

Meeting Date: Tuesday 7 February 2012
Location: Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde
Time: 4.00pm

NOTICE OF BUSINESS

Item		Page
1	CONFIRMATION OF MINUTES - Meeting held on 6 December 2011.....	2
2	498 BLAXLAND ROAD, DENISTONE. LOT 39 DP 7997. Local Development Application for Affordable rental housing (under the Affordable Housing State Environmental Planning Policy) comprising 5x2 storey dwellings on one property. LDA2011/0257. <i>INSPECTION 4.20PM / INTERVIEW 5.05PM</i>	9
3	40 CLARKE STREET, WEST RYDE. LOT 7 DP 19560. Local Development Application for multi dwelling housing (attached) containing 1x4 bedroom two storey dwelling, 2x3 bedroom and 1x2 bedroom single storey dwellings. LDA2011/0248. <i>INSPECTION 4.35PM / INTERVIEW 5.15PM</i>	58
4	64 PELLISIER ROAD, PUTNEY. LOT 102 DP 866280. Local Development Application for Alterations and additions to the existing dwelling including an additional new storey and new cabana in the rear yard. LDA2011/493. <i>INSPECTION 4.50PM / INTERVIEW 5.25PM</i>	115

1 CONFIRMATION OF MINUTES - Meeting held on 6 December 2011

File No.: CLM/12/1/3/2 - BP12/51

In accordance with Clause 3.4.4 of Council's Code of Meeting Practice, a motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

RECOMMENDATION:

That the Minutes of the Planning and Environment Committee 16/11, held on Tuesday 6 December 2011, be confirmed.

ATTACHMENTS

- 1 Minutes - Planning and Environment Committee - 6 December 2011

ITEM 1 (continued)

ATTACHMENT 1

City of Ryde

Planning and Environment Committee

MINUTES OF MEETING NO. 16/11

Meeting Date: Tuesday 6 December 2011

Location: Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde

Time: 4.05pm

Councillors Present: The Mayor, Councillor Etmekdjian and Councillors Pickering (Chairperson) and Butterworth.

Apologies: Councillors O'Donnell, Salvestro-Martin and Yedelian OAM.

Staff Present: Group Manager – Environment and Planning, Manager Assessment, Manager Environmental Health and Building, Business Support Coordinator – Environment & Planning, Consultant Town Planner, Team Leader – Fast Track Team, Team Leader – Assessment, Team Leader – Building Compliance, Building Surveyor and Meeting Support Coordinator.

DISCLOSURES OF INTEREST

There were no disclosures of interest.

1 CONFIRMATION OF MINUTES - Meeting held on 15 November 2011

RESOLUTION: (Moved by Councillors Pickering and Butterworth)

That the Minutes of the Planning and Environment Committee 15/11, held on Tuesday 15 November 2011, be confirmed.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

2 82 CHATHAM ROAD DENISTONE. LOT 20 DP 9166. Local Development Application for a new two storey dwelling. LDA2011/0074.

Report: The Committee inspected the property at 82 Chatham Road, Denistone.

ITEM 1 (continued)

ATTACHMENT 1

Note: Mr Sunil Randeni (applicant) addressed the Committee in relation to this Item.

RESOLUTION: (Moved by Councillor Butterworth and the Mayor, Councillor Etmekdjian)

- (a) That consideration of Local Development Application No. 2011/0074, at 82 Chatham Road Denistone (LOT 20 DP 9166) be deferred to enable the applicant to submit amended plans incorporating the following matters:
- i. The submission of details of front fencing. This may involve retention of the existing low-scale front fence; or a new low-level fence consisting of red-brick (to the same height as existing).
 - ii. The proposed bay window along the front elevation of the house and detailing must be deleted and replaced by a gable end.
 - iii. A bay style window frame may be incorporated into the area referred to in part (b) above. The bay window style frame should not protrude from the front building line more than 600mm.
 - iv. The submission of external colours and finishes of all external materials (bricks, roof, gable details, timber battens). The proposed colours must be consistent with the Inter-war period features consisting of similar colours to terracotta roof tiles and no heavy or dark / bright brick highlight features.
 - v. To minimise privacy impacts, the side dining room window is to be modified to a highlight style window with a minimum sill height of 1.5m or maintain the current window with opaque or frosted glass.
 - vi. The site plan to be amended to show no fill between side of building and boundary.

Upon receipt of satisfactory amended plans incorporating the above requirements, this development application be approved under delegated authority by Council's Group Manager Environment & Planning subject to the ATTACHED conditions (Attachment 1).

- (b) That the persons who made submissions be advised of Council's decision.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

ITEM 1 (continued)

ATTACHMENT 1

3 534 BLAXLAND ROAD EASTWOOD. LOT 11 DP 7997. Local Development Application for alterations and additions to dwelling including two storey addition at rear. LDA2011/0274.

Report: The Committee inspected the property at 534 Blaxland Road, Eastwood.

RESOLUTION: (Moved by Councillor Butterworth and the Mayor, Councillor Etmekdjian)

- (a) That Local Development Application No. 2011/274 to carry out alterations and additions to the existing dwelling house at 534 Blaxland Road, Eastwood, being LOT 11 Section 1 DP 7997, be approved subject to the **ATTACHED** conditions (Attachment 2).
- (b) That the persons who made submissions be advised of Council's decision.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

4 68 DOUGLAS STREET PUTNEY. LOT 334 DP 11471. Section 96 Application for modifications to the cabana at the rear of the site. MOD2011/0058.

Report: The Committee inspected the property at 68 Douglas Street, Putney.

Note: A Plan and a document titled "State Environmental Planning Policy for Dwelling Houses and Outbuildings" was tabled by the applicant in relation to this Item and copies are ON FILE.

Note: Mr Stephen Gouge (on behalf of an objector) and Mr Harry Minassian and Mrs Maggie Minassian (applicants) addressed the Committee in relation to this Item.

RESOLUTION: (Moved by Councillor Butterworth and the Mayor, Councillor Etmekdjian)

- a) That Section 96 Application No. MOD2011/0058 for modifications to the cabana at the rear of the site at 68 Douglas Street, Putney, being LOT 334 DP 11471 be refused for the following reasons:
 - (1) **Wall Plate Height (Ceiling)** – Control 'a' of Council's DCP 2010: Part 3.3 Dwelling Houses and Dual Occupancy (attached) – Section 2.7.1 'Building Height': states – *The maximum wall plate height for outbuildings is 2.7m.* The cabana has a wall plate height of 3.4m which is considered excessive for an outbuilding as it contributes to bulk and scale.

ITEM 1 (continued)

ATTACHMENT 1

- (2) Amenity of Neighbours** – Objective No.4 of Council’s DCP 2010: Part 3.3 Dwelling Houses and Dual Occupancy (attached) – Section 2.9 ‘Outbuildings’: states – *To ensure that the amenity of the dwelling or neighbouring dwellings is not adversely affected by outbuildings.* The cabana is considered to adversely affect the amenity of the surrounding properties given the size of the structure.
- (3) Small Scale** – Objective No.5 of Council’s DCP 2010: Part 3.3 Dwelling Houses and Dual Occupancy (attached) – Section 2.9 ‘Outbuildings’: states – *To ensure that outbuildings are of a small scale.* Control ‘b’ of Council’s DCP 2010: Part 3.3 Dwelling Houses and Dual Occupancy (attached) – Section 2.9 ‘Outbuildings’: states: The total area for all outbuilding not to exceed 20m². The enclosed cabana area is 12m² and the overall roof area is 81.8m². The approved roof area was 59.82m², the further increase of 21.98m² contributes to the overall bulk and size. The cabana is not small in scale and considered excessive for an outbuilding.
- b) That the matter be referred to Council’s Building Compliance team for an order to be served that requires the applicant bring the structure into compliance with the approved development consent unless a new Section 96 application is lodged seeking to regularise the structure by the end of March 2012.
- c) That a penalty infringement notice be issued for the unauthorised building works.
- d) That the objectors be advised of Council’s decision.
- e) That the applicant be strongly encouraged to submit a further Section 96 application that addresses all of the non-compliances with Council’s Development Control Plan and the concerns raised by the objectors.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee’s delegated powers.

5 2 GREGORY STREET PUTNEY. LOT 1 DP 27720. Building Certificate Application for merit based assessment constructed rear timber decking and awning. BC2011/0040

Report: The Committee inspected the property at 2 Gregory Street, Putney.

Note: A submission prepared by A & SA Lawrence (objectors) was tabled in relation to this Item and a copy is ON FILE.

Note: Mr Stephen Lawrence and Mrs Anne-Maree Lawrence (objectors) and Mrs Hana Blogg (applicant) addressed the Committee in relation to this Item.

ITEM 1 (continued)

ATTACHMENT 1

RESOLUTION: (Moved by Councillor Pickering and the Mayor, Councillor Etmekdjian)

- (a) That Council approve the Building Certificate Application No. 2011/40 for the rear timber deck and pergola at 2 Gregory Street Putney subject to:
- (i) the planting of three (3) 1.8m high Lily Pilly along the rear boundary fence to screen views from the top of the stairs of the deck.
 - (ii) the deck is to be certified by a suitably qualified engineer to withstand the flood forces during the 100 year ARI flood event.
 - (iii) that additional lattice screening between the objectors property and the applicant be erected to a height of three (3) metres and a width of no less than three (3) metres to provide maximum privacy for 141 Morrison Road, to the satisfaction of Council staff.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

6 29 TRAMWAY STREET, WEST RYDE. LOT 9 DP8283. Local Development Application for Demolition, multi-dwelling housing (attached) containing four (4) units and strata subdivision. LDA2011/167.

Note: An email from Mat Rous and Lyndell Coutts (objectors) dated 6 December 2011 was tabled in relation to this Item and a copy is ON FILE.

Note: Mr Andrew Martin (applicant) addressed the Committee in relation to this Item.

RESOLUTION: (Moved by Councillor Butterworth and the Mayor, Councillor Etmekdjian)

- (a) That Local Development Application No 2011/167 at 29 Tramway Street, West Ryde, being LOT 9 DP8283, be approved as a deferred commencement in accordance with the draft Conditions set out in **Attachment 1** subject to the following amendments to conditions 15 and 117:-

15. An amendment to condition 15 to have the lattice screen 300mm high on top of the entire eastern boundary fence.

117. Deletion of the following paragraph from condition 117:-

A positive covenant shall be executed and registered against the title of any lot containing an on site detention system to require maintenance of the system in accordance with Council's standard terms.

ITEM 1 (continued)

ATTACHMENT 1

(b) That the persons who made submissions be advised of Council's decision.

Record of Voting:

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

The meeting closed at 7.15pm.

CONFIRMED THIS 7TH DAY OF FEBRUARY 2012.

Chairperson

- 2 498 BLAXLAND ROAD, DENISTONE. LOT 39 DP 7997. Local Development Application for Affordable rental housing (under the Affordable Housing State Environmental Planning Policy) comprising 5x2 storey dwellings on one property. LDA2011/0257.**

INSPECTION: 4.20pm
INTERVIEW: 5.05pm

Report prepared by: Senior Town Planner

Report approved by: Manager Assessment; Group Manager - Environment & Planning

Report dated: 20/01/2012

File Number: GRP/11/3/6/9 - BP12/34

1. Report Summary

Applicant: C Chi Bong.

Owner: C W Archer, G A Daniels.

Date lodged: 11 May 2011.

This report considers a proposal to erect 5 townhouses, each being 2 storeys. The application was submitted as infill affordable housing under State Environmental Planning Policy (Affordable Rental Housing) 2009. Recent changes to this SEPP (Affordable Rental Housing) 2009, which can be applied to the development application, results in the development not complying with the character test for the local area.

As the development is defined as multi dwelling housing which is a permitted use in the zoning, the development application has also been assessed under Council's planning controls for such developments. This assessment has demonstrated that the development is an overdevelopment of the site and is out of character with the locality. The development will also adversely affect the amenity of the surrounding properties.

The development also does not comply with the requirements in the SEPP (Affordable Rental Housing) Amendment 2011 regarding car parking - 8 parking spaces are required but only 5 spaces are provided (single garage per dwelling).

The development application is recommended for refusal.

Reason for Referral to Planning and Environment Committee: Number of submissions received and called up by Councillor Perram.

Public Submissions: 7 individual submissions plus one petition containing 24 signatures were received objecting to the development.

Clause 4.6 RLEP 2010 objection required? Yes - An objection would be required for non-compliance with:

ITEM 2 (continued)

- Clause 4.5A (a) of RLEP 2010 for density control. Required: 1500m² of site area (300m² for each 3 bedroom dwelling). Site area = 1012m².
- Clause 4.3 (2A) (a) of RLEP 2010 for height control. Dwellings that do not have frontage to street are limited to 6.5m height. Proposed 2 storeys for whole of development ranging in height from 7.9m to 7.05m.

No written request for variations to the standards was received.

Value of works? \$998,000.

A full set of the plans is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

RECOMMENDATION:

(a) That Local Development Application No. 2011/257 at 498 Blaxland Road, Denistone being Lot 39 DP 7997 be refused for the following reasons;

1. The proposed development is inconsistent with the amended State Environmental Planning Policy (Affordable Rental Housing) 2009 and Amendment 2011, failing to satisfy clauses 15 and 16A of the SEPP.

Particulars:

- The proposal does not satisfy parts 1,2,3 & 4 of the Seniors Living Policy: Urban Design Guidelines for Infill Development as required by clause 15 (1) of the SEPP.
- The proposal is out of character of the local area due to the building being 2 storey for the whole length of the development, resulting in a much greater scale and massing than what is existing within the immediate area.

2. The proposed development is inconsistent with the objectives of the R2 Low Density Residential Zone as contained in Ryde Local Environmental Plan 2010.

Particulars:

- Due to the 2 storey nature for the whole length of the building, the proposal is not consistent with the low density residential environment of the locality.
- The bulk, scale and massing of the development is inconsistent with the established character of the area as well as what would be expected in a low density residential area.
- The scale and bulk of the development will have an adverse impact in terms of amenity of the adjoining properties due to the bulk and scale, privacy and increased overshadowing.

ITEM 2 (continued)

3. The proposed development fails to comply with the parking requirements in Clause 14(2) of State Environmental Planning Policy (Affordable Rental Housing) 2011.
 4. The proposed development fails to satisfy the height requirements in Clause 4.3 of Ryde Local Environmental Plan 2010 and no variation has been sought under Clause 4.6 of Ryde Local Environmental Plan 2010.
 5. The proposed development is inconsistent with the requirements of Part 3.5 Multi Dwelling Housing (for Low Density Residential Zone) of Development Control Plan 2010 in regard to height, storeys, type of dwellings, front setbacks, side and rear setbacks, private open space, landscaping, insufficient car parking and driveway width.
 6. The development is an overdevelopment of the site.
 7. The development is not in the public interest.
 8. The development will affect the amenity of the adjoining properties due to it not being consistent with the character of the area and insufficient car parking being provided to cater for the needs of the development.
- (b) That the persons who made submissions be advised of Council's decision.

ATTACHMENTS

- 1 Map
- 2 Plans
- 3 A3 Plans – subject to copyright provisions – CIRCULATED UNDER SEPARATE COVER
- 4 Seniors Living Guidelines Table

Report Prepared By:

Sandra McCarry
Senior Town Planner

Report Approved By:

Liz Coad
Manager Assessment

Dominic Johnson
Group Manager - Environment & Planning

ITEM 2 (continued)

2. Site (Refer to attached map.)



Address	: 498 Blaxland Road Denistone
Site Area	: 1012m ² Frontage: 20.115 metres Depth: 50.31 metres
Topography and Vegetation	: The site is relatively level with a slight fall towards Blaxland Road and the rear of the site with a slight cross fall from south to north. The site contains three trees – two Crepe Myrtles and one Golden Cypress, all of which have limited amenity value.
Existing Buildings	: The site currently contains a single storey brick and tiled roof dwelling with detached garage.
Planning Controls	: R2 – Low Density Residential
Zoning	: Ryde Local Environmental Plan 2010
Other	: State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Development Control Plan 2010

ITEM 2 (continued)

3. Councillor Representations

Name of Councillor: Councillor Perram

Nature of the representation: Called up to Planning and Environment Committee.

Date: 30 June 2011.

Form of the representation (e.g. via email, meeting, phone call): Email

On behalf of applicant or objectors? Objectors

Any other persons (e.g. consultants) involved in or part of the representation: No

4. Political Donations or Gifts

Any political donations or gifts disclosed? No

5. Proposal

The proposal involves the demolition of all structures on the site and the construction of five attached 2 storey townhouses. The application has been submitted under the provisions of SEPP (Affordable Rental Housing) 2009.

The development will provide one car parking space for each unit. This results in a total of five car parking spaces on the site. Access to all of these spaces is via a driveway that is located along the southern boundary.

The ground floor of each unit will contain a living room, family room, kitchen, laundry and toilet. The first floor will contain three bedrooms and two bathrooms.

A private courtyard will be provided for each dwelling. These courtyards are located along the northern side boundary.

6. Background

DA was lodged on 11 May 2011.

Following a preliminary assessment which was based on the amended Affordable Housing State Environmental Planning Policy (amended 20 May 2011) a letter was sent to the applicant on 19 September 2011. This letter raised the following matters:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 was amended on 20 May 2011 and the saving provisions in clause 54 provide that:

ITEM 2 (continued)

- (2) *If a development application has been made before the commencement of this clause in relation to development to which this Policy applies and the application has not been finally determined before that commencement, the application may be determined as if this Policy had not been made.*
- (3) *If an existing application relates to development to which Division 1 or 3 of Part 2 applied, the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

Council will be assessing this application under the provisions of the State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 and under subclause 3 must take into consideration whether the proposed development is compatible with the character of the area.

