 4: Constitution Road opposite the subject site are single and two storey dwellings.**



**Figure 5: Industrial buildings immediate south of the subject site (106 Bowden Street).**

**ITEM 6 (continued)**



**Figure 6: 115 and 117 Bowden Road, opposite the site. 7 storey residential apartment building under construction.**

**4. The Proposal**

It is proposed to demolish the existing buildings on site and construct a five (5) storey residential apartment building comprising of 43 dwellings with two (2) levels of basement parking below the building, providing a total of 59 car spaces. Vehicle access to the development is proposed via basement links between the proposed development and the adjoining Stage 7 development located at 37 -53 Nancarrow Avenue, Meadowbank.



**Figure 7: Photomontage of the proposed development as viewed from the corner of Bowden Street and Constitution Road.**

## ITEM 6 (continued)

### 5. Background

#### Relevant Background for the Current Development Application

- The application was submitted to Council on 8 February 2018.
- The application was reviewed by the Urban Design Review Panel on 1 March 2018 and a desktop review on 23 June 2018. The Panel supported the proposal however recommended some changes. The UDRP comments of 1 March 2018 are discussed in full further in the report.
- A letter, dated 26 March 2018 was sent to the applicant outlining areas of non compliances plus request for further information as follows:
  - Revise stormwater plan and Flood Impact Statement to be submitted.
  - How will service vehicles such as removalist and delivery vehicles be catered for?
  - Provide a splay corner at the intersection of Bowden Street and Constitution Road.
  - Demonstrate compliance with waste collection.
  - Non compliance with building separation between eastern elevation and building at 37 Nancarrow Avenue.
  - Demonstrate how visitors to the subject will know how to access the visitor car parking in the development given that vehicular access is from the adjoining site at 37 Nancarrow Ave.
  - Compliance with minimum bedroom size (10m<sup>2</sup>).
  - Comments from Urban Design Review Panel will be required to be addressed.
- Amended plans (Issue 2) and additional information were received 28 May 2018.
- A desktop review of these plans were undertaken by the UDRP. This review raised further issues. The applicant was advised and further amended plans (Issue 3) were received 3 August 2018.

### 6. Planning Assessment

An assessment of the development in respect to Section 4.15 of the Environmental Planning and Assessment Act is detailed below.

#### 6.1 State Environmental Planning Instruments

State Environmental Planning Policy (Building Sustainability Index: BASIX)



**ITEM 6 (continued)**

The development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. As such, a BASIX Certificate has been submitted (No. 887283M\_02 dated 6 June 2018) which provides the development with a satisfactory target rating.

Appropriate conditions have been imposed requiring compliance with the BASIX commitments detailed within the Certificate. See **Conditions 3 & 101**.

State Environmental Planning Policy No 55 – Remediation of Land

The requirements of State Planning Policy No. 55 – Remediation of Land (SEPP 55) apply to the subject site. In accordance with Clause 7 of SEPP 55, Council must consider if the land is contaminated, if it is contaminated whether it is suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed development.

The site is currently used for industrial purposes and a Preliminary Site Investigation report by Martens Consulting Engineers has been submitted with the application. The report states:

*Overall, the site is considered to have a risk of contamination and poses a potential risk of harm to human health and environment under proposed development conditions. Assessment of the identified area of environmental concern (AEC) should be undertaken prior to any future development.*

*Recommendations*

*Prior to the proposed development, assessment of the areas of environment concern (AECs) and contaminants of potential concern Contaminants of potential concern (COPCs) as noted in this preliminary site contamination investigation (PSI) should be undertaken.*

*Given their expected age, the buildings should undergo a hazardous material assessment by an appropriately qualified contractor prior to demolition to determine if asbestos or other hazardous material is present. Where hazardous material is identified, the material is to be removed and disposed of by an appropriately qualified contractor under current controls.*

*To address potential identified AECs and COPCs, a detailed site investigation (DSI) including intrusive soil sampling and testing is recommended. Testing under all building footprints (plus 1 m curtilage) is recommended following their demolition to determine any residual impacts from previous use.*

**ITEM 6 (continued)**

*The DSI plan is to be developed in accordance with NSW EPA (1995) Sampling Design Guidelines and a risk based assessment. Assessment shall address each of the identified AECs and associated COPC identified in Table 6. Results of the site testing shall be assessed against site acceptance criteria (SAC) developed with reference to ASC NEPM – Assessment of Site Contamination - National Environmental Protection Measure (1999 amended 2013).*

*Provided the above recommendations are adhered to, we consider that the site shall be able to be made suitable for the proposed development.*

Council's Environmental Health Officer has reviewed the report which concluded that the site has a risk of contamination and that a detailed site investigation needs to take place. It considers that the site can be made suitable. A site validation report should be submitted to Council to ensure that the detailed investigation and any required remediation is successfully carried out. **Conditions 31 to 35** have been imposed requiring this.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 is a deemed SEPP and applies to the subject site.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above planning instrument. 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 planning instrument are not applicable to the proposed development. The objective of improved water quality is satisfied through compliance with the provisions of Part 8.2 of DCP 2014. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the planning instrument.

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 applies to the subject site as the site is located in the Coastal Use Area and Coastal Environment Area. The following clauses are applicable:

**Clause 13 – Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*

**ITEM 6 (continued)**

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

The proposed development for the construction of a 5 storey residential building is located approximately 300m from the foreshore and is not considered to have any adverse impact to the above criteria. A Geotechnical Report has been submitted and has not identified any issues with surface or below ground groundwater level. The development incorporates an onsite detention and will discharge to a public drainage infrastructure, ensuring that water quality is maintained. The development will not impact on the existing public open space, foreshore or any aboriginal items or place.

**14 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*

The proposed development is not considered to have any adverse impact to the existing foreshore. The development is located approximately 300m away from the foreshore and will not hinder access, overshadow or cause loss of views from a public place to the foreshore.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

**ITEM 6 (continued)**

The proposed development is not considered to cause any coastal hazard.

**Condition 62** has been imposed requiring an erosion and sediment control plan being prepared and implemented.

**16 Development in coastal zone generally—coastal management programs to be considered**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.*

The Parramatta River Estuary Coastal Zone Management Plan applies to the land and the development has taken into consideration provisions for stormwater runoffs (OSD on site and discharge to a public drainage infrastructure) and for erosion and sediment control. As the site is located 300m away from the foreshore, the development is not envisaged to have any adverse ecological impact.

**State Environmental Planning Policy (Infrastructure) 2007**

The Infrastructure SEPP applies to the subject site as it is proposed to do excavation within 2m of an underground power line in Constitution Road. Clause 45 is applicable.

**Clause 45 - Determination of development applications - other development**

*This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:*

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
- (b) development carried out:*
  - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
  - (ii) immediately adjacent to an electricity substation, or*
  - (iii) within 5m of an exposed overhead electricity power line,*
- (c) installation of a swimming pool any part of which is:*
  - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
  - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
- (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

**ITEM 6 (continued)**

- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:*
- (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
  - (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

The proposal involves excavations within 2m of an underground electricity power line located generally along the subject development site's Constitution Road frontage and within 5m of an overhead electricity power line located on Bowden Street. In accordance with Clause 45(2) the proposal was referred to Ausgrid who has raised no objections subject to conditions. **Conditions 21 & 22** have been imposed as required.

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

This Policy aims to improve the design quality of residential flat development. This proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- Urban Design Review Panel;
- The SEPP 65 Design Quality Principles; and
- The NSW Residential Apartment Design Guidelines.

Urban Design Review Panel

Two Urban Design Review Panel (UDRP) meetings were held to discuss the development – one meeting prior to the lodgement of the application (19 October 2017) and one post submission (1 March 2018).

The UDRP comments of 1 March 2018 was forward to the applicant and amended plans addressing the UDRP comments were submitted on 28 May 2018. A desktop review of these amended plans was conducted by the UDRP on 23 June 2018 who made the following comments:

*In summary, the design seems to have improved around the areas of specific concern we had raised.*

***Landscape design***

*A landscape proposal has been prepared and looks to be quite credible. It addresses the Panel's areas of concern:*

- Clearer building address points are resolved
- A through site link is proposed and is largely well-resolved
- Rooftop communal open space looks adequate and well-resolved, including

**ITEM 6 (continued)***facilities*

*A couple of more minor points however*

*- The basement egress stair enclosure emerges in the south east corner of the site and, in its current configuration, risks interrupting the continuity, legibility and safety of the through site link. Either the stair should 'dematerialise' to a handrail rather than an enclosure and better integrated with planters, or it could be attached to the face of the building line so it isn't left 'in the round'*

*- The community room is accessed via a stair from the main lobby and building address. The configuration of the stair appears a little constrained and would benefit from being more direct and generous. Perhaps separating it from the letterboxes would achieve this objective.*

**Architectural development**

*The complicated pergolas on the southern elevation have been omitted, which improves the outlook for dwellings situated lower in the building. The address points are clearer, more intuitive and directly accessible.*

The applicant was advised of the above and amended plans were submitted on 3 August 2018 to address the above concerns.

The amendments include amending the access to the community room, which is now via a lift to the lower ground floor, see Figures 8 & 9.

At the south east corner of the site, the private open space of unit LG003 have been relocated and reduced in size to allow for better integration for the basement fire egress to allow a direct pathway to the side site through link, see Figures 10 & 11.

ITEM 6 (continued)

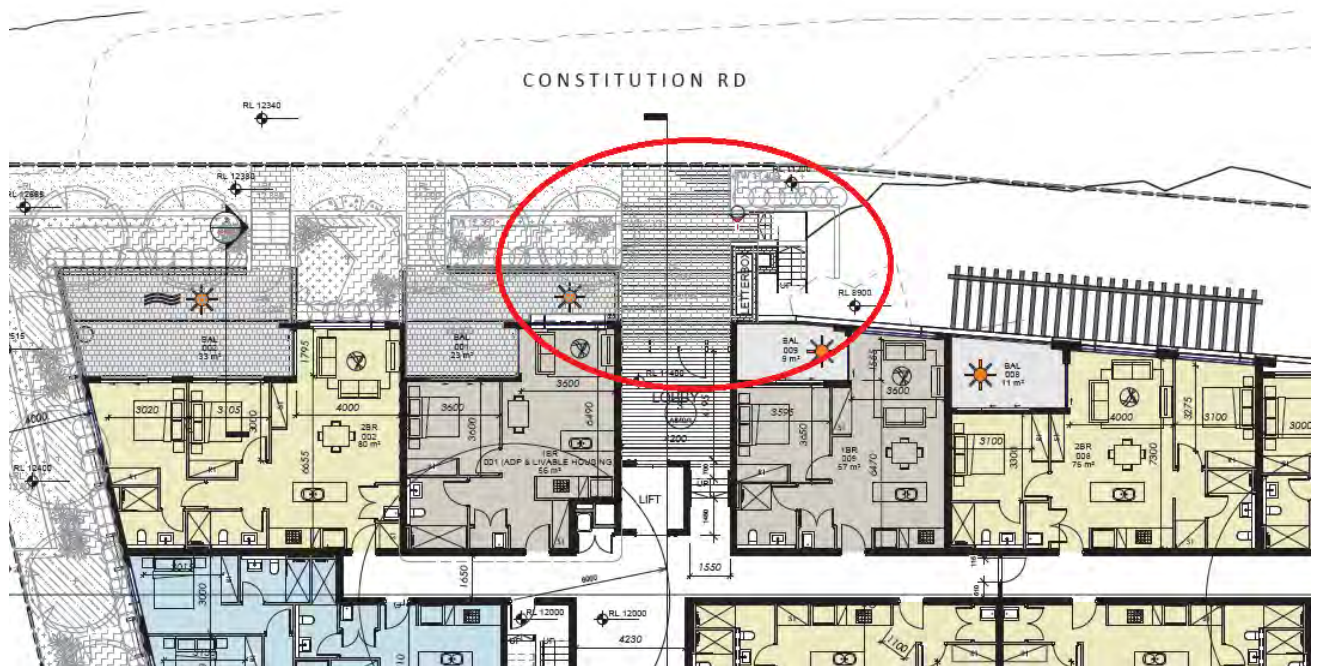


Figure 8: Original design with access to the lower ground community room via a side stairs.

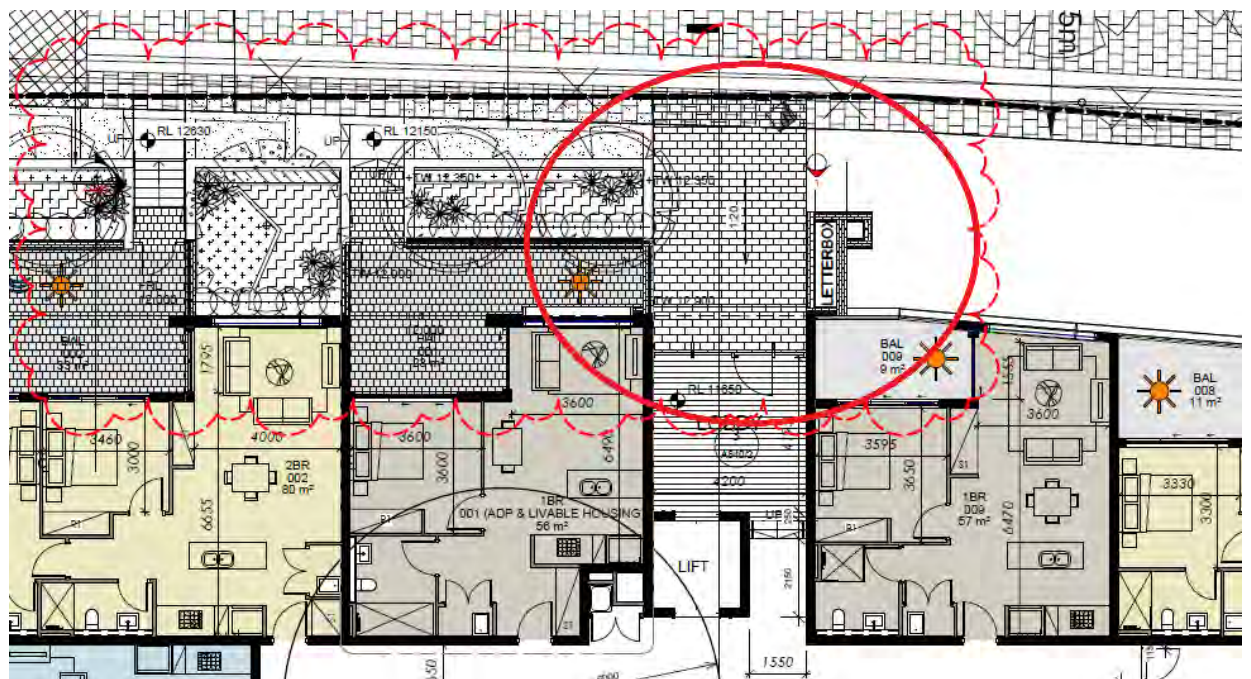
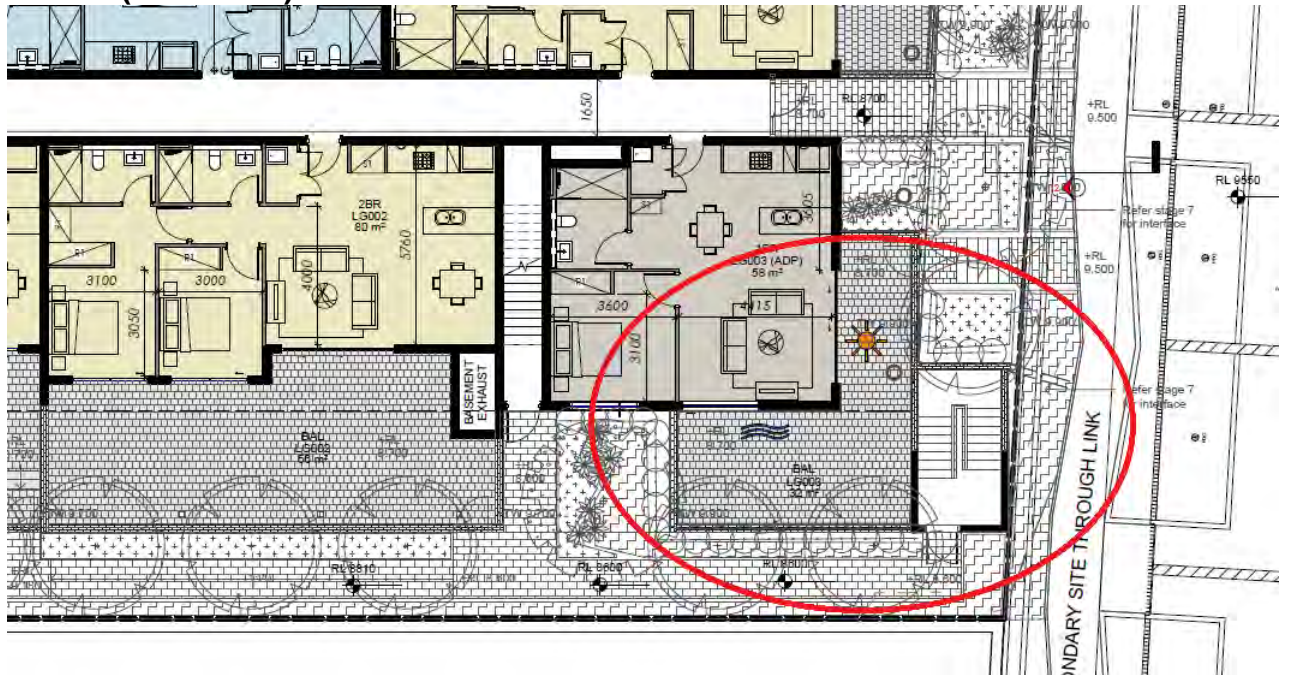
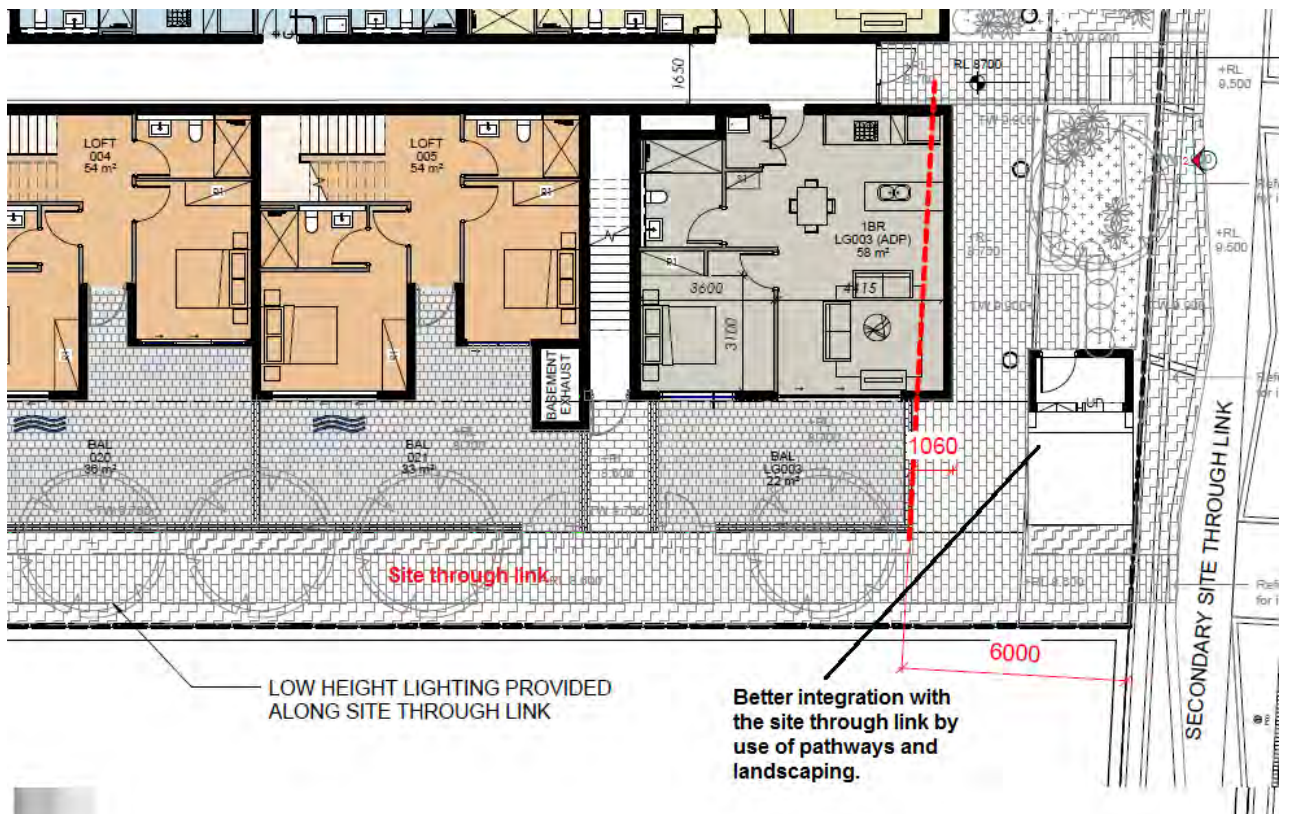


Figure 9: Amended design for access to the community room – side stairs deleted. Entry is now via lift.