- Council advised that the development would be to the detriment of the character of the area as its bulk, scale and massing is considerably greater than the low scale character of the surrounding developments. This is due to the development being 2 storey for the length of the development, resulting in a much greater scale and massing than what would normally be permitted on the site under Council's planning controls. Accordingly the proposed development is not considered to be compatible with the character of the area and cannot be supported by Council officers.
- The State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 now requires higher parking standards – clause 14 Standards that cannot be used to refuse consent (2) if
 - (ii) *at least 0.5 parking spaces are provided for each dwelling containing one bedroom, at least one parking space is provided for each dwelling containing two bedrooms and at least 1.5 parking spaces are provided for each dwelling containing three or more bedrooms.*

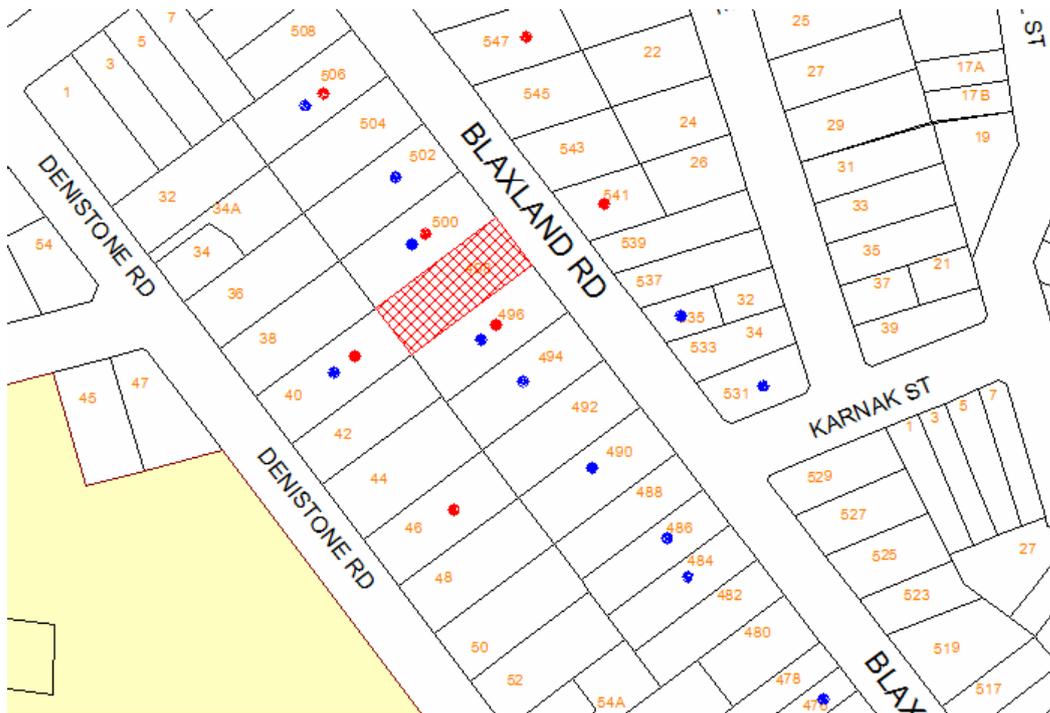
The proposal is for 5 x 3 bedrooms dwellings, which requires 7.5 spaces (round up to eight spaces). The proposal only provides for five spaces, a shortfall of three spaces.

- Given that the whole development consists of two storey dwellings with excessive bulk and scale in areas outside of the general building line, resulting in the development not being compatible with the local character area, the proposal in its current form cannot be supported by Council officers. The applicant was given 14 days to withdraw the application.
- On 20 October 2011 the Planning Consultant for the applicant advised that they will not be withdrawing the application.

ITEM 2 (continued)

7. Submissions

The proposal was advertised and notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. The application was advertised on 8 June 2011 and notification of the proposal was from 21 May 2011 until 30 June 2011.



Map of location where submissions were received – Red dot denote individual submission, blue dot denote signed petition.

Seven submissions and one petition containing 24 signatures were received. The issues raised in the submissions were;

3/40 Denistone (adjoining rear property – western)

- *This building will totally overshadow our backyard all morning*

Comment:

The submitted shadow diagrams shows that the adjoining rear property rear yard area will be in shade at 9.00am on 22 June, however by 12 noon overshadowing from this proposal to their rear yard area will be minimal and by 1pm there will be no shadow cast from this proposal onto their property.

- *The upper storey window will look directly down into our backyard and into our rear window and back door thus destroying our privacy.*

ITEM 2 (continued)

Comment:

House five which is the rear dwelling closest to the rear boundary will have a laundry door off the rear elevation and on the 1st floor only a stairwell window is proposed along the southwest (rear elevation). Overlooking from the rear dwelling to the rear villa at 40 Denistone is not considered to be an issue that would warrant refusal of the application.

- *Our view from the rear patio and window of our villa would look directly onto a 2 storey brick wall.*

Comment:

Agreed – the 2 storey villa is set back 4.5m off the rear boundary, which complies with the numerical requirement of 4.5m rear setback required under Council's DCP – Multi Dwelling Housing however the proposal is 2 storeys for the length of the development which adds to the bulk and scale of the development.

500 Blaxland: (adjoining northern property)

- *Our home privacy will no longer be protected. There are more than 12 windows to be built on the second storey – our living area, bathroom, shower and private open space will be overlooked.*

Comment:

Agreed - The proposed units will be set back 3.5m to 4m along the northern boundary with ground floor family room and kitchen windows facing the northern boundary. On the 1st floor the master bedroom and ensuite windows will overlook onto the adjoining northern property. The 1st floor windows are off low use areas and generally for single dwellings will not cause any overlooking issues. However it is proposed to have a row of five dwellings all with north facing 1st floor bedroom and bathroom windows (total 12 windows) looking into the adjoining property's single storey dwelling and rear yard area. Therefore, there is a perception of overlooking from 12 windows looking onto one property, resulting in the amenity of the private outdoor area being reduced.

The windows on the ground floor are off main living areas, however as the development is generally at grade and with a 1.8m high boundary fence, which will screen the ground floor elements, overlooking from these areas are not considered to be an issue that would warrant refusal of the application.

- *Light and air – our house is only single storey – our rooms and private open space will be overshadowed by the proposed 2 level building, light and air greatly reduced.*

ITEM 2 (continued)

Comment:

Due to the orientation of the allotments with 500 Blaxland Road being north of the subject site, the proposed development will have minimal overshadowing impact to 500 Blaxland Road.

- *Our house will lose the views and outlook to existing plants and skyline. The planned bulk building is about 3m away from our fence and will negatively impact on us.*

Comment:

Agreed. The development is 2 storeys for the length of the development (39.8m). This will result in additional bulk and scale than what would be envisaged by a development that fully complied with the Council's requirements for multi dwelling housing, i.e. single storey. The increased bulk will adversely impact on the amenity of the adjoining properties.

- *For the above reasons our house property value may be reduced greatly.*

Comment:

Property values are not a planning consideration under S79C of the Environmental Planning and Assessment Act, 1979.

- *Density and compatibility – Denistone is a beautiful suburb which mainly consists of one level houses. If the application is approved, there will be a big increase in the number of dwellings, resulting from the transformation of a lovely federation house into five crowded townhouses, and it will not be compatible with character of Denistone.*

Comment:

Agreed – The predominant form of housing in this locality is detached dwellings which are either single or 2 storey in height. Along this section of Blaxland Road, the houses are predominantly single storey. There are examples of multi dwelling housing however these are single storey. Council's controls require that multi dwelling housing must be contained within a single storey building except for the dwelling facing the street. This is to ensure that the scale of such developments relates to the character and streetscape of the locality. The development proposes the erection of 5 x 2 storey attached dwellings. Although 2 storey dwellings are permissible, they do not extend for the length of the site as proposed in this development application. This development would be to the detriment of the character of the area as its bulk, scale and massing is considerably greater than the low scale character of the surrounding developments.

- *Car parking will be a big problem, more people living in one building, more cars and not enough space plus Blaxland Road is a main road and a busy road, it is unsafe for people.*

ITEM 2 (continued)

Comment:

The State Environmental Planning Policy (Affordable Rental Housing) 2009 was amended on 20 May 2011 and Council may apply the amending SEPP to the development. Under the amended State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011, 1.5 parking spaces are required to be provided for each dwelling containing three or more bedrooms, therefore the development would need to provide eight parking spaces. Only five parking spaces have been provided, as such the lack of car parking is likely to have an adverse impact on the area.

496 Blaxland (adjoining southern property)

- *Blaxland Road is listed and shown in the Council map as a “red line” which indicates No developments to be undertaken at all.*

Comment:

The application is submitted as infill affordable housing under the SEPP (Affordable Rental Housing) 2009 and will be assessed under the SEPP (Affordable Rental Housing) Amendment 2011. Under the amended SEPP the development fails to satisfy Clause 16A requiring the design of the development to be compatible with the character of the local area. Accordingly, the development cannot be approved.

In Council’s DCP – Multi Dwelling Housing, along this section of Blaxland Road, the site is within the “Non-preferred Location” for multi dwellings housing due to adverse traffic impacts and adverse impact to the change to the character of the local area.

- *Accommodating five families in such very limited parcel of land will have its toll to the environment and add huge pressure to the council facilities.*

Comment:

The site is within a “Non-preferred Location” for multi dwellings due to traffic and character impact. If the application were to be supported, monetary contribution would be required for the increase in population to cater for the increase in demand on facilities.

- *Turn the quiet to overcrowded, noisy and busy neighbourhood.*

Comment:

The proposed development would be out of character with the local area in terms of built form and it is acknowledged that the development could potentially result in increased noise. However noises from neighbours are matter dealt with by the Police and is not a valid reason for refusal of this development application.

- *There will be a minimum of 10 vehicles using the next door driveway – exposing children to risk and make it impossible to find car space in nearby side street.*

ITEM 2 (continued)

Comment:

The issue of lack of parking spaces have been discussed above. The concern about exposure to children to risk from increased traffic is a matter of parental supervision.

- *Violation to our privacy*

Comment:

Along the southern elevation, the building will be set back 3.5m to 7m from the common southern boundary with a side driveway in between. On the 1st floor the building will be set back 6.5m to 7m from the southern boundary with bedroom windows facing the south. The adjoining property to the south comprises three villas with their courtyard area adjacent to the common boundary. As mentioned above, given that the windows in question are bedrooms, the extent of overlooking is satisfactory.

46 Denistone:

- *Insufficient parking space, people turning in from the right side at peak hours will cause significant traffic blockage to the main road.*

Comment:

The matter of insufficient parking has been addressed above and the site is within a "Non-preferred Location" for multi dwellings due to possible adverse traffic impact.

- *Linear separation*

Comment:

The proposal is assessed under the State Environmental Planning Policy (Affordable Rental Housing) 2009 where linear separation is not applicable. However Council's DCP – Multi Dwelling has a linear separation requirement and under the DCP, the proposal does not comply with this requirement.

- *Lack of privacy in the neighbourhood due to the height of the building at the back*

Comment:

Agreed - see comments above in regards to privacy and character of the area.

547 Blaxland (on other side of road and approximately 60m away)

- *Loss of sunlight and privacy for bordering dwellings. Unusual as most other have 2 storey frontage and then all those behind are usually single storey only.*

ITEM 2 (continued)

Comment:

The issue of sunlight and privacy to the immediate adjoining properties have been discussed above. The issue of 2 storey frontage and single storey behind has also discussed above with regards to the character of the area.

- *Stops the bordering properties the opportunity of solar access.*

Comment:

Agreed. The development is predominantly 2 storeys for the length of the development. This will result in further overshadowing than what would be envisaged by a development that fully complied with the Council's requirements for multi dwelling housing, i.e. single storey. The increased shadow will have some adverse impact on the amenity of the adjoining southern property.

- *No details as to how many bedrooms per townhouse raising concerns that one car space per townhouse is way under what's really needed. The proposal does not allow for visitor space, forcing them to park on the main road which is a clearway in the afternoon. Cars will park on Blaxland Road creating pressuring on side street.*

Comment:

The concern about parking is discussed above.

- *Does not address the problem of people ageing in place with each residence being 2 storeys.*

Comment:

The development is for infill affordable housing which is not meant to solely provide housing choice for seniors. There are options available to deal with this such as stairlifts should this be an issue for future residents.

- *No air conditioning on plans with minimal eaves and no trees how long before air conditioning installed to make top storey liveable through summer.*

Comment:

The proposal has submitted a BASIX Certificate and ABSA Assessor Certificate giving the development a Thermal Comfort and Energy rating of Pass and 42, respectively. Council is not able to answer the question of air conditioning units being installed on the 1st storey, however should the proposal be supported, a condition of consent will be imposed requiring compliance with the BASIX Certificate.

- *Set a precedent for similar developments and will not allow people to age in place having some outdoor/garden area.*

ITEM 2 (continued)

Comment:

Council will assess each application on its own merit and the matter of precedence is not a consideration. Council's DCP requires that courtyards have a minimum area of 35m² for three bedroom dwellings, as such any multi dwelling development are required to provide outdoor areas.

541 Blaxland Road (directly opposite)

- *five dwellings on this one property is too dense, creating overdevelopment for this area, don't leave much room for green corridor of trees that will be removed. 5 x 2 storey buildings on the one block is completely out of character with the other dwellings around the area.*

Comment:

Agreed. The development is considered to be an overdevelopment of terms of Council's planning controls and it is not supported under SEPP (Affordable Rental Housing) Amendment 2011 due to the development being incompatible with the local area. The built form of the development is not consistent with the character of the area.

- *Loss of privacy of adjoining properties, overshadowing and loss of nature light.*

Comment:

See above comments in regards to the privacy, overshadowing and light.

- *Insufficient parking.*

Comment:

See above comments in regards to parking.

- *Removal of three trees but there appears to be no plan for trees to be replanted.*

Comment:

Council's Landscape Architect has reviewed the proposal and has no objections to the removal of the three trees on site as the trees have limited amenity value. However there are deficiencies in the landscape plan and should Council be of a mind to support the proposal, landscaping issues will need to be addressed ie amend landscaping plan to provide for 1.2m wide planting strip.

506 Blaxland Road (four allotments north of subject site).

- *Overdeveloped, 2 storey dwellings would look out of place, overshadowing, next door to villas – against Council's policy.*

ITEM 2 (continued)

Comment:

Agreed. – see comments above.

- *Blaxland Road – very busy road, traffic congestion is heavy during peak hours.*

Comment:

Council's Traffic Engineer has raised concerns about the lack of parking on site and should the application be supported, the driveway should be 6m wide to minimise disruption to traffic from vehicles entering the property.

8. Policy Implications

Relevant Provisions of Environmental Planning Instruments etc:

(a) Relevant SEPPs

State Environmental Planning Policy (Affordable Rental Housing) 2009 and Amendment 2011

State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 aims to provide new affordable rental housing and retain and mitigate the loss of any affordable rental housing by providing a consistent planning regime. An assessment in respect of the relevant considerations is discussed below:

Clause 10 Development to which Division applies:

Subclause 1 states that the Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if the development concerned is permitted with consent under another environmental planning instrument.

The RLEP defines multi dwelling housing as three or more dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan or community title scheme) each with access at ground level, but does not include a residential flat building. This form of development is permitted in the R2 Low Density Residential zoning. As such, the development satisfies the provisions of sub clause 1.

Subclause 2, states that despite subclause 1, this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area. For the purposes of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and Amendment 2011, accessible area is defined as follows:

ITEM 2 (continued)

Accessible area means land that is within:

- (a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.*

A bus stop is located outside 460 Blaxland Road, which is approximately 358m away, hence the site is within 400 metres of a bus stop therefore subclause (c) is the relevant section. The relevant bus service is Bus 515 to Eastwood station. The development meets the criteria for at least one bus per hour between 6am to 9pm weekdays, between 8am to 6pm Saturdays and Sundays.

The development complies with the above, as such is permitted as infill affordable housing under the State Environmental Planning Policy (Affordable Rental Housing) 2009.

It should be noted that this SEPP (2009) was only amended on 20 May 2011 where the above clause was inserted. This development application has been assessed under the 20 May 2011 amended provisions of the State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 as the amended provisions are considered to be more consistent with the community's expectations for infill affordable housing.

Clause 13 Floor space ratios

- (1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*

The proposal complies with this requirement with three of the proposed dwellings being dedicated as affordable rental housing dwellings (60%).

- (2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:
 - (a) if the existing maximum floor space ratio is 2.5:1 or less:
 - (i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or***

ITEM 2 (continued)

- (ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:

As it is proposed to have 60% of the gross floor area for affordable housing then the maximum FSR allowed is $0.5 + 0.5 = 1:1$. The proposal complies with this, having a floor space of 0.56:1.

Clause 14 Standards that cannot be used to refuse consent

Clause	Requirement	Compliance
Clause 14 (1)(b)	Site area of at least 450m ²	Yes - site area of 1012m ²
Clause 14 (c)(ii)	Landscaped area of at least 30% of the site.	Yes - landscaping to 31% of the site.
Clause 14 (d)	Deep soil area of 15% of the site area with deep soil zone having a minimum 3m dimension and if practicable two thirds of the deep soil zone located at the rear.	Yes - The proposal complies with the deep soil requirement have a deep soil area of 17.9% with two thirds in the rear yard area.
Clause 14 (c)	Solar access to living rooms and private open spaces for a minimum of 70% of the dwelling receive 3 hours direct sunlight between 9am and 3pm mid winter	Yes - the family rooms are orientated to the north with large glass doors.
Clause 14 (2) General (a) (ii)	Parking to be provided at a rate of 1.5 parking spaces for each dwelling containing 3 or more bedrooms. The proposal is for 5 x 3 bedrooms, therefore required 8 spaces.	No - only 5 spaces are proposed.
Clause 14 (2)(b) (iv)	Requires 95m ² of gross floor area for each 3 bedrooms	Yes – more than 95m ² for each dwelling

Clause 15 Design requirements

This clause states:

- (1) *A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.*

ITEM 2 (continued)

The provisions of the Seniors Living Policy – Urban Design Guidelines for Infill Development were considered. The proposal does not satisfy Parts 1, 2, 3 and 4 of the Guidelines (**ATTACHMENT 4**). This is further reinforced by the non compliance with the following clause 16A – character of the local area.

Clause 16A Character of local area

On 20 May 2011 changes were made to the State Environmental Planning Policy (Affordable Rental Housing) 2009. One of these changes was the inclusion of Clause 16A Character of local area, which states:

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

Furthermore, the savings provision in Clause 54A(3) of the amending SEPP requires a consideration of whether the design of the development is compatible with the character of the local area.

It is considered that the bulk, scale and massing of the development is inconsistent with the established character of the area as well as what would be expected in a low density residential area. This is due to the development being predominantly 2 storeys for the length of the development, resulting in a much greater scale and massing than what would normally be permitted on the site under Council's planning controls. Although 2 storey dwellings are permitted within the locality, these are dwelling houses that do not extend for the length of the site as what is proposed in this development application. The locality also contains examples of other multi dwelling housing, however these are single storey rather than 2 storeys.

The character of the area can be taken from both the visual catchment in which the development will be viewed and the wider context of the area. The predominant form of development in the visual catchment comprises single storey dwellings, being a single storey dwelling at 500 Blaxland Road (adjoining northwest property), single storey villas at 496 Blaxland and 40 Denistone Road (adjoining southeast and western properties, respectively). These developments are consistent with Council's planning controls for dwelling houses and multi dwelling housing. The proposed development, at predominantly 2 storeys for a length of 39.8m (79% of the length of the site), would introduce a scale of built form that is considerably greater than that which exists or would reasonably be expected in the area. Therefore the relationship of the proposed built form to the surrounding space is incompatible and would affect the established character in terms of amenity of the adjoining properties due to the excessive height, bulk and scale and privacy.