**ITEM 6 (continued)**



**Figure 10: Original proposal with the basement egress**



**Figure 11: Amended plans relocating the adjacent private open space. This has allowed a direct pathway to the side through link to Stage 7 of the Shepherd's Bay Redevelopment site.**



**ITEM 6 (continued)**

The following comments with regard to the 9 Design Quality Principles of SEPP 65, were made as detail below (from 1 March 2018 meeting):

<b>SEPP 65 – Design Quality of Residential Flat Buildings</b>	<b>UDRP Comments</b>
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The site is located within the renewal area of Meadowbank.</p> <p>The site slopes upward from east to west and is located on the corner of Constitution Road and Bowden Street. The site shape and orientation are well-suited to a plan that maximizes amenity with northern aspect.</p> <p>In the previous meeting the redesign of Constitution Road was noted and the need for landscape design was discussed. While landscape drawings are included in the architectural plans, no separate landscape package was provided to the Panel.</p> <p><u>Planner's comments:</u></p> <p>A separate landscape package has been submitted and reviewed by Councils Consultant Landscape Architect who has advised:</p> <p><i>The revised landscaping has addressed the specific concerns raised by Council and the UDRP relating to open space design on site. This includes improving the private outdoor areas of the lower ground floor units, providing increased amenity to the rooftop communal open space and further resolution of the through site link to improve access and sightlines. Accordingly, no concerns are raised with the revised landscape documentation and the proposal is supported from a landscape perspective.</i></p>
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines</p>	<p>The proposal exceeds the height controls of 15.5m at the eastern end of level 3 and the eastern end of level 4 (mid-way along the overall building length). Except for the lift overrun the height breach appears to be within 1m. The Panel supports the stepped building height and notes that the storey height is compatible with the evolving context.</p> <p>Overshadowing diagrams comparing the proposed height with the complying height were provided in plan. It is difficult to assess impacts from these drawings. A sun's eye view of the implications on the adjacent apartment building to the east and a potential building envelope to the south would be a more useful analysis.</p> <p>The proposed lower ground building level is a concern for the western half of the building.</p>

**ITEM 6 (continued)**

<b>SEPP 65 – Design Quality of Residential Flat Buildings</b>	<b>UDRP Comments</b>
<p>the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<ul style="list-style-type: none"> <li>- Unit LG005 on the north side of the building is 1.9m below street level. The space between the street edge and the external wall is proposed as communal space. To address privacy between the two spaces a high wall and planting is proposed. This solution limits the amenity (outlook and daylight of the unit). The street setback is generous and could accommodate an amenable north facing private open space for the apartment with appropriate planting along the street edge</li> <li>- Units LG001 and LG002 are single aspect south facing and the building level is significantly below the ground level at the southern boundary. The architectural drawings (lower ground floor plan and section B) do not clearly show levels along the boundary. Section A and the 3D views suggest the level change is significant and similar to the northern boundary relationship discussed above. Refer to amenity.</li> </ul> <p>The change from communal to private open space along the south is supported. The fire egress path along the southern boundary provides an unrealised opportunity to link to the through site link on the adjacent property to the east.</p> <p>The fire egress structure at the south-eastern corner is intrusive. Better integration with the landscape design, retaining walls and potential through site link is warranted.</p> <p><u>Planner's comments:</u> The applicant has addressed the above by submission of sun's eye view solar access analysis and amended plans.</p> <p>The architectural plans have been amended such that the terrace for LG005 is now significantly larger (previously 19m<sup>2</sup> and is now 34m<sup>2</sup>) thereby improving its amenity.</p> <p>The amended landscaping plan, provides for suitable species around the perimeter of the terrace.</p> <p>Similar amenity related concerns were raised with respect to dwellings LG001 and LG002 given their south facing, and partially below ground nature. In response, amended plans were submitted which amended the dwellings to loft type dwelling, reducing the proposed number of dwellings from 44 to 43. As such, these</p>

**ITEM 6 (continued)**

SEPP 65 – Design Quality of Residential Flat Buildings	UDRP Comments
	<p> dwellings are now 2 storey dwellings. Subsequently, their living rooms have been relocated from Lower Ground, to Ground Level, affording them improved amenity in the form of larger overall internal area and improved outlook. In addition, their associated pergola structures, which were identified as potentially blocking solar access to these dwellings by the UDRP, have been deleted.</p> <p> The fire egress structure at the south eastern corner cannot be relocated as it is 'fixed' to the basement below, however the plans has been amended to align and integrate it with other elements such as pathways and landscaping (See Figure 11 above).</p>
<p><b>Density</b></p> <p> Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p> Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p> The density is acceptable subject to achieving cross ventilation and solar access requirements.</p> <p><u>Planner's comments:</u></p> <p> Proposal complies with solar access (74%) and cross ventilation (62.7%) requirements.</p>
<p><b>Sustainability</b></p> <p> Good design combines positive environmental, social and economic outcomes.</p> <p> Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable</p>	<p> The site shape and orientation mean that the proposal achieves solar access requirements.</p> <p> Unit 003 would benefit from redesign to locate the balcony and living room in the corner. This would enable some sunlight into living areas and ameliorate privacy conflicts with the entry path.</p> <p> As part of a larger master plan and a significant renewal site, the proposal should achieve sustainability measure above the minimum requirements of BASIX.</p> <p><u>Planner's comments:</u></p> <p> Unit 003 amended as recommended with separate entry from Bowden Street with the balcony and living area relocated to face Bowden Street.</p>

**ITEM 6 (continued)**

SEPP 65 – Design Quality of Residential Flat Buildings	UDRP Comments
<p>materials and deep soil zones for groundwater recharge and vegetation.</p>	
<p><b>Landscape</b></p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development’s environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours’ amenity and provides for practical</p>	<p>The Panel reiterates the importance of landscape design to describe the design intent, character and use of open spaces and the streetscape. Further information is needed:</p> <ul style="list-style-type: none"> <li>- the resolution of site levels, particularly along site boundaries, the street edge and private courtyards.</li> <li>- the performance of deep soil areas and their capacity to enhance environmental and landscape performance including water management and significant tree planting.</li> <li>- retaining walls and fencing design including their integration with the building and landscape design and their visual permeability.</li> <li>- the opportunity for a through site link along the southern boundary.</li> </ul> <p>The roof top space appears amenable in the architectural drawings, but a landscape plan is required to further assess its design merit. A kitchenette and toilet on the roof for the communal open space is recommended. This could be accommodated with little impact on the height.</p> <p><u>Planner’s comments:</u></p> <p>Additional facilities were suggested for the roof top communal such as a kitchenette and bathroom. Amendments have been made to include a bathroom, kitchenette, and other amenities such as seating, shading etc to the roof top terrace area. Together with the proposed landscaping, the roof top represents a</p>


**ITEM 6 (continued)**

SEPP 65 – Design Quality of Residential Flat Buildings	UDRP Comments
<p>establishment and long term management.</p>	<p>communal area with high amenity.</p>
<p><b>Amenity</b></p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Building separation with Stage 6/7 has been addressed by replanning the eastern edge of Level 4 to orient apartments to the north and south and by removing east facing windows.</p> <p>Daylight and outlook to Unit LG001 and LG002 are compromised by their south facing location and the approach to site levels. The pergola structure which seems to be to a device to limit overlooking from above further constrains the daylight and outlook. Better amenity for living areas is encouraged through redesign of these units.</p> <p>Apartments with direct street access would benefit from front solid core swing doors rather than sliding entry doors.</p> <p>In the last meeting, changes to the broader Stage 6/7 were presented to the Panel. There was not enough information to assess these changes at that time. These items were not addressed in the meeting and referred to Council for consideration.</p>

**ITEM 6 (continued)**

SEPP 65 – Design Quality of Residential Flat Buildings	UDRP Comments
	<p><u>Planner's comments:</u></p> <p>Units LG001 &amp; LG002 have been redesigned (See above under Building Form) with their living area located at ground level and the pergola structure deleted. The UDRP have advised that the design seem to have improved around the areas of concerns and are acceptable.</p>
<p><b>Safety</b></p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The entries from Bowden Street is indirect with poor site lines. The fire egress stairs and undercroft space create spaces of concealment. By integrating the entry with the potential through site link (adapted from proposed fire egress) a more inviting and direct entry is possible and would be supported.</p> <p><u>Planner's comments:</u></p> <p>The main entry is from Constitution Road and is generally at grade with Constitution Road. The entry from Bowden Street is a secondary entry and <b>Condition 47</b> has been imposed requiring low glare lighting being provided along the walkway which will enhanced the entry way.</p> <p>It should be noted that a through site link is not required under the DCP however the proposal has provided a link from the side pathway to the through site link at Stage 7 building. This is considered satisfactory.</p>

**ITEM 6 (continued)**

SEPP 65 – Design Quality of Residential Flat Buildings	UDRP Comments
	 <p data-bbox="715 969 1193 999"><b>Secondary entry from Bowden Street.</b></p>
<p data-bbox="268 1032 679 1099"><b>Housing Diversity and Social Interaction</b></p> <p data-bbox="268 1122 687 1283">Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p data-bbox="268 1305 687 1467">Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p data-bbox="268 1489 687 1720">Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p data-bbox="715 1043 1445 1171">The entry from Bowden Street is the accessible route and poorly resolved. The accessible entry experience should be equitable with the same design quality, safety and legibility.</p> <p data-bbox="715 1193 991 1223"><u>Planner’s comments:</u></p> <p data-bbox="715 1245 1393 1373">See discussion above with regards to the entry from Bowden Street. <b>Condition 47</b> has been imposed requiring suitable lighting being provided along the pathway to ensure legibility and safety.</p>
<p data-bbox="268 1760 419 1789"><b>Aesthetics</b></p> <p data-bbox="268 1812 683 2036">Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p>	<p data-bbox="715 1812 1433 2013">The design development of the building elevation has evolved since the last meeting. The Panel supports the direction of the design and encourages further refinement to clarify the design intent particularly at the western end where simplification could better reinforce the building form.</p>

**ITEM 6 (continued)**

<b>SEPP 65 – Design Quality of Residential Flat Buildings</b>	<b>UDRP Comments</b>
The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	<u>Planner's comments:</u> Along the western elevation the vertical brick elements have been deleted. This has helped simplified the building design.

Apartment Design Guide

The SEPP requires consideration of the "Apartment Design Guide" (ADG) which supports the nine Design Quality Principles by giving greater detail as to how those principles might be achieved. The following table provides an assessment of the proposal against the matters in the ADG:

<b>Part 2 Development the controls</b>		
	<b>Considerations</b>	<b>Consistent</b>
<b>Building Depth</b> Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line.	The building proposes 17m – 19m depth.  Notwithstanding the proposed depth variation to 19m, the proposal provides for acceptable amenity as the building has been designed to have greater modulation and articulation, allowing for better air circulation. The proposal achieves the required cross ventilation requirements. In addition, the non-compliance is relatively minor and the UDRP have raised no concerns in this regard, the proposed design is considered acceptable.	No – variation acceptable.
<b>Building Separation</b> Minimum separation distances for buildings are: <i>Up to four storeys (approx 12m):</i> <ul style="list-style-type: none"> <li>- 12m between habitable rooms/balconies</li> <li>- 9m between habitable and non-habitable rooms</li> <li>- 6m between non-habitable rooms</li> </ul> <i>Five to eight storeys (approx 25m):</i>	The building separation is provided as follows:  Proposal is for a 5 storey building.  <u>Require:</u> <ul style="list-style-type: none"> <li>- 12m separation for up to Level 4 and 18m for Level 5.</li> <li>- To distribute the building separation equally, it is required to provide a 6m setback for the 1<sup>st</sup> four storeys then 9m for level 5.</li> </ul>	



**ITEM 6 (continued)**

<p>- 18m between habitable rooms/balconies</p> <p>- 12m between habitable and non-habitable rooms</p> <p>- 9m between non-habitable rooms</p> <p><i>Nine storeys and above (over 25m):</i></p> <p>- 24m between habitable rooms/balconies</p> <p>- 18m between habitable and non-habitable rooms</p> <p>- 12m between non-habitable rooms</p> <p><u>Note:</u></p> <ul style="list-style-type: none"> <li>• At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m</li> <li>• No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres.</li> </ul>	<p><u>Proposed:</u></p> <p><u>East:</u> (adjoins with Stage 7 building at 37 -57 Nancarrow Ave).</p> <p><u>Lower Ground</u> The proposal has provided setback of between 6m to 5.2m along the eastern boundary on the lower ground floor however the building separation between the subject building and the adjoining Stage 7 building is 12.3m (measured from Stage 7 ground floor usable court yard area). A high light window is proposed along the section where the setback is only 5.2m however this window is a high light window for the kitchen area and was installed to try to get some sunlight into the unit. Given that the window is not considered to pose any overlooking/privacy issues, and that the separation between the buildings complies with the ADG, the proposed variation and window can be supported. See diagram, Figure 12 after the table, illustrating the separation between the two buildings.</p> <p><u>Ground Floor, Levels 1 &amp; 2</u> The apartments' side balconies encroach into the 6m setback, reducing the setback to 3m only. However the separation between the building at 37 Nancarrow Ave (Stage 7 building) and the subject building is 12.35m, which complies with the building separation. Given that the proposal complies with the ADG control, and that the development will be effectively part of the Shepherd's Bay Redevelopment, the proposed variation to the setback on the ground floor and levels 1 to 2 is acceptable.</p> <p><u>Require:</u> <u>Level 3: (5 storey)</u> The east facing elevation of the proposal does not contain east facing windows or openings, being a blank</p>	<p>No – variation acceptable, the proposal complies with separation between the buildings.</p> <p>No – variation acceptable, the proposal complies with separation between the buildings.</p>
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**ITEM 6 (continued)**

	<p>wall. Accordingly, the applicant contends that this is a non habitable rooms, which therefore require a building separation of 12m (between habitable and non habitable rooms).</p> <p><u>Proposed:</u> 12.25m to 12.6m. This complies with the required building separation.</p> <p><u>South:</u> (Adjoins with 106 Bowden Street).</p> <p>The development has provided a 6m setback along the southern boundary for ground floor to the 3<sup>th</sup> floor. At the 4<sup>th</sup> floor the building is setback 8m and the 5<sup>th</sup> floor is setback 9m.</p>	<p>Yes</p> <p>Yes</p>
<p><b>Front, Rear &amp; Side Setbacks</b> See discussion under the relevant Development Control Plan.</p> <p>Determine street setback controls relative to the desired streetscape and building forms, for example:</p> <ul style="list-style-type: none"> <li>• define a future streetscape with the front building line</li> <li>• match existing development</li> <li>• step back from special buildings</li> <li>• retain significant trees</li> <li>• in centres the street setback may need to be consistent to reinforce the street edge</li> <li>• consider articulation zones accommodating balconies, landscaping etc. within the street setback</li> <li>• use a setback range where the desired character is for variation within overall consistency, or where subdivision is at an angle to the street</li> <li>• manage corner sites and secondary road frontages</li> </ul>	<p>The DCP requires a 4m setback along Bowden Street and 6m landscape buffer along Constitution Road.</p> <p>The proposed building is setback 6m along Constitution Road and 4m along Bowden Street.</p>	<p>Yes</p>
<p><b>Part 3 Siting the development Design criteria/guidance</b></p>	<p>Consideration</p>	<p>compliance</p>
<p><b>3B Orientation</b> Building types and layouts respond to the streetscape and site while optimising solar access and</p>	<p>Proposal has been amended to respond to the streetscape.</p>	<p>Yes</p>



**ITEM 6 (continued)**

<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="274 548 726 846"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms &amp; balconies</th> <th>Non habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m(4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table>	Building Height	Habitable rooms & balconies	Non habitable rooms	Up to 12m(4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m		
Building Height	Habitable rooms & balconies	Non habitable rooms												
Up to 12m(4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<p><b>3G Pedestrian Access &amp; entries</b>                  Pedestrian Access, entries and pathways are accessible and easy to identify.</p>	<p>Several entries are proposed along Constitution Road and Bowden Street. Units 001,002 &amp; 003 have their own separate entries and a main and secondary entry from Constitution Road and Bowden Street, respectively. The proposed pedestrian access, entries and pathways have been amended as recommended by the UDRP and are considered satisfactory as they are easy to identify and provide a sense of address to the site.</p>	<p>Yes</p>												
<p><b>3H Vehicle Access.</b>                  Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>No vehicular access is proposed from the site, instead vehicular access is via basement links between the proposed development and the adjoining Stage 7 building located at 37-53 Nancarrow Ave. Given that Holdmark Property Group P/L are the proponents for Stage 7 and the subject site, the consent authority can impose a condition requiring documentary evidence to be submitted confirming that a ROW is create over 37 – 53 Nancarrow Ave. See Deferred Commencement <b>Condition A (2)</b>.                  Council's Senior Co-ordinator Development Engineer has confirmed that it is not possible to provide vehicular access from the current proposal due to the levels difference between Constitution Road and the site frontage. Along Bowden Street the site is too narrow and would impact on the streetscape and the traffic lights that</p>	<p>Yes</p>												



**ITEM 6 (continued)**

<p>1m above ground (use stepped/ split level).</p> <ul style="list-style-type: none"> <li>Natural ventilation to be provided for basement car parks. Any ventilation grills/ screening device to be integrated into the façade and landscape design.</li> </ul>	<p>ground. Ventilation of the basement has not been shown on the plans. <b>Condition 23</b> has been imposed requiring the basement car park to be provided with adequate system of ventilation.</p>	
<b>Part 4 Designing the building</b>		
<b>4A Solar &amp; daylight access</b>		
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>The proposal provides solar access for more than 2 hours to 32 apartments, representing 74% of the total apartments.</p>	<p>Yes</p>
<p>No more than 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>15% of the development is 6.45(7) apartments. The proposal will have 8 apartments not receiving direct sunlight to the apartments, resulting in 18.6% of the apartments not receiving sunlight between 9am and 3pm. The ADG acknowledges that achieving the solar criteria may not be possible on some sites, this includes, inter alia, on south facing sloping sites.</p> <p>In this instance, the proposal is short of complying by one apartment. 3 of the lower ground dwellings that don't receive direct sunlight are double storey. This allows for generous (wider) proportions for living rooms and bedrooms, which goes some way in offsetting less access to sunlight.</p> <p>In addition the proposal complies with the solar requirement with 74% of apartments receiving the required solar access.</p> <p>Furthermore the site is east – west oriented. There will inevitably be a high number of south facing dwellings on such lots, and their access to sunlight is restricted.</p>	<p>No – variation can be supported.</p>
<p>Design should incorporate shading and glare control, particularly for warmer months.</p>	<p>Design has incorporated balconies, external louvres and planting to external walls.</p>	<p>Yes</p>



**ITEM 6 (continued)**

5m <sup>2</sup> .														
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have direct access to a window opening that achieves a minimum of 10% of the room area. No borrowed daylight and air is proposed.	Yes												
Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts – habitable room (where the living, dining and kitchen are combined) be maximum depth of 8m from a window.	Require 2.5 x 2.7 = 6.7m. Habitable room depths are between 3m to 6m. Combined living, dining and kitchen areas are less than 8m from a window.	Yes												
Master bedrooms - minimum area of 10m <sup>2</sup> (excluding wardrobe space).	The master bedrooms are minimum of 10m <sup>2</sup> .	Yes												
Bedroom - minimum dimension of 3m (excluding wardrobe space)	All bedrooms have minimum dimension of 3m.	Yes												
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments;</li> <li>• 4m for 2 and 3 bedroom apartments.</li> </ul>	The width of the living rooms to the 1 bedroom apartments are 3.6m and minimum 4m for the 2 bedroom apartments.	Yes												
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	No cross over apartments.	N/a												
<b>4E Private Open Space and balconies</b> Apartments must provide appropriately sized private open space and balconies to enhance residential amenity.  <b>Design criteria</b> 1. All apartments are required to have primary balconies as follows:	All of the balconies comply with minimum size and depth requirements.	Yes												
<table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Min.depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>N/A</td> </tr> <tr> <td>1 bedroom</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> </tbody> </table>	Dwelling type	Minimum area	Min.depth	Studio apartments	4m <sup>2</sup>	N/A	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m		
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**ITEM 6 (continued)**

3+ bedroom	12m <sup>2</sup>	2.4m		
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.			The apartments on the lower ground floor, adjacent to the northern boundary, have a terrace area and POS greater than 15m <sup>2</sup> .	Yes
<p><b>4F Common circulation and spaces.</b></p> <p><b><u>Design criteria</u></b></p> <p>The maximum number of apartments off a circulation core on a single level is 8.</p> <p>Where the above design criteria cannot be achieved no more than 12 apartments should be provided off a circulation core.</p>			<p>The development provides a maximum of:</p> <ul style="list-style-type: none"> <li>• 3 apartments off a circulation core on the Lower ground floor</li> <li>• 10 apartments on the ground floor</li> <li>• 9 apartments on Level 1 to 3 and</li> <li>• 3 apartments on Level 4.</li> </ul> <p>The proposal does not comply on the ground floor and Levels 1 to 3. However the ADG recognises that full achievement may not be possible. In these cases there should be a high level of amenity for the corridors and apartments. The proposed variation is considered acceptable having regard to the following ADG design guidance:</p> <ul style="list-style-type: none"> <li>• Provision of an east facing window at the end of the corridor to allow for light and ventilation access.</li> <li>• Provision of seating and window half way along the corridor along the southern elevation.</li> <li>• The proposal is for 9 apartments off a single corridor however there are two separate stairwells and a lift servicing each floor.</li> <li>• On the ground floor, three of the apartments also have access from the street.</li> </ul> <p>In addition, the UDRP has reviewed the</p>	No – variation acceptable.

**ITEM 6 (continued)**

	layout and have raised no objections to the corridor core.											
Daylight and natural ventilation should be provided to all common circulation space above ground. Windows should be provided at the end wall of corridor.	Adequate ventilation and sunlight will be available into the corridor as an end window is proposed at the end of the corridor.	Yes										
<p><b>4G Storage</b>                  Adequate, well designed storage is to be provided for each apartment.</p> <p><b>Design criteria</b>                  1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>3</sup></td> </tr> <tr> <td>1 bedroom apt</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom apt</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3 + bedroom apt</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio	4m <sup>3</sup>	1 bedroom apt	6m <sup>3</sup>	2 bedroom apt	8m <sup>3</sup>	3 + bedroom apt	10m <sup>3</sup>	Storage area is proposed within the apartment and also in the basement. The storage size has been detailed in the Unit Analysis sheet submitted with the proposal and complies with ADG requirement.	Yes
Dwelling type	Storage size volume											
Studio	4m <sup>3</sup>											
1 bedroom apt	6m <sup>3</sup>											
2 bedroom apt	8m <sup>3</sup>											
3 + bedroom apt	10m <sup>3</sup>											
<p><b>4H Acoustic privacy</b>                  Noise transfer is minimised through the siting of buildings, building layout, and acoustic treatments.</p> <p>Plant rooms, services and communal open space and the like to be located at least 3m away from the bedrooms.</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>An Acoustic Assessment Report prepared by DK Acoustics P/L has been submitted.</p> <p>This report looked at noise from road traffic, from air conditioning plant and mechanical plant.</p> <p>The report concluded that: <i>“Road traffic noise affecting the proposed Stage 7A of the residential development ‘Shepherd’s Bay’ at 102 – 104 Bowden Street, Meadowbank has been assessed in Sections 2.2 and 3.7 of this report. Provided the noise control recommendations in Section 5 of this report are implemented, road traffic noise inside the habitable rooms will be reduced to comply with the noise limits required by Council. Acoustical investigation of the noise emission from the proposed development was carried out to assess the impact on the nearby residential units in Section 4. Provided the recommended noise controls in Section 5 of this report are implemented, noise emission from the development will comply with the noise limits required by Council and the NSW</i></p>	Yes										

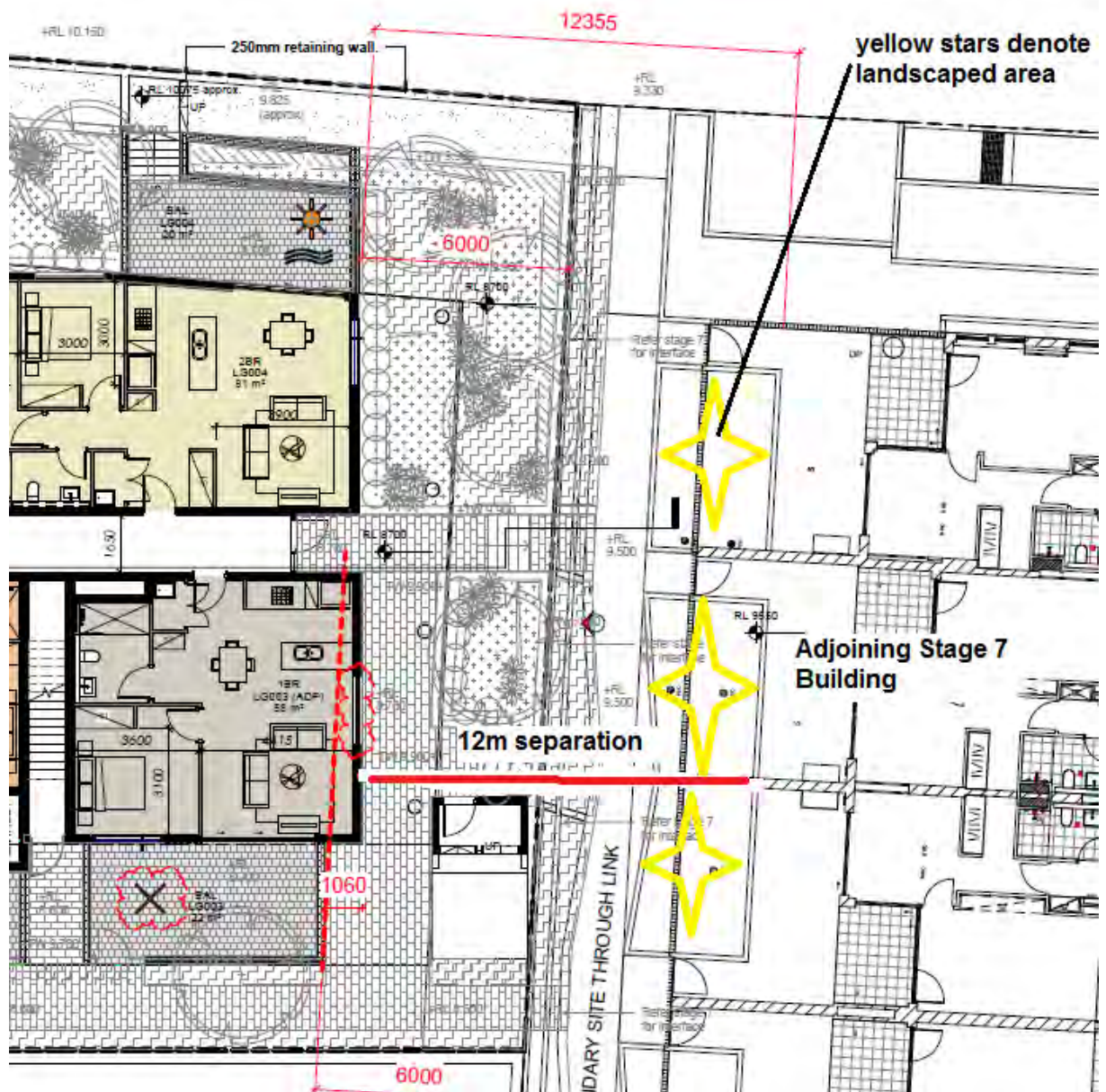
**ITEM 6 (continued)**

	<p><i>Environmental Protection Authority (EPA) noise guidelines, detailed in Section 3 of this report.</i></p> <p><b>Condition 36</b> has been imposed requiring compliance with the recommendations contained in the report.</p>	
<p><b>4K Apartment mix</b> A range of apartment types with different number of bedrooms (1bed, 2 bed, 3 bed etc) should be provided.</p>	<p>A mix of studio, 1, 2 &amp; 3 bedroom apartments have been provided.</p>	<p>Yes</p>
<p><b>4L Ground floor apartments</b> Building facades to provide visual interest, respect the character of the local area and deliver amenity and safety for residents.</p>	<p>The buildings facades provide visual interest with use of horizontal and vertical elements plus the main entrance clearly defined.</p>	<p>Yes</p>
<p>Building functions are expressed by the façade.</p>	<p>The building is residential and the design reflects the proposed use of the building.</p>	<p>Yes</p>
<p><b>4N Roof design</b> Roof treatments are integrated into the building design and positively respond to the street.</p>	<p>Roof elements are integrated into the building design.</p>	<p>Yes</p>
<p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Communal open space proposed on the roof terrace area.</p>	<p>Yes</p>
<p>Roof design incorporates sustainability features.</p>	<p>It is proposed to have a roof terrace area. Umbrellas are shown on the plans to provide shading.</p>	<p>Yes</p>
<p><b>4O Landscape design</b> Landscape design contributes to the streetscape and amenity. Landscape design is viable and sustainable</p>	<p>The proposal includes a landscape plan. Council's Consultant Landscape Architect has reviewed the plan and has advised that the plan provides for a high quality landscape design with appropriate species and level of deep soil planting.</p>	<p>Yes</p>
<p><b>4P Planting on structures</b> Appropriate soil profiles are provided.</p>	<p>Council's Consultant Landscape Architect has reviewed the landscaping plan and is satisfied with the plan. To ensure that the development complies with the recommended soil profiles, a condition on the consent has been imposed requiring compliance with the relevant soil depth. See <b>Condition 41.</b></p>	<p>Yes</p>

**ITEM 6 (continued)**

<b>4Q Universal design</b> Universal design features are included in apartment design to promote flexible housing for all community members. A variety of apartments with adaptable designs are to provided.	An Accessibility Report has been submitted with the proposal and the development has been designed to incorporate 5 adaptable apartments	Yes
<b>4R Adaptive reuse</b> New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place. Adapted buildings provide residential amenity while not precluding future adaptive reuse.	N/A	N/A
<b>4S Mixed use</b> Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	N/A	N/A
<b>4T Awnings and signage</b> Awnings are well located and complement and integrate with the building design.	No awnings required.	N/A
<b>4U Energy efficiency</b> Development incorporates passive environmental design measures – solar design, natural ventilation etc.	Complies with BASIX	Yes

**ITEM 6 (continued)**



**Figure 12: Lower ground floor separation along the eastern elevation with the adjoining Stage 7 building measured from subject building to after the landscaped areas of the courtyards of the adjoining building.**

**6.2 Ryde Local Environmental Plan 2014**

The following is an assessment of the proposed development against the applicable provisions from the Ryde Local Environmental Plan 2014.

Clause 2.2 - Zoning

The site is zoned B4 Mixed Use under the provisions of the RLEP 2014. The development is permitted in this zoning.

Clause 2.3 – Zone Objectives

**ITEM 6 (continued)**

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

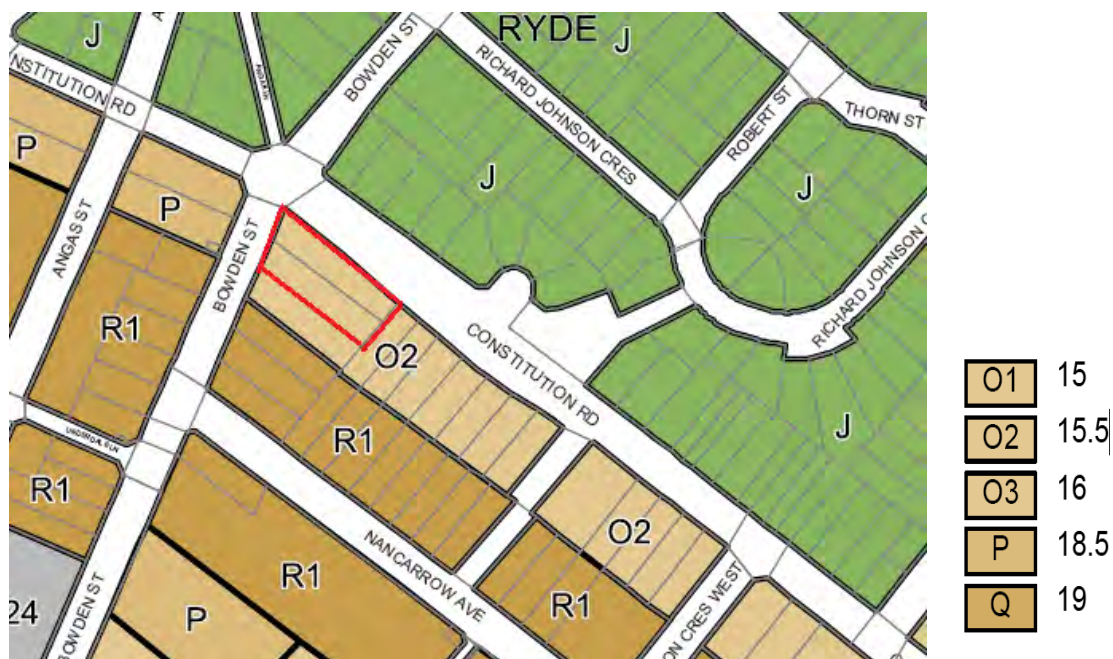
- To provide a mixture of compatible uses.
- To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.
- To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.
- To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.

The development complies with the above objectives. Whilst the use is solely residential, the zone permits residential apartment buildings and the use will be consistent with the desired future character for the precinct by introducing a new residential apartment building located within walking distance of bus and rail services, retail and commercial services and is therefore considered to be a suitable location for this development.

The massing and scale of the development has been assessed by the UDRP as appropriate in terms of the future built environment. The built form contributes to the character and public domain of the area. Public transport patronage, walking and cycling will be encouraged through the provision of residential development.

Clause 4.3 Height

The height control map shows the maximum height allowed is 15.5m. This is demonstrated in the extract from RLEP 2014 (**Figure 13**).





**ITEM 6 (continued)**

**Figure 15: Cross section through the middle of the building east to west.**

**Clause 4.6 Exceptions to development standards**

The applicant has provided a written request seeking to justify the variation to the development standard contained in Clause 4.3. A revised Clause 4.6 statement accompanied the amended plans.

**1. “Is the planning control in question a development standard?”**

The proposal seeks to vary the Maximum Building Height permitted under the RLEP 2014 which is considered to be a development standard.

**2. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]**

The applicant has provided the following justifications as to why compliance with the development standard is unreasonable or unnecessary:

*Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1** (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.*

Objective	Discussion
(a) <i>to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development</i>	<p><i>The extent of the variation, when viewed from any public domain, is negligible. Conversely, the vast majority of the proposed envelope when viewed from Constitution Road is compliant. In fact, when viewed from Bowden Street, the proposal is compliant. As such, it can be concluded that the proposal is consistent with the expected built form character, and therefore consistent with this objective.</i></p> <p><i>Further, the Planning Assessment Commission (PAC) approved Concept Plan MP09_0216 on 6 March 2013 which relates to land directly to the east of the subject site. In summary, the Concept Approval includes multiple, multi storey (up to 10 storeys) residential or mixed-use buildings. The proposed RFB at 102-104 Bowden Street, Meadowbank does not form a part of the concept approval, but reflects its overall built form scale given it includes 5 levels.</i></p> <p><u>Planner’s comments</u>                      Agreed - The Bowden Road frontage and the southern side of Constitution Road is changing from low scale industrial buildings to high rise buildings of up to 7 storeys along Bowden Street and up to 10 storey within the Shepherd’s Bay Redevelopment. The proposed development is 5 storey and similar in height to the adjoining Stages 6 &amp; 7 Shepherd’s Bay Redevelopment. See Figure 16 below. The proposed variation in height does not result in the building being out of character with the immediate area.</p>
(b) <i>to minimise overshadowing and</i>	<i>The proposal provides an architecturally designed RFB with contemporary finishes and materials. As discussed above, the</i>



**ITEM 6 (continued)**

<p><i>to ensure that development is generally compatible with or improves the appearance of the area</i></p>	<p><i>proposal is consistent with the emerging built form character as provided by the RLEP 2014, or Concept Approval MP09_216 (as modified). Compared to the existing warehouse structure at the subject site, the proposal is a vast improvement to the appearance of the area.</i></p> <p><i>The proposal warrants some minor additional height in order to define or at presence to the street corner on which it is located. This improves the appearance and legibility of the subject locality.</i></p> <p><i>The shadow diagrams provided at Figures 16 to 18 demonstrate that impacts are consistent with east-west orientated lots, and that the height non-compliance causes little additional impact to neighbouring dwellings. Most impact would be to any allotment to the south as the Bowden Street road corridor is to the west. Stage 7 is to the east, but this achieves solar access between 9am to 1am at June 21. The allotments to the south are currently all historical industrial uses and built form, despite their current B4 Mixed Use zone. It is difficult to anticipate shadow impacts given allotments to south include the original industrial envelopes. Regardless, the proposal's shadow impacts to the south would be consistent with any subsequent development to the south (i.e. they will be overshadowing each other to the same degree).</i></p> <p><u>Planner's comments</u></p> <p>Agreed - The proposed building will generally improve the appearance of the area as it will result in the significant redevelopment of the site.</p> <p>As illustrated in the overshadowing diagrams, Figures 17 to 19 below the additional overshadowing from the variation is minimal.</p>
<p><i>(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure</i></p>	<p><i>The proposal provides consolidation of two allotments, consistent with the desired pattern of the locality and with the approved Concept Plan MP09_0216. The development does not adversely cause isolation of any adjacent sites, and therefore further encourages the consolidation of other allotments in the locality.</i></p> <p><i>The subject site is in the vicinity of Meadowbank rail station and the Bowden Street ferry wharf. This encourages or increases the likelihood of public transport usage.</i></p> <p><u>Planner's Comment</u></p> <p>Agreed - The building is well-sited, in proximity to rail and bus services and within walking distance to schools and shops. Bus services to the CBD and Ryde can be accessed from bus stops located along Bowden Street. The subject site is within the Shepherd's Bay Meadowbank Town Centre and the adjoining southern sites will be likely to be redeveloped for residential apartments in the future.</p>
<p><i>(d) to minimise the impact of development on the amenity of surrounding properties</i></p>	<p><i>The proposed height non-compliance does not cause unacceptable impacts to the amenity of surrounding properties in terms of solar access, privacy and views for example. The height non-compliance is of minor nature, and the overshadowing impacts do not cause unacceptable additional impacts on the neighbouring developments.</i></p> <p><i>It should also be noted that the proposal is substantially compliant with adjoining amenity controls provided by the Apartment Design Guideline. In particular, building separation is substantially compliant.</i></p>

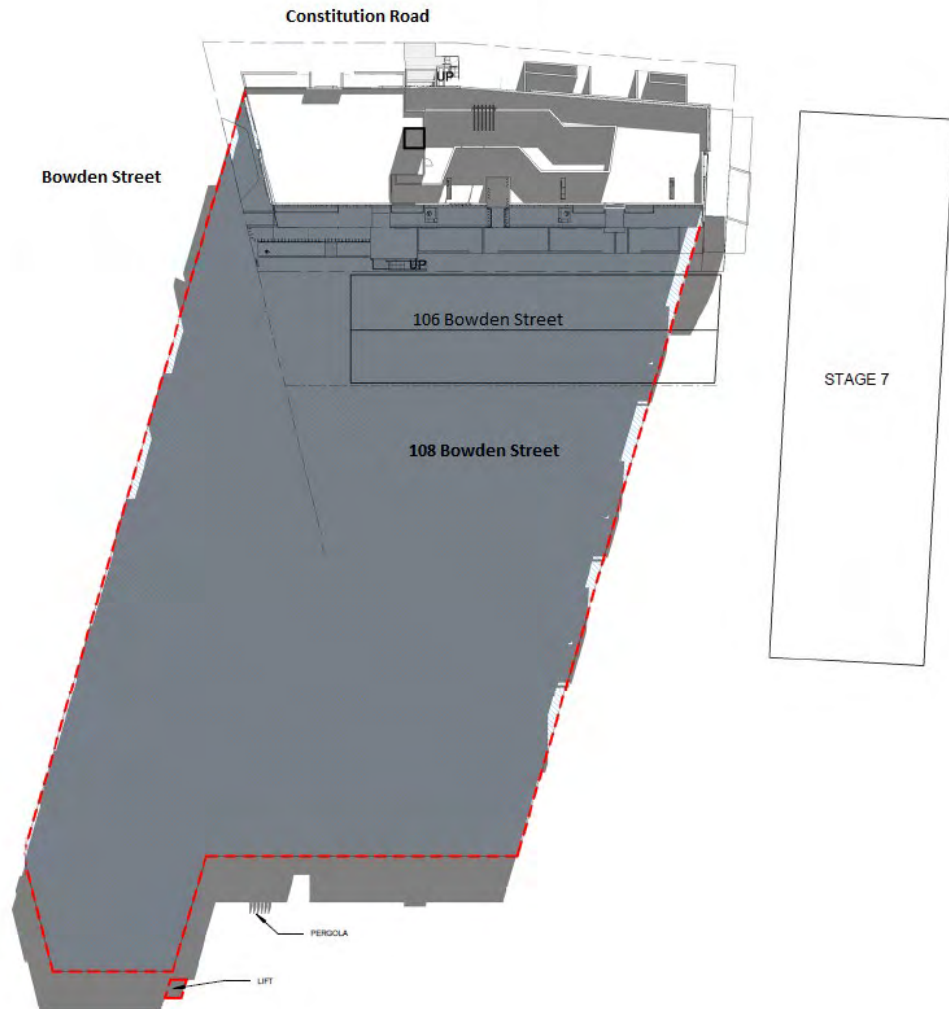
**ITEM 6 (continued)**

	<p><u>Planner's Comment</u> The proposal is acceptable with regard to overshadowing and impacts on the streetscape. The variation is minor, is only for a small section of the roof plus the lift overrun and is a consequence of the site's topography.</p>
<p><i>(e) to emphasise road frontages along road corridors</i></p>	<p><i>Both the proposal's north and west (street) facing elevations are effectively low height street walls, providing suitable emphasis to Constitution Road and Bowden Street, further emphasised by the proposed material and finishes.</i></p> <p><i>Much of the non-compliant height is located towards the intersection of Constitution Road and Bowden Street. As such, the proposal assists with emphasising, or defining the corner.</i></p> <p><u>Planner's Comment</u> The site is sited along at the corner of Constitution Road and Bowden Street and will emphasise the road corridor through allowing the future redevelopment of the site. The building has been designed to have a strong architectural element at the corner</p>



**Figure 16: As viewed from Constitution Road. The development will be similar in height to the adjoining eastern development – Stage 7 of the Shepherd's Bay Redevelopment.**

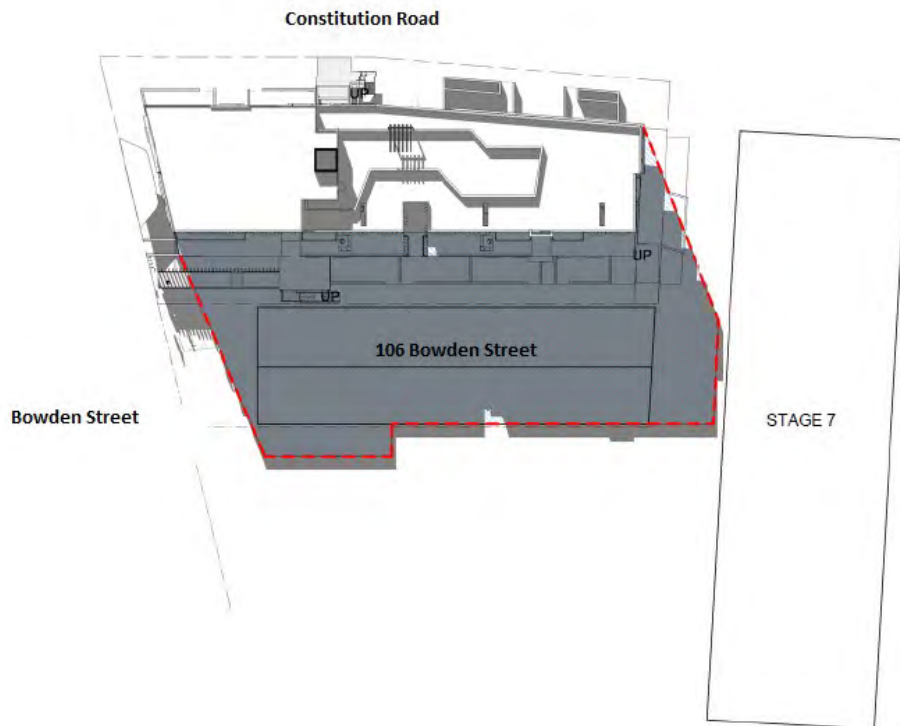
**ITEM 6 (continued)**



SHADOW DIAGRAM - 0900hrs

**Figure 17: Shadow diagram 21 June at 9am.**

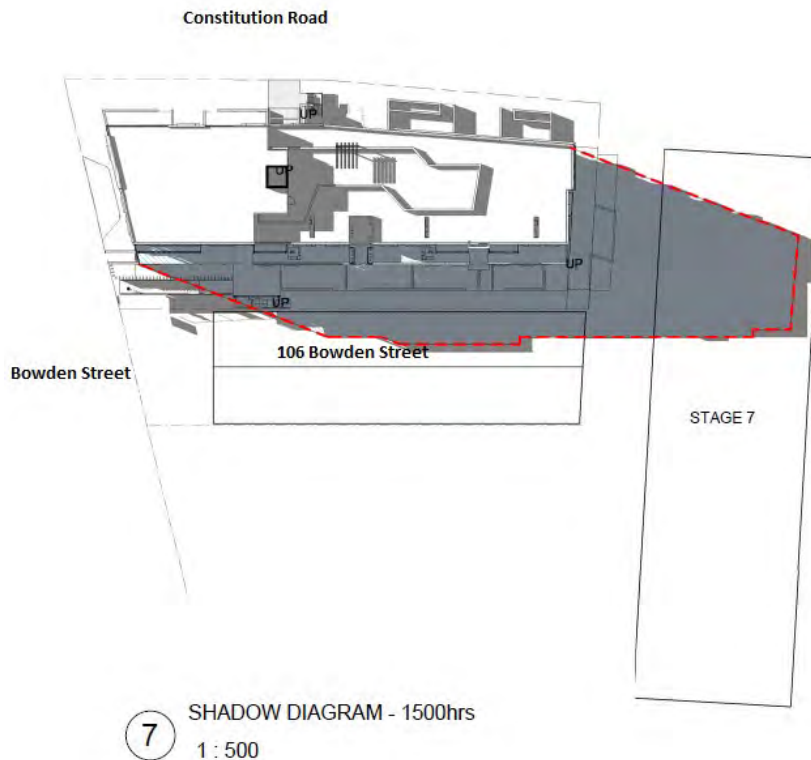
**ITEM 6 (continued)**



4 SHADOW DIAGRAM - 1200hrs  
1 : 500

**Figure 18: Shadow diagram 21 June 12 noon**

**ITEM 6 (continued)**



**Figure 19: shadow diagram 21 June 3pm.**

**3. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]**

The applicant has provided the following:

*Some specific environmental grounds to justify the breach of the standard are summarised as follows:*

*The breach of the standard allows for a development that is consistent with the desired future character of the Shepherd's Bay area as established in Part 4, Section 2.2 of the Ryde DCP 2014;*

*Similarly, the proposal remains consistent with built form character established within Shepherd's Bay, pursuant to Concept Approval MP09\_216, as modified;*

*The breach of the standard results as a consequence of the significant slope of the site and the lift overrun, which provides a better planning outcome in that it allows equitable access for all residents to the communal rooftop area;*

*In the absence of the lift overrun to the rooftop communal open space, the breach would only be 0.5m due to the slope of the land where such variations are unavoidable to achieve equitable access to all floor levels. Providing communal open space on the roof is preferable in this instance because it allows for full sun access and views which would otherwise not be accessible at ground level.*

**ITEM 6 (continued)**

*Further, providing communal open space on the roof allows for larger private open space to those ground level dwellings, thus providing improved amenity.*

*The site is located on the corner of Constitution Road and Bowden Street. The scale of the building provides for a defined corner development, creating a greater presence and a better urban design outcome.*

*For the above reasons, there are sufficient environmental planning grounds to justify the works above the 15.5m height limit due to the absence of resultant environmental impacts and the necessity to provide a contemporary level of residential amenity on a site of this nature.*

**Planner's Comment**

Agreed – the proposal does not have unreasonable impacts on surrounding properties for the reasons stated above. The variation is primarily due to the topography of the land and the non-compliance does not result in an exceedance in the floor space ratio. In addition the proposal allows for sufficient separation to the adjacent southern property to ensure that impacts of bulk and scale are reduced by the proposed non-compliance.

Despite the departure from the standard, the proposed development is considered consistent with its objectives and the additional height will not have adverse environmental impact, accordingly there are sufficient environmental planning grounds to justify the contravening the standard.

**4. “Is the objection well founded?”**

As detailed in above sections the proposed variation has been considered acceptable. The non compliance in height is not considered to adversely impact on adjoining and adjacent properties and to ensure compliance would likely result in a poorer planning outcome for the surrounds.

**5. “Would non-compliance raise any matter of significance for State or Regional planning?”**

The departure is not a matter for regional or state environmental planning. The proposal achieves a good urban design outcome and the proposal is not considered to raise any matters of significance for State or Regional planning.

**6. “Is there a public benefit of maintaining the Development Standard?”**

There is no public benefit of strictly complying with the standard in this particular instance. Maintaining the development standard would not provide any additional public benefit than what is proposed by the development (provision of housing close to facilities). The redevelopment of the site will result in a variety of public benefits such as upgrades to the public domain and urban renewal.

**ITEM 6 (continued)****7. “Matters required to be taken into consideration by the Secretary before granting concurrence.”**

There are no additional matters to be considered. Ryde Local Planning Panel can assume the Secretary’s concurrence where the variation to a numerical standard is greater than 10%. The variation is greater than 10% accordingly the proposal is to be determined by Ryde Local Planning Panel.

**Conclusion**

The proposed mixed-use development is consistent with the objectives of both the height of buildings control and the B4 Mixed Use zone. The proposed variation to the height of buildings control is considered appropriate as the proposal:

- is compliant with RLEP 2014 FSR control.
- Level 4 (top level) of the development includes a terrace area for the use by residents. The terrace is accessible via an elevator, ensuring the space is accessible for all residents. The landscaped terrace includes seating and barbeque facilities and offers expansive views to the south east towards the Parramatta River. The communal open space is orientated away from traffic noise on Bowden Street, however is afforded considerable solar access due to its location on the roof of the development.
- The building elements associated with the variation to the height of buildings control (in the southern western corner and lift overrun in the middle of the site) is due to the slope of the site, falling from the north eastern corner to the south western corner.
- The additional shadowing created by the built form and the associated lift overrun is minimal when compared to the shadowing resulting from a height complaint scheme for the site. There are no additional visual impacts or privacy impacts associated with the proposed development.