ITEM 2 (continued)

In the wider locality, the character is still low density residential comprising of one or two storeys dwellings or multi dwellings which are predominately single storey and consistent with Council's DCP – Multi Dwellings. Therefore the predominant character of the wider locality is of a built form nature of single detached dwellings. The development, in its built form being predominantly 2 storey, albeit small sections of single storey for garages, for the length of the building (39.8m), is different to the existing and desired future character of the locality.

As the proposal fails in the character test, the proposal cannot be supported.

Clause 17 Must be used for affordable housing for 10 years

This clause states:

- 1) *A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:*
 - (a) *for 10 years from the date of the issue of the occupation certificate:*
 - (i) *the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and*
 - (ii) *all accommodation that is used for affordable housing will be managed by a registered community housing provider, and*
 - (b) *a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.*

This clause is not applicable as the design of the proposal is incompatible with the local area as such failing the character test, and cannot be recommended for approval by Council officers.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. A BASIX Certificate has been prepared (No. 373358M dated 29 April 2011) which provides the development with a satisfactory target rating.

Any approval would include an appropriate condition that would require compliance with the BASIX commitments detailed within the Certificate.

ITEM 2 (continued)

Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the subject site and has been considered in this assessment.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above 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 2010. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the planning instrument.

(b) Ryde Planning Scheme Ordinance

Zoning

The site is zoned R2 Low Density Residential under the provisions of the RLEP 2010. The development is defined as multi dwelling housing, which is a permitted form of development in this zoning with the consent of the consent authority.

Mandatory Requirements

Objectives

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 R2 Low Density Residential zone are as follows:

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

Due to the design of the development being predominantly 2 storeys for the length of the block, it is considered that this is not consistent with the low density residential environment of the locality.

- *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 development.

- *To ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing do not significantly alter the character of a location or neighbourhood.*

ITEM 2 (continued)

The bulk, scale and massing of the development is inconsistent with the established character of the area as well as what would be expected in a low density residential area. This is due to the development being predominantly 2 storeys and having a much greater scale and massing than what would normally be permitted on the site under Council's planning controls. Although the streetscape does contain 2 storey buildings and 2 storey dwellings are permissible, these are dwelling houses that do not extend for the length of the site as proposed in this development application. The locality also contains examples of other multi dwelling housing, however these are single storey rather than 2 storeys. This development would also affect the established character in terms of amenity of the adjoining properties due to the excessive height, bulk and scale, privacy and increased overshadowing. The development fails to satisfy this objective.

- *To ensure that new development complements or enhances the local streetscape.*

The development is consistent with this objective as when viewed from the street, the front elevation will appear as a single 2 storey dwelling.

- *To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.*

The development is consistent with this objective.

- *To ensure that land uses are compatible with the character of the area and responsive to community needs.*

The design of this development means that it is not compatible with the character of the area. Due to the number of objections received it is also not considered to be responsive to community needs.

Clause 4.3 Height of Buildings

This clause specifies that the maximum height for multi dwelling housing in the R2 zone should not exceed the following:

- (a) For dwellings in the building that do not have a frontage to the street – 6.5 metres.
- (b) For dwellings with a frontage to the street, if adjoining lots contain dwelling houses that are less than 9.5 metres high – 8 metres.

The development complies with the second part of this clause. The dwelling that faces the street will have a maximum height of 7.9 metres. The development however fails to comply with the height control for the remaining four dwellings. Dwelling two will have an overall height of 7.9 metres, dwellings three and four, 7.5 metres and dwelling five, 7.05 metres. The non compliance with height is due to the development being 2 storeys rather than single storey. This also results in the development being out of character with the locality.

ITEM 2 (continued)

The applicant has not sought a variation to this clause under the provisions of Clause 4.6 of the LEP.

In this instance the variation cannot be supported.

Clause 4.5A Density controls for Zone R2 Low Density Residential

The consent authority must not consent to the erection of multi dwelling housing unless the site area for the building is not less than 300m² for each three bedroom dwelling. As the development contains 5 x 3 bedroom dwellings a site area of 1500m² is required. The proposed site area is 1012m². The development fails to comply with the density control. This control will allow a maximum of 3 x 3 bedroom dwellings on the site rather than the five dwellings as proposed.

The applicant has not sought a variation to this clause under the provisions of Clause 4.6 of the LEP. However, it should be noted that density is covered in the SEPP in respect to FSR, site area, landscaped area. The development complies with all of these requirements and as the SEPP overrides the LEP, therefore this clause is not applicable in this instance and cannot be used as a reason for refusal.

(c) Any draft LEPs

There are no applicable draft LEPs to be considered.

(d) Any DCP (e.g. dwelling house, villa)

Part 3.5 Multi Dwelling Housing (for Low Density Residential Zone) of DCP 2010

The development meets the definition of multi dwelling housing under RLEP 2010 and an assessment of the proposal under Council's planning controls is carried out to assist in the assessment of character test.

The following table provides a list of all of the areas where the development fails to comply. This list of non compliances results in a development that can be considered as an overdevelopment for the site which will result in adverse impacts to the amenity of the adjoining properties as well as the development being inconsistent with the character of the area.

DCP 2010	Proposed	Compliance
Density As per clause 4.5A RLEP 2010 which states (a) Site area <ul style="list-style-type: none"> • 300m² per 1, 2 3 bedroom dwelling 	As each dwelling is 3 bedrooms the development requires a site area of 1500m ² . The site area is 1012m ² . However, as the development complies with the SEPP this cannot be used as a reason for refusal.	No

ITEM 2 (continued)

DCP 2010	Proposed	Compliance
<p>Type of dwellings If 4 or more dwellings on site, <75% with same number of bedrooms.</p>	100% of the dwellings have the same number of bedrooms.	No
<p>Storeys A MDH must be within a single storey building or dwelling with frontage to street can be 2 storeys provided 2 storey dwelling not attached to any other 2 storey dwelling and 2 storey is suitable in terms of streetscape.</p>	All of the units are two storeys. 2 storeys dwellings are not appropriate in terms of the streetscape which is predominantly single storey.	No
<p>Height As per clause 4.3(2a) which states the maximum height is: (a) for dwellings in buildings with no frontage to a street – 6.5 m (b) for dwellings with a frontage to the street if adjoining lots have dwellings that area < 9.5 metres – 8m</p>	The front dwelling complies as it has a height of 7.9m. The remaining 4 dwellings fail to comply with the height control. Dwelling 2 – 7.9m Dwelling 3 & 4 – 7.5m Dwelling 5 – 7.05m.	No
<p>Site coverage Site coverage <40%</p>	The development proposes a site coverage of 39%.	Yes
<p>Front setbacks Similar to adjoining buildings. Council may vary this requirement if streetscape is likely to change. In this situation, not less than 7.5m for 50% of elevation and not less than 6.5m for 50% of the elevation.</p>	Streetscape is likely to change in the future given that dwellings can be erected closer to the front setback. Proposed 7.6 metres for approximately 80% of dwelling and 6 metres for rest of the dwelling.	No
<p>Side and rear setbacks Minimum 4.5 metres unless vehicular access is included in this area then minimum 6m. Allow variation between 3-6m for less than 50% for visual interest.</p>	Northern boundary – min 3.5m to 4m & max 7m. 90% of the elevation is setback less than 4.5m. Southern boundary requires 6m due to driveway. Proposed min 4.5m to max 7m. 44.9% less than permitted 6m. Rear elevation – 4.5m	No Yes Yes
<p>Private outdoor space Minimum area 35m². Minimum dimension of 4 metres.</p>	Courtyard 1 – 33.4m ² Courtyard 2 – 32.2m ² Courtyard 3 – 32.2m ² Courtyard 4 – 32.5m ² Courtyard 5 – 97m ² Courtyards have dimensions of less than 4 metres.	No No No No Yes Yes

ITEM 2 (continued)

DCP 2010	Proposed	Compliance
Landscaping At least 1.2m landscape strip between driveway and adjoining property.	The plans demonstrate 1m setback area.	No
Car parking Number of parking spaces – 2 space per 3 bedroom dwelling and 1 visitor space per 4 dwellings.	Requires 12 spaces. 10 resident spaces and 2 visitor spaces.	No
Driveways Suitably paved, extent minimised to avoid excessive amounts of hard paving.	Driveway results in an excessive amount of hard paving. This is due to the driveway being located along the side boundary and the driveway requiring to be widened to 6m for access from Blaxland Road..	No
Appearance Complement streetscape.	As the development is inconsistent with the character of the area, if fails to comply with this clause.	No

9. Likely impacts of the Development

The predominant form of housing in this locality is detached dwellings which are either single or 2 storeys in height. There are examples of multi dwelling housing however these are single storey. Council’s controls require that multi dwelling housing must be contained within a single storey building except for the dwelling facing the street. This is to ensure that the scale of such developments relates to the character and streetscape of the locality.

The development proposes the erection of five attached dwellings. These are all 2 storey townhouses. This development would be to the detriment of the character of the area as its bulk, scale and massing is considerably greater than the low scale character of the surrounding developments. The following diagram demonstrates the side elevation of the development.



ITEM 2 (continued)

The non compliances with the Council's controls results in a built form that is considered to be an overdevelopment of the site. This will adversely impact on the amenity of the adjoining properties due to greater bulk and massing, reduced privacy and increased car parking on the street.

10. Suitability of the site for the development

The site is not suitable for infill affordable housing under the SEPP as it fails to comply with the requirement in respect compatibility with the character of the area. The development also fails to comply with Council's requirements for multi dwelling housing. In these circumstances the development is considered to be unsuitable for the site.

11. The Public Interest

In terms of this development application the public interest is best served by the development complying with the relevant planning controls. In this instance the development fails to comply with the applicable controls and is recommended for refusal.

12. Consultation – Internal and External

Internal Referrals

Development Engineer: 26 July 2011: Council's Development Engineer has advised that Blaxland Road is a very busy road and the driveway needs to be widened at the entry. This will need adjustment to the landscaping and removal of part of the porch.

Amended plans were not requested as the proposal does not comply with the character test requirement and cannot be supported by Council officers.

Traffic Engineer: 23 September 2011: Council's Traffic Engineer advised that the proposal needs to have a 6m wide driveway to minimise disruption to traffic from vehicles wishing to enter the property. A minimum of 6m wide two way access driveway is recommended.

The number of on site parking spaces is inadequate, the applicant should provide the number of car parking spaces to satisfy the requirement of DCP 2010 Part 9.3.

Heritage Officer: 9 June 2011: Council's Heritage Officer has advised that the demolition of the existing dwelling is not considered to have any heritage value, therefore demolition presents no heritage concerns. The development is assessed having little or no impact on the heritage significance of a heritage item that is within 100m of the proposal because the proposal is outside the view catchment of the relevant heritage item. There are no special heritage recommendations.

ITEM 2 (continued)

Consultant Landscape Architect: 2 August 2011: The following comments were provided:

The site was accessed and inspected on 29 June, 2011. I have also reviewed development documentation including an arborist's report prepared by Meredith Gibbs from Australis Tree Management, dated April 2011, and a landscape plan prepared by Peta Gilliland Landscape Design Issue A, dated 2 May, 2011.

*The arborist's report identifies five trees
three occur on the subject site:*

*two Crepe Myrtles
one Golden Cypress*

And two trees on neighbouring properties

*one Silky Oak
one Liquidambar*



ITEM 2 (continued)

The trees occurring on the subject site are of only limited amenity value and there is no issue with their removal. The arborist has highlighted that there may be some issues associated with the construction impacts occurring within the Tree Protection Zones of the Liquidambar and the Silky Oak. Both trees are exempt under Council's Tree Preservation Order, however, they belong to the owner of 500 Blaxland Road, and should be protected from construction impacts, by the use of thrust boring as nominated by the arborist.

I have attached a condition requiring an exploratory trench be dug along the property boundary to reveal the presence (or not) of structural roots, which should then dictate the course of construction.

The common boundary will also have a low brick retaining wall, which will potentially affect the roots of the Liquidambar, and is a construction impact that has not been commented on in the arborist's report. I have attached a condition that it needs to be considered.

Landscape Plan

In terms of landscaping, the proposal does not comply with the DCP requirement for a 1.2m landscape strip along the common boundary with 496 Blaxland Rd, which I have scaled to be only 800mm. The shortfall precludes the development of shrubs to a suitable height and there is no scope for complementary tree planting. Towards the rear most of the landscape strip is used for the provision of two retaining walls leaving minimal garden width.

Similarly there are areas of inadequate separation between the dwellings and the driveway which require a minimum 1m of landscaping, whereas in some instances only 430-500mm is provided e.g. units five & three.

Conclusion

If the development is to be approved it must address the landscaping issues that currently do not comply with the DCP. Should they be satisfactorily addressed the following conditions should be attached regarding the management of construction impacts upon neighbouring trees.

Conditions

Schedule of removal/retention of existing trees and the installation of tree protection measures and construction management is to be in accordance with the arborist's report prepared by Meredith Gibbs from Australis Tree Management, dated April 2011. In addition:

- a) *with regard to the neighbour's Silky Oak and Liquidambar, at 500 Blaxland Road, prior to thrust boring, the project arborist shall dig an exploratory trench along the common boundary for the extent of the root protection zone of both trees to a depth of 700mm, to determine the presence of structural roots. The results of the trench shall determine 1) the necessity of thrust boring; and, 2)*

ITEM 2 (continued)

- the extent and distribution of roots if thrust boring is prescribed by the project arborist.*
- b) the stormwater pipes should be off-set from the boundary by a distance of at least 2m.*
 - c) no structural woody roots are to be severed for the construction of the low walling adjacent to the Liquidambar.*

External Referrals

Road & Traffic Authority: 10 June 2011: The proposal was referred to the RTA as it is proposed to relocate the driveway and it was referred to the RTA for concurrence under Section 138(2) of the Roads Act 1993.

RTA replied by letter dated 10 June 2011 advising:

The RTA has reviewed the development application and grants concurrence to the proposed vehicular crossing on Blaxland Road under section 138(2) of the Roads Act 1993, subject to Council's approval and the following requirements being included in Council's conditions of consent.

Should the application be supported the seven conditions imposed by RTA could be included in the conditions of approval.

13. Critical Dates

There are no critical dates or deadlines to be met.

14. Other Options

There are no other options in respect of this development application.

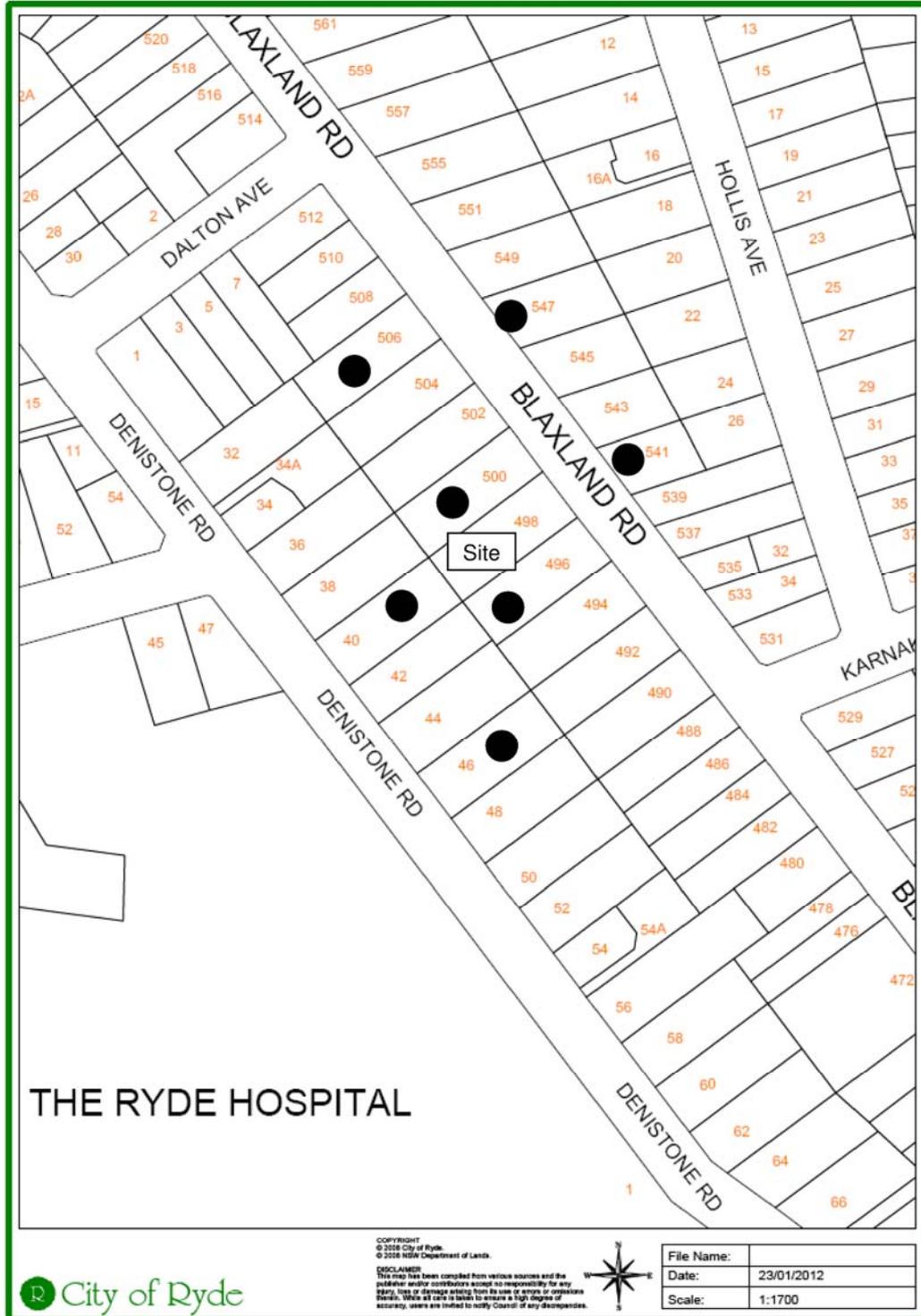
15. Conclusion

The development is considered to be inappropriate for the site and has been recommended for refusal. Given the recent changes to State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011, which can be applied to this development, the development fails to meet the criteria for infill affordable housing and must be assessed as multi dwelling housing under RLEP 2010 and DCP 2010. In this respect, the development fails to comply with density, height, setbacks, car parking, landscaping, private outdoor space and driveway provisions. These non-compliances result in the development being out of character with the locality and will adversely impact on the amenity of the adjoining properties.