Accordingly the proposed variation is supported.

**Clause 4.4 Floor Space Ratio**

The floor space ratio of a building is not to exceed the maximum floor space ratio as specified on the Floor Space Ratio Map. The map identifies the site as having a floor space ratio of 2:1. This is demonstrated from the following extract from RLEP 2014 (**Figure 20** below).

**ITEM 6 (continued)**



**Figure 20: Floor Space Ratio Map.**

The development will have a GFA of 3,875m<sup>2</sup>, with a site area of 1946m<sup>2</sup> will equate to a compliant FSR of 1.99:1.

Other provisions

The table below considers other provisions relevant to the evaluation of this proposal:

Provision	Comment
Clause 6.2 Earthworks	The proposed development includes excavation for a basement car park. Council's Senior Development Engineer requires that a sediment and erosion control plan to be submitted prior to the issue of a Construction Certificate. See <b>Condition 62</b> . Accordingly the development is considered satisfactory in respect of this clause.
Clause 6.4 Stormwater management	The development is to be designed to maximise on-site stormwater retention for use as an alternative supply to the mains water as well as avoiding any impacts of stormwater runoff on adjoining properties.

**6.3 Draft Environmental Planning Instruments**

There are no draft environmental planning instruments that affect the site.



## ITEM 6 (continued)

### 6.4 Development Control Plans

#### City of Ryde DCP 2014

The following sections of DCP 2014 are of relevance, being:

- Part 4.2 – Shepherd’s Bay Meadowbank
- Part 7.2 - Waste Minimisation and Management
- Part 8.1 - Construction Activities
- Part 8.2 - Stormwater Management
- Part 9.2 - Access for People with Disabilities
- Part 9.3 - Car Parking

With regard to Parts 7.2 to 8.2, noting the advice received from the various technical departments within Council and the consideration of issues previously in this report, the proposal is satisfactory in relation to these parts of the DCP. Parts 4.2, 9.2 and 9.3 are considered below.

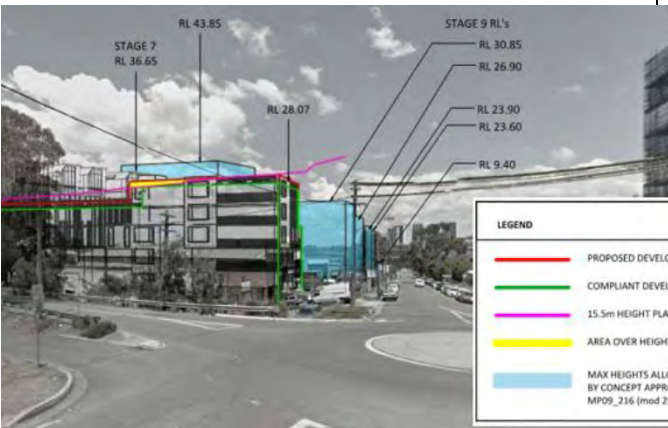
#### Part 4.2 – Shepherd’s Bay Meadowbank

RDCP 2014	Comment	Complies
4.1.1 Mixed-Use Development		
Mixed-use development will comprise either: <ul style="list-style-type: none"> <li>a. a combination of medium and high density residential development with compatible employment related activity; or</li> <li>b. compatible employment related activities including:               <ul style="list-style-type: none"> <li>i. restaurants and cafes;</li> <li>ii. small scale retail establishments such as convenience stores and news agencies up to 2000m<sup>2</sup>;</li> <li>iii. small commercial offices and studios such as real estate agencies offices;</li> <li>iv. professional suites such as doctors suites; and</li> <li>v. home offices.</li> </ul> </li> </ul>	<p>The development does not propose any commercial component comprising of 43 residential apartments.</p> <p>However whilst no commercial use is proposed, the development is compatible with the adjoining Shepherd’s Bay Redevelopment site which has incorporated mixed uses.</p> <p>The site is located on the corner of Bowden Street and Constitution Road, with a new traffic signal to be installed at this intersection. At a signalised intersection, no vehicular stopping or parking will be allowed for the first 20m downstream of the intersection. Furthermore, along Constitution Road, the ground floor will be partially below ground level as such will not be highly visible. Accordingly given that this development is relatively small (43 apartments) and given the site constraints, mixed use is not very viable in this location.</p>	No – variation acceptable.
4.1.2 Public Domain, Access and Pedestrian/ Cyclist		

**ITEM 6 (continued)**

Amenity		
<p>a. The achievement of maximum heights and density is contingent on meeting the public domain provisions of this plan and all public domain items being provided by the proponent.</p> <p>b. New developments must be provided with a minimum of one barrier free access point to the main entry.</p> <p>j. The design and location of vehicle access to developments should minimise conflicts between pedestrian and vehicles on footpaths, particularly along high volume pedestrian streets.</p> <p>o. The ground floor of all development is to be flush with the street footpath for the predominant level of the street frontage and at the main entry to the building.</p>	<p>The proposal does not comply with the maximum height permitted on site. A Clause 4.6 Variation has been submitted and can be supported by Council. See full discussion above. The proposal complies with the FSR. Public domain works will be required to be done – See <b>Conditions 51 &amp; 52.</b></p> <p>The proposed development provides barrier free (i.e.ramps) access to main building entries.</p> <p>Vehicular access to the site is from stage 7A basement levels. The use of Stage 7 vehicle access will eliminate the need for a driveway entry from either Bowden Street (which has a limited frontage) or Constitution Road The stage 7 vehicle access has been previously deemed to satisfy the relevant controls of the RDCP 2014.</p> <p>There is a crossfall on the site from north to south and east to west, however, the ground floor has been designed to ensure the levels are as close as possible to the street footpath level. The main entrance to the building is located on the northern elevation of the building and is generally flush with the street footpath of the Constitution Road street frontage.</p>	<p>No – variation to the height. See full discussion above.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>4.1.3 Implementation – Infrastructure, Facilities and Public Domain Improvements</b>		
<p>a. The public land such as the road verge adjoining a development site is to be embellished and if required dedicated to Council as part of any new development.</p> <p>b. The Access Network as shown Figure 4.2.03 is to be embellished if required and dedicated to Council as part of the new development.</p>	<p>Conditions have been imposed to ensure that the adjoining road verge is embellished and the splay corner dedicated. See <b>Conditions 116.</b></p> <p>Figure 4.2.03 show this section of Constitution Road being upgraded Link 3 – New Pedestrian Link. The adjoining Shepherd’s Bay Redevelopment is required to upgrade Constitution Road as part of the Concept Approval. The approved public domain plans for the Constitution Road upgrade include the subject site.</p> <p>See <b>Condition 24.</b></p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

**ITEM 6 (continued)**

<p>c. S7.11 contributions still apply throughout area, notwithstanding any land dedications, public domain improvements, infrastructure provision etc as required by this DCP.</p>		
<p>4.1.4 Views and Vistas</p>		
<p>a. Panoramic views of Parramatta River are to be maintained from Faraday Park, Settlers Park, Anderson Park, and Helene Park.</p> <p>b. Development is to ensure that vistas towards Parramatta are maintained.</p>	<p>The proposed development will not compromise views from the identified parks.</p> <p>Views of Parramatta River from the nearby residential flat buildings will not be affected by this development. The building stepped down with a half length top floor. In addition, building envelopes as permitted by Concept Approval for land beside and to the rear of the subject site are notably taller, see illustrated in the diagram below.</p>  <p>Blue outline illustrate building height approved by the Shepherd's Bay Concept Approval.</p>	<p>Yes</p> <p>Yes</p>
<p>d. Maintain views for pedestrians and cyclists along the public open space to the Parramatta River.</p>	<p>The siting of the building will not adversely impact views along the public space to Parramatta River.</p>	<p>Yes</p>
<p>4.1.5 Landscaping and Open Space</p>		
<p>a. All development proposals are to be accompanied by a Landscape Plan prepared by a qualified and suitably experienced landscape architect. This is to include an arborist's report on existing trees, and demonstrate how</p>	<p>A landscape plan has been submitted and reviewed by Council's Consultant Landscape Architect who has advised that the proposal is supported from a landscape perspective.</p>	<p>Yes</p>

**ITEM 6 (continued)**

proposed landscaping will contribute to ecologically sustainability. Management of construction impacts must also be addressed.		
b. Roof gardens are encouraged and must be considered in any landscaping plan.	The proposal includes the provision of accessible roof gardens.	Yes
e. Provide adequate deep planting zones above car parking and other concrete or similar structures to allow sustainable planting.	The landscape plan and associated report prepared by Site Image Landscape Architects provides adequate deep soil planting. The proposal provides 15% of deep soil landscape area which complies with the ADG requirement.	Yes
f. Provide at ground floor, where possible, open space for dwelling units and contiguous open garden areas to create common large landscaped space.	Each ground floor unit includes a private courtyard area in addition to communal open space provided on the roof terrace.	Yes
g. Construction of roof areas of multi unit developments is to make provision for useable roof gardens.	The proposal includes an accessible roof garden.	Yes
h. Where appropriate, developments should incorporate landscaping (such as planter boxes) integrated into the upper levels of building to soften building form.	The roof top common open space areas also provide suitable landscaping which may soften the building form. <b>Condition 41</b> has been imposed requiring suitable soil depth in planter boxes.	Yes
k. Where a proposal involves redevelopment of a site the developers are to arrange for electricity and telecommunications utilities to be under grounded along the entire length of all street frontages. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g. Energy Australia). This is to improve the visual amenity of the area and allow street trees to grow unimpeded.	See <b>Conditions 51 &amp; 52.</b>	Yes
4.1.6 Street Furniture and Public Art		
a. All development proposals are to be accompanied by a landscape plan, prepared by	See <b>Conditions 51 &amp; 52</b> for public domain improvements to be provided.	Yes

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<p>a qualified and suitably experienced landscape architect, indicating how public domain improvements including paving and street lighting will be incorporated into the development.</p>		
<p>b. Public domain finishes including the style, colour and installation methods of street furniture, paving and street lighting shall be in accordance with Ryde Public Domain Technical Manual.</p>	<p>Conditions of consent have been imposed to ensure that a landscape plan is submitted which addresses the public domain. See <b>Conditions 51 &amp; 52.</b></p>	<p>Yes</p>
<p>c. Public art is to be provided in accordance with Council's Public Art Policy. Developers must examine opportunities to incorporate public art in both internal and external public spaces and indicate how public art will be incorporated into major developments. Relevant themes include:</p> <ul style="list-style-type: none"> <li>i. the harbour location;</li> <li>ii. industrial history and heritage;</li> <li>iii. Aboriginal heritage; and</li> <li>iv. urban revitalisation.</li> </ul>	<p>A public art plan has not been submitted with the application and the applicant has advised that public art is not to be incorporated into the design public spaces for stage 7A, however, the approved Stage 6 &amp;7 will incorporate the mentioned themes in accordance with Councils Public Art Policy into dedicated public open space areas. As this development is not technically part of the Shepherd's Bay Redevelopment, this proposal should provide its own public art plan. <b>Condition 44</b> has been imposed requiring this.</p>	<p>No – required by way of condition.</p>
<b>4.1.7 Safety</b>		
<p>a. Public spaces need to be designed to meet Crime Prevention Through Environmental Design (CPTED) principles (DUAP 2001).</p>	<p>CPTED principles including natural surveillance, Natural Access control, territoriality, maintenance have been conditioned – See <b>Conditions 128 to 134.</b></p>	<p>Yes – conditioned to provide.</p>
<p>b. Open sightlines and landscaping needs to be provided that allows for high levels of public surveillance by residents and visitors.</p>	<p>Open sightlines and landscaping has been provided to ensure public surveillance of common areas including open space.</p>	<p>Yes</p>
<b>4.2.1 Height</b>		
<p>a. The maximum building height is to comply with the heights shown in Ryde Local Environmental Plan 2014 Height of Buildings Map. Buildings must comply with the maximum number of stories shown in Figure 4.2.10.</p>	<p>The height of the building exceeds the height control however complies with the number of stories permitted, being 5 storeys.</p> <p>The height variation is only for a small section of the building and for the lift overrun. A Clause 4.6 height variation request accompanies this DA and is discussed in detail earlier in the report.</p>	<p>No – variation proposed. Clause 4.6 submitted and discussed earlier in the report.</p>

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c. The ground floor height shall be 4m floor to floor regardless of use.	The lower ground floor height is 3.3m and ground level is 3.7m. The 4m height control is to allow flexibility for mixed use development. Given that the site is not conducive to ground floor commercial uses, the floor to floor height of 3.7m is considered acceptable.	No –variation acceptable.
<b>4.2.2 Setbacks</b>		
i. New development to have 4m setbacks ii. Setbacks for buildings of four storeys and above to be consistent with Figure 4.2.13 below.	4m setback along Bowden Street and between 4m to 6m along Constitution Road.  The proposal does not provide a 4m setback for the 4 <sup>th</sup> floor and above, being in line with the rest of the building.  The subject site is a corner allotment, and therefore warrants articulation addressing the corner. In this particular case, it is achieved by bringing part of the 4th and 5th storeys within the prescribed 4m setback zone. It should also be noted that other recently constructed building along Bowden Street have not provided the 4m setback.	Yes   No – variation acceptable.
<b>4.2.3 Roof Form</b>		
a. Buildings below RL 15 must have articulated roofs, as they will be viewed from buildings above. Articulated roofs refer to well-deigned roof zones with landscaping, useable areas and/or richly detailed roofs made of high quality materials.	The proposed building is not below RL 15. Despite this, articulation on the rooftop is provided through the provision of a communal open space area.	N/A
b. The use of solar panels on roofs is encouraged where possible.	No solar panels have been proposed.	N/A
<b>4.2.4 Building Facades and Articulation</b>		
a. Building facades should be articulated within a 3 metre zone to provide entries, external balconies, porches, glazed balcony enclosures, terraces, verandahs, sun shading elements etc.	The proposed building facades incorporates articulated forms including balconies and use of materials.	Yes
b. Penthouses should be set a minimum of 4 metre from any building's façade.	Three roof top apartments are proposed however only the southern apartment has been set in 3m from the southern façade. The other two apartments along the northern and eastern	No – variation acceptable.

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	façade have not been set in being in line with the rest of the building, with the balconies and other architectural treatments such as blades providing articulation and interest. As this is a corner site, not indenting the upper storeys helps reinforce the corner site and presentation to the streets.	
c. Articulate buildings to respond to orientation, views, breezes, privacy, views, acoustic requirements, street widths and relationship of the building to external garden spaces.	Unit layout and corresponding external areas are orientated to respond to orientation, views, privacy etc.	Yes
d. Articulate buildings vertically and horizontally: materials and building setbacks on the upper storeys are to be used to reduce the perceived bulk of buildings.	Articulation of the building incorporating both horizontal (slab edges, cladding, balustrades) and vertical (blades, materials) forms.	Yes
e. Provide and denote entries along street frontages and public domain spaces where appropriate.	The building features direct entry from the two streets.	Yes
f. Buildings are to address streets, open spaces and the river foreshore. Street frontages are to be parallel with or aligned to the street alignment.	The building is situated parallel to adjoining streets and address both the street and open space areas.	Yes
g. Provide balconies and terraces, particularly where buildings overlook public spaces.	Balconies and terrace are provided for all apartments.	Yes
<b>4.2.5 Private and Communal Open Space</b>		
a. Private open space with sunlight access, ventilation and privacy shall be provided for apartments in accordance with SEPP 65.	Refer to the ADG Assessment.	Yes
<b>4.3.2 Energy Efficient Design</b>		
a. Residential development must be designed in accordance with principle outlined in the Building Sustainability Index (BASIX).	The development complies with the BASIX requirements.	Yes
<b>4.4.2 Noise and Vibration Attenuation</b>		
Residential		
a. New residential	An acoustic report has been prepared by	Yes

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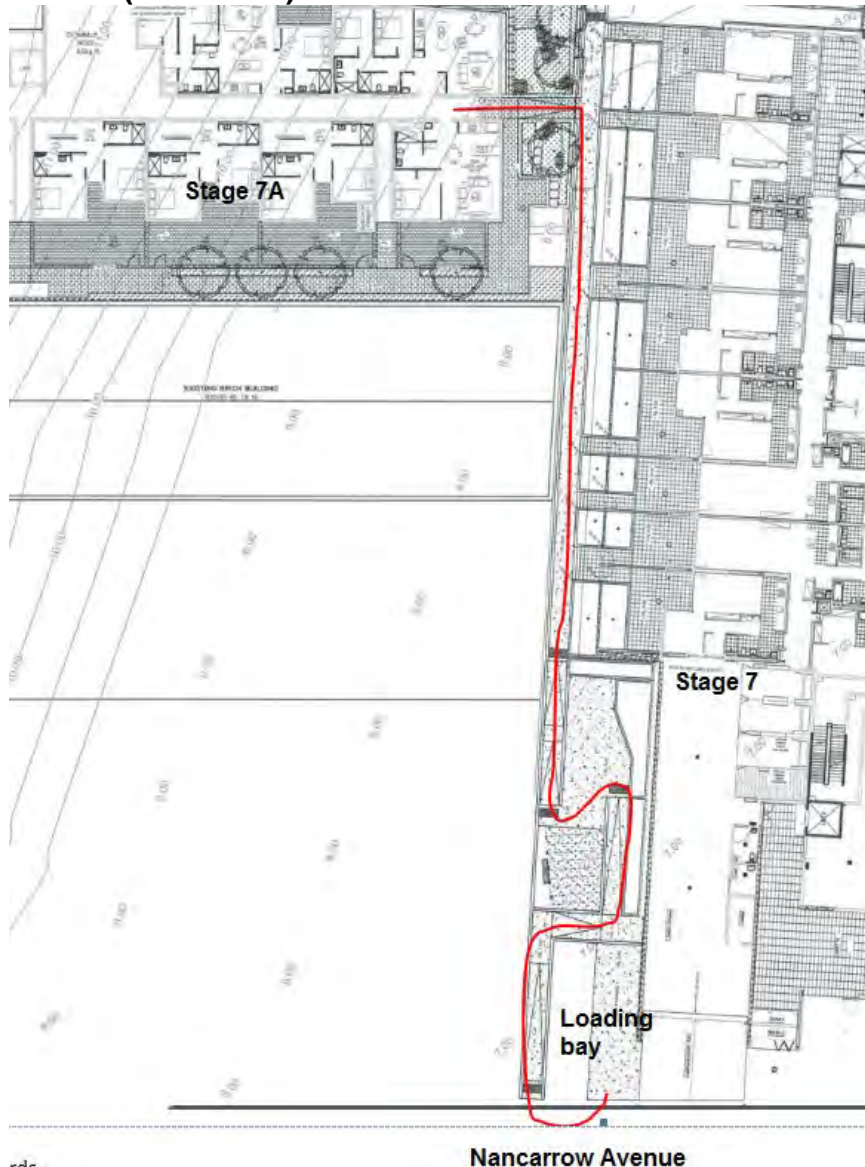
<p>developments, including those within a mixed use building, are required to consider noise attenuation and acoustic treatment in their design. Particularly, the building layout, walls, windows, doors and roofs are to be designed and detailed to reduce intrusive noise levels.</p>	<p>Acoustics P/L which concludes the proposal is acceptable subject to noise mitigation measures.</p>	
<p>4.4 Parking Access and Loading</p>		
<p>a. All new buildings are required to provide on-site loading and loading facilities.</p>	<p>Options were investigated as to where an on site loading bay could be provided and the applicant initially proposed an indented bay/'lay area' along Bowden Street. This was not supported by Council's Senior Traffic Engineer as the location would potentially interrupt the operation of the proposed signalised intersection at Bowden Street and Constitution Road. Furthermore due to proposed changes along Constitution Road and the current service laneway (being changed to pedestrian and bicycle pathway) it is not possible to provide it off Constitution Road. In addition, Council's Senior Traffic Engineer has advised that the majority of the site's road frontages, Constitution Road and Bowden Street will be limited with "No Stopping" restrictions. Therefore options were investigated to provide loading facilities at the Stage 7 building. The applicant and owners of Stages 6 &amp; 7 has agreed to provide a loading bay at the front of Stage 7 building. This will allow residents of the subject building to use the side pathway (a through site link which was required as part of Stage 7 building) to the subject site for removalists. See <b>Figure 21</b> after this table, illustrating the pathway from the loading bay to the subject building. Mod 2018/12 is currently in with Council for the loading bay to be provided in the Stage 7 development. Whilst this is not ideal, the development is relatively small (only 43 apartments) and small removalist trucks can park off street. <b>Deferred Commencement Condition (A) 2</b> has been imposed requiring evidence that a Right Of Way/easement being created over the loading bay and side walkway for use by Stage 7A building. <b>Condition 43</b> is also imposed requiring a signage plan to advise residents where the loading bay is located for use.</p>	<p>No – variation acceptable.</p>



**ITEM 6 (continued)**

<p>b. Loading docks shall be located in such a position that vehicles do not stand on any public road, footway, laneway or service road and vehicles entering and leaving the site move in a forward direction.</p>	<p>The development does not include any loading docks. See discussion above. The collection of waste will occur from Stages 7 &amp; 6 basement area. This is considered acceptable by City Works.</p>	<p>No – variation acceptable</p>
<p>4.5 Flooding and Stormwater Drainage</p>		
<p>a. Protect built structures and public safety from stormwater inundation up to the ‘major design flood’.</p>	<p>The applicant has provided a preliminary stormwater and flooding assessment and Council’s Public Works – Drainage has raised no objections subject to <b>Conditions 13, 14 &amp; 15.</b></p>	<p>Yes</p>
<p>5.0 Precinct Specific Development controls</p>		
<p>5.3 Precinct 2 – Constitution Road. a. Views from the highest point in this precinct to the south west and Sydney Olympic Park should be maximised.</p>	<p>Not the highest point.</p>	<p>N/A</p>
<p>b. Minimum permeable landscaped area is to be 35% of site area.</p>	<p>Approx 641m<sup>2</sup> is provided as permeable landscaping, or 33% of the site area which is a minor variation. In addition to the ground level landscaping, the proposal also includes a communal roof top terrace which has an area of 439m<sup>2</sup> and Council’s Senior Development Engineer has raised no objections to the stormwater management for the site.</p>	<p>No – variation acceptable.</p>
<p>c. Facades should be articulated within a zone of 3 metres and be built to street edge behind the required landscape setback.</p>	<p>The proposed building feature articulation to each respective façade within the approved setbacks.</p>	<p>Yes</p>

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**Figure 21: Loading Bay at Stage 7 Building, path of travel to the subject building outline in red.**

**Part 9.3 – Parking Controls**

Part 9.3 specifies that car parking is to be provided at the following rates:

Residential Development - High Density (Residential Flat Buildings)

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

The development will contain a total of 43 apartments comprising of: 1 x studio, 15 x 1 bedroom, 23 x 2 bedroom and 4 x 3 bedroom apartments.

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Based on the above, the following car parking is required:

	Min	Max
16 x 1 bed	9.6	16
23 x 2 bed	20.7	27.6
4 x 3 bed	5.6	6.4
<b>Total</b>	<b>35.9 (36)</b>	<b>50</b>
Visitor /5	8.6 (9)	8.6 (9)
<b>Total</b>	<b>45</b>	<b>59</b>

The proposal is required to provide between 45 to 59 spaces. It is proposed to provide 60 spaces which is one space above the maximum range. It is considered that as no motorcycle parking has been provided, the extra car space should be use as motorcycle parking. **Condition 55** has been imposed requiring this and **Condition 140** imposed for the allocation of spaces.