ITEM 2 (continued)

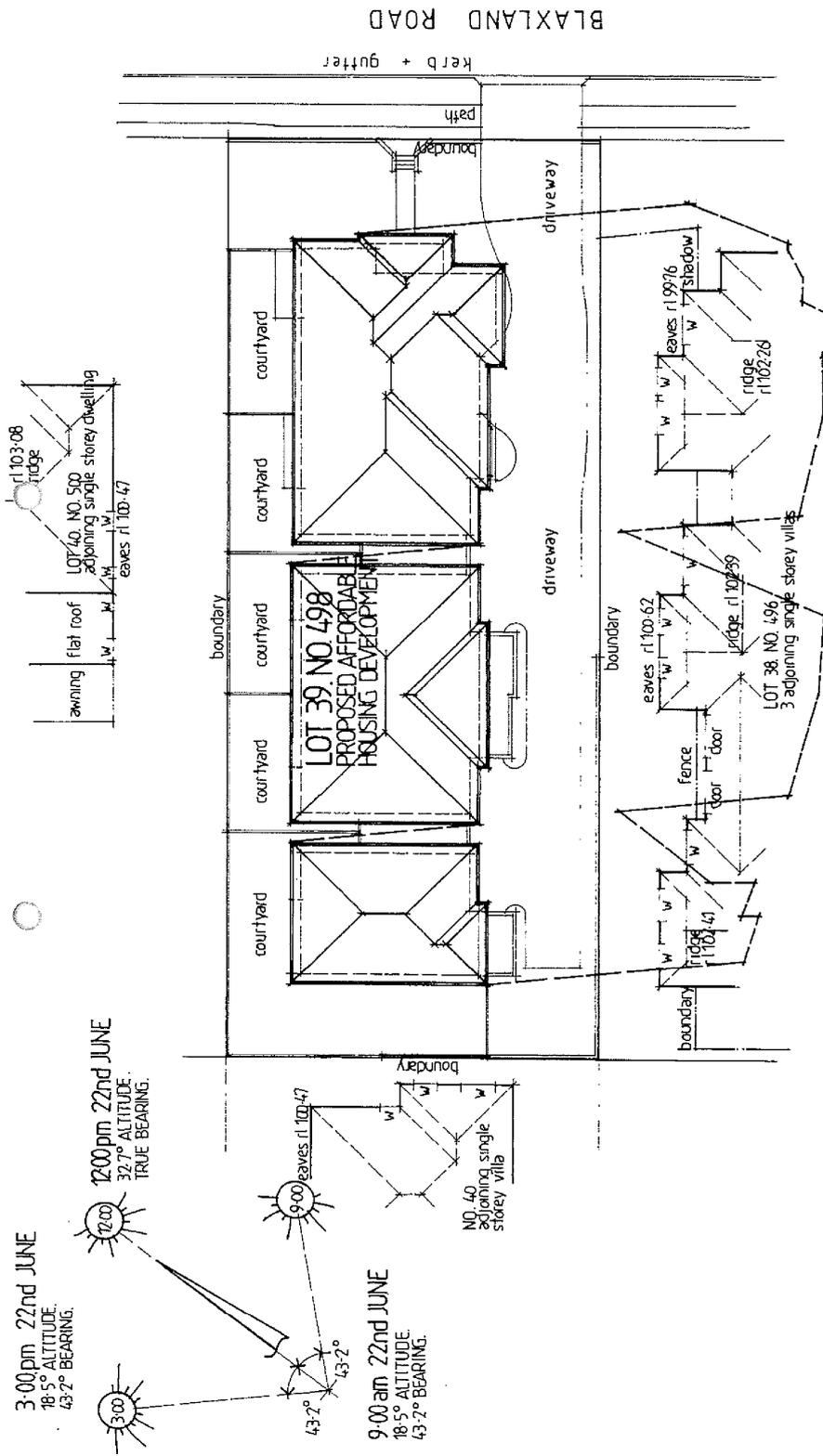
ATTACHMENT 1

 Indicates individual submissions received (petition also received)



ITEM 2 (continued)

ATTACHMENT 2



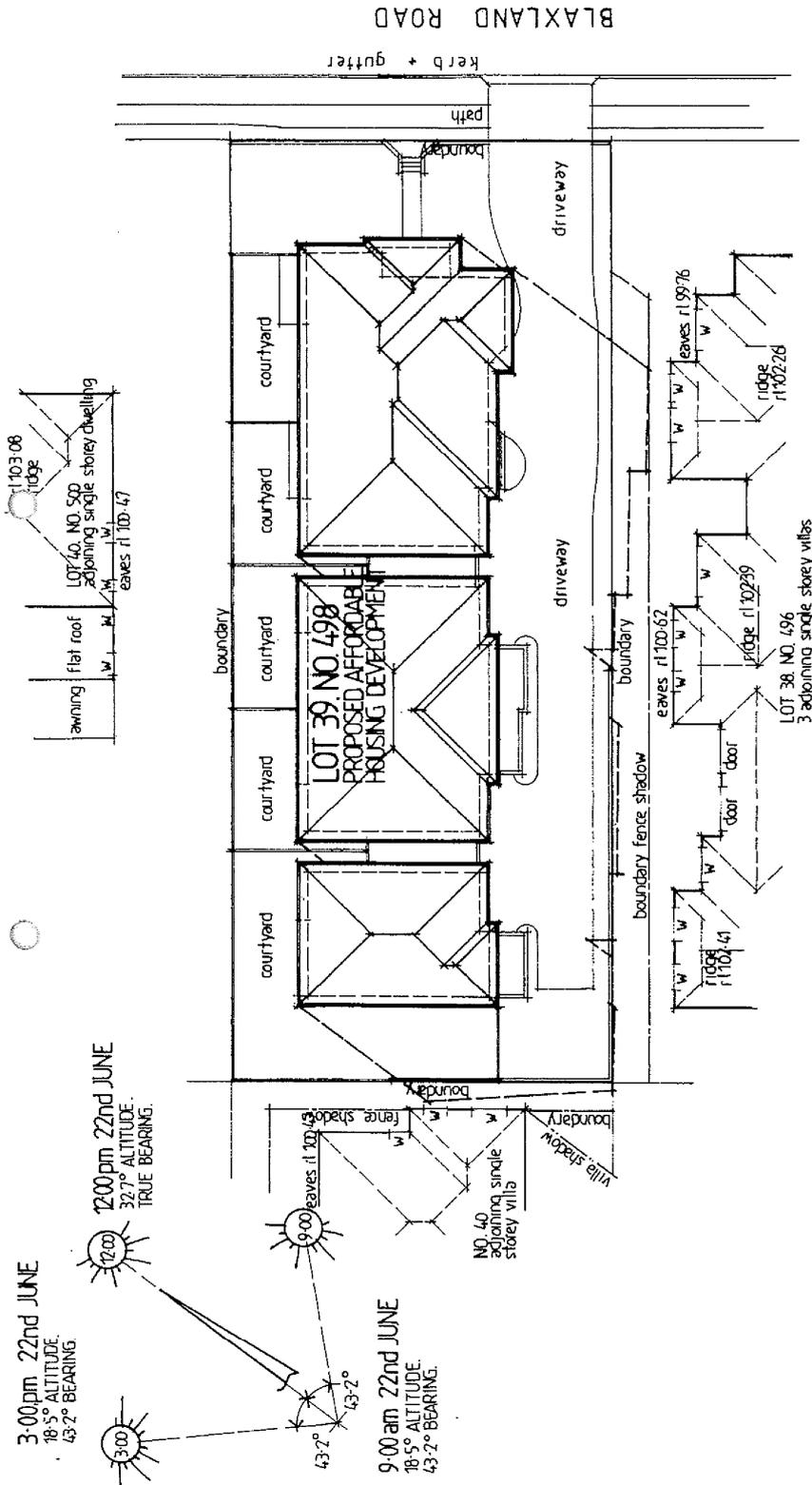
PROPOSED SHADOW DIAGRAM ◊ 3:00pm 22nd JUNE.

PROPOSED AFFORDABLE HOUSING DEVELOPMENT.
MR. J. CHAN + MS. Y. LIANG
LOT 39, NO. 498 BLAXLAND ROAD DENISTONE.

G + A DRAFTLINE
21 YANGALLA STREET MARSFIELD, 2122, NSW. PH: 9876 1582. M: 041 35 77 130.
SCALE 1:200 DATE 29 APR 2011 DRAWN BY: GIND M ITR NO: 1 0027/11 -> 3 -> 3

ITEM 2 (continued)

ATTACHMENT 2



PROPOSED SHADOW DIAGRAM @ 12:00pm 22nd JUNE.

PROPOSED AFFORDABLE HOUSING DEVELOPMENT.
MR. J. CHAN + MS. Y. LIANG
LOT 39, NO. 498 BLAXLAND ROAD DENISTONE.

G + A DRAFTLINE
21 YANGALGA STREET MARSFIELD, 2122, NSW. PH: 9876 1582. M: 041 35 77 130.
SCALE 1:200 DATE 29 APR 2011 DRAWN BY: GIND M. DIR NO. 1007/11 → 7 → 3

ITEM 2 (continued)

ATTACHMENT 4

SENIORS LIVING POLICY:

Urban design guidelines for infill development.

1. Responding to Context		
<p>Neighbourhood character: Street layout & hierarchy: What is the pattern and hierarchy of streets in the local area?</p>	<p>No changes to the street pattern or hierarchy.</p>	<p>N/a</p>
<p>Blocks & Lots What are the predominant block and lot patterns? How have these changed over time (for example by subdivision and amalgamation)? What are the typical lot sizes, shape and orientation.</p>	<p>No changes to the pattern of the street. The predominant pattern being the street block is of regular shaped allotments with street frontage to Blaxland Road. Lots sizes varies from approx 500m² to 1000m² plus.</p>	<p>N/a</p>
<p>Built environment: Look for buildings that have a good relationship to the street or characteristics that contribute positively to neighbourhood character. Do buildings have a consistent scale and massing? Is there a regular rhythm of spaces between them? What are the atypical buildings? Should particular streetscapes and building types be further developed or discouraged?</p>	<p>Proposal does not contribute positively to the character of the area. The building is not consistent with scale and massing of adjoining dwellings. Typical buildings are single or 2 storeys at street frontage with single storey with no street frontage.</p>	<p>No</p>
<p>Trees: Where are the significant trees and landscapes in the neighbourhood? Are there street trees, and if so what species and spacing? What are the patterns of planting in the front and rear gardens? Could new development protect and enhance existing vegetation?</p>	<p>No significant trees on site, trees to be removed as part of the proposal are considered to have little amenity value.</p>	<p>Yes</p>
<p>Policy Environment: What are the key characteristics of an area as identified by the Council? How might these be accommodated in the design of new</p>	<p>Council LEP does not specified the key characteristics of the area however the objectives of the zone, inter alia, <i>to ensure the general low density nature</i></p>	<p>No</p>

ITEM 2 (continued)

ATTACHMENT 4

<p>development for the area? Are there any special character areas, view corridors, vistas, landscaped areas, or heritage buildings or precincts that should be considered?</p>	<p><i>of the zone is retained and that the development for the purposes of dual occupancy (attached) and multi dwelling housing do not significantly alter the character of a location or neighbourhood.</i> Council's LEP and DCP 2010 – Multi Dwelling restrict the height of dwelling with no frontage to 6.5m. The proposal is not consistent with Council's policies.</p>	
<p>2. Site Planning and Design</p>		
<p>Design principles & better practice</p> <ul style="list-style-type: none"> - Site design should be driven by the need to optimise internal amenity and minimise impacts on neighbours. These requirements should dictate the maximum development yield. - Cater for the broad range of needs from potential residents by providing a mix of dwelling sizes and dwellings both with and without assigned car parking. This can also provide variety in massing and scale of built form within the development. <p>Built form:</p> <ul style="list-style-type: none"> - Locate the bulk of development towards the front of the site to maximise the number of dwellings with frontage to a public street. - Parts of the development towards the rear of the site should be more modest in scale to limit the impacts on adjoining properties. - Design and orient dwellings to respond to environmental conditions: <ul style="list-style-type: none"> • orient dwellings on the site to maximise solar access to 	<p>Adverse impact to neighbours with 2 storey element overlooking into adjoining properties</p> <p>5 x 3 bedrooms, no mix of dwelling sizes. Mass form continuous for the length of the building.</p> <p>Building bulk is continuous for the length of the building.</p> <p>Family rooms and kitchen areas orientated north, family</p>	<p>No</p> <p>No</p> <p>No</p> <p>Yes</p>

ITEM 2 (continued)

ATTACHMENT 4

<p>living areas and private open space</p> <ul style="list-style-type: none"> locate dwellings to buffer quiet areas within the development from noise. 	<p>rooms have direct access to private open space.</p>	
<p>Tree, landscaping & deep soil zones Maintain existing patterns and character of gardens and trees:</p> <ul style="list-style-type: none"> retain trees and planting on the street and in front setbacks to minimise the impact of new development on the streetscape retain trees and planting at the rear of the lot to minimise the impact of new development on neighbours and maintain the pattern of mid block deep soil planting retain large or otherwise significant trees on other parts of the site through sensitive site planning where it is not possible or desirable to retain existing trees, replace with new mature or semi-mature trees. <p>Improve amenity by increasing the proportion of the site that is landscaped area by:</p> <ul style="list-style-type: none"> increasing the width of landscaped areas between driveways and boundary fences, and between driveways and new dwellings providing pedestrian paths reducing the width of driveways providing additional private open space above the minimum requirements providing communal open space 	<p>3 existing trees to be removed however landscaping plan indicate new trees to be planted in front setback.</p> <p>Landscaping proposed along the rear yard area.</p> <p>No significant trees on site.</p> <p>Can condition to comply.</p> <p>Proposal does not provide sufficient landscaping width between driveway and driveway, can condition to comply.</p> <p>No pedestrian path adjacent to driveway.</p> <p>Driveway needs to be widen to increase manoeuvrability.</p> <p>Only rear dwelling have increased private open space.</p> <p>No communal open space.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

ITEM 2 (continued)

ATTACHMENT 4

<ul style="list-style-type: none"> • increasing front, rear and/or rear setbacks • providing small landscaped areas between garages, dwelling entries, pedestrian paths, driveways, etc. <p>Provide deep soil zones for absorption of run-off and to sustain vegetation, including large trees:</p> <ul style="list-style-type: none"> • it is preferable that as least 10% of the site area is provided as a single area at the rear of the site, where there is the opportunity to provide a mid-block corridor of trees within a neighbourhood • where the pattern of neighbourhood development has deep soil planting at the front of the site, it may be desirable to replicate this pattern. <p>Minimise the impact of higher site cover on stormwater runoff by:</p> <ul style="list-style-type: none"> • using semi-pervious materials for driveways, paths and other paved areas • using of on-site detention to retain stormwater on site for re-use. <p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> - Consider centralised parking in car courts to reduce the amount of space occupied by driveways, garages and approaches to garages. - Where possible maintain existing crossings and driveway locations on the street. <p>SEPP Controls Minimum site area: 1000</p>	Minimal front rear setback.	No
	No landscaped areas between garages.	No
	Deep soil area provided at rear.	Yes
	Front setback provided with deep soil area.	Yes
	Driveway imperivous	No
	Rainwater reuse tank.	
	Individual garages via a side driveway.	No
	Relocate existing driveway/crossing.	No
Site area 1012m ² , width 20.115m.	Yes	

ITEM 2 (continued)

ATTACHMENT 4

<p>square metres — Cl. 38(2). Minimum site width: 20 metres Cl. 38(3). Development cannot be refused if:</p> <ul style="list-style-type: none"> • proposed buildings do not exceed 8 metres in height — Cl. 81(a) • the floor space ratio does not exceed 0.5:1— Cl. 81(b) • the landscaped area is a minimum of 30% of the site — Cl. 81 (c)(ii) • the deep soil zone area is a minimum of 15% of the site (must have minimum dimension of 3 metres and it is preferable that two thirds of the deep soil area is at the rear of the site) — Cl. 81(d) • one visitor parking space is provided for development of 6 or less dwellings or two visitor parking spaces for development of 7 or 8 dwellings — Cl. 81 (g)(i-ii) • 0.5 resident parking spaces per bedroom are provided — Cl. 81(h)(i). <p>Additional site-related requirements regarding access to services, bush fire prone land, and water and sewerage are contained in Clauses 25 to 27.</p> <p>Rules of Thumb The proportion of the site given to landscaped area and deep soil should be increased in less urban areas, on large lots, and in areas already characterised by a high proportion of open space and planting.</p>	<p>Under 8m.</p> <p>0.516:1</p> <p>31%</p> <p>16.8%.</p> <p>No visitor parking provided.</p> <p>Only 5 spaces are provided – require 8 spaces.</p> <p>In an urban area.</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>N/a</p>
---	---	--

ITEM 2 (continued)

ATTACHMENT 4

3. Impacts on streetscape		
<p>General: Respond to the desired streetscape character by:</p> <ul style="list-style-type: none"> • locating and designing new development to be sympathetic to existing streetscape patterns (building siting, height, separation; driveway locations, pedestrian entries, etc.) • providing a front setback that relates to adjoining development. <p>Built form: Reduce the visual bulk of a development by:</p> <ul style="list-style-type: none"> • breaking up the building massing and articulating building facades • allowing breaks in rows of attached dwellings • using variation in materials, colours and openings (doors, windows and balconies) to order building facades with scale and proportions that respond to the desired contextual character • setting back upper levels behind the front building facade • where it is common practice in the streetscape, locating second storeys within the roof space and using dormer windows to match the appearance of existing dwelling houses • reducing the apparent bulk and visual impact of a building by breaking down the roof into smaller roof elements • using a roof pitch sympathetic to that of existing buildings in the 	<p>Existing streetscape is predominately single storey with 2 storey element within the roof form. 2 storeys dwellings are permissible.</p> <p>Does not comply – forward of adjoining properties.</p> <p>Some articulation to break up mass.</p> <p>No breaks in attached dwellings.</p> <p>No details provided.</p> <p>Upper level in line with front façade.</p> <p>Example of 2nd storey within roof space located in the street – proposal has not gone for this approach.</p> <p>Attempted to break visual mass by dividing/breaking roof areas.</p> <p>Pitched roof.</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p>

ITEM 2 (continued)

ATTACHMENT 4

<p>street</p> <ul style="list-style-type: none"> • avoiding uninterrupted building facades including large areas of painted render. <p>Trees, landscaping and deep soil zones: Retain existing trees and planting in front and rear setbacks and the road reserve:</p> <ul style="list-style-type: none"> • where this is not possible or not desirable use new planting in front setback and road reserve • plant in front of front fences to reduce their impact and improve the quality of the public domain. <p>Residential amenity</p> <ul style="list-style-type: none"> - Clearly design open space in front setbacks as either private or communal open space. - Define the threshold between public and private space, for example by level change, change in materials, fencing, planting and/or signage. - Design dwellings at the front of the site to address the street. <p>Provide a high quality transition between the public and private domains by:</p> <ul style="list-style-type: none"> • designing pedestrian entries where possible to be directly off the street • for rear residents, providing a pedestrian entry that is separate from vehicular entries • designing front fences to provide privacy where necessary, but also to allow for surveillance of the street • ensuring that new front fences have a consistent character with front fences 	<p>No large area of uninterrupted building facades.</p> <p>New planting proposed.</p> <p>No details of planting in front of fence.</p> <p>Front setback is not delineated as private open space however not very useable as communal open space.</p> <p>Private space located behind each dwelling.</p> <p>Front dwelling addresses the street.</p> <p>Pedestrian access to front dwelling.</p> <p>No separate pedestrian entry from vehicular entries.</p> <p>No details of front fence.</p> <p>No details of front fence.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p>
---	---	---