Five of the units are to be adaptable in accordance with the minimum 10% requirement. Council requires that a disabled parking space be allocated to each of these units. Five disabled parking spaces have been provided however the plans do not indicate specific unit allocations. **Condition 39** has been imposed requiring the residential disabled car spaces to be allocated to the adaptable units.

The DCP states that: *in every new building, where the floor space exceeds 600m<sup>2</sup> GFA (except for dwelling houses and multi-unit housing) provide bicycle parking equivalent to 10% of the required car spaces or part thereof.*"

Based on the above, 5 to 6 bicycle spaces are required to be provided. The development incorporates 12 bicycle spaces.

Subject to conditions, the proposal complies with Council's car parking and bicycle requirements.

### 6.5 Any proposed instrument (Draft LEP, Planning Proposal)

There are no relevant Draft Environmental Planning Instruments for the subject site.

### 6.6 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:

## ITEM 6 (continued)

- 16 x 1 bedroom units;
- 23 x 2 bedroom units and
- 4 x 3 bedrooms

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$117,931.94
Open Space & Recreation Facilities	\$290,324.45
Civic & Urban Improvements	\$98,745.09
Roads & Traffic Management facilities	\$13,469.40
Cycleways	\$8,413.71
Stormwater Management Facilities	\$26,742.77
Plan Administration	\$2,268.27
<b>The total contribution is</b>	<b>\$557,895.63</b>

**Condition 24** has been imposed to reflect the required Section 7.11 contribution.

### 6.7 Any matters prescribed by the regulations

As the development involves the demolition of a building, Council must consider the provisions of *AS201-1991: The Demolition of Structures*. Appropriate conditions of consent have been included to reflect this Australian Standard.

## 7. The Likely Impacts of the development

Most of the impacts associated with the proposed development have already been addressed in the report. The additional impacts associated with the development or those issues requiring further consideration are discussed below.

### Built Form

The area is currently undergoing a transitional phase with many sites within the Meadowbank area being redeveloped for mixed-use development. The built form and scale of the development meets Council's vision and objectives for the area.

The proposed building will not have any significant adverse impacts on the existing built environment or the amenity of the surrounding area and the proposed built form and character of the development will contribute to an attractive public domain.

### Overshadowing and Solar Access

The extent of overshadowing is an important consideration in terms of amenity to the proposed development as well as adjoining developments.

Shadow diagrams for 21 June has been submitted (Figures 17 to 19) which illustrate that the development will cast shadows on the adjacent southern properties – 106 to 110 Bowden Street.

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As illustrated in the diagrams, properties at 106 to 110 Bowden Street will be in shade at 9am. However by 12 noon only 106 Bowden Street, the immediate southern property will be in shade.

Due to the orientation of the site, east to west, overshadowing to 106 Bowden Street is unavoidable and will be impacted by overshadowing by a compliant development as illustrated in the shadow diagrams. The variation to the height results in minor additional overshadowing impacts when compared with the overshadowing created by a height compliant development.

The proposed development is considered to be a suitable development for the site, being permissible in the zone. As detailed earlier in this report, the development is consistent with the emerging character of the area and appropriately responds to the natural and built environmental assets and constraints of the site.

**8. The Public Interest**

The development is considered to be in the public interest as it is reasonably consistent with the relevant planning controls. Where variations to the planning controls occur in terms of height and setbacks, the proposal has been designed to minimise any potential impact to adjoining properties. The development complies with the objectives of the planning controls.

**9. Submissions**

In accordance with DCP 2014 Part 2.1 Notice of Development Applications, the proposal was advertised in the Northern District Times on 21 February 2018 and adjoining property owners were notified of the application. Submissions about the proposal closed on 14 March 2018.

During the notification period, 11 submissions were received. Figure 22 demonstrates the location of the properties who lodged submissions in relation to the site. Note: Two of the submissions were from West Ryde, not within close proximity of the subject site.

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**Figure 22: Location of objectors raising concerns about the development highlighted in yellow with two objectors outside the map – at West Ryde. Red denote the subject site.**

Amended plans were received 28 May 2018 however these plans were not renotified as the plans resulted in an improvement to the overall design.

The objections raised the following concerns:

- *The proposal is in excess of the 15.5m building height control which applies to the site, having a maximum height of 18m. The result of the additional height is unnecessary shadow impacts to 106 Bowden Street, which is a relatively narrow lot and will rely on its northern frontage for adequate solar access for any future development*

Planner's comments:

Not all of the building exceeds the height limit. Due to the topography of the site, the height breach is limited to certain sections of the building, being the south western corner (which is the lowest point on the site) and the middle section where the lift over run is located.

Any redevelopment of the subject site, even one within the height control will have impact to the immediate adjoining southern property (106 Bowden Street). Due to the orientation of the site, east to west, overshadowing to 106 Bowden Street is unavoidable and its northern elevation will still be impacted by overshadowing by a

**ITEM 6 (continued)**

compliant development. The additional height will have little additional overshadowing impact to 106 Bowden Street as illustrated in the shadow diagrams.

The proposal complies with the ADG building separation between the subject site and 106 Bowden Street, having a setback of 6m for the 1<sup>st</sup> four levels and then a setback of 9m on the 5<sup>th</sup> floor and above.

- *The proposal relies on vehicular access from the south-eastern adjoining development at 37-53 Nancarrow Avenue, under a Section 4.55 (1a) application to Council submitted on 19 January 2018. This neighbouring application is not considered to constitute a S4.55(1a) modification due to the extent of the proposed changes as detailed in a previous objection to that modification. It is contested that the access arrangement will be unsatisfactory, convoluted and inconvenient.*

*I can speak to this issue with considerable experience of a similar arrangement. For over six years, I was a resident of 13 Bay Drive, Meadowbank, which is part of the complex generally known as "Waterpoint" and similarly has absolutely no vehicular access of its own, just like this application. Resident and Visitor parking is accessed over 150 metres away via a driveway underneath 5 Bay Drive. This was an incredibly confusing arrangement that was difficult for visitors to find, and if they did find it, many visitors were highly confused as to how to navigate their way to 13 Bay Drive. I can tell you without any doubt: my visitors hated it.*

**Planner's comments:**

Whilst the proposal does not rely on direct street frontage for vehicular access, vehicular access is proposed via a combined ingress/egress with Stage 7's driveway at Nancarrow Avenue in the south-western corner of the Stage 7 site.

The applicant has provided written confirmation from Nancarrow Property Investments P/L stating that they will create an easement through Stage 7 (37 – 53 Narrow Ave) for the benefit of Stage 7A (this proposal), for vehicular access purposes. Accordingly **Deferred Commencement Condition (A) 2** has been imposed requiring evidence that a Right of Way has been registered over the title of Stage 7 (37 – 53 Narrow Ave) to ensure vehicular access will be available to the subject site.

Similarly a condition will also be imposed on Mod 2018/12 which is currently in with Council to permit vehicular access through Stage 7 building to the subject site. The condition will require a ROW to be created over Stage 7 building. In addition a condition will also be imposed on the modification for signage to be provided to direct residents and visitors to the Stage 7 building.

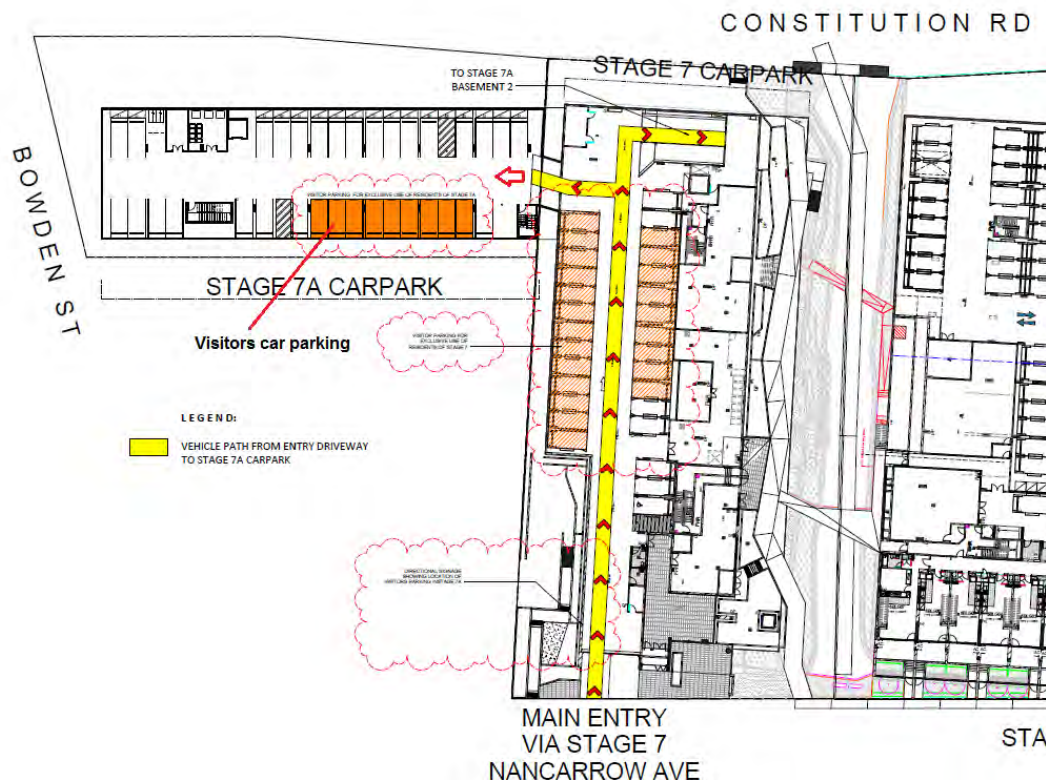
Access to the subject site basement /parking area is relatively straight forward, with entry from Nancarrow Ave and then a straight distance of approximately 70m to the site basement 1 area. This is a direct path from Nancarrow Avenue through the first

**ITEM 6 (continued)**

basement level of Stage 7 to the basement of Stage 7A which is on the same level. Signs are proposed at the entry to direct visitor and residents to the site's car parking area. Figure 23 illustrates the route to the car parking area.

The applicant has advised that “*proposed arrangements are not, by any means, entirely out of the ordinary. There are countless similar examples where visitors and residents access a building's parking provisions from a rear laneway, or similar. It is noted that Stage 2 & 3 of the Shepherd's Bay Concept Approval has its main address to Nancarrow Avenue, but its basement will be accessible from Rothesay Avenue only. It is not an arrangement which requires intensive intervention by either a visitor or resident of proposed Stage 7A. At most, residents will inform visitors of the vehicular access arrangements before they attend the site, otherwise, visitors will be able to rely on the proposed directional signage.*”

**Condition 43** has been imposed requiring signage to be provided around the site to direct visitors to the subject building to the respective visitor parking spaces.



**Figure 23: Route to the subject site car parking area form Nancarrow Ave. Yellow denote the pathway with the orange area is the visitor car parking area for Stage 7A building.**

- *The reliance on the neighbouring Stage 6 and Stage 7 of the proponent's Part 3A development (which this development does NOT form a part of) for vehicular access and garbage disposal, together with a complete failure to provide loading and unloading facilities for deliveries appears to have led to a substantial non-compliance with the Ryde DCP.*



**ITEM 6 (continued)**

*A flow-on impact from the failure to include the appropriate access and loading and unloading facilities is an unnatural density that is not in keeping with the character set forward for Shepherd's Bay in the DCP. It is not purely about built form in terms of height and setbacks and similar controls. These controls are inclusive of the need for vehicular ingress and egress which must be catered for within the allowable building envelopes.*

Planner's comments:

As explained earlier in the report, it is not possible to get vehicular access to the site due to the levels differences along Constitution Road and the limited frontage along Bowden Street, accordingly the vehicular access from Stage 7 building is an acceptable option.

Whilst the garbage disposal is from Stage 6 building, a garbage holding room is provided on site and someone will be employed to take the garbage across to Stage 6 holding area. This is the same situation for Stage 7 building therefore the transfer of additional 43 units' garbage is not too onerous and is supported by Council's Senior Co-ordinator Resources Recovery.

A loading bay is now proposed to be provided adjacent to the driveway of Stage 7 building. Whilst it is acknowledged that the proposed loading bay is not on the subject site, various options were investigated as to where loading facilities can be provided. Due to the site constraints it is not possible to provide a loading bay on the site or along the frontages of the site. However as the development adjoins Stage 7 building and will be known as Stage 7A, it was considered acceptable to provide the loading bay on the Stage 7 site, adjacent to the side walkway (the north western through site link) which adjoins a pathway on the Stage 7A building. See Figure 21 above illustrating the pathway for removals. Given that the loading bay will be off street and the distance between the loading bay and subject building is not excessive, the proposed arrangement is considered acceptable. **Deferred Commencement Condition (A) 1** has been imposed requiring a private Right of Way be registered over Stage 7 site, extending between the two sites. **Deferred Commencement Condition (A) 2** has also been imposed requiring documentary evidence that a ROW/easement is on the title of Stage 7 building for the loading bay.

- *The layout of apartments on the south-western side of the building is poor, relying on skylights to achieve solar access. Significant non compliance with the ADG for corridor length and with an excessive number of units being serviced by a single lift core.*

Planner's comments:

The southern western apartments on the lower ground floor and apartments, 104, 105 & 204 & 205 do not receive the required solar access and these apartments have been included in the 15% of apartments not receiving any solar access between 9am and 3pm.

**ITEM 6 (continued)**

As part of the amended plans, the lower ground floor apartments have been amended to 2 storey dwelling this has resulted in their living rooms relocated from Lower Ground, to Ground Level, affording them improved amenity in the form of larger overall internal area and improved outlook. Further, their associated pergola structures, which was also identified as potentially blocking solar access to these dwellings by the UDRP, have also been deleted

The ADG design criteria states that *the maximum number of apartments off a circulation core on a single level is eight however where this is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.*

The proposal does not comply on the ground floor and Levels 1 to 3. However the ADG recognises that full achievement may not be possible. In these cases there should be a high level of amenity for the corridors and apartments. The proposed variation is considered acceptable having regard to the following ADG design guidance:

- Provision of an east facing window at the end of the corridor to allow for light and ventilation access.
- Provision of seating and window half way along the corridor along the southern elevation.
- The proposal is for 9 apartments off a single corridor however there are two separate stairwells and a lift servicing each floor.
- Three of the ground floor apartments have their own separate entry from the street.

In addition, the UDRP has reviewed the layout and have raised no objections to the corridor core.

- *The proposal does not comply with the building separation requirements of the Apartment Design Guide or the Ryde Local Environmental Plan 2014, demonstrating that the proposal presents an unsuitable building envelope for the subject site that unduly imposes upon surrounding properties.*

**Planner's comments:**

Along the lower ground floor, the proposal has provided a setback of between 6m to 5.2m from the eastern boundary. However the building separation between the subject building and the adjoining 37 Nancarrow Ave (Stage 7 building) is 12.35m, which complies with the ADG building separation between the two buildings.

On the ground floor and Levels 1 & 2, the apartments' side balconies encroach into the 6m setback, reducing the setback to 3m only. However the separation between the building at 37 Nancarrow Ave (Stage 7 building) and the subject building is 12.35m, which complies with the building separation under the ADG.

The proposal has provided the required 6m setback along the southern boundary with 106 Bowden Street.

**ITEM 6 (continued)**

The proposal complies with the ADG building separation requirements. There are no such provisions in the RLEP 2014.

- *The proposal would completely overshadow the south-western adjoining property at 106 Bowden Street from 9am – 1pm in midwinter, with further significant shadowing from 1pm – 3pm. 106 Bowden Street is a relatively narrow lot and will rely on its northern frontage for adequate solar access for any future development.*

Planner's comments:

Due to the orientation of the site, east to west, overshadowing to 106 Bowden Street is unavoidable and will be impacted by overshadowing by a compliant development as illustrated in the shadow diagrams.

Any redevelopment of 106 Bowden Street will need to amalgamate with the adjoining southern properties to enable it to achieve the required setbacks and building separation.

- *The waste management arrangement for the subject development proposes a complicated and excessive bin travel path from the subject site across two sites to the south-east, finally being collected at the Stage 6 development site. This arrangement relies on access to these sites under an unapproved modification application as detailed before. The extent of the travel path raises issues with the sanitary disposal of waste from the subject site.*

Planner's comments:

The development will have 43 residential units with access to the basement through 37-53 Nancarrow Ave (Stage 7 building's basement). The bins will be taken to the bin storage room in Stage 6 building for collection. Stage 6's bin room is to be modified via Mod 2018/12 currently in with Council to ensure that the room is adequate to contain all the bins from the three sites. A bulky waste collection room has been provided in the basement for the storage of unwanted household items awaiting the cleanup collection. These items will be transferred to the communal bulky waste room located in Stage 6 – 33 Nancarrow Ave. **Condition 144** has been imposed for staff or contractors to be employed to take the waste containers from the garbage and recycling room to the container emptying point for servicing and to return the containers to the garbage room after servicing and for the movement of bins to be conducted in a hygienic and sanitary manner.

Council's Senior Co-Ordinator Resources Recovery has advised that whilst this situation is not ideal, the site's gradient is not conducive to direct access for vehicles from Bowden Street or Constitution Road and due to the proximity of the traffic lights and being on a downhill slope, waste collection vehicles will not be able to stop along this section of Bowden Street to allow for street waste collection. Accordingly the proposed arrangement is considered acceptable.

**ITEM 6 (continued)**

- *Insufficient information has been provided with the development application regarding the contamination of the subject site.*

Planner's comments:

Council's Environmental Health Officer has reviewed the proposal and has advised that the application included a preliminary site investigation by Martens Consulting Engineers, *Preliminary Site Investigation: Lot 1 DP 730371 & Lot SP 20107, 102-104 Bowden Street, Meadowbank, P1705999JR01V01, December 2017*. The report concluded that the site has a risk of contamination and that a detailed site investigation needs to take place. It considers that the site can be made suitable. A site validation report is required to be submitted to Council to ensure that the detailed investigation and any required remediation is carried successfully carried out. This has been conditioned – See **Conditions 31 to 35**.

- *Meadowbank is already overdeveloped and cannot accept more development without significant investment in infrastructure. Further development should be stopped until all ongoing developments both in Meadowbank and surrounding suburbs are completed and the real impact of further development can be assessed in the correct context. There is no need to rush into further development approvals at this time. There has been negligible increase in infrastructure capacity to accommodate such dramatic increase in population within such a short span of time.*

Planner's comments:

With regard to overdevelopment and further developments stopped until all ongoing developments are completed, the subject site is zoned B4 Mixed use and the proposed development is permissible with consent. The developer has the right to submit an application to develop their land, subject to Council's approval.

The provision of new infrastructure such as schools, public transport etc is under the State government jurisdiction. Council at the time of the making of the current planning controls (LEP 2014) with the increased in density wrote to the relevant departments for them to consider as part of their strategic plans funding for new schools, public transport etc.

- *The area is over developed with infrastructure especially traffic condition on Constitution Road severely deteriorated over the last two year. Heavy congestion during peak hours. Especially Constitution Road and Bowden Street roundabout. The traffic around Meadowbank Train Station is already an absolute mess in the morning even though the majority of apartments are still under construction.*

Planner's comments:

Council's Senior Traffic Engineer has advised that *in accordance with the RMS Guide to Traffic Generating Developments, 43 units located near easily accessible public transport are anticipated to generate 9 vehicles per hour during peak periods. This equates to one (1) vehicle every 6-7 minutes. This is considered negligible on the*

**ITEM 6 (continued)**

*local network and is anticipated to have minimal impact on the serviceability of the approved development at 37 Nancarrow Avenue.*

As part of the redevelopment of the adjoining sites – the Shepherd’s Bay Redevelopment Concept Approval, the concept approval incorporates a series of public road and infrastructure upgrades including but not limited to:

- The extension of Nancarrow Avenue to connect with Bowden Street
- The implementation of Local Area Traffic Management (LATM) measures
- Implementation of left in/left out arrangement at the intersection of Belmore Street and Hamilton Crescent
- The installation of a pedestrian crossing facility at the intersection of Bowden Street and Nancarrow Ave
- The installation of a roundabout at the intersection of Belmore Street and Rothesay Ave
- Implementation of left in/left out arrangement at the intersection of Belmore Street and Yerong Street and
- The signalisation of Constitution Road and Bowen Street.

Once the upgrades to the local road and infrastructures are completed, the local roads will be able to cope with the additional traffic.

- *The proponent has failed to adequately account for the redesign of Constitution Road as illustrated in concept form in the DCP and has shown its present form with an access road apparently stated for removal, which doesn’t correctly reflect how the proposed residential flat building will integrate into the new Constitution Road. Only passing mention is made of the signalisation of the intersection of Bowden Street and Constitution Road and this is also not factored into any of the drawings, the timing of which is still a contentious issue in their Part 3A concept plan (with the proponent seeking to delay this work, while the RMS has repeatedly stipulated in their submissions that it should be completed prior to the issue of the Occupation Certificate for Stage 3 of their Part 3A development).*

**Planner’s comments:**

Holdmark is required to upgrade Constitution Road as part of the Shepherd’s Bay Redevelopment Concept Approval. Council and Holdmark consultants are currently liaising in relation to the road designs. These drawings take into account the frontage along Constitution Road and Council’s Public Works has reviewed the proposal and has raised no objections to the proposed development.

The matter of delivery of the works is part of the Shepherd’s Bay Redevelopment and is not relevant to this application.

- *Object to the application made by Holdmark for 43 new dwellings on the grounds of the high density of apartments already in the area. These dwellings*

**ITEM 6 (continued)**

*will result in approx 150 additional residents, but there is no proposal by Holdmark or by the council to widen roads to reduce traffic congestion, increase street parking, expand parklands or an assessment on the impact to schools.*

*The traffic around Meadowbank Train Station is already an absolute mess in the morning even though the majority of apartments are still under construction. Once the 7 Shepherd's Bay apartments are finished in addition to all the surrounding developments, it's just going to get worse! I know there will be a traffic light installed to help improve traffic flow, but there is only so much it can help.*

**Planner's comments:**

As part of the redevelopment of Shepherd's Bay, the road network will be upgraded to improve traffic flow, minimise congestion and improve pedestrian safety within the area in accordance with the Concept Approval for the Shepherd's Bay Redevelopment. Stage 6 and 7 the development is required to provide for the installation of the signalised intersection to Bowden Street and Constitution Road and currently RMS and Holdmark are working on this matter. As part of the proposed public domain works for Stages 6 & 7, a central communal public space area and associated pedestrian cycle way to provide direct linkages to the foreshore is to be provided. Whilst this application is not part of the Concept Approval, it will be connected to Stage 7. In addition, the Concept Approval requires a series of public road and infrastructure upgrades – see discussion above.

Council's Senior Co-ordinator Development Engineering Services has confirmed that the proposed residential parking spaces, subject to Conditions, are in accordance with Council's requirements. Pressure of existing educational facilities and public transport is a State wide issue and Council will continue to liaise with State Government agencies.