ITEM 2 (continued)

ATTACHMENT 4

<p>in the street</p> <ul style="list-style-type: none"> • orienting mailboxes obliquely to the street to reduce visual clutter and the perception of multiple dwellings • locating and treating garbage storage areas and switchboards so that their visual impact on the public domain is minimised. <p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> - Avoid unrelieved, long, straight driveways that are visually dominant by: <ul style="list-style-type: none"> • varying the alignment of driveways to avoid a 'gunbarrel' effect • setting back garages behind the predominant building line to reduce their visibility from the street • considering alternative site designs that avoid driveways running the length of the site. - Minimise the impact of driveways on streetscape by: <ul style="list-style-type: none"> • terminating vistas with trees, vegetation, open space or a dwelling, not garages or parking • using planting to soften driveway edges • varying the driveway surface material to break it up into a series of smaller spaces (for example to delineate individual dwellings) • limiting driveway widths on narrow sites to single carriage width with passing points • providing gates at the head of driveways to minimise visual 'pull' of the driveway. 	<p>No details of mailboxes.</p> <p>No proposed garbage storage area.</p> <p>Long driveway proposed.</p> <p>Garages setback, not visible from the street.</p> <p>Driveway for the length of the site.</p> <p>Landscaping provided down side of driveway.</p> <p>Planting provided.</p> <p>No break up in material.</p> <p>Driveway single carriage width with manoeuvring areas.</p> <p>No gates provided.</p> <p>Not basement parking.</p>	<p>No</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p> <p>N/a</p>
--	--	--

ITEM 2 (continued)

ATTACHMENT 4

<ul style="list-style-type: none"> - Where basement car parking is used minimise the impact of the entry by: - Locate or screen all parking to minimise visibility from the street. <p>SEPP Controls For development proposed in a residential zone where residential flat buildings are not permitted:</p> <ul style="list-style-type: none"> • the height of all buildings in the proposed development must be 8 metres or less, • a building that is adjacent to a boundary of the site must be not more than 2 storeys in height — Cl. 38(4)(a-b). <p>Rules of Thumb</p> <ul style="list-style-type: none"> - Respond to council planning instruments that specify the character or desired character for the area. - Where there is a consistent front building alignment, new development should not encroach on the front setback. - Driveways or basement car park entries should not exceed 25% of the site frontage. - Garage doors should be set back a minimum of 1 m metre behind the predominant building facade on both the street frontage and common driveways. 	<p>Under 8m.</p> <p>2 storeys.</p> <p>Does not respond to Council's RLEP or DCP in regards to maintaining desired character.</p> <p>Proposal encroaches into the front setback.</p> <p>Driveway exceeds 25% of site frontage.</p> <p>Garages behind building façade.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes</p>
<p>4. Impacts on Neighbours</p>		
<p>Built form:</p> <ul style="list-style-type: none"> - Design the relationship between buildings and open space to be consistent with the existing patterns in the block: • where possible maintain the existing orientation of dwelling 'fronts' and 'backs' 	<p>2 storey building for the length of the site.</p> <p>Perception of overlooking from</p>	<p>Yes</p> <p>No</p>

ITEM 2 (continued)

ATTACHMENT 4

<ul style="list-style-type: none"> • where the dwelling must be oriented at 90 degrees to the existing pattern of development, be particularly sensitive to the potential for impact on privacy of neighbours. - Protect neighbours' amenity by carefully designing the bulk and scale of the new development to relate to the existing residential character, for example by: <ul style="list-style-type: none"> • Setting upper storeys back behind the side or rear building line - Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure. - Design second storeys to reduce overlooking of neighbouring properties, for example by: <ul style="list-style-type: none"> • incorporating them within the roof space and providing dormer windows • offsetting openings from existing neighbouring windows or doors. - Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks. 	<p>1st floor windows looking into adjoining property rear yard.</p>	
<ul style="list-style-type: none"> - Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure. 	<p>Upper storey for length of the building.</p>	<p>No</p>
<ul style="list-style-type: none"> - Design second storeys to reduce overlooking of neighbouring properties, for example by: <ul style="list-style-type: none"> • incorporating them within the roof space and providing dormer windows 	<p>Roof form broken up into sections.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - Design second storeys to reduce overlooking of neighbouring properties, for example by: <ul style="list-style-type: none"> • incorporating them within the roof space and providing dormer windows 	<p>Full upper storey – not set into roof area.</p>	<p>No</p>
<ul style="list-style-type: none"> - offsetting openings from existing neighbouring windows or doors. - Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks. 	<p>Windows not off set.</p>	<p>No</p>
<p>Trees, landscaping and deep soil zones:</p>	<p>Lot not a narrow site – however long building running the length of the site.</p>	<p>No</p>
<ul style="list-style-type: none"> - Use vegetation and mature planting to provide a buffer between new and existing dwellings. 	<p>Planting/landscaping provided.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - Locate deep soil zones where they will provide privacy between new and existing dwellings. 	<p>Deep soil zones provided.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - Planting in side and rear 	<p>Planting provided.</p>	<p>Yes</p>

ITEM 2 (continued)

ATTACHMENT 4

<p>setbacks can provide privacy and shade for adjacent dwellings.</p> <ul style="list-style-type: none"> - For new planting, if possible, use species that are characteristic of the local area. 	<p>Can be condition.</p> <p>Sufficient building separation.</p>	<p>Yes</p> <p>Yes</p>
<p>Residential amenity</p> <ul style="list-style-type: none"> - Protect sun access and ventilation to living areas and private open space of neighbouring dwellings by ensuring adequate building separation. - Design dwellings so that they do not directly overlook neighbours' private open space or look into existing dwellings. - When providing new private open space minimise negative impacts on neighbours, for example by: <ul style="list-style-type: none"> • locating it in front setbacks where possible • ensuring that it is not adjacent to quiet neighbouring uses, for example bedrooms • designing dwellings around internal courtyards • providing adequate screening. - Where side setbacks are not large enough to provide useable private open space, use them to achieve privacy and soften the visual impact of new development by planting screen vegetation. 	<p>Bedroom windows overlook into adjoining property's private open space.</p> <p>Located at side.</p> <p>No details.</p> <p>Courtyards at side.</p> <p>Screening/planting provided.</p> <p>Side setback large enough for POS.</p>	<p>No</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p>
<p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> - Provide planting and trees between driveways and side fences to screen noise and reduce visual impacts. - Position driveways so as to be a buffer between new and 	<p>Provided – need to increase width.</p> <p>Side driveway – buffer between new and existing.</p>	<p>Yes – provided, need to increase width.</p>

ITEM 2 (continued)

ATTACHMENT 4

<p>devices to establish curtilages for individual dwellings.</p> <ul style="list-style-type: none"> - Design dwelling entries so that they: <ul style="list-style-type: none"> • are clear and identifiable from the street or driveway • provide a buffer between public/communal space and private dwellings • provide a sense of address for each dwelling • are oriented to not look directly into other dwellings. <p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> - Locate habitable rooms, particularly bedrooms, away from driveways, parking areas and pedestrian paths: <ul style="list-style-type: none"> • where this is not possible use physical separation, planting, screening devices or louvres to achieve adequate privacy. - Avoid large uninterrupted areas of hard surface (driveways, garages, walls). Small areas of planting can break these up and soften their 'hard edge' appearance. - Screen parking from views and outlooks from dwellings. - Reduce the dominance of areas for vehicular circulation and parking by considering: <ul style="list-style-type: none"> • single rather than double width driveways with passing bays • communal car courts rather than individual garages • single rather than double garages • tandem parking or a single garage with single car port in tandem • the provision of some dwellings without any car 	<p>Front dwelling entry is clear and identifiable.</p> <p>Buffer provided.</p> <p>Single row development.</p> <p>Ground floor ground living area adjacent driveway.</p> <p>Long driveway.</p> <p>Garages not dominant.</p> <p>Single driveway width.</p> <p>Individual garages.</p> <p>Single garage.</p> <p>All dwellings with single garage.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p>
---	--	---

ITEM 2 (continued)

ATTACHMENT 4

<p>parking for residents without cars.</p> <p>Residential amenity</p> <ul style="list-style-type: none"> - Provide distinct and separate pedestrian and vehicular circulation on the site: <ul style="list-style-type: none"> • where this is not possible shared driveway/pedestrian paths should be wide enough to allow a vehicle and a wheelchair to pass safely . • provide pedestrian routes to all public and semi-public areas including lobbies, dwelling entries, communal facilities and visitor parking spaces. - Ensure that adequate consideration is given to safety and security by: <ul style="list-style-type: none"> • avoiding ambiguous spaces in building and dwelling entries that are not obviously designated as public or private • minimising opportunities for concealment by avoiding blind or dark spaces between buildings, near lifts and foyers and at the entrance to or within indoor car parks • clearly defining thresholds between public and private spaces (for example by level change, change in materials, fencing, planting and/or signage). - Provide private open space that: <ul style="list-style-type: none"> • is generous in proportion and adjacent to the main living areas of the dwelling (living room, dining room or kitchen) • is oriented predominantly north, east or west to 	<p>Shared driveway and pedestrian paths. Show sections not wide enough to allow a vehicle and a wheelchair to pass safety.</p> <p>N/a</p> <p>N/a</p> <p>N/a – no lift or communal entrance.</p> <p>Buffer provided.</p> <p>Courtyard area adjacent to family and kitchen area.</p> <p>Orientated north.</p>	<p>No</p> <p>N/a</p> <p>N/a</p> <p>N/a</p> <p>Yes</p> <p>Yes</p>
---	---	---

ITEM 2 (continued)

ATTACHMENT 4

<p>provide solar access</p> <ul style="list-style-type: none"> • comprises multiple spaces for larger dwellings • uses screening for privacy but also allows casual surveillance when located adjacent to public or communal areas (including streets and driveways) • provides both paved and planted areas when located at ground level • retains existing vegetation where practical • uses pervious pavers where private open space is predominantly hard surfaced, to allow for water percolation and reduced runoff. <p>- Provide communal open space that:</p> <ul style="list-style-type: none"> • is clearly and easily accessible to all residents and easy to maintain • incorporates existing mature trees and vegetation to provide additional amenity for all residents • includes shared facilities such as seating areas and barbecues to permit resident interaction. • Site and/or treat common service facilities such as garbage collection areas and switchboard to reduce their visual prominence to the street or to any private or communal open space. <p>SEPP Controls Development cannot be refused if:</p> <ul style="list-style-type: none"> • living rooms and private open spaces for a minimum of 70% of dwellings receive a minimum of 3 hours 	<p>N/a</p> <p>Dwellings have living room windows facing street or driveway.</p> <p>Courtyards predominantly grassed.</p> <p>Removal of insignificant trees.</p> <p>Predominantly grassed.</p> <p>Small section of communal area at rear.</p> <p>Existing trees to be remain on site is incorporated in the landscaping plan.</p> <p>None proposed.</p> <p>No common service facilities proposed.</p> <p>Complies.</p>	<p>N/a</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/a</p> <p>N/a</p> <p>Yes</p>
--	---	--

ITEM 2 (continued)

ATTACHMENT 4

<p>direct sunlight between 9am and 3pm in mid-winter Cl. 8 1(e)</p> <ul style="list-style-type: none"> • private open space is not less than 15 square metres and minimum dimension 3 metres for ground floor dwellings; 10 square metres and minimum dimension 2 metres for other dwellings; or 6square metres and minimum dimension 2 metres for other dwellings with only one bedroom — Cl. 81(f)(ii). 	<p>Complies.</p>	<p>Yes</p>
<p>Rules of Thumb</p> <ul style="list-style-type: none"> - Separation of 1 .2 metres should be achieved between habitable rooms and driveway or car parks of other dwellings: <ul style="list-style-type: none"> • this can be reduced if adequate screening is provided. 	<p>Complies.</p>	<p>Yes</p>

- 3 40 CLARKE STREET, WEST RYDE. LOT 7 DP 19560. Local Development Application for multi dwelling housing (attached) containing 1x4 bedroom two storey dwelling, 2x3 bedroom and 1x2 bedroom single storey dwellings. LDA2011/0248.**

INSPECTION: 4.35pm

INTERVIEW: 5.15pm

Report prepared by: Consultant Town Planner

Report approved by: Manager Assessment; Group Manager - Environment & Planning

Report dated: 23/01/2012

File Number: GRP/11/3/6/9 - BP12/43

1. Report Summary

Applicant: Moderinn Group Pty Ltd.

Owner: Devmax Clarke Street Pty Limited.

Date lodged: 6 May 2011.

This report considers a proposal to erect on the site a multi dwelling housing (attached) development containing 4 dwellings. The dwellings will consist of a two-storey, 4 bedroom (+ study) dwelling at the front, and 2 x 3 bedroom and 1 x 2 bedroom single storey dwellings at the rear.

The proposal has the following areas of non-compliance with controls detailed in Part 3.5 of DCP 2010, namely:

- Slight departure from minimum site frontage;
- Linear separation controls;
- Southern side boundary setback distance; and
- Overall height of one facade of Unit 1.

These issues are addressed in detail in this report.

The application was advertised in the Ryde City View insert in the Northern District Times dated 8 June 2011 and owners of surrounding properties were given notice of the application. In response, eight (8) submissions were received objecting to the proposal. A total of 19 issues were identified in the submissions. Comments on the issues are provided in this report.

The application is recommended for refusal principally on the basis of the non-compliance with the linear separation provisions of DCP 2010, however, options in respect of determination of the application are provided for Council's consideration.

Reason for Referral to Planning and Environment Committee: Nature of application and number of submissions received.

Public Submissions: Eight submissions were received objecting to the development.

ITEM 3 (continued)

Clause 4.6 RLEP 2010 objection required? Not required.

Value of works? \$760,000

A full set of the plans are **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

RECOMMENDATION:

- (a) That Local Development Application No. 2011/248 at 40 Clarke Street, West Ryde, being Lot 7 DP 19560, be refused for the following reasons:
 - (i) The proposed development does not comply with the provisions of Ryde Development Control Plan 2010 (DCP) in respect to linear separation. (Control 2.4 of Part 3.5 of the DCP relates)
 - (ii) Consent to the application would not be in the public interest.
- (b) That the persons who made submissions be advised of Council's decision.

ATTACHMENTS

- 1 Proposed conditions should Council wish to approve the application
- 2 Map
- 3 Plans
- 4 A3 Plans – subject to copyright provisions – CIRCULATED UNDER SEPARATE COVER
- 5 Statement of Environmental Effects – CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

Bob Tillott
Consultant Town Planner

Report Approved By:

Liz Coad
Manager Assessment

Dominic Johnson
Group Manager - Environment & Planning

ITEM 3 (continued)

2. Site (Refer to attached map.)

Address : 40 Clarke Street, West Ryde

Site Area : Site area: 1309.0m²
Frontage 19.73 metres
Depth 65.83/67.19 metres

Topography and Vegetation : The subject site is located on the western side of Clarke Street, opposite the intersection of Clarke Street and Mount Street. The site slopes away from the street alignment. There is a fall of 6.6m from the street alignment to the rear boundary. There is minimal crossfall.

There are 10 trees that could be affected by the proposed development. Seven are growing in adjoining properties, but close to the common boundary, and three are located within the site. Two of these trees are to be removed as they are within the footprint of the development.

Existing Buildings : The following aerial photograph identifies the subject site:



Presently erected upon the site is a single storey dwelling with two attached carports and various garden sheds.

ITEM 3 (continued)

Planning Controls

- Zoning** : R2 – Low Density Residential under Ryde Local Environment Plan 2010.
- Other** : (a) Environmental Planning & Assessment Act 1979
(b) State Environmental Planning Policy – Building Sustainability Index (BASIX) 2004
(c) City of Ryde Development Control Plan 2010

3. Councillor Representations

Nil.

4. Political Donations or Gifts

Any political donations or gifts disclosed? No.

5. Proposal

Erection of multi dwelling housing (attached) containing 4 dwellings. These dwellings will consist of 1x4 bedroom (+ study) two storey dwelling at the front, 2x3 bedroom and 1x2 bedroom single storey dwellings at the rear.

Dwellings one, two and three will contain a single garage with a car space behind the respective garage. Dwelling four has a single car garage. One visitor car space is proposed adjacent to Dwelling four.

The combined vehicular access and driveway is located on the southern side of the property. This permits the designing of courtyards along the northern boundary of the site.

6. Background

A pre-lodgement meeting was held on 17 February 2011.

The subject application was lodged on 6 May 2011.

During the period 20 May to 25 August there was detailed discussion between the applicant and Council's Development Engineers regarding the impact on the proposed development of the overland flow affectation of the rear of the site. On 25 August 2011 amended drawings were submitted incorporating amendments to satisfy the engineering constraints of the site.

ITEM 3 (continued)

7. Submissions

In accordance with DCP 2010 Part 2.1 Notice of Development Applications, the proposal was advertised in the Ryde City View insert in the Northern District Times dated 8 June 2011 and owners of surrounding properties were given notice of the application. In response, eight (8) submissions were received from six (6) properties.

Following is a map which identifies the location of the submissions with respect to the subject site:



Notes:

1. Submissions came from sites with black dots.
2. Two submissions came from two persons living at No. 7 Benson Street.
3. Two submissions came from the same person at No. 5 Benson Street.

ITEM 3 (continued)

The submissions raised the following issues:

1. Inadequate visitor car parking.

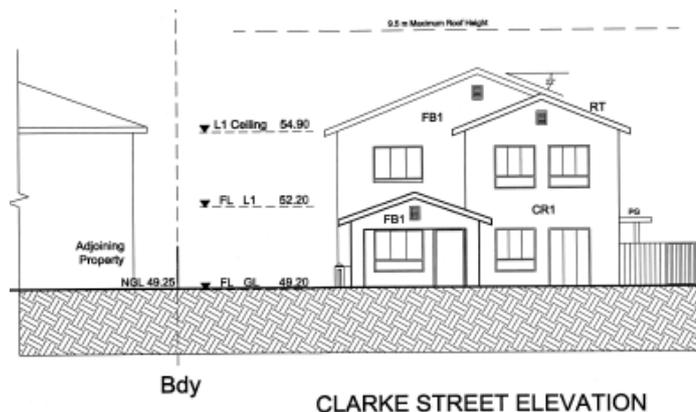
Comment:

The proposed development contains one visitor car parking space. This complies with the provisions of Council's DCP 2010 which requires one visitor car parking space. It is not reasonable to require additional visitor car parking spaces.