**10. Referrals****Internal Referrals:**

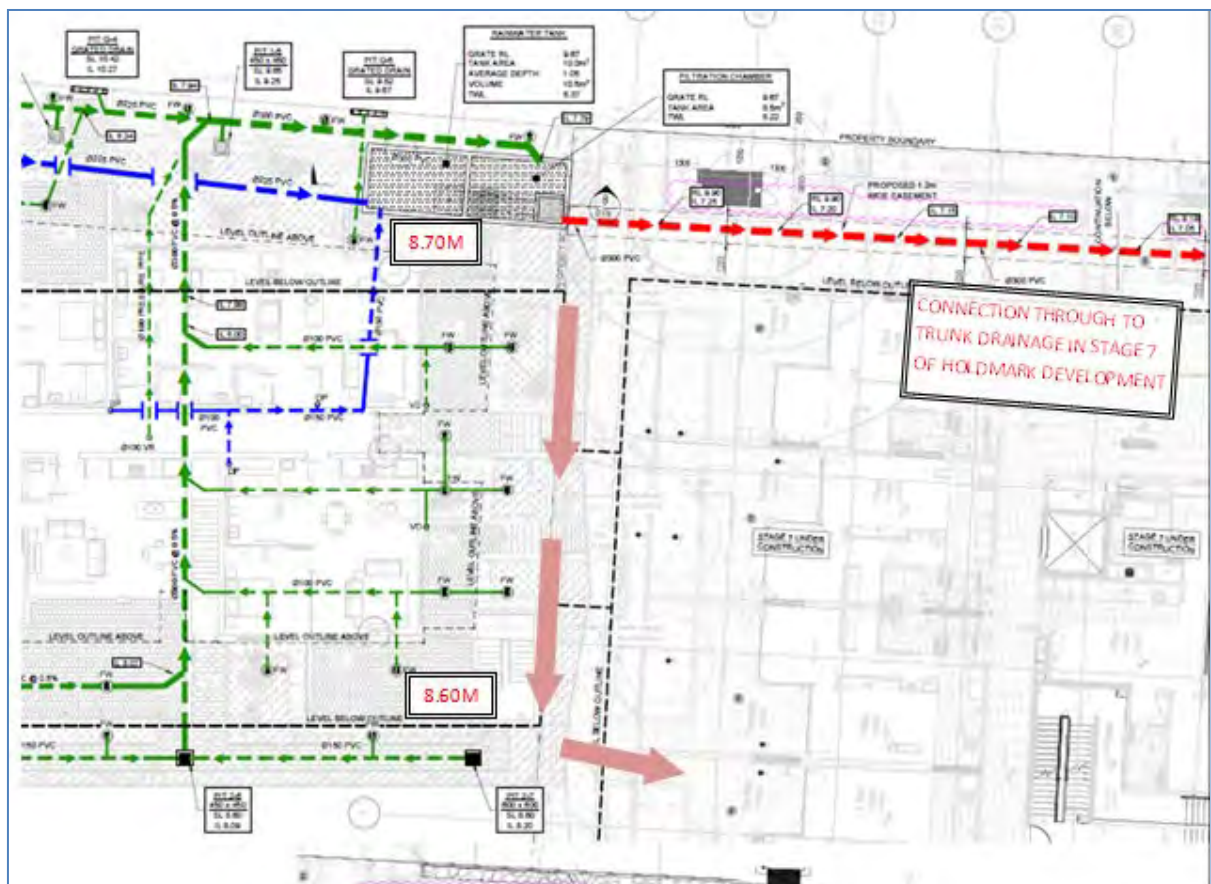
**Development Engineer: 29 October 2018:** Council's Senior Co-ordinator Development Engineering Services has reviewed the proposed has provided the following comments with regard to stormwater management:

*The proposed stormwater management system for the development seeks to discharge to the public drainage infrastructure which traverses the neighbouring site currently under construction (Stage 6 & 7 of the Holdmark Meadowbank development). The design is noted to incorporate an onsite detention system located the northern end of the site.*

*A review of the plan has noted the following matters which need to be addressed;*

**ITEM 6 (continued)**

- *The nominated diameter of the discharge line is 300mm which would warrant an easement width of 1.5m be created over the burdened lot in lieu of the 1.2m proposed. This can be addressed by condition of deferred commencement.*
- *The proposed easement traversing Stage 7 development will require the modification to retaining walls on this lot to accommodate the easement. This can be a matter addressed in the MOD for this development (MOD2018/12), submitted to accommodate this development.*
- *The documentation does not define a clear failure mode (overland flowpath in the event the drainage system blocks) for most of the surface areas at ground level. Ground floor units are located below the level of street frontage on both Constitution Road and Bowden Street frontage and therefore overland flow would be directed to the lowest point of the site in the southeast corner. There are also partitions separating the ground floor units which would impose on this flow. The matter could be resolved by position openings in the base of partitions and ensuring that the levels are graded such that any runoff can be directed to the path along the western side of Stage 7 development. Whilst the pathway is to be preserved as a public Right of Way, an Easement to Drain Stormwater must be registered on the neighbouring lot to ensure the overland flowpath will be retained.*



**Figure 24: Illustrate the stormwater management failure mode.**

**ITEM 6 (continued)**

*There are no objections to the proposed development with respect to the engineering components however the following matters are to be noted;*

- *The drainage easement over Stage 7 of the Holdmark development will need to be 1.5m wide (as per the DCP requirements), not 1.2m wide as proposed.*
- *Connection to the trunk drainage line located in the neighbouring development will likely occur when the infrastructure when the infrastructure is dedicated to Council. Accordingly detailed plans are warranted prior to CC.*
- *The easement will require some modification of retaining walls in this area to accommodate (or possible finessing the alignment of the infrastructure).*
- *The development provides 1 parking space in excess of the resident parking requirement. This could be resolved by relocating one of the visitor spaces to the accessible space at the eastern end of basement level 1 and relocating the resident accessible space to basement level 2 or convert one of the residential parking space for motorbike parking. Refer to the condition "Vehicle Access and Accommodation".*

See **Conditions (A)1, 55 to 62, 76 to 82, 120 to 124, 138 to 140.**

**Consultant Landscape Architect: 6 August 2018:** The proposal was referred to Council's Consultant Landscape Architect who has advised:

*This landscape assessment responds to amended plans received for the proposed residential flat building development at 102-104 Bowden Street, Meadowbank following comments from Urban Design Review Panel (UDRP) some of which related to landscaping, communal and private open space areas. It is noted that the application does not appear to involve any tree removal/retention or impact to neighbouring trees.*

*Overall the revised landscaping has addressed the specific concerns raised by Council and the UDRP relating to open space design on site. This includes improving the private outdoor areas of the lower ground floor units, providing increased amenity to the rooftop communal open space and further resolution of the through site link to improve access and sightlines. Accordingly, no concerns are raised with the revised landscape documentation and the proposal is supported from a landscape perspective.*

**City Works: 19 September 2018:**

**Drainage:** *The Stormwater Concept Plan Lower Ground Level, indicates the property drainage pipeline from the OSD tank is to be discharged directly into the channel, which is not acceptable. The connection of property drainage system shall be made to the inground drainage infrastructure located underneath the channel. As this*



**ITEM 6 (continued)**

*channel bed is to be rock lined, the connection must be made prior the completion of channel work.*

**Conditions 13 to 15** imposed to comply.

**Traffic:** No objections subject to conditions. See **Conditions 12, 49, 73 to 77, 94, 116, 125 & 126.**

**Public Domain:** From a Public Domain perspective there are no objections to approval of this application subject to conditions. See **Conditions 51 to 54, 95, 105 to 115.**

**Waste:** From Waste perspective there are no objections to approval of this application subject to conditions. See **Conditions 63, 64, 96 to 100, 143 & 144.**

**Environmental Health: 18 September 2018:** Council's Environmental Health Officer has reviewed the proposal and has advised: "*The application included a preliminary site investigation by Martens Consulting Engineers, Preliminary Site Investigation: Lot 1 DP 730371 & Lot SP 20107, 102-104 Bowden Street, Meadowbank, P1705999JR01V01, December 2017. The report concluded that the site has a risk of contamination and that a detailed site investigation needs to take place. It considers that the site can be made suitable. A site validation report should be submitted to Council to ensure that the detailed investigation and any required remediation is carried successfully carried out.*

*An acoustic report by DK Acoustics Pty Ltd, Road Traffic Noise Assessment and Environmental Noise Impact Assessment, Proposed Residential Development Stage 7A-Shepards Bay, 102-104 Bowden Street, Meadowbank, Ref:170825, 20 December, 2017 was submitted with the application. It details the construction requirement for the building and the target noise levels required to be achieved for noise emissions and intrusions."*

See **Conditions 31 to 35.**

External Referrals:

**NSW Police: 13 March 2018:** No objections subject to conditions. See **Conditions 128 to 134.**

**Ausgrid: 28 September 2018:** The proposal was referred to Ausgrid as the proposal involves excavations within 2m of an underground electricity power line located generally along the subject development site's Constitution Road frontage and within 5m of an overhead electricity power line located on Bowden Street. Ausgrid raised no objections subject to conditions. See **Conditions 21 & 22.**

**11. Conclusion**

**ITEM 6 (continued)**

After consideration of the development against the relevant section of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the proposal is considered suitable for the site and is in the public interest. The proposal provides a contemporary built form that is considered to be appropriate in the local context in terms of bulk, density and scale.

The proposed development was amended as per the recommendations of the UDRP and with the impositions of the attached conditions the development will provide a high degree of amenity for future occupants in terms of access to public transport, commercial uses and shops.

The site is zoned B4 Mixed Use under Ryde LEP 2014 and the development results in one variation to the development standards contained in Ryde LEP 2014 in respect to the overall height of the building. The height exceedance is due to the topography of the site, not as a consequence of extra floor space. The height exceedance is not considered to have an unreasonable impact to adjoining properties in terms of overshadowing or overlooking nor is the development out of character with the immediate area. Accordingly, given the circumstance of the case, the applicant has provided a Clause 4.6 variation which is supported.

Notwithstanding the proposed variations discussed in detail in the main body of the report, the proposal provides for acceptable amenity. The variations are not considered to adversely impact adjoining properties or the streetscape character of the area. The UDRP have raised no concerns in this regard, the proposed design is considered reasonable in the circumstances.

The development is recommended for a deferred commencement approval subject to appropriate conditions of consent provided in **Attachment 1** of this report.

The issues raised in the submissions have been considered and have been adequately addressed throughout the assessment process. Refusal of the application is not warranted based on the reasons contained in the submissions.

**12. Reasons for Approval**

In light of the above, the development application is recommended for approval subject to conditions for the following reasons:

- 1) The proposed development is consistent with the objectives of the B4 Mixed Use zone under RLEP 2014. The development is also consistent with the development standards in RLEP 2014 with the exception of height.
- 2) The variation to the height control requested under Clause 4.6 of the RLEP is justified for the following reasons:
  - The non-compliance in height does not result in an exceedance in the floor space ratio.

**ITEM 6 (continued)**

- The building elements associated with the variation to the height of buildings control will not result in any additional visual impacts or privacy impacts associated with the variation.
  - The additional shadowing created by the variation is minimal when compared to the shadowing resulting from a height compliant scheme for the site and will not adversely impact on any adjoining properties.
  - The development is consistent with the desired future character of the locality.
- 3) The proposal results in some breaches to the Apartment Design Guide in respect to building depth, setback, circulation corridor and communal open space. Despite the non-compliances, the development will provide adequate amenity to future residents whilst maintaining amenity to the adjoining residential properties.
- 4) The issues raised in the public submissions have all been discussed in detail in the report.

**13. Recommendation**

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

- a. That the Ryde Local Planning Panel grant consent to development application LDA2018/48 for demolition and the construction of a residential apartment building development at 102 – 104 Bowden Street subject to the conditions of consent in Attachment 1 of this report.
- b. That the persons who made submissions be advised of this decision.

**ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Clause 4.6 Variation - Height
- 3 Amended Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Sandra Mccarry**  
**Acting Senior Coordinator - Major Development**

Report Approved By:

**ITEM 6 (continued)**

**Sandra Bailey**

**Manager - Development Assessment**

**Liz Coad**

**Director - City Planning and Environment**

**ITEM 6 (continued)**  
**Draft Conditions 102-104 Bowden Street, Meadowbank**

**ATTACHMENT 1**

**DEFERRED COMMENCEMENT**

The following are the Deferred Commencement condition(s) imposed pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979.

(A) Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, the applicant must satisfy the following deferred commencement conditions of consent prior to this development consent becoming operative.

**1. Drainage Easement(s) and Right-of-Way.** An “*Easement for drainage of water*” must be registered over the neighbouring downstream property (37 to 53 Nancarrow Avenue – Lot 7 DP1239998). The easement is to be located generally as shown on the concept plan by Australian Consulting Engineers (Refer to Project No. ACE151141.SW.DA Dwgs SW000 - SW106 Rev A dated 8 December 2017) subject to amendment noted below, must have a defined width and must comply with the DCP Part 8.2 (*Stormwater and Floodplain Management*) & Part 8.4 (*Title Encumbrances*). Note that due to the diameter of the drainage service, this will require a minimum easement width of 1.5m. The easement must also be located to be border footings of significant structures (such as any retaining walls) such that ready access to the drainage service can be achieved (ie either adjoining the foot of a retaining wall or wholly located atop of it).

Further to the above, the pedestrian access to the public Right-of-Way on the neighbouring lot is the lowest point of the subject site and potentially will accommodate stormwater runoff arising from extreme storm events / blockage of the drainage system. Accordingly an “*Easement for drainage of water*” must also be registered over the Public Right of Way, downstream of the access, located on the western side of 37 to 53 Nancarrow Avenue. This is to ensure a failure mode for the drainage system of the subject development is provided for.

To accommodate pedestrian access from the subject development to the public Right-of-Way, a private Right-of-Way must be registered over the neighbouring property of 37 to 53 Nancarrow Avenue, extending between access point to the future public Right-Of-Way.

Council must review and approve the terms of all easements prior to registration should they differ from those terms defined in Schedule 8 of the Conveyancing Act – 1919. Council must also be listed as the body having authority to alter, reconfigure or extinguish these easements.

**2. Rights of Ways for Vehicular Access, Bin Collections and Loading Bay.** Documentary evidence of registration of the Right of Ways for the Vehicular Access, Bin Collection Path and Loading Bay on Stages 6 & 7 Buildings at 37-53 Nancarrow Ave - Lot 7 DP1239998, are to be submitted to Council as

**ITEM 6 (continued)**

**ATTACHMENT 1**

(B) Documentary evidence of registration of the drainage easement and Right of Ways as identified in deferred commencement conditions (A) 1 & 2 above, with the Land & Property Information Authority, including the terms of the drainage easement, ROWs and their location on the burdened lot(s), must be submitted to Council to demonstrate the requirements of this condition have been satisfied, within 12 months from the date of this development consent, failing which, this development consent will lapse pursuant to Section 4.53 of the Environmental Planning and Assessment Act 1979.

(C) This Development Consent will not operate until such time that the Council notifies the Applicant in writing that that deferred commencement consent conditions (A) 1 & 2 above have been satisfied; and

(D) Upon Council giving written notification to the Applicant that deferred commencement consent conditions (A) 1 & 2 above have been satisfied, the development consent will become operative from the date of that written notification, subject to the following 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
Cover Page	03/10/2018	DAA000/5
Site Plan	01/11/2018	DA A003/4
Demolition Plan	19/12/2017	DAA005/2
Basement 02	04/05/2018	DA A101/2 Issue 2
Basement 01	04/05/2018	DA A102/2 Issue 2
Lower Ground Floor	02/11/2018	DA A103/8 Issue 8
Ground Floor	23/10/2018	DA A104/7 Issue 7
Level 1	03/10/2018	DA A105/3 Issue 3
Level 2	03/10/2018	DA A106/3 Issue 3
Level 3	03/10/2018	DA A107/4 Issue 4
Level 4	03/10/2018	DA A108/3 Issue 3
Roof Plan	04/05/2018	DA A109/2 Issue 2
Elevations	04/05/2018	DA A151/2 Issue 2
Elevations	04/10/2018	DA A152/3 Issue 3
Sections	04/05/2018	DA A161/2 Issue 2
Sections	04/05/2018	DA A161/2 Issue 2
Materials and Finishes	04/05/2018	DA A175/2 Issue 2
Pre & Post Adaptable	04/05/2018	DA A840/2 Issue 2
Waste Management Bin Path	04/05/2018	DA A881/2

**ITEM 6 (continued)**

**ATTACHMENT 1**

Basement 1 & 2 Carpark Connection	04/05/2018	DA A885/2 & DA A886/2
Landscaping Plans SS17-3628		000 Issue C
Landscape Site Link		101.1 Issue A
Landscaping Lower Ground Floor		101 Issue H
Landscape Plan Ground Floor		102 Issue E
Landscape Plan Level 4		103 Issue F
Landscape Details		501 Issue C

Prior to the issue of a **Construction Certificate**, the following amendments shall be made (as marked in red on the approved plans):

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(s) numbered 8872783M, dated 18 December 2017.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - Protect and support the adjoining premises from possible damage from the excavation, and
  - Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.
5. **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.
6. **Hoardings.**
  - (a) A hoarding or fence must be erected between the work site and any adjoining public place.
  - (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
7. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

**ITEM 6 (continued)**

**ATTACHMENT 1**

8. **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.

9. **Balconies:**

(a) **Clothes drying.** No clothes drying on balconies in the public view are permitted. Any future Strata Management Plan is to include the requirement that clothes drying on balconies visible from any public domain is not permitted.

10. **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.

11. **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.

12. **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 2006: - Part 8.1; Construction Activities.

13. **Flood Impact Statement.** The Flood Impact Statement Issue A dated May 2018 and Issue B July 2018, prepared by Australian Consulting Engineers shall be complied with.

14. **Entrances.** Stairway entrances into the lot shall be designed with an upward step above the 100 Year ARI plus 0.5m freeboard flood level. Top Water Levels (TWL) at all stairways entrances, road and nature strip shall be shown on cross sections drawing (Drawing No. DA A895/4 Revision 4 dated 23-10-2018). Updated drawings including a design certificate shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

15. **Stormwater Management – Connection to Public Drainage System.** The point of discharge from the property drainage connection system shall be made to the inground drainage infrastructure and not directly into the channel. The Stormwater Concept Plan Lower Ground Level, Drawing No.SW104, Issue B dated July 2018 prepared by Australian Consulting Engineers shall be amended to include the construction detail for the inground connection, and resubmitted to Council for approval prior to the issue of a Construction Certificate.



**ITEM 6 (continued)**

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**16. Service Alterations.** All mains, services, poles, etc., which require alteration due to works associated with the development, shall be altered at the applicant's expense.

**17. Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, 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.

**18. 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.

**19. Construction Staging.** For any staging of the public domain works, the applicant shall provide a detailed construction management and staging plan.

**20. 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.

**21. Ausgrid. Proximity to Existing Network Assets Overhead Powerlines**

There are existing overhead electricity network assets in Bowden St. Safework NSW Document - Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/pole structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, [www.ausgrid.com.au](http://www.ausgrid.com.au)

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.

**ITEM 6 (continued)**

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**22. Ausgrid. Underground Cables**

There are existing underground electricity network assets in Bowden Street and Constitution Road. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable. Safework Australia– Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables.

**23. Carpark exhaust vent.** The carpark must be provided with adequate system of ventilation. Exhaust vent must be located at least 3 metres above ground level or any pedestrian thoroughfare and:

- (a) at least 6 metres from any fresh air intake vent or natural ventilation opening; and
- (b) at least 6 metres or, where the dimensions of the allotment make this impossible, the greatest possible distance from any neighbouring property boundary.

**PRIOR TO CONSTRUCTION CERTIFICATE**

A Construction Certificate must be obtained from a Principal Certifier 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 Certifier 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 Certifier.

**24. 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:

<b>ITEM 6 (continued)</b>	<b>ATTACHMENT 1</b>
<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$117,931.94
Open Space & Recreation Facilities	\$290,324.45
Civic & Urban Improvements	\$98,745.09
Roads & Traffic Management facilities	\$13,469.40
Cycleways	\$8,413.71
Stormwater Management Facilities	\$26,742.77
Plan Administration	\$2,268.27
<b>The total contribution is</b>	<b>\$557,895.63</b>

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 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>.

25. **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 Certifier prior to the issue of the **Construction Certificate**.

26. **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**.

27. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation).

28. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:

**ITEM 6 (continued)**

**ATTACHMENT 1**

- (a) Infrastructure Restoration and Administration Fee
- (b) Enforcement Levy

29. **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 Certifier prior to the issuing of the **Construction Certificate**.

30. **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](http://www.sydneywater.com.au/tapin) to apply.

31. **Detailed site investigation report** - The proponent must undertake a detailed site investigation. The detailed site investigation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997) and demonstrate that the site is suitable for the proposed use, or that the site can be remediated to the extent necessary for the proposed use.

If remediation is required, the report should also set out the remediation options available for the site and whether the work is considered to be category 1 or category 2 remediation work.

32. **Remediation of land following detailed site investigation** - If required by the detailed site investigation report, the land must be remediated to the extent necessary for the proposed use and a copy of the site validation report must be submitted to Council for consideration. The site validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997) and demonstrate that the site is suitable for the proposed use.

**No Construction Certificate is to be issued for any building work on the land, excluding those works required for the remediation of the site eg. excavation or shoring, until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use, without the need for further remediation.**

33. **Notice of remediation work** - Before commencing remediation work written notice must be submitted to Council in accordance with clause 16 of *State Environmental Planning Policy No. 55 - Remediation of Land*.

34. **Remediation work** - All remediation work must be carried out in accordance with the requirements of:

- a) State Environmental Planning Policy No. 55 - Remediation of Land;
- b) any relevant guidelines published by the NSW Environment Protection Authority; and
- c) any council policy or development control plan relating to the remediation of land.

**ITEM 6 (continued)**

**ATTACHMENT 1**

35. **Council may require site audit of detailed investigation and validation reports** If requested by Council, a site audit statement and a site audit summary report from an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council verifying the information contained in the detailed investigation and/or the site validation reports.

36. **Compliance Acoustical Assessment Report** . The development is to comply with the recommendations contained in Sections 5 & 6 in the Acoustic Report prepared by Acoustic Pty Ltd dated 20/12/2017. All noise and vibration control measures nominated in the acoustical consultant's report and any related project documentation must be implemented and shown on the Construction Certificate plans.

37. **Compliance with Geotechnical Report**. All design and construction work be conducted in full compliance with all of the recommendations as contained in the Geotechnical Report prepared by Assetgeo dated 15 December 2017.

38. **Compliance with Access Report**. The development is to comply with the requirements contained in the Access Design Assessment Report P217\_301-3 (Access) LD prepared by Design Confidence dated 20 December 2017. The development is to comply with the Access to Premises Standard 2010, BCA 2014 and Australian Standard AS 1428.1 – 2009 Design for Access and Mobility – General Requirements For Access -New Building Work. Australian Standard AS 4299 – 1995. Prior to the issue of any construction Certificate, a suitably qualified access consultant is to certify that the development complies with the requirement of this condition.

39. **Adaptable Units**. Five (5) adaptable apartments, each with an allocated disabled parking space, are to be provided within the development. These apartments are to comply with all of the requirements as outlined in AS4299. Details demonstrating compliance is to be provided on the Construction Certificate plans. Prior to the issue of the Construction Certificate, a suitably qualified access consultant is to certify that the development achieves the requirements of AS4299.

40. **Storage**. Each residential unit is to be provided with the minimum internal storage area as required by the Apartment Design Guide. Details of the location of the storage and dimensions of the storage areas are to be provided on the Construction Certificate plans. The architect is to verify in writing that the development complies prior to the issue of the Construction Certificate.

41. **Soil Depth over Structures**. Where planting is proposed over a structure, the development is to achieve the minimum standards for soil provision suitable to the proposed planting, as contained within the Apartment Design Guide. Information verifying that the development complies with these requirements to be provided on the Construction Certificate plans.

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42. **Irrigation.** An automatic watering system is to be supplied to all landscape areas including common areas, private open spaces to ensure adequate water is available to lawns and vegetation. Irrigation systems shall be fully automated and capable of seasonal adjustments. Details are to be submitted to the PCA prior to the issue of Construction Certificate.

43. **Signage Plan.** A detailed signage plan advising residents and visitors of the location of the vehicular access to the site, where visitors are to park and location of the loading bay for removalists are to be placed strategically within the building and Stage 7's carparking area (lifts, lobby areas etc) with residents of the Stage 7A building given a copy of the Signage Plan. Details to be submitted to and approved by Council prior to the issue of the Construction Certificate.

44. **Arts and Cultural Plan.** Prior to the issue of the Construction Certificate, a site specific Public Arts Plan is to be submitted for approval by Council. This plan is to be prepared by an arts and cultural planner and will be required to address the following:

- Identify opportunities for the integration of public art in the propose development;
- Identify themes for public art;
- Durability, robustness and longevity of the public art; and
- Demonstrate how public art is incorporated in the site and built form design.

45. **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 Certifier prior to the release of the **Construction Certificate**.

46. **Fencing.** Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**.

47. **Lighting of common areas including entry areas and pathways.** All common areas, pathways and the building entries are to be provided with low glare lighting. The Bowden Street walkway entrance is also to be provided with low glaze lighting to enhance walkway. Details of the lighting 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.

48. **Fibre-ready facilities and telecommunications infrastructure.** Prior to the issue of any Construction Certificate satisfactory evidence is to be provided to the Certifier that arrangements have been made for:

- (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.

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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).

**49. Construction Traffic Management Plan.** As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by Council prior to issue of any Construction Certificate.

The CTMP must:-

- i. Make provision for all construction materials to be stored on site, at all times.
- ii. Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- iii. Make provision for parking onsite once basement level is constructed. All Staff and Contractors are to use the basement parking once available.
- iv. Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council's Public Works.
- v. Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- vi. Specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- vii. Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- viii. Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- ix. Specify spoil management process and facilities to be used on site.
- x. Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- xi. The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites", Council's DCP 2014 Part 8.1 (Construction

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Activities) and Council's CTMP checklist. A copy of Council's CTMP checklist shall be obtained from Council's Traffic, Transport and Development Department prior to submission of CTMP.

xii. All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

**Note:** This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

**50. Ground Anchors.** The installation of permanent ground anchors into public roadway is not permitted. The installation of temporary ground anchors may be considered subject to an application to Council's City Works Directorate, and approval obtained as per the provisions of Section 138 of the Roads Act, 1993. The application for consent must include detailed structural engineering plans prepared by a Chartered Structural Engineer (registered on the NER of Engineers Australia), clearly nominating the number of proposed anchors, minimum depth below existing ground level at the boundary alignment and the angle of installation. The approval will be subject to:

- a. Advice being provided to the relevant Public Utility Authorities of the proposed anchoring and their requirements are met.
- b. the payment of all fees in accordance with Council's Schedule of Fees & Charges at the time of the application, and
- c. the provision of a copy of the Public Liability insurance cover of not less than \$20million with Council's interest noted on the policy. The policy shall remain valid until the de-commissioning of the ground anchors.

**51. Public domain improvements.** The public domain is to be upgraded in both Bowden Street and Constitution Road frontages of the development site in accordance with the City of Ryde Public Domain Technical Manual Section 5 - Meadowbank. The work is to include paving, multifunction light poles, street furniture and plantings, and must be completed to Council's satisfaction at no cost to Council, prior to the issue of any Occupation Certificate.

A public domain 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 paving as specified in the condition of consent for public infrastructure works.

(b) Street trees to be provided in accordance with the Meadowbank Street Tree Master Plan. The designated species are "Angophora costata" (Sydney Red Gum) for Constitution Road frontage of the development, and "Fraxinus griffithii" (Evergreen Ash) or "Fraxinus oxycarpa 'Raywoodii'" (Claret Ash) as the designated street tree for Bowden Street.



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**Note:** In designing the street tree layout, the consultant shall check and ensure that all new street trees are positioned such that there are no conflicts with the proposed street lights, utilities and driveway accesses. The proposed street lights will have priority over the street trees. All costs associated with the removal of existing street trees, where required, will be borne by the Developer.

(c) All telecommunication and utility services are to be placed underground along the Constitution Road and Bowden Street frontages. The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site.

Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of work. The public utility cover requirements shall be based on the approved Finished Surface Levels for the footpath, driveways and kerb ramps.

For the undergrounding of existing overhead electricity network, the requirements mentioned in the Ausgrid's Network Standards NS130 and NS156 are to be met.

(d) New street lighting serviced by metered underground power and on multifunction poles (MFPs) shall be designed and installed to Australian Standard AS1158:2010 *Lighting for Roads and Public Spaces*, with a minimum vehicular luminance category V3 and pedestrian luminance category P2 along Constitution Road and Bowden Street.

Subject to design, it is expected that two new street lights on multi-function poles (MFPs) will be required along the Bowden Street frontage and three new street lights on MFP's will be required along the Constitution Road frontage of the site. Lighting upgrade shall be in accordance with the City of Ryde *Public Domain Technical Manual Section 5 – Meadowbank*. The consultant shall liaise with Council's City Works Directorate in obtaining Council's requirements and specifications for the MFP and components, including the appropriate LED luminaire and location of the meter boxes.

Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant and submitted to, and approved by Council's City Works Directorate prior to lodgement of the scheme with Ausgrid for their approval.

**Note:** Council has prepared a design guide and schema for the provision of the street lighting on MFPs. A copy of the design guide and schema can be made available to the Electrical Design Consultant upon request to Council's City Works Directorate.

**52. Public Infrastructure Works.** Public infrastructure works shall be designed and constructed as outlined in this condition of consent. The approved works must be completed to Council's satisfaction at no cost to Council.

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**ATTACHMENT 1**

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 drawings shall include plans, sections, existing and finished surface levels, drainage pit configurations, 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 road works into the remaining street scape.

The drawings shall also include the boundary adjustment to create the splay corner to be dedicated as public road at the intersection of Bowden Street and Constitution Road.

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

- (a) The full reconstruction of half road width for the Bowden Street and Constitution Road frontages of the development site in accordance with the City of Ryde DCP 2014 *Part 8.5 - Public Civil Works*, Clause 1.1.4 – *Constructing Half Road*.
- (b) The removal of all redundant vehicular crossings and replacement with new kerb and gutter, and the adjacent road pavement reconstruction.
- (c) Full depth road reconstruction of the slip lane parallel to Constitution Road according to Council's guidelines.
- (d) The construction of new kerb and gutter along the Constitution Road and Bowden Street frontages of the development site. Proposed kerb profiles are to be provided to ensure proper connections to existing kerb and gutter along Bowden Street and the slip lane parallel to Constitution Road.
- (e) Construction of granite footway along the Bowden Street frontage of the development site in accordance with the City of Ryde Public Domain Technical Manual *Section 5 – Meadowbank*.
- (f) Stormwater drainage installations in the public domain in accordance with the DA approved plans.
- (g) Signage and line-marking including any requirements of Ryde Traffic Committee.
- (h) Staging of the public civil works, if any, and transitions between the stages.
- (i) The relocation/adjustment of all public utility services affected by the proposed works. Written approval from the applicable Public Authority shall be submitted to Council along with the public domain plans submission. All the requirements of the Public Authority shall be complied with.

**Notes:**

1. 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.

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**ATTACHMENT 1**

2. 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.
3. 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 is also available upon request to Council's City Works Directorate.
4. 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.

**53. 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 \$62,000 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.

**54. 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.

**55. Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

With respect to this, the following revision(s) must be undertaken;

- One residential car parking space on Basement 1 is to be converted for use for motorcycle parking with signage advising of such.

The amendment(s) must be clearly marked on the plans submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

**56. Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the public trunk drainage infrastructure located in

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**ATTACHMENT 1**

the neighbouring property (37 to 53 Nancarrow Avenue) generally in accordance with the plans by Australian Consulting Engineers (Refer to Project No. ACE151141.SW.DA Dwg SW000 - SW106 Rev A dated 8 December 2017) subject to any variations marked in red on the approved plans and noted following;

- A defined failure mode (overland flow path) must be provided, directing any surcharge or surface flow to the easement meaning from the southeastern corner of the lot (being the lowest point of the site). To comply with this, any walls over the flowpath must accommodate perforations at the base to permit the conveyance of flows through the area.
- Connection of the sites drainage system to the public drainage infrastructure located in the trunk drainage will require approval from Council's Stormwater Section. Refer to the condition "*Stormwater Management – Connection to Public Drainage System.*".

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and 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 WSUD measures, 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 Council's 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.
- The subsurface drainage system must be designed to preserve the pre-developed groundwater table so as to prevent constant, ongoing discharge of groundwater to the public drainage network, as well as avoid long term impacts related to the support of structures on neighbouring properties.

**57. Stormwater Management – Connection to Public Drainage System.** The connection to the public inground stormwater drainage infrastructure located in the neighbouring property of 37 to 53 Nancarrow Avenue will require the assessment, approval and inspection by Council's Civil Infrastructure & Integration Department (Stormwater Section) to ensure the integrity of this asset is maintained. Engineering plans detailing the method of connection complying with Council's DCP and Technical Standards and an inspection fee in accordance with Council's Schedule of Fees and Charges must be paid to Council prior to the issue of the Construction Certificate. Council must be notified when the connection has been made to the channel/ pit / pipe and an inspection must be made by a Council officer prior to restoration/ backfill at the point of connection for approval.

Where the point of connection is in neighbouring property, the applicant must provide written notification to the affected property owner no less than a week prior to the works and all structures/ surface areas affected by the drainage connection works must be reinstated at the completion of this activity, at no cost to the affected property owner.

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The point of discharge from the property drainage connection system shall be made to the inground drainage infrastructure. The Stormwater Concept Plan Lower Ground Level, Drawing No.SW104, Issue B dated July 2018 prepared by Australian Consulting Engineers shall be amended to include the construction detail for the inground connection, and resubmitted to Council for approval prior to the issue of a Construction Certificate.

**58. Stormwater Improvement Works.** Details Civil Plans are to be submitted complying with the requirements of Council's City Works Directorate, City of Ryde DCP 2014 and relevant Australian Standards. Stormwater improvement works are required to both frontages of Bowden Street and Constitution Road southern slip lane. Stormwater documentation including concept stormwater plans, detailed stormwater engineering plans, supporting calculations, models and reports shall be submitted to and approved by Council's City Works Directorate, prior to the issue of the Construction Certificate.

**59. Geotechnical Design, Certification and Monitoring Program.** The proposed development involves the construction of subsurface structures and excavation that has potential to adversely impact neighbouring property if undertaken in an inappropriate manner. To ensure there are no adverse impacts arising from such works, the applicant must engage a suitably qualified and practicing Engineer having experience in the geotechnical and hydrogeological fields, to design, certify and oversee the construction of all subsurface structures associated with the development.

This engineer is to prepare the following documentation;

- a) Certification that the civil and structural details of all subsurface structures are designed to;
  - provide appropriate support and retention to neighbouring property,
  - ensure there will be no ground settlement or movement during excavation or after construction (whether by the act of excavation or dewatering of the excavation) sufficient to cause an adverse impact to adjoining property or public infrastructure, and,
  - ensure that the treatment and drainage of groundwater will be undertaken in a manner which maintains the pre-developed groundwater regime, so as to avoid constant or ongoing seepage to the public drainage network and structural impacts that may arise from alteration of the pre-developed groundwater table.
  
- b) A Geotechnical Monitoring Program (GMP) to be implemented during construction that;
  - is based on a geotechnical investigation of the site and subsurface conditions, including groundwater,
  - details the location and type of monitoring systems to be utilised, including those that will detect the deflection of all shoring structures, settlement and excavation induced ground vibrations to the relevant Australian Standard;
  - details recommended hold points and trigger levels of any monitoring systems, to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;

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- details action plan and contingency for the principal building contractor in the event these trigger levels are exceeded.
- Is in accordance with the recommendations of any Geotechnical Report approved/ required by this consent.

The certification and the GMP is to be submitted for the approval of the Accredited Certifier prior to the issue of the Construction Certificate.

60. **Dilapidation Survey.** A dilapidation survey is to be undertaken that addresses all properties that may be affected by the construction work, namely 37 to 53 Nancarrow Avenue & 106 Bowden Street. A copy of the dilapidation survey is to be submitted to the Accredited Certifier *and Council* prior to the release of the Construction Certificate.

61. **Site Dewatering Plan.** To ensure that stormwater runoff and the disposal of groundwater from the excavation is drained in an appropriate manner and without detrimental impacts to neighbouring properties and downstream water systems, a Site Dewatering Plan (SDP) must be prepared and submitted with the application for a Construction Certificate.

The SDP is to comprise of detailed plans, documentation and certification of the system, must be prepared by a chartered civil engineer and must, as a minimum, comply with the following;

- All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded so as to prevent the emission of offensive noise as a result of their operation.
- Pumps used for dewatering operations are not to be fuel based so as to minimise noise disturbance and are to be electrically operated.
- Discharge lines are to be recessed across footways so as to not present as a trip hazard and are to directly connect to the public inground drainage infrastructure where ever possible.
- The maximum rate of discharge is to be limited to the sites determined PSD rate or 30L/s if discharging to the kerb.
- Certification must state that the submitted design is in accordance with the requirements of this condition and any relevant sections of Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
- Be in accordance with the recommendations of approved documents which concern the treatment and monitoring of groundwater.
- Any details, approval or conditions concerning dewatering (eg Dewatering License) as required by the Water Act 1912 and any other relevant NSW legislation.
- Approval and conditions as required for connection of the dewatering system to the public drainage infrastructure as per Section 138 of the Roads Act.

62. **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

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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.

63. **Waste Management Plan.** Any changes to the Waste Management Plan dated December 2017 or DA A881/2, A102/2 & A105/2 plans which were utilized to evaluate the waste collection by Council, have to be approved by the Waste Department at the City of Ryde Council before the issue of a Construction Certificate to ensure the waste collection is not affected.

64. **Waste Storage.** All waste storage areas which have a doorway must be wide enough to allow the bins allocated to the property to fit through opening including the door.

- 1100L Bins – width 1.4m, depth 1.1m, height 1.4m
- 240L Bins – width 0.6m, depth 0.8m, height 1.1m

All garbage and recycling rooms must be constructed in accordance with the following requirements:

(a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;

(b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;

(c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;

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- (d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;
- (e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;
- (f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;
- (g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive metal legs at least 150mm high;
- (h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;
- (i) The room must be provided with adequate artificial lighting;
- (j) a hose with a trigger nozzle must be provided in or adjacent to the room to facilitate cleaning;
  
- (k) The paving from the waste storage area or garbage and recycling room must be moderately graded with no steps or uneven surfaces so that the waste containers can be safely and easily maneuvered to the collection point.
- (l) Signs will be required to be placed within the bin area to encourage correct recycling and reduce contamination. City of Ryde will provide the required signage.
- (m) All waste storage areas must be maintained in a clean and tidy condition at all times.
- (n) Wastes for recycling should be the stored in separate bins or containers and transported to a facility where the wastes will be recycled or re-used.
- (o) An adequate number of suitable waste containers must be kept on the premises for the storage of garbage.

**65. Evidence of connection by gravity flow.** Documentary evidence from a professional hydraulic engineer or other suitably qualified person demonstrating that all of the premises will be connected directly to the sewerage system by gravity flow must be submitted with the application for the Construction Certificate.

**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.



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**66. 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 Certifier 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.

**67. Excavation adjacent to adjoining land**

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

**68. Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply

**69. 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.

**70. 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.

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71. **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.

72. **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 photographic record of any observable defects to the following infrastructure where applicable.

- a) Road pavement,
- b) Kerb and gutter,
- c) Footpath,
- d) Drainage pits,
- e) Traffic signs, and
- 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.

73. **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

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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 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.

**74. 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.

**75. Property above/below Footpath Level.** Where the ground level adjacent the property alignment is above/below the ultimate footpath level, as set by Council, adequate measures are to be taken (either by means of constructing approved retaining structures or batters entirely on the subject property) to support the subject land/footpath. An approved fence shall be erected along the boundary for public safety.

**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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**76. Traffic Management.** Any traffic management procedures and systems must be in accordance with *AS 1742.3 1996* and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

Accordingly, a detailed plan of traffic management prepared by a traffic engineer including certification indicating compliance are to be submitted with the Construction Certificate application.

**77. Truck Shaker.** A truck shaker grid with a minimum length of 6 metres must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass them. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.

**78. 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 Australian Consulting Engineers (Refer to Project No. ACE151141.SW.DA DwgS SW000 - SW106 Rev A dated 8 December 2017) submitted in compliance to the condition labelled "Stormwater Management." and the requirements of Council in relation to the connection to the public drainage system.

**79. Stormwater Management – Works in the New Drainage Easement.** To ensure there is minimal imposition and loss of amenity to the owner/ occupants of the property burdened by the new drainage easement in construction of these drainage services, the builder/ developer must;

- (i) provide a minimum 3 weeks notification to the burdened property owner and occupants prior to the commencement of works in the neighbouring property.
- (ii) ensure the works are completed in a timely manner.
- (iii) ensure any structures adjacent the works are adequately supported at all times.
- (iv) make provision to restore the work area so as to maintain the amenity of the land / minimise the imposition of works on the burdened land, should the works be delayed due to unforeseen events such as weather, service adjustments, etc.
- (v) restore all areas on the burdened property disturbed by the construction works to a condition equivalent to the pre-developed state or otherwise as agreed by the owner of the burdened property.
- (vi) comply with any terms agreed upon by both parties in regards to the construction of the drainage services and restoration of the land, in the granting of the easement.

**80. Erosion and Sediment Control Plan - Implementation.** The applicant shall install erosion and sediment control measures in accordance with the Construction Certificate approved Soil Erosion and Sediment Control (ESCP) plan at the commencement of works on the site. 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.

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81. **Geotechnical Monitoring Program - Implementation.** The construction and excavation works are to be undertaken in accordance with the Geotechnical Report and Monitoring Program (GMP) submitted with the Construction Certificate. All recommendations of the Geotechnical Engineer and GMP are to be carried out during the course of the excavation. The applicant must give at least seven (7) days notice to the owner and occupiers of the adjoining allotments before excavation works commence.

82. **Site Dewatering Plan – Implementation.** The Site Dewatering Plan (SDP) on the site must be constructed in accordance with the Construction Certificate version of the SDP submitted in compliance to the condition labelled “Site Dewatering Plan.”, the requirements of Council in regards to disposal of water to the public drainage infrastructure and the requirements of any Dewatering License issued under NSW Water Act 1912 in association with the works. A copy of the SDP is to be kept on site at all times whilst dewatering operations are carried out.

83. **Public Domain Works – Construction Inspections.** Any works in the Public Domain or alterations to public infrastructure that will come under the care and control of Council upon completion of the development, will require inspection by Council’s Civil Infrastructure & Integration Department (the relevant officer) at the following hold points: -

- a) Prior to the commencement of construction and following the set-out on site of the position of the drainage works to the levels shown on the approved drainage drawings.
- b) Upon excavation of trenches and for other drainage structures to the line, grade, widths and depths shown on the approved drainage drawings.
- c) Upon installation of any pipe and other drainage structures.
- d) Upon backfilling of excavated areas and prior to the construction of the final pavement surface.
- e) Upon the completion of all drainage works and prior to practical completion.

An inspection fee is applicable for each visit and at least 24hours notification will be required prior to each inspection.

84. **Stormwater Improvements – Inspections** will be required by Council's engineer at the following hold points:

- After excavation of pipeline trenches
- After the laying of all pipes prior to backfilling.
- After the completion of all pits and connection points.

A minimum of 24 hours notice shall be given to Council to inspect works. Work is not be proceed until the works are inspected and approved by Council in writing for each hold point.

85. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifier during construction to ensure that the critical stage inspections are undertaken, as specified under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.

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86. **Noise Management Plan.** Where demolition or construction activities are likely to cause significant noise or vibration (eg. jackhammering, rock breaking or impact piling) a noise management plan must be prepared by a suitably qualified acoustical consultant and be submitted to the Principal Certifying Authority before the work commences. The plan must be prepared in accordance with the Interim Construction Noise Guideline (DECC, 2009) and include:

- (a) Identification of nearby affected residences or other sensitive receivers.
- (b) An assessment of the expected noise impacts.
- (c) Details of the work practices required to minimise noise impacts.
- (d) Noise monitoring procedures.
- (e) Procedures for notifying nearby affected residents.
- (f) Complaints management procedures.

87. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.

88. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.

89. **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.

90. **Construction materials.** All materials associated with construction must be retained within the site.

91. **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.

92. **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.

93. **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

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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".

94. **Implementation of Construction Traffic Management Plan.** All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

95. **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.

96. **Tip Dockets.** Tip Dockets identifying the type and quantity of waste disposed/recycled during construction are to be kept in accordance with the Site Waste Minimisation & Management Plan for spot inspections.

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97. **Maintenance.** The area surrounding the construction site must be maintained to reduce the incidence of illegal dumping and management of litter from the site and workers associated with the site must be undertaken.

98. **Identification and removal of hazardous materials.** Any hazardous materials, including asbestos, must be identified before work commences and be removed in a safe manner.

99. **Contaminated soil.** All potentially contaminated soil excavated during construction work must be stockpiled in a secure area and be assessed and classified in accordance with the *Waste Classification Guidelines* (DECCW, 2009) before being transported from the site.

100. **Transportation of wastes.** All wastes must be transported in an environmentally safe manner to a facility or place that can lawfully be used as a waste facility for those wastes. Copies of the disposal docketts must be kept by the applicant for at least 3 years and be submitted to Council on request.

**PRIOR TO OCCUPATION CERTIFICATE**

An Occupation Certificate must be obtained from a Principal Certifier 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 Certifier 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 Certifier 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 Certifier.

101. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered 8872783M, dated 18 December 2017.

102. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the any **Occupation Certificate**.

103. **Fire safety matters.** At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the Fire and Rescue NSW.



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Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Each year the Owners must send to the Council and the Fire and Rescue NSW an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

**104. Sydney Water – Section 73 Compliance Certificate.** A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water will determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. A Section 73 Compliance Certificate must be completed before the issue of any Occupation Certificate. Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to [www.sydneywater.com.au/section73](http://www.sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

**105. 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**.

**106. 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.

**107. 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.

**108. Electricity accounts for new street lighting.** Prior to the issue of any Occupation Certificate, the Applicant shall liaise with Council's Public Domain Development Section regarding the setting up of the electricity account/s in order to energise the newly installed street lighting.

**109. Compliance Certificates – Street Lighting.** Prior to the issue of any Occupation Certificate, the Applicant shall submit to Council, a *Certificate of Compliance - Electrical Work (CCEW)* from the Electrical Contractor, and certification from a qualified Electrical Engineering consultant confirming that the

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street lighting in the public domain has been constructed in accordance with the Council approved drawings and City of Ryde standards and specifications.

**110. Compliance Certificate – External Landscaping Works.** Prior to the issue of any Occupation Certificate, the Applicant shall submit to Council, certification from a qualified Landscape Architect confirming that the public domain landscaping works have been constructed in accordance with the Council approved drawings and City of Ryde standards and specifications.

**111. 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.

**112. 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.

**113. 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 photographic record of any observable defects to the following infrastructure where applicable.

- a. Road pavement,
- b. Kerb and gutter,
- c. Footpath,
- d. Drainage pits,
- e. Traffic signs,
- f. Length of the stormwater improvement works. The location of any damage in the drainage line is to be recorded and the report details how this is to be rectified for Council's consideration and
- g. Any other relevant infrastructure.

The post construction dilapidation report is to 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

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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.

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.

**114. Decommissioning of Ground Anchors.** Prior to the issue of any Occupation Certificate, the Applicant shall provide Council a certificate from a suitably qualified Structural or Geotechnical Engineer confirming that all temporary soil/ground anchors installed into the public road reserve, have been decommissioned and are not transferring any structural loads into the road reserve stratum.

**115. 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 and Infrastructure 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.

**116. Land Dedication.** Prior to the issue of any Occupation Certificate, a splay corner shall be created and dedicated to Council as public road near the intersection of Constitution Road and Bowden Street in order to provide a minimum 3.5m pedestrian thoroughfare. The dimensions shall be as shown on the approved by RMS drawings for the intersection of Bowden Street and Constitution Road. Evidence regarding effective registration of the land dedication shall be submitted to Council and the PCA prior to the issue of the Occupation Certificate.

**117. Design Verification.** Prior to an Occupation Certificate being issued to authorise a person to commence occupation or use of a residential flat building, the Principal Certifying Authority (PCA) is to be provided with design verification from a qualified designer. The statement must include verification from the qualified designer that the residential flat development achieves the design quality of the development as shown on plans and specifications in respect of the relevant Construction Certificate issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Apartment Design Guide. This condition is imposed in accordance with Clause 154A of the Environmental Planning and Assessment Regulation 2000.

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**118. 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.