2. Excessive bulk and scale.

Comment:

The streetscape impact of the proposal is very much that of a two-storey dwelling-house, not unlike other nearby dwellings. The applicant has submitted the following street façade drawing:



Given that the site slopes away from the street, the slope will reduce the extent of this elevation that can be viewed from the public domain.

The bulk and scale of the development will be reduced by the effectiveness of existing and proposed landscaping. The existing (*Angonis flexuosa*) Western Australian Peppermint tree growing at the street alignment is to be retained. The size of this tree will filter the viewing of the front dwelling from the street. The following photograph is essentially that of the existing dwelling, but also on the right hand side shows part of the Western Australian Peppermint tree:

ITEM 3 (continued)



This photograph also demonstrates how the site falls away from the street with a consequential reduction in the bulk and scale of any building on the site.

3. Dominant streetscape impact of two-storey dwellings.

Comment:

It is agreed that the streetscape impact of the proposal is that of a two-storey dwelling. Two-storey dwellings are not uncommon in the locality, and include Nos 31 and 33 which are directly opposite the subject site, and are shown in the following photographs:

ITEM 3 (continued)

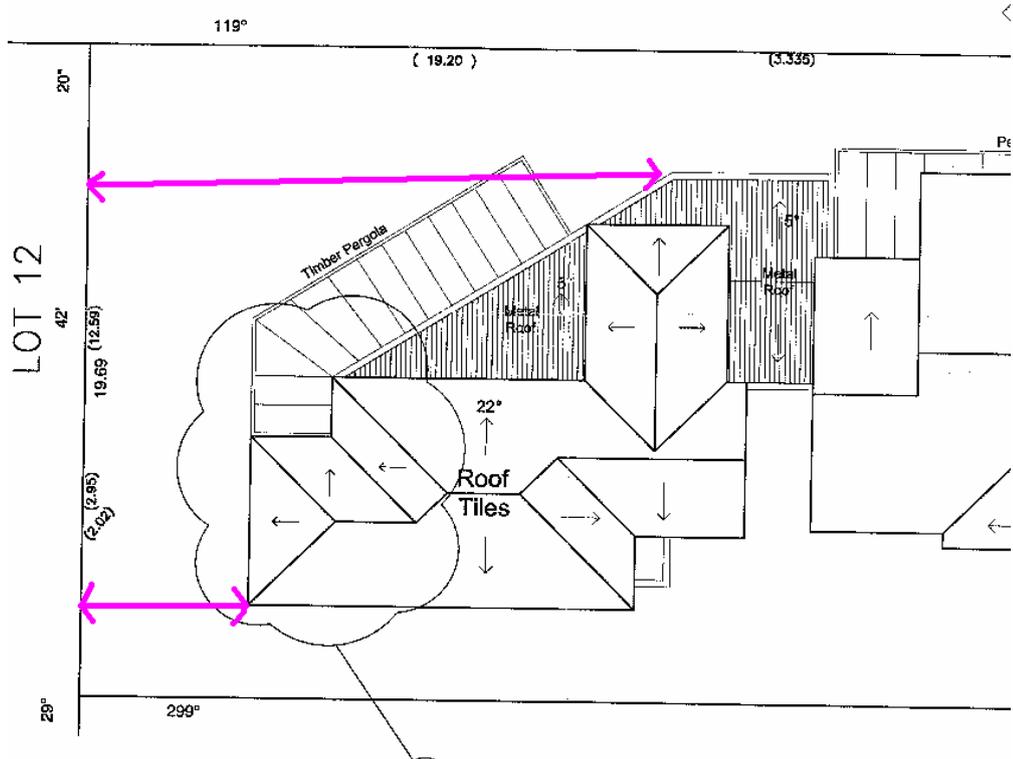


4. Development too close to rear boundary.

Comment:

Following is a reproduction of part of the development's roof plan that details the extent of the rear boundary setback, which varies between 3.18m and 16.5m.

ITEM 3 (continued)



Council's DCP requires that the rear boundary setback distance shall be a minimum of 4.5m, unless vehicular access is included in this area, then the minimum is 6m. Further to facilitate design variations, a minimum rear boundary setback of 3.0m can be provided, for no more than 50% of the building facing the rear boundary.

A total of 61% of rear boundary setback is a minimum of 4.5m. This arrangement complies with the DCP provisions.

5. Out of character with streetscape.

Comment:

Refer to comment provided on point No. 3.

6. Failure to comply with linear separation requirements.

Comment:

The matter of non-compliance with the linear separation provisions of DCP 2010 are discussed in detail later in this report. In summary, the adjoining development at No. 42 Clarke Street is a multi dwelling housing development and as such the proposed development does not comply with the linear separation provisions of the DCP. Due to this non-compliance the proposal is recommended for refusal.

ITEM 3 (continued)

7. Will encourage other developments to ignore linear separation control.

Comment:

Refer to previous comment.

8. Frontage is below minimum length as detailed in DCP.

Comment:

As is detailed later in this report under consideration of the provisions of DCP 2010, the subject site has a frontage of 19.73m to Clarke Street, whilst DCP 2010 requires that multi dwelling housing sites have a minimum frontage of 20.0m. This represents a departure from the DCP standard by 27cm. The applicant argues that the degree of variation from the standard of 27cm or 1.35% does not inhibit the designing of a high quality development, that otherwise complies with the DCP provisions. The applicant's submission concluded with comment as to compliance also with the objectives of the subject development control.

9. Excessive site coverage.

Comment:

The proposed development has site coverage of 36.1% (472.55m²). This is less than the maximum permitted 40% site coverage contained in DCP 2010.

10. Inadequate front setback distance.

Comment:

Proposed front setback distance is 7.0m which aligns with the existing setback distance of No. 38 Clarke Street. This complies with the DCP requirements.

11. Side windows too close to neighbours.

Comment:

Apart from the possible impact of the first floor bedroom windows in Dwelling one (refer to comments in point 14 below), all other windows in the development are at ground level and the development includes a conventional 1.8m high fence, located along the side and rear boundaries. In addition, within the proposed development there are landscaping strips along the boundary fencing. Accordingly, it is considered that the location of windows in respect of the common side boundaries is not likely to adversely impact upon the amenity of adjoining residents.

ITEM 3 (continued)

12. Inadequate number of resident car parking spaces.

Comment:

Council's DCP requires the provision of six off-street resident car parking spaces in this development. The proposal includes seven off-street car parking spaces. It would be unreasonable to require the development to include additional off-street car parking spaces.

13. Inadequate pedestrian access.

Comment:

Dwelling No. 1 has a separate pedestrian access from Clarke Street, whilst the other three units are accessed from a combined pedestrian access and driveway arrangement. This is a common design arrangement for many villa developments.

It is not reasonable to require the proposed design to be modified so as to facilitate separate pedestrian access to each villa unit.

14. Overlooking from upper levels of two-storey dwellings.

Comment:

The only two-storey dwelling is Dwelling one which fronts Clarke Street. This dwelling is located in line with the adjoining residential developments. There is a minimum 12m separation between proposed Dwelling one and the villa development to the north and 7.5m between Dwelling one and the dwelling at No. 38 Clarke Street.

On the southern side of Dwelling one is the internal driveway within the development. On the northern side is the driveway within the adjoining development. Given the not inconsiderable building separation between buildings on both sides and the location of Dwelling one at the building alignment, it is considered that any overlooking from the first floor bedrooms should not adversely impact the amenity of adjoining residents.

15. Inadequate justification for removal of trees.

Comment:

The proposal involves the removal of two trees (Nettle Tree and Narrow Leaf Black Peppermint). Council's Landscape Architect has reviewed the submitted arborist's report and endorses the removal of these trees. A condition of consent could be recommended that would require the planting of two native endemic trees equivalent to Turpentine in the rear open space area. (See Attachment 1, Condition 36.)

ITEM 3 (continued)

16. Excessive number of multi-dwelling developments in the area.

Comment:

Multi-dwelling housing is a permissible form of development within the statutory zoning of the locality.

The proposed development contains four dwellings, and if approved, the proposal will result in nine dwellings, in the form of multi-dwelling developments in the immediate area with frontage to Clarke Street. Given the depth of the development sites and the presentation to the street as dwelling-houses, it is considered that the total of nine dwellings constitutes a relatively small number of multi-dwelling developments in the visual catchment area of the subject site, and is not likely to prejudice the amenity of nearby residents.

17. The low estimated construction cost will result in poor quality workmanship.

Comment:

This is not a planning matter. Construction standards are a matter for consideration by the Principal Certifying Authority following the granting of a Construction Certificate. Any PCA must be satisfied that the development will meet the minimum requirements of the Building Code of Australia.

18. The slope of the driveway will make it very hard to push a full wheelie bin to the street.

Comment:

The gradient of the driveway complies with the relevant Australian standards and Council's Development Engineer has raised no objection to the proposed driveway. Accordingly, it is not possible to require a different arrangement for the movement of waste bins to the kerb.

19. Unsightly location of bins near street alignment.

Comment:

Waste and recycling bins will be stored within the courtyard of each dwelling and moved to the kerb for collection. There will be no mass storage of bins within the property near the street alignment.

8. SEPP1 (or clause 4.6 RLEP 2010) objection required?

Not applicable.

ITEM 3 (continued)

9. Policy Implications

Relevant Provisions of Environmental Planning Instruments etc:

(a) Ryde Local Environmental Plan 2010 (RLEP)

Zoning

R2 Low Density Residential under RLEP.

The proposed development is a permissible form of development, with consent, within the R2 Low Density Residential zoning.

Mandatory Requirements

Ryde LEP 2010	Proposal	Compliance
4.3(2) Height		
9.5m	8.0m – 9.0m	Yes
4.5A Density		
• 300m ² per 1,2,3br dwelling		
• 365m ² per 4+br dwelling		
Total required (2 x 300 + 1 x 365) = 965m ²	1309.0m ²	Yes

Aims and objectives for residential zones:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.
- To ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood.
- To ensure that new development complements or enhances the local streetscape.
- To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.
- To ensure that land uses are compatible with the character of the area and responsive to community needs.

Particularly relevant is the third last objective which requires a new development to complement or enhance the local streetscape.

ITEM 3 (continued)

The streetscape immediately surrounding the subject site is mostly characterised by well maintained dwelling houses that were, in the main, erected before World War II and shortly thereafter. The one exception is the five villa units at No. 42 Clarke Street that were erected in 1991/1992.

Notwithstanding the number of free-standing dwelling-houses that were erected in the second half of last century, the proposed development with one two-storey dwelling addressing the public domain, is considered to compliment the existing local streetscape.

It is considered that the proposed development will enhance the existing, as well as the likely future streetscape of the locality.

Overall, the proposed development is considered to comply with the zone objectives.

(b) Relevant SEPPs

A compliant BASIX Certificate (No. 366849M dated 31 March 2011) has been submitted with the DA. A standard condition requiring compliance with this BASIX certificate has been included in the conditions of consent, detailed as an alternative determination to the provided recommendation.

(c) Relevant REPs

No relevant plans.

(d) Any draft LEPs

No draft plans apply to the subject site.

(e) Any DCP (e.g. dwelling house, villa)

Ryde Development Control Plan 2010 (Part 3.5 – Multi Dwelling Housing) applies.

An assessment of the proposal against the provisions of the DCP follows:

DCP 2010	Proposed	Compliance
2.1 Site Analysis		
<ul style="list-style-type: none"> o Must have a SA o SA should relate dwgs to surrounds + minimise amenity impacts 	Site analysis plan submitted	Yes
2.2 Minimum allotment size		
Area: (not <600m ²)	1309.0m ²	Yes

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
Primary Frontage: (not <20m)	19.73m	No (See Note 1)
Not hatchet shaped	Regular shaped	Yes
2.3 Non-Preferred Locations		
Is the proposed development within a non-preferred location?	No	Yes
2.4 Linear Separation		
Is there any approved Villa, Duplex or Urban Housing development within double the frontage (or proposed frontage)?	Five villa units constructed in 1990 at 42 Clarke Street. (SP 38887 relates)	No (See Note 2)
2.5 Retention of Existing Dwellings		
Retention of existing dwg as part of a MDH will not be approved	To be demolished	Yes
2.6 Density		
As per clause 4.5A RLEP2010 – which state: (a) Site Area: o 300m ² per 1,2,3br dwg o 365m ² per 4+br dwg	3x 300 = 900m ² 1 x 365 = 365m ² Total required = 1265.0m ² Provided = 1309.0m ²	Yes
(b) Each dwg has its own POS and sep access to that space from unbuilt portion of site	Courtyards provided	Yes
2.7 Number of Dwellings		
Not more than 12 Dwellings	four dwellings	Yes
3.1 Slope of Site		
At least one dwelling must present to the street	Dwelling one faces street	Yes
Slope must be <1:6 either up or down from street frontage	<1:6 (Slope is 1:11.2 over length of site)	Yes
Cross-fall <1:14	<1:14 (Site is generally level in respect of cross-fall.)	Yes
3.2 Altering the Levels of the Site		
No imported Fill	None shown	Yes
<300mm Cut or Fill outside building envelope.	<300mm	Yes

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
No basement garages, minimal steps, minimal retaining walls	None proposed	Yes
POS generally at NGL.	At NGL	Yes
3.3 Storey and Height		
3.3.1 Storeys		
Dwg with frontage to street can be 2 storeys provided: <ul style="list-style-type: none"> o 2 st dwg not attached to any other 2 st dwg o 2 st dwg is suitable re streetscape 	Not attached to 2 storey dwelling Streetscape impact of Dwelling one is acceptable	Yes Yes
3.3.2 Height		
As per Clause 4.3(2a) – which state the maximum height is: (a) for dwgs with a frontage to street, if adj lots have dwgs that are <9.5m high – 8m	Dwelling one, which fronts Clarke Street, has an overall height of 8.0m at the Clarke Street frontage and 9.0m at the western façade. The fall of the site away from Clarke Street over the length of Dwelling one causes the 1.0m increase in overall building height.	No (See Note 3)
3.4 Site Coverage		
Site coverage < 40% (523.6m ²)	36.1% (472.55m ²)	Yes
Pervious area > 35% (458.15m ²)	35.5% (464.7m ²)	Yes
3.5 Setbacks		
3.5.1 Front Setbacks		
Front Setbacks: Similar to adjoining buildings <ul style="list-style-type: none"> - same as adjoining if <2m - Setback of 1m less than the above std for not more than 50% of the front elevation for interest in the streetscape 	No. 42 setback 6.1m No. 38 setback 7.0m Proposed setback is 7.0m which aligns with No. 38.	Yes
3.5.4 Side and Rear Setbacks		
Min 4.5m unless vehicular access is included in this area, then min 6m. Allow variation between 3-6m for less than 50% for visual	North - Varies between 3.63m and 6.4m 77% at 4.5m South (driveway side) – Varies between 3.0m and 9.5m	Yes No

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
interest	Along driveway the setback is between 5.5m and 9.5m. Area less than 6.0m is 22.3m or 60% of driveway length. This exceeds the maximum permitted 50% of building length that can be less than 6.0m setback. Rear- Varies between 3.18m and 16.5m. 61% of rear boundary setback is a minimum of 4.5m.	(See Note 4) Yes
Must provide appropriate solar access.	Courtyards face north	Yes
Ensure existing substantial trees not within proposed courtyard areas.	None shown on plans	Yes
3.5.5 Internal Setbacks		
Habitable room windows don't overlook	No overlooking	Yes
9m separation between facing dwellings habitable room windows?	No facing dwellings	NA
3.6 Private Outdoor Space		
Min 30m ² for 2B Min 35m ² for 3+B	Dwelling 1 (4bed) = 42.46m ² Dwelling 2 (3bed) = 44.23m ² Dwelling 3 (3bed) = 42.50m ² Dwelling 4 (2bed) = 220.17m ²	Yes
Min dimension 4m and generally at NGL	All comply	Yes
Solar access: 50% for ≥2hrs	All courtyards face north	Yes
Do not contain ex'g big trees	None shown	Yes
Access to courtyard other than through dwg?	Dwelling 2 through garage, all others separate access	Yes
Securely enclosed (not roofed) + visible from living rooms	All comply	Yes
Not within front setback	Not within setback	
≥1.2m landscape strip between courtyard and adjoining property	1.2m provided	Yes
3.7 Landscaping		
Extent of landscaping, existing trees retained in common areas?	Existing trees to be removed	NA
Privacy Planting ≥1.2m landscaped strip	1.2m along driveway, except	Yes

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
1m strip between driveway and wall of dwgs	opposite garages. A condition of consent could correct this departure. 1m along dwellings	Yes
3<h<4m mature plants? 5<h<6m small trees?	Planting shown on landscape plan	Yes
Lawn areas edged or kerbed?	Kerbing shown	Yes
Nature Strips: Street trees retained and protected?	One street tree will remain and conditions imposed to protect tree.	Yes
3.8 Car Parking, Manoeuvrability and Driveway Crossings		
Car Parking		
Number of Parking Spaces one space per one or two B dwelling two spaces per three+B dwelling one visitor space per four dwgs (at least one space per dwg must be lockable garage) Total No of spaces req'd: seven (six resident + one visitor)	Dwellings one, two and three have single garage with tandem space behind. Dwelling four has a single car garage. one space Total provided = eight (seven resident & one visitor)	Yes Yes Yes
Garage location: - Not between dwelling and street frontage - No tandem parking in front of garage - Conveniently located for occupants, located so they separate dwellings.	Off driveway None proposed in front of garages Between dwellings	Yes Yes Yes
Manoeuvrability: Enter and leave garage/parking area with single 3pt turn, in a forward direction (unless safe to reverse - corner allotment only).	Council's Development Engineer has raised no objection to the ability for vehicles to manoeuvre within the site.	Yes

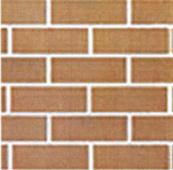
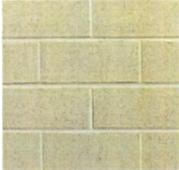
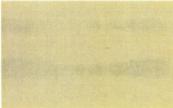
ITEM 3 (continued)

DCP 2010	Proposed	Compliance
Driveways Suitably paved, extent minimised, to avoid excessive amounts of hard paving.	Hard paving minimised	Yes
Driveway Crossings Width: 10 spaces, min 4m Driveways <30% of frontage	5.5m 27.8%	Yes Yes
3.9 Overshadowing and Access to Sunlight		
Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.	All comply	Yes
Sunlight to at least 50% of each courtyard, and principal ground level open space >2hrs between 9am and 3pm on June 21	All face north	Yes
Shadow diagrams must indicate extent of shadowing within development and adjoining properties.	Shadow plans submitted	Yes
3.10 Visual and Acoustic Privacy		
Min 9m separation between facing habitable room windows	No facing habitable rooms	NA
No direct views between living area windows or adjacent dwellings (otherwise screening or obscuring necessary)	No facing habitable rooms	NA
Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius.	Screened by dividing fence	Yes
No balconies.	None proposed	Yes
Elevated landings (or similar associated with stairs into courtyard) max 1m wide	None proposed	Yes