**119. 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) from a suitably qualified engineer (registered on the NER of Engineers Australia) certifying the drawings are a true and accurate representation of the constructed works 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.

**120. 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 pump/ sump and WSUD 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 standard terms for such systems, as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7 and to the satisfaction of Council. The positive covenant must be registered on the title prior to the release of any Occupation Certificate for development works for which the system(s) serve.

**121. Stormwater Management – Maintenance program.** To ensure the approved onsite detention system and WSUD measures function as designed for the ongoing life of the development, without imposition on the public domain, the applicant is to prepare a drainage system maintenance plan (DSMP) which is to contain;

- (a) The DSMP is to incorporate a master schedule and plan identifying the location of all stormwater components crucial to the efficient operation of the trunk drainage system on the development lot. This is to include (but not be limited to) pump/sump systems, WSUD components and all onsite detention systems. The master plan is also to contain the maintenance schedule for each component.
- (b) The DSMP is also to include safe work method statements relating to access and maintenance of each component in the maintenance schedule.
- (c) Signage is to be placed in vicinity of each component, identifying the component to as it is referred in the DSMP (eg. OSD – 1), the reference to the maintenance work method statement and maintenance routine schedule.

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- (d) Designate areas inside the property in which the maintenance operation is to be undertaken for each component. Maintenance from the road reserve or public domain is not accepted. Areas are to be demarcated if required.
- (e) Locate a storage area for maintenance components / tools to be stored on site. The location is to be recorded in the DSMP.

The DSMP is to be prepared by a suitably qualified and practising drainage engineer in co-operation with a workplace safety officer (or similar qualified personal) and all signage / linemarkings are to be implemented prior to the issue of any Occupation Certificate.

**122. Engineering Compliance Certificates.** 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 Council's DCP 2014 Part 9.3 (Parking Controls).
- b) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's 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.
- c) 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.
- d) Confirming that the connection of the site drainage system to the trunk drainage system complies with Section 4.7 of AS 3500.3 - 2003 (National Plumbing and Drainage Code), the relevant sections of the Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures and any requirements of Council pending on site conditions.
- e) Confirming that the footings adjacent to drainage easements are founded below the zone of influence of this infrastructure, in accordance with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
- f) 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 Council's DCP 2014 Part 8.1 (Construction Activities).
- g) Certification from a suitably qualified structural or geotechnical engineer confirming that any temporary soil/ rock anchors installed into public roadway, have been de-stressed and are no longer providing any structural support.
- h) Certification from a suitably qualified geotechnical engineer confirming that the Geotechnical Monitoring Program (GMP) was implemented throughout the course of construction and that all structures supporting neighbouring property have been designed and constructed to provide appropriate support of the neighbouring property

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and with consideration to any temporary loading conditions that may occur on that site, in accordance with the relevant Australian Standard and building codes.

i) Compliance certificate from Council confirming that all external works in the public road reserve and alteration to Council assets located in private property have been completed to Council's satisfaction.

**123. Compliance Certificate.** The applicant shall comply with the recommendations made in the Flood Impact Statement prepared by Australian Consulting Engineers, Issue C dated November 2018. A certificate from a suitably qualified Engineer shall be submitted to the Certifying Authority stating compliance with these recommendations **prior to the issue of the Occupation Certificate.**

**124. 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 Council's 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).

**125. Signage and Linemarking – External.** A plan demonstrating the proposed signage and line marking within Council's Public Domain shall be prepared by a suitably qualified person and submitted to and approved by the Ryde Traffic Committee prior to the issue of any Occupation Certificate.

**Note:** The applicant is advised that the plan will require approval by the Ryde Traffic Committee if the proposal requires change in existing parking conditions and hence, adequate time should be allowed for this process

**126. Signage and Linemarking – Implementation.** The applicant is to install all signage and linemarking, as per the plan approved by the Ryde Traffic Committee. These works are to be undertaken prior to the issue of any Occupation Certificate.

**127. Lots Consolidation.** 102 & 104 Bowden Street Meadowbank, being Lot 1 in DP 730371 and SP 20107, respectively are to be consolidated to one lot.

**128. CCTV Cameras.** CCTV cameras will be required to be installed throughout the site. The cameras should include the foyer area to the buildings including the area around the mail boxes. The cameras should also monitor the 50 metre vicinity outside the building including, but not limited to, the footpath area in front of the premises. CCTV cameras should also cover any communal areas, lifts, public spaces, pedestrian link and the basement car parks, including the entry and exit points to the car park. Recordings should be made twenty four (24) hours a day seven (7) days a week.

As a minimum, CCTV cameras at entry and exit points to the premises **MUST** record footage of a nature and quality in which it can be used to identify a person recorded by the camera. All other cameras **MUST** record footage of a nature and quality in which it can be used to recognise a person recorded by the camera. The time and

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date must automatically be recorded on all recordings made whilst it is recording. All recordings are to be kept for a minimum period of thirty (30) days before they can be reused or destroyed.

If requested by police, the applicant is to archive any recording until such time as they are no longer required. Recordings are to be made in a common media format such as Windows Media Player or similar, or should be accompanied by applicable viewing software to enable viewing on any windows computer.

The CCTV control system should be located within a secured area of the premise and only accessible by authorised personnel. If the CCTV system is not operational, immediate steps are to be taken by the applicant to ensure that it is returned to a fully operational condition as soon as possible.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

129. **Car parking security.** Vehicular entry to residential parking and visitor's parking areas is to be through a secured roller shutter with an intercom system for visitor's access. The doors are to be controlled by locksets such as remote or card operating electronic lock sets. The phasing of the roller door needs to minimise the opportunity for unauthorised pedestrian access after a vehicle enters/exits the car park. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

130. **Graffiti.** All surfaces on the street level that are not glass should use graffiti resistant paints and/or other surfaces that discourage graffiti. A maintenance policy should be established for graffiti to be painted over within two a week of the graffiti.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

131. **Security.** To enhance the physical security of doors, all glass doors are to be laminated and the main entry/exit doors to individual units on the ground floor, including balcony doors and fire exit doors to the development are to be fitted with a single cylinder lockset (Australian and New Zealand Standard - Lock Sets), which comply with the Building Code of Australia. Windows to individual units on the ground floor should also be fitted with key operated locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

132. **Intercom System.** Intercom facilities should be incorporated into these entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development. An auxiliary lock set should also be incorporated into the design of each of the entry/exit points to enable emergency services to access the development particularly in emergency situations.

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Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

133. **Balcony doors to units.** Balcony doors to units are to be fitted with single cylinder locksets (Australian and New Zealand Standard – Lock Sets) to restrict unauthorised access to units. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

134. **Lift access and security.** Electronic access controls are to be installed on the lift. The equipment should include card readers to restrict access to the level a resident resides on, to the car parking levels and to the Ground Floor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

135. **Acoustic certification.** A report from a qualified acoustical consultant demonstrating compliance with the relevant noise criteria must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

136. **Disabled access.** Access for disabled persons shall be provided in the building or portion of the building in accordance with the applicable legislation and the requirements set out in AS 1428.1. Documentary evidence and certification is to be obtained from a suitable qualified person confirming that the development meets these requirements in accordance with this consent, is to be provided to the PCA prior to the issue of any Occupation Certificate.

137. **Mechanical Ventilation.** Where any mechanical ventilation systems have been installed, a certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an Occupation 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.

138. **Service Bay Management.** To ensure the efficient use of the Service Bay located on Stage 7 of the Meadowbank lot (37 Nancarrow Avenue) and prevent abuse of the Service Bay by the public, the Service Bay is to be restricted to public access (eg by way of a removable bollard) and the strata plan of management must include a mechanism which requires the scheduled use of the Service Bay by occupants of the development. The Service Bay schedule is to be overseen by the strata manager or caretaker of the development and its implementation is to be clearly displayed in common areas to ensure occupants are aware of the schedule system. The schedule is also to be mindful of any operating times required for waste or essential service access which potentially may utilise this area.



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139. **Drainage System Maintenance Plan Implementation.** The stormwater management system components are to be maintained for the ongoing life of the development by the strata management/ owners corporation, as per the details in the approved Drainage System Maintenance Plan (DSMP).

140. **Parking Allocation.** Both the owner and occupier of the development must provide and maintain the minimum parking allocation as follows;

- A maximum of 50 residential spaces
- A minimum of 9 visitor spaces,
- A minimum 6 bicycle parking spaces.
- A minimum of 1 motorbike space.

141. **Stormwater Management – Implementation of maintenance program.** The stormwater management system components are to be maintained for the ongoing life of the development by the strata management/ owners corporation, as per the details in the approved drainage system maintenance plan (DSMP).

142. **Universal Key.** Where there is a lockable door to access a bin room or hard-waste storage room, the universal Council key should be installed so the contractor can access the room for servicing bins or collect the household clean up items.

143. **Waste Collection.** Council does not support the use of private contractors for the collection of domestic waste. All domestic waste will be collected by the Council waste collection contractor.

144. **Waste Collection/Transfer.** Staff or contractors must be employed to take the waste containers from garbage and recycling room to the container emptying point for servicing and to return the containers to the garbage room after servicing. The transferring of the waste containers to the emptying point are to be conducted in a safe and hygienic manner. The material is to be placed in such a manner so that it will not impede the access to any bins from a side arm waste collection vehicle or pedestrian access”

145. **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.

146. **Offensive noise** - The use of the premises must not cause the emission of ‘offensive noise’ as defined in the *Protection of the Environment Operations Act 1997*.

147. **Noise and vibration from plant or equipment** - Unless otherwise provided in this Consent, the operation of any plant or equipment installed on the premises must not cause:

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- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the *New South Wales Industrial Noise Policy* (EPA, 2000).
- (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
- (c) The transmission of vibration to any place of different occupancy.

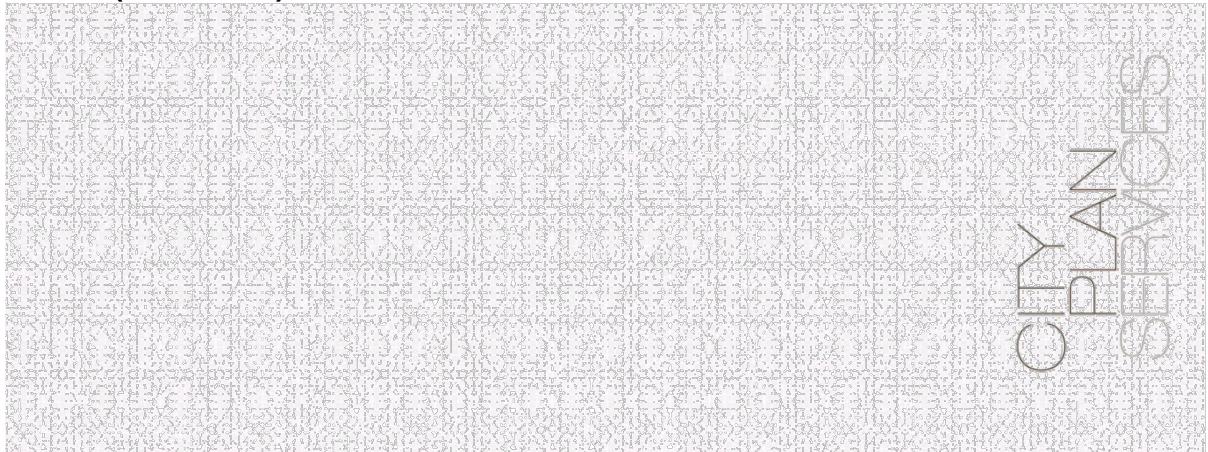
**Advisory Note:**

Temporary dewatering of an amount above 3 ML may require a water licence to be obtained from DPI Water before construction commences.

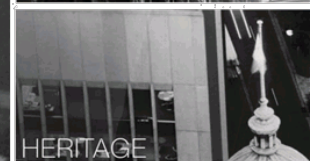
**End of consent**

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**ATTACHMENT 2**



CITY PLAN  
STRATEGY &  
DEVELOPMENT



**Clause 4.6 Variation Request  
Height of Buildings (Clause 4.3)  
Ryde Local Environmental Plan 2014**

102-104 Bowden Street,  
Meadowbank (Stage 7A)

Submitted to the Ryde City Council  
On Behalf of Holdmark

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November 2018 | P-17149

**ITEM 6 (continued)**

**ATTACHMENT 2**

**Report Revision History**

Revision	Date	Prepared by	Reviewed by	Verified by
01	19/12/2017	<b>Jack Davies</b> <i>Assistant Planner</i>	<b>Carlo Di Giulio</b> <i>Associate Director</i>	<b>Sue Francis</b> <i>Executive Director</i> 

This document is preliminary unless approved by a Director of City Plan Strategy & Development

**CERTIFICATION**

This report has been authorised by City Plan Strategy & Development, with input from a number of other expert consultants, on behalf of the Client. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

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III

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### 1. Introduction

This is a formal written request that has been prepared in accordance with clause 4.6 of the Ryde Local Environmental Plan (RLEP) 2014 to support a development application submitted to Ryde City Council for the construction of a 5 level Residential Flat Building (RFB) at **102 - 104 Bowden Street, Meadowbank** including:

- Earthworks works and vegetation removal;
- Construction of a five (5) level RFB above two (2) basement levels inclusive of 43 dwellings and 60 basement car parking spaces;
- Typical storm water infrastructure through the site;
- Landscaping within the site and on the communal roof terrace; and
- Vehicle access to the development is proposed via a basement link between the proposed development and the adjoining Stage 7 development located at 37 -53 Nancarrow Avenue, Meadowbank.

The proposed works are described in detail in the Statement of Environmental Effects (SEE) that accompanies this application.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this application.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the RLEP 2014. The numeric value of the Height of Buildings control in Clause 4.3 of the RLEP 2014 is 15.5m.

The development standard is not specifically excluded from the operation of Clause 4.6 of the RLEP.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal<sup>1</sup>.

In **Sections 3** and **4** of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In **Sections 4, 5, 6** and **7** we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

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<sup>1</sup> Relevant decisions include: *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 Pty Ltd v Ashfield Council* [2015] NSWLEC 90; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248; and *Moskovich v Waverley Council* [2016] NSWLEC 1015.

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2. Extent of variation

The subject site has a maximum building height standard of 15.5m. The proposal has a RL of 27.7 to the top of the main building envelope, and RL 29.1 to the top of the lift over-run. This equates to a non-compliant proposed building height of 16m to the main envelope, and 18m to the top of the lift over run. Specifically, the proposed envelope breaches the standard as follows:

- North eastern corner - 0.6m maximum breach;
- South eastern corner - 2.17m maximum breach; and,
- Lift overrun - 2.33m maximum breach.

The extent of the height breach is shown in **Figures 1 to 3** below.

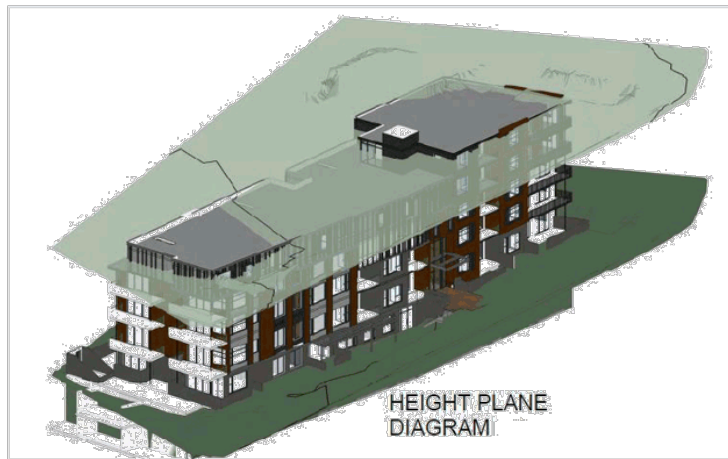


Figure 1: Height Plane Diagram (Source: Robertson + Marks Architecture)

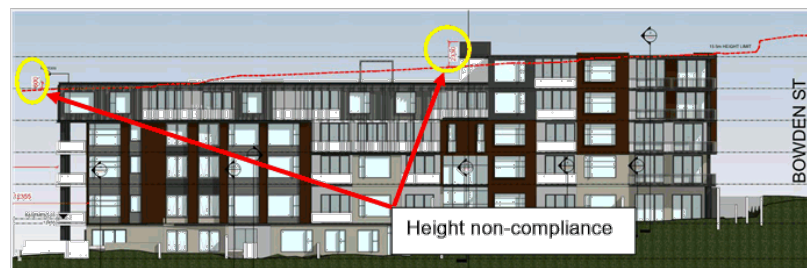


Figure 2: Proposed northern elevation with maximum breaches circled yellow (Source: Robertson + Marks)

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Figure 2: Proposed southern elevation with maximum breach circled yellow (Source: Robertson + Marks)

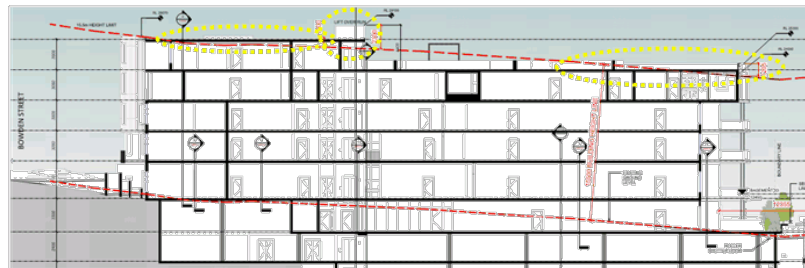


Figure 3: Section of proposal with height breaches outlined yellow (Source: Robertson + Marks)

It is important to note that the extent of the variation is largely related to the lift over-run of the building that provides equitable access to the roof-top communal open space.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1** (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard<sup>2</sup>.

<sup>2</sup> In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting



**ITEM 6 (continued)**

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Table 1 - Achievement of Development Standard Objectives

Objective	Discussion
(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development	<p>The extent of the variation, when viewed from any public domain, is negligible. Conversely, the vast majority of the proposed envelope when viewed from Constitution Road is compliant. In fact, when viewed from Bowden Street, the proposal is compliant. As such, it can be concluded that the proposal is consistent with the expected built form character, and therefore consistent with this objective.</p> <p>Further, the Planning Assessment Commission (PAC) approved Concept Plan MP09_0216 on 6 March 2013 which relates to land directly to the east of the subject site. In summary, the Concept Approval includes multiple, multi storey (up to 10 storeys) residential or mixed-use buildings. The proposed RFB at 102-104 Bowden Street, Meadowbank does not form a part of the concept approval, but reflects its overall built form scale given it includes 5 levels.</p>
(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area	<p>The proposal provides an architecturally designed RFB with contemporary finishes and materials. As discussed above, the proposal is consistent with the emerging built form character as provided by the RLEP 2014, or Concept Approval MP09_216 (as modified). Compared to the existing warehouse structure at the subject site, the proposal is a vast improvement to the appearance of the area.</p> <p>The proposal warrants some minor additional height in order to define or at presence to the street corner on which it is located. This improves the appearance and legibility of the subject locality.</p> <p>The shadow diagrams provided at <b>Appendix 5</b> of the SEE demonstrate that impacts are consistent with east-west orientated lots, and that the height non-compliance causes little additional impact to neighbouring dwellings. Most impact would be to any allotment to the south as the Bowden Street road corridor is to the west. Stage 7 is to the east, but this achieves solar access between 9am to 1am at June 21. The allotments to the south are currently all historical industrial uses and built form, despite their current B4 Mixed Use zone. It is difficult to anticipate shadow impacts given allotments to south include the original industrial envelopes. Regardless, the proposal's shadow impacts to the south would be consistent with any subsequent development to the south (i.e. they will be overshadowing each other to the same degree).</p>
(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure	<p>The proposal provides consolidation of two allotments, consistent with the desired pattern of the locality and with the approved Concept Plan MP09_0216. The development does not adversely cause isolation of any adjacent sites, and therefore further encourages the consolidation of other allotments in the locality.</p> <p>The subject site is in the vicinity of Meadowbank heavy rail station and the Bowden Street ferry wharf. This encourages or increases the likelihood of public transport usage.</p>

consents departing from the standard and hence the standard is unreasonable and unnecessary, or 5. The zoning of the land is unreasonable or inappropriate.

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<p>(d) to minimise the impact of development on the amenity of surrounding properties</p>	<p>The proposed height non-compliance does not cause unacceptable impacts to the amenity of surrounding properties in terms of solar access, privacy and views for example. The height non-compliance is of minor nature, and the overshadowing impacts, as seen at <b>Appendix 5</b> to the SEE do not cause unacceptable additional impacts on the neighbouring developments.</p> <p>It should also be noted that the proposal is substantially compliant with adjoining amenity controls provided by the Apartment Design Guideline. In particular, building separation is substantially compliant.</p>
<p>(e) to emphasise road frontages along road corridors</p>	<p>Both the proposal's north and west (street) facing elevations are effectively low height street walls, providing suitable emphasis to Constitution Road and Bowden Street, further emphasised by the proposed material and finishes.</p> <p>Much of the non-compliant height is located towards the intersection of Constitution Road and Bowden Street. As such, the proposal assists with emphasising, or defining the corner.</p>

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**ATTACHMENT 2**

**4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]**

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. There is robust justification throughout the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

- The breach of the standard allows for a development that is consistent with the desired future character of the Shepherds bay area as established in Part 4, Section 2.2 of the Ryde DCP 2014;
- Similarly, the proposal remains consistent with built form character established within Shepherds Bay, pursuant to Concept Approval MP09\_216, as modified;
- The breach of the standard results as a consequence of the significant slope of the site and the lift overrun, which provides a better planning outcome in that it allows equitable access for all residents to the communal rooftop area;
- In the absence of the lift overrun to the rooftop communal open space, the breach would only be 0.6m due to the slope of the land where such variations are unavoidable to achieve equitable access to all floor levels. Providing communal open space on the roof is preferable in this instance because it allows for full sun access and views which would otherwise not be accessible at ground level.
- Further, providing communal open space on the roof allows for larger private open space to those ground level dwellings, thus providing improved amenity.
- The site is located on the corner of Constitution Road and Bowden Street. The scale of the building provides for a defined corner development, creating a greater presence and a better urban design outcome.

For the above reasons, there are sufficient environmental planning grounds to justify the works above the 15.5m height limit due to the absence of resultant environmental impacts and the necessity to provide a contemporary level of residential amenity on a site of this nature.

**ITEM 6 (continued)**

**ATTACHMENT 2**

**5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]**

In **Section 2** (above), it was demonstrated that the proposal is consistent<sup>3</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2 - Consistency with Zone Objectives

Objective	Discussion
To provide a mixture of compatible land uses	The development proposes a medium density residential flat building that is compatible with the adjoining development and future character of the Shepherds Bay precinct. The development is also complementary to the commercial and retail development concentrated around Meadowbank Station and along Church Street.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling	The proposal will allow for a medium density residential development to be located approximately 300m from Meadowbank Train Station. The convenient location of the development in proximity to public transport will further encourage and maximise public transport patronage in the locality.
To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities	The development does not discourage the integration between Macquarie University campus and other businesses and activities in the locality. Conversely, the proposal may provide accommodation opportunities which may support either the university or nearby business activities.
To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor	See above.

As can be seen from **Table 2**, the proposal is consistent with the objectives of the standard and the objectives of the zone, and is therefore in the public interest.

<sup>3</sup> In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'.

**ITEM 6 (continued)**

**ATTACHMENT 2**

**6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]**

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

**7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]**

As discussed earlier, the proposed breach of the standard facilitates public benefits through a built form outcome that achieves the desired future character outcomes for the Shepherd's Bay Precinct as established under the RDCP 2014 and Concept Approval MP09\_216. The proposal provides substantially compliant setbacks and adequate articulation, resulting in a building that will provide a defined corner lot and an improved relationship to the public domain. Maintaining the standard will limit the manner in which the proposal defines the street corner.

Accordingly, there is no public benefit<sup>4</sup> in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

**8. Conclusion**

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the RLEP 2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

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<sup>4</sup> *Ex Gratia P/L v Dungog Council (NSWLEC 148)* established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