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
Living and sleeping areas protected from high levels of external noise?	No high noise levels nearby	NA
Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A)	None shown, controlled by P of E legislation in any event	NA
3.11 Accessibility		
3.11.1 Pedestrian Access		
Pedestrian access provided, separate to vehicle access where possible.	Access provided, separate access is provided for Dwelling 1 off Clarke Street.	Yes
4.1 Appearance		
Complement streetscape	Complementary	Yes
Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick	Design complies	Yes
At least one dwg must face street	Dwelling one faces street	Yes
4.2 Ceiling Height		
Floor to Ceiling min 2.7m	2.7m floor to ceiling in all dwellings.	Yes
4.3 Roofscape and Roof Materials		
Pitch 22-30° (35° where 2 nd floor is within roof)	22° for all dwellings.	Yes
Min 300mm eaves overhang for roofs & verandas	450mm minimum achieved	Yes
Gables to street frontage?	Gable	Yes
Variation to roof line?	Roofline varied	Yes
Roof materials consistent with traditional ones in the street?	Concrete roof tile	Yes
4.4 Building materials for Walls		
In keeping with the traditional materials for the locality. Detailing to break up large areas of wall adding interest and individuality	The proposed external finishes are:	Yes

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
	<p style="text-align: center;">External Finishes</p> <p style="text-align: center;">Roof</p>  <p style="text-align: center;">Charcoal Colour Tile Roof (Dwellings 1-4)</p> <p style="text-align: center;">Bricks and Cement Render</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>FB1</p>  <p>Boral Flame Red</p> </div> <div style="text-align: center;"> <p>FB2</p>  <p>Boral Pearl Grey</p> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="text-align: center;"> <p>CR1</p>  <p>Dulux Beige</p> </div> <div style="text-align: center;"> <p>CR2</p>  <p>Dulux Rose Beige</p> </div> </div> <p style="text-align: center;">Windows, Doors, Pergolas, Sunhoods & other miscellaneous metals.</p>  <p style="text-align: center;">The proposed external finishes are considered to be satisfactory</p>	
<p>Proportion of windows and other openings consistent with character of locality. (windows generally 2:1 and 3:1 vertical proportion)</p>	<p>Windows satisfactory</p>	<p>Yes</p>
<p>4.5 Fences</p>		
<p>4.5.1 Front fence</p>		
<p>Max ht 1m, and 70% visually permeable</p>	<p>1.0m high and constructed fully of face brick.</p>	<p>No (Condition of consent will overcome non-</p>

ITEM 3 (continued)

DCP 2010	Proposed	Compliance
		compliance – Condition 22 relates)
Materials compliment dwelling e.g. wooden pickets, masonry with infill panels, wrought iron or similar etc	Solid face brick fence does not comply. Condition of consent could overcome the non-compliance.	No (As above)
4.5.3 Other boundary fences		
Min ht 1.8m	1.8m	Yes
Lapped and capped timber	Existing lapped and capped timber fence to remain.	Yes
4.6 Clotheslines and drying area		
External clotheslines (not visible from adjoining properties or public areas)	In courtyard	Yes
Each dwelling must have its own laundry	Provided	Yes
4.7 Lighting		
Front yard lighting and lighting for the front of dwellings is to be provided	Not detailed. A condition of consent would be appropriate.	Yes
Location of external lighting must not have adverse affect on adjoining properties.	Not detailed. A condition of consent would be appropriate.	Yes
4.8 Garbage bin enclosures		
For developments up to 5 dwellings on sites that are not steeply sloping and which have a wide road frontage: <ul style="list-style-type: none"> - Each dwelling must be provided with a storage area for Council's standard rubbish and recycling bins. - Storage area should be behind the dwelling, not visible from public spaces, common areas and habitable room windows 	In courtyard	Yes
	In courtyard	Yes
5.0 Drainage		
Refer to Part 8.2 Storm water Management DCP 2010	See Drainage Engineers comments	Yes

ITEM 3 (continued)

BASIX	Proposal	Compliance
All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans (list) BASIX Cert 366849M dated 31/3/11.		
• Indigenous or low water plants	Shown on landscape plans	Yes
• RWT 1000L per dwelling	1000L per dwelling	Yes
• No pool or Spa	None proposed	Yes
• Thermal Comfort Commitments: - Requirements for in slab heating & cooling to be shown - Floors to be constructed as per schedule.	No in slab heating & cooling proposed, air conditioning to be used Shown on plans	NA Yes
• Central energy systems to be as per schedule	Shown on plans	Yes
• HWS Gas Instantaneous 3 star.	Shown on plans	Yes
• Natural Lighting - kitchen	Each kitchen has window	Yes
• Water Target 40	Water: 40	Yes
• Energy Target 40	Energy: 40	Yes
• Thermal Comfort Target Pass	Pass	Yes
Correct description of property/proposal on 1 st page of Certificate.	Correct details shown	Yes

Note 1: *Minimum frontage*

The subject site has a frontage of 19.73m to Clarke Street. DCP 2010 requires that multi dwelling housing sites have a minimum frontage of 20.0m.

The degree of non-compliance is 0.27m or 1.35% of the standard. Assessment of the application has identified that the proposed development complies with relevant provisions of the DCP associated with the design of multi dwelling housing. In respect of the design of the development, no reason is forthcoming that should cause the application to fail based solely on the minor departure from the from the identified minimum allotment frontage distance in the DCP.

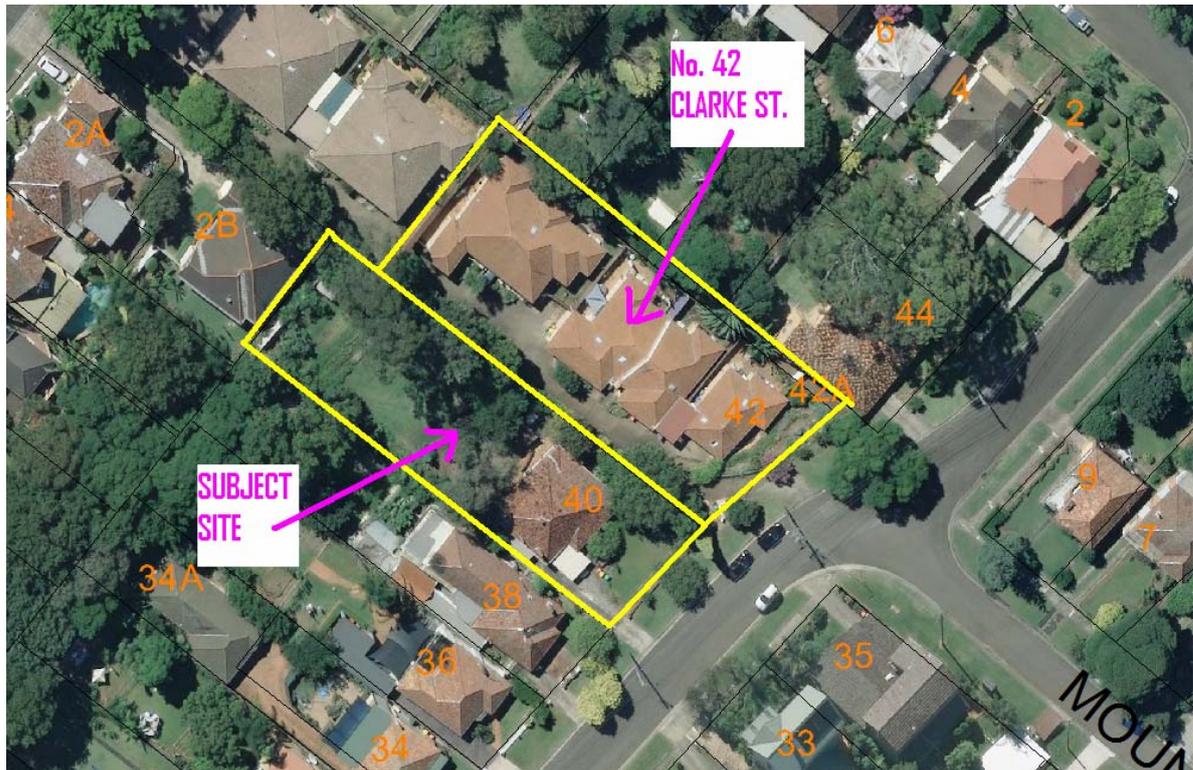
Note 2: *Linear Separation*

Adjoining the subject site at No. 42 Clarke Street is a multi dwelling housing development of five dwellings. These dwellings were erected in 1990/1991.

ITEM 3 (continued)

Whilst this development was erected under the provisions of the then Ryde Planning Scheme Ordinance, they satisfy the definition of “multi dwelling housing” as contained within the current Ryde Local Environment Plan 2010.

The adjoining development is shown in the following aerial photograph:



Ryde Development Control Plan 2010 at clause 2.4 provides objectives and controls relevant to Separation of Medium Density Developments in the following manner:

Objectives

1. *To ensure the dispersal of Multi dwelling housing (attached) development throughout the City of Ryde and that the general low density character of the Low Density Residential zone is retained;*
2. *To ensure that Multi dwelling housing (attached) developments are not the dominant form of development in an area and do not dramatically change the character of a location or neighbourhood.*

Controls

- a. *Multi dwelling housing (attached) developments in the Low Density Residential zone must be separated from other Multi dwelling housing (attached), Villa Homes, Urban housing, Duplex Building and Dual Occupancy (attached) developments in accordance with the following:*

ITEM 3 (continued)

- b. If a Multi dwelling housing (attached) development, Villa Home, Urban housing Duplex Building or Dual Occupancy (attached) is erected, or is permitted by a development consent, on an allotment with a frontage to a street or road within the Low Density Residential zone, the Council will not consent to another Multi dwelling housing (attached) development on another allotment with frontage to that same street or road, in the same street block unless the two allotments are separated by a distance of at least:*
- i. Twice the distance of the frontage to the street of the existing or approved urban housing, villa, duplex, dual occupancy (attached) or multi dwelling housing (attached) development, **or***
 - ii. Twice the distance of the frontage to the street of the proposed multi dwelling housing (attached) development*

whichever is the greater distance.

With the development at No. 42 Clarke Street being described as a “multi dwelling housing” application of the controls in clause 2.4 (Linear Separation) of the DCP are triggered.

As the subject site is less than the minimum separation distances with respect to No. 42 Clarke Street, the proposed development fails to comply with the Linear Separation provisions of DCP 2010.

The applicant has submitted that application of the DCP’s Linear Separation provisions are not reasonably justified in this case for the following reasons:

- (a) The proposed development complies with the objectives of clause 2.4, notwithstanding the identified numerical non-compliance;
- (b) The applicant relies upon a decision of the Land & Environment Court in *Haris Sutanto -v- Ryde City Council (LEC 11251 of 2007)* which related to the subject site, and on 20 June 2008 development consent was granted, by the Court, to the erection of an attached two storey residential duplex building, notwithstanding the linear separation issue.
- (c) The invalidity of clause 2.4 in that it seeks to prohibit a development that is permissible within the R2 zone under the RLEP.

A complete copy of the applicant’s submission, contained in the Statement of Environmental Effects, is **CIRCULATED UNDER SEPARATE COVER.**

In respect of the three substantive reasons provided by the applicant, the following comments are made:

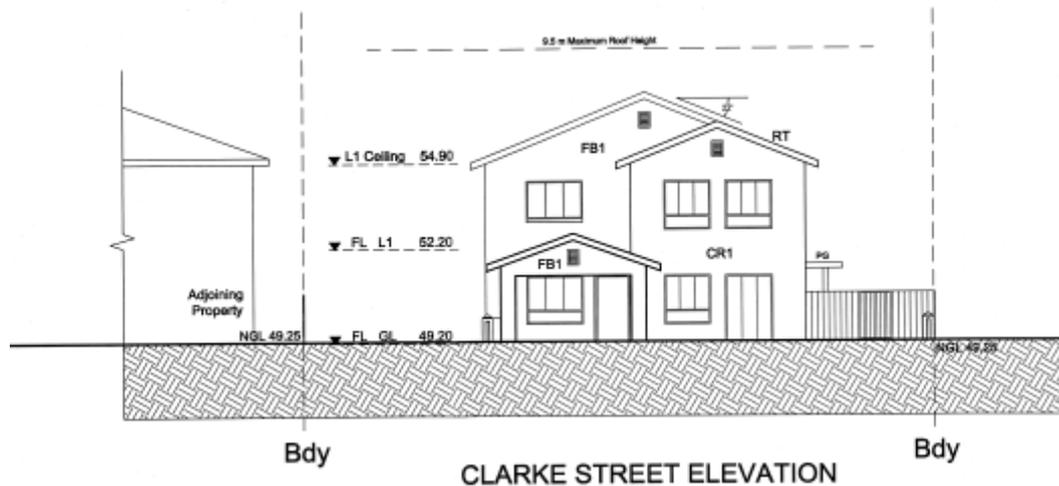
ITEM 3 (continued)

(a) Objectives of clause 2.4

The objectives of clause 2.4 are:

1. To ensure the dispersal of Multi dwelling housing (attached) development throughout the City of Ryde and that the general low density character of the Low Density Residential zone is retained;
2. To ensure that Multi dwelling housing (attached) developments are not the dominant form of development in an area and do not dramatically change the character of a location or neighbourhood.

Notwithstanding the adjoining villa development at No. 42 Clarke Street, the combination of the proposed development and the development at No. 42 it is not likely to give the streetscape impact of a significant concentration of multi dwelling developments in the general locality. Particularly significant is Clarke Street elevation drawing of the proposed development which generally gives the appearance of a two-storey dwelling-house. This drawing is shown below.



Also significant to the proposed development and the adjoining development at No. 42 is the local topography. Both sites have a substantial natural ground fall to the rear of the site. This causes the streetscape impact of the developments to be significantly reduced, as is shown in the following photographs of No. 42 Clarke Street.

ITEM 3 (continued)



It is considered that the local topographical constraints, impacting upon Nos 40 and 42 Clarke Street, would most likely ameliorate any streetscape impact concerns flowing from the location of two multi dwelling housing development on adjoining sites. Accordingly, it is considered that in the circumstances of the application, the proposal is not likely to significantly change the character of the location and as such, complies with the objectives of clause 2.4.

ITEM 3 (continued)

(b) LEC judgement in May 2008

The applicant has pointed to a decision of the Land & Environment Court in 2008 when consent was granted in the erection of a dual occupancy development on the subject site.

The Court considered the linear separation provisions of the DCP, however, the Court's judgement does not detail how much determinative weight was placed upon the linear separation provisions of the DCP. As the application was approved, in the worst case scenario, the Court must have come to the conclusion that the provisions of clause 2.4 should not cause the application to fail.

Finally, in respect of the character of the locality, the applicant has provided the following comparison between the 2008 approved dual occupancy building and the streetscape impact of the proposed development.

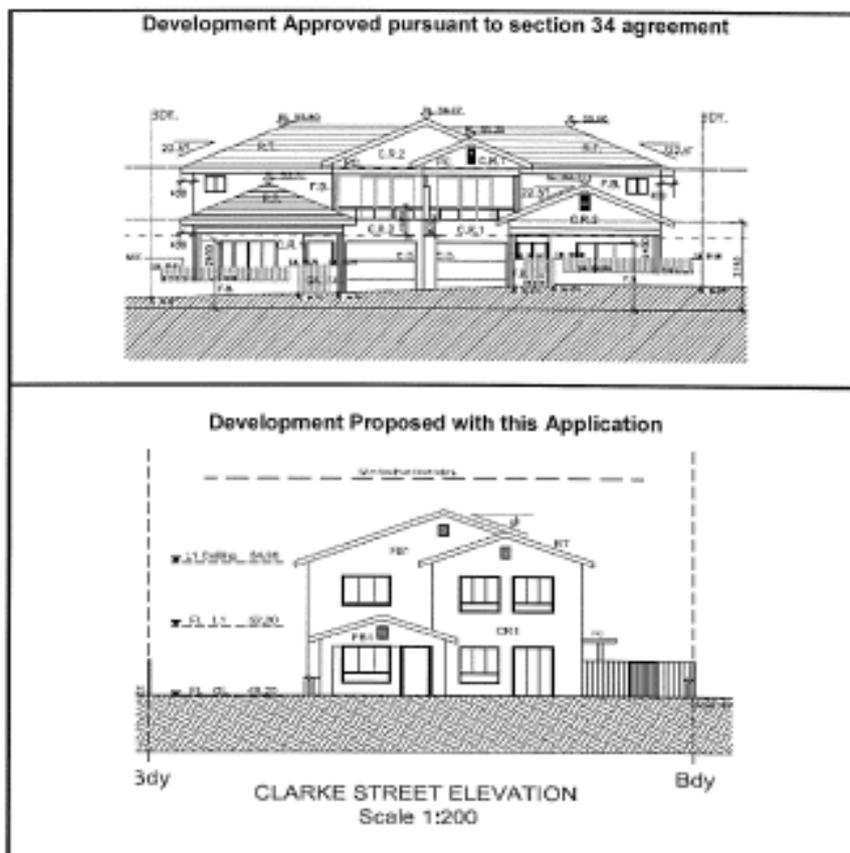


Figure 7: Comparison of previous approval to proposed development

ITEM 3 (continued)

In respect of the above design comparisons the applicant states:

The proposed development provides a superior outcome in regards to the retention of the low density character of the area, than the previous approval did. It is identifiable as a single dwelling from the public domain, whilst the previous development appeared as a medium density dual occupancy.

From solely a streetscape point of view, the above comments are considered to be reasonable.

(c) *Invalidity of clause 2.4*

The applicant states:

The zoning map associated with LEP 2010 nominates the subject land as being within the R2 Low Density Residential zone. The land use table for this zone provides that upon the subject property “multi dwelling housing (attached)” may be carried out with the consent of Council.

Clause 2.4 attempts to introduce a prohibition by providing that development (regardless of its design) cannot be granted upon the subject site due to its locational characteristics. Section 74C of the Act provides:

A provision of a development control plan (whenever made) has no effect to the extent that:

- (a) it is the same or substantially the same as the provision of an environmental planning instrument applying to the same land, or*
- (b) it is inconsistent with a provision of any such instrument or its application prevents compliance with a provision of any such instrument.*

Clause 2.4 is firstly inconsistent with the land use table and secondly prevents compliance with development which attempts to comply with the land use table. It therefore has no force or effect.

The applicant is essentially saying that the *Environmental Planning and Assessment Act 1979* does not permit a development control plan to contain provisions that are:

- substantially the same as that contained in an LEP, or
- inconsistent with the provisions of an LEP; or
- would prevent compliance with provisions of an LEP.

Whilst this may be a clinical understanding of the nominated part of Section 79C of the EP&A Act, the situation remains that the linear separation provisions of the DCP have been in force for a number of years and have been consistently applied by the Council.

ITEM 3 (continued)

It is acknowledged that under the forthcoming draft DCP 2011, it is likely to be recommended that the linear separation control be deleted. However, DCP 2011 will not come into force until draft LEP 2011 becomes effective. As there are a number of statutory steps that have to be undertaken before LEP 2011 becomes effective, it is reasonable to say that commencement of either LEP 2011 or DCP 2011 is not currently imminent.

On this basis, continued application of the linear separation provisions of DCP 2010, is proposed, with a resulting recommendation of refusal. However, Council could form the view that application of the linear separation provisions in respect of the proposed development is not warranted. A set of appropriate conditions of consent are provided as an option for Council in determination of the application.

Note 3: *Overall height limit of 8.0m in respect of Dwelling 1.*

Dwelling one has an overall height of 8.0m on the Clarke Street façade and 9.0m on its western façade. This height difference is due to the fall of the site from the street. As is shown in the discussion in Note 4, the design of the development respects the site topography, however, in the case of Dwelling 1 it is not possible for one element of the dwelling, that being the western façade, to be within the DCP limit of 8.0m.

It is noted that Ryde LEP 2010 imposes a height limit of 9.5m on this site, and the proposed development complies with this control.

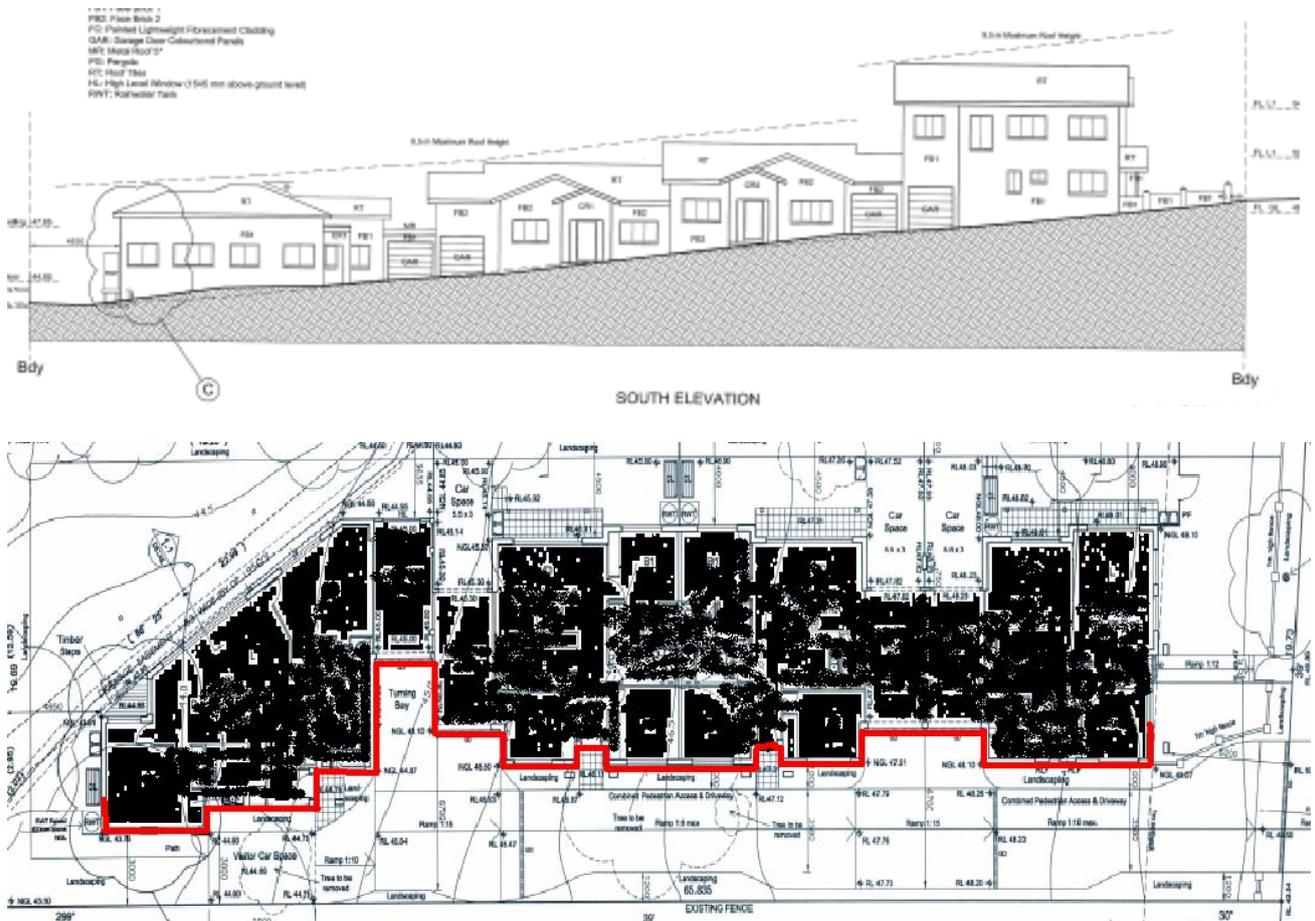
Overall, the departure from the 8.0m height limit contained within the DCP 2010, for part of Dwelling one, is considered to be acceptable due to site constraints, and the fact that the breach does not result in any adverse amenity impacts.

Note 4: *Southern side boundary setback*

The DCP requires that side boundary setback shall be a minimum of 4.5m unless vehicular access is included in this area, then the minimum setback is 6m. However, a variation to between 3-6m is permitted for less than 50% of the length of the building, to facilitate visual interest.

The southern boundary setback varies between 3.0m and 10.0m. Along the driveway the setback is between 5.5m and 9.5m. Area less than 6.0m is 22.3m or 60% of driveway length. This exceeds the maximum permitted 50% of building length that can be less than 6.0m setback. The following elevation and plan drawings detail the extent of articulation on the southern elevation.

ITEM 3 (continued)



The red line follows the external wall of the development.

The extent of articulation on the southern elevation is quite pronounced and is partly as a result of the designer's desires to have each dwelling easily recognizable, together with the need to respect the slope of the site. Whilst the amount of the façade which has a setback of less than 6.0m from the side boundary, is marginally beyond the 50% of the length of the façade that need not comply with this control, the circumstances of the site, and in particular the topography drop from front to rear, are sufficient to justify the subject design, and no useful purpose would be achieved by forcing full compliance with the control.

Despite the identified variation, the development will still provide for acceptable amenity impacts to the adjoining property, adequate vehicular access can be achieved and sufficient articulation is provided to the southern façade. In these circumstances the variation is acceptable.

Further, the development could have complied with the required side boundary setback, and with the site falling away from Clarke Street, it possibly would have been simpler to design, but there would have been less articulation in respect of the southern façade. Overall, the proposed design is considered to be preferable to a less articulated, but complying side boundary setback.

ITEM 3 (continued)

Section 94 Contributions

The proposed development will result in the increase from one to four in the number of dwellings on the site. Whilst the application is recommended for refusal, if Council was to take up the option detailed in paragraph 16, and determine the application by way of approval, a condition of consent would be imposed under Council's Section 94 Contributions Plan as follows:

A contribution for the services in Column A and for the amount in Column B shall be made to Council prior to release of any Construction Certificate.

A	B (\$)
Community & Cultural Facilities	8,803.66
Open Space & Recreation Facilities	21,672.77
Civic & Urban Improvements	7,371.35
Roads & Traffic Management Facilities	1,005.51
Cycleway	628.06
Stormwater Management Facilities	1,996.34
Plan Administration	169.34
Total	\$41,647.04

This contribution has been calculated on the basis of the contribution rates current for September 2011.

See Attachment 1, Condition 16 in the approval option, relates to the payment of the above contributions.

10. Likely impacts of the Development

(a) Built Environment

Other than the matter of linear separation as detailed in DCP 2010, the proposed development involving the erection of multi dwelling housing (attached) containing four units, including, one 4 bedroom (+ study) dwelling at the front, and 2 x 3 bedroom and 1 x 2 bedroom single storey dwellings at the rear, is considered not likely to have any unacceptable impacts on the existing built environment or the amenity of the surrounding area. The development presents to the public domain of Clarke Street as a two-storey dwelling and due to the site's topography and proposed landscaping, persons standing in Clarke Street should get only limited glimpses of the rear four dwellings.

ITEM 3 (continued)

Other than for the existing villa development to the north of the subject site, the streetscape surrounding the subject site is characterised by free-standing dwelling-houses, many being erected before World War II. Whilst the free-standing dwelling-house will remain into the future as the dominant, but not exclusive, form of development in the locality, the existing and proposed multi-dwelling housing developments represent a widening of housing options available to the local community, whilst still preserving the amenity of nearby residents.

Whilst the proposal will provide increased housing choice in the neighbourhood, in view of non-compliance with the linear separation provision of DCP 2010, notwithstanding the restricted presentation to Clarke Street, which minimizes the streetscape impact, the application is recommended for refusal.

(b) Natural Environment

The proposed development is not likely to have significant impacts on the natural environment.

11. Suitability of the site for the development

The subject site is not classified as a heritage item, however is partially affected by flooding and landslip. Council's Drainage Engineer has raised no objection to the proposal, subject to conditions. Council's Consultant Structural Engineer has raised no objection to the proposal, subject to conditions.

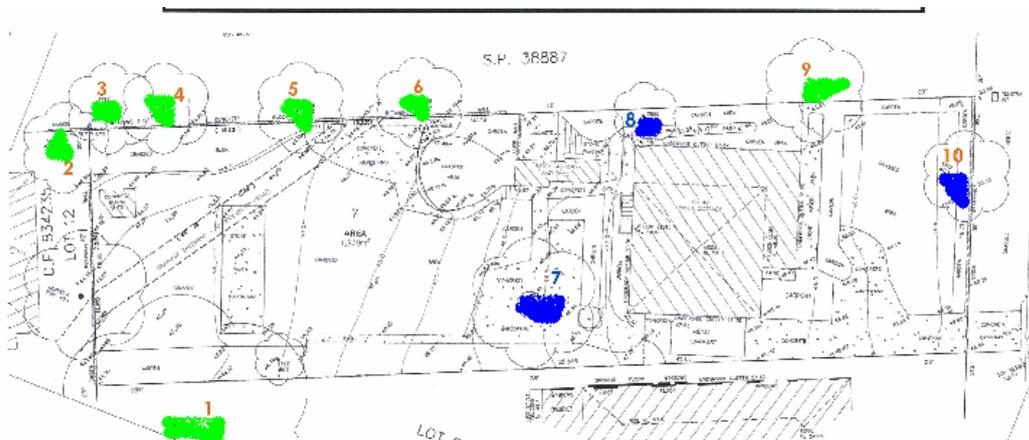
Council's mapping system identifies the rear of the site as containing endangered bushland, as shown on the following map:



ITEM 3 (continued)

Both the submitted Arborist's report and Council's Landscape Architect agree that there is a stand of seven trees located on the property to the rear and north of the subject site (being not within the subject site) and only three trees are growing upon the subject site. The above mapping does not accurately represent the location of the existing trees. The three trees within the subject site are located well away from the adjoining trees which constitute the identified urban bushland.

The following sketch diagram indicates the seven (7) trees adjoining the site by a green mark and the three (3) trees within the site by a blue mark.



Overall, the proposal is considered to be suitable for the site in terms of likely impact on the existing natural environment.

12. The Public Interest

The proposed development is considered likely to adversely impact upon the public interest, due to non-compliance with the linear separation provisions of DCP 2010.

13. Consultation – Internal and External

Internal Referrals

Development Engineer: Council's Development Engineer has provided the following comments:

The proposed development is on the low side of Clarke Street and is traversed by a council drainage easement and is also subject to overland stormwater flows in major storm events.

ITEM 3 (continued)

Stormwater from the majority of the roof and driveway areas is to be directed to an on site detention system located under the driveway with charged drainage lines being utilised along the northern side to direct runoff to rainwater storage tanks for each dwelling with the overflow then directed to the OSD system.

The driveway grade and turning areas to the proposed garages are satisfactory as are the internal dimensions of the garages.

It is noted that Council's existing pipeline is not located centrally within the drainage easement and that an agreement has been made to allow construction up to near the pipeline and leave the easement in its present location. This is not in the best interest of Council in the long term so it is proposed to have the easement relocated so that it will cover the current location of the pipeline.

An overland flow analysis has been submitted and assessed by Catchment and assets. See separate report.

There are now no engineering objections to the proposed development subject to the following conditions.

Landscape Architect: Council's Landscape Architect has provided the following comments:

The site was inspected and accessed on 22 September, 2011. I have also reviewed development documentation including an arborist's report prepared by Neville Shields of Redgum Horticultural, dated 12 April 2011, and a landscape plan prepared by landscape architect Ray Fuggle of Ray Fuggle and Associates, Issue A, dated 15 April, 2011.

The arborist's report has identified ten trees with seven of the specimens occurring on neighbouring properties. The three trees on site include:

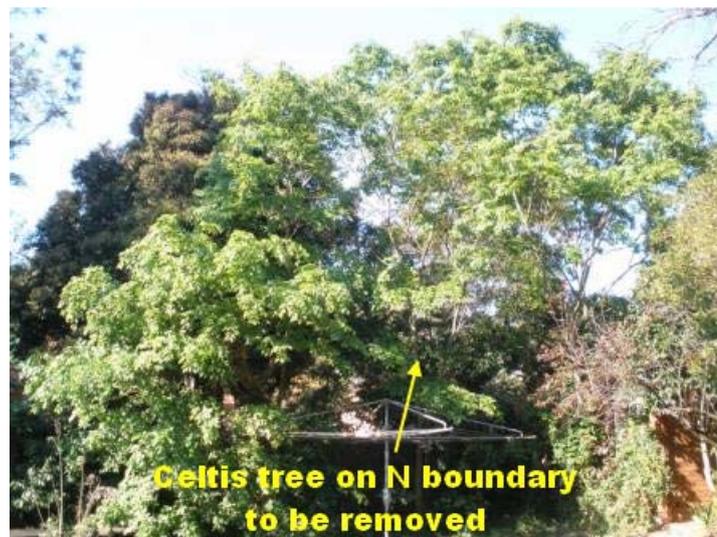
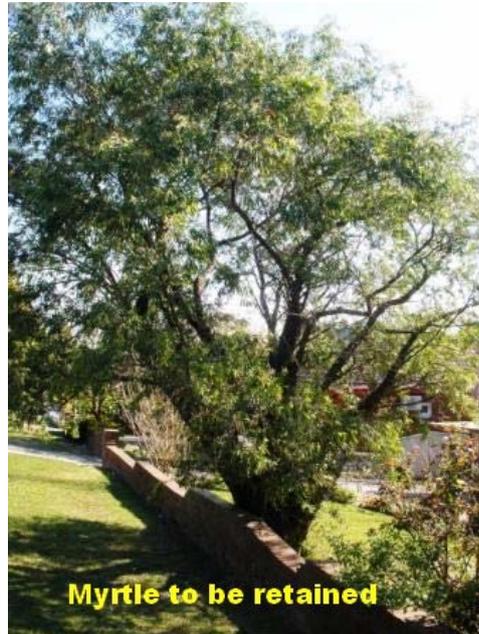
*1 Western Australian Weeping Myrtle (**Agonis flexulosa**)*

*1 Nettle Tree (**Celtis orientalis**)*

*1 Narrow Leaf Black Peppermint (**Eucalyptus nicholii**)*

Only the Myrtle is being retained, which given the age, condition and location of the other two trees is considered acceptable (refer to pictures below)

ITEM 3 (continued)



Construction impacts

The trees occurring on neighbouring properties are largely unaffected by proposed works, and are unlikely to suffer significant construction impacts. In particular trees 2-5 are adjacent an area of large open space and are also separated from the development site by an existing boundary retaining wall. Tree 6 is also protected by the existing wall despite being closer to unit buildings and an associated parking area.

The arborist's report has adequately considered the construction protection of all trees to be retained by outlining a plan of tree protection zones for all subject trees.

ITEM 3 (continued)

Landscape plan is generally considered satisfactory, however I have attached an additional condition as the open space area to the rear is an opportunity for the planting of at least two advanced native trees.

Conclusion

No objection to development subject to the following conditions:

Conditions

The schedule of tree removal/retention and the construction management of all trees to be retained is to be in accordance with the arborist's report prepared by Neville Shields of Redgum Horticultural, dated 12 April 2011, with particular reference to the installation of Tree Protection Zones as per Appendix F, which are to be installed prior to the commencement of demolition, and maintained for the duration of the construction period.

Landscaping is to be in accordance with the landscape plan, prepared by Ray Fuggle of RFA, Issue A, dated 15 April, 2011, which is to be amended to show an additional two 100 litre size trees to be planted in the rear open space.

*Replacement trees should be native endemic trees equivalent to Turpentine (*Syncarpia glomulifera*).*

Catchment & Assets:

During the period 20 May to 25 August 2011 there were detailed discussion between the applicant and Council's Drainage Engineer regarding the impact on the proposed development of the overland flow affectation of the rear of the site. On 25 August 2011 amended drawings were submitted incorporating amendments to satisfy the engineering constraints of the site.

By memo dated 1 September 2011 Council's Drainage Engineer provided detailed technical comment on the proposal, and concluded by advising that there were no objections subject to the imposition of identified conditions.

External Referrals

Council's Consultant Structural Engineer by letter dated 24 May 2011 raised no objection to the proposal, subject to identified conditions.

14. Critical Dates

There are no critical dates or deadlines to be met.

15. Financial Impact

Adoption of the recommendation of this report will have no financial impact.

ITEM 3 (continued)

16. Other Options

As previously detailed, the application does not comply with the linear separation provisions of DCP 2010, and accordingly is recommended for refusal.

If the linear separation provision were, for the moment, to be put to one side, the only other remaining areas of non-compliance with DCP 2010 controls are:

- Slight departure from minimum site frontage;
- Southern side boundary setback distance; and
- Overall height of one facade of Unit 1.

These issues have previously been discussed, and on their own, either singularly or collectively, are considered not to be such as to cause the application to fail.

The likely future inclusion of linear separation controls within DCP 2011 has previously been discussed, however, the future content of DCP 2011 is not finalized, and implementation of DCP 2011 is not imminent.

However, the option of approval of the application is made available to Council, and to this end a draft set of conditions relevant to this option are contained in Attachment 1.

17. Conclusion

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal has some areas of non-compliance with controls detailed in Part 3.5 of DCP 2010, namely:

- Slight departure from minimum site frontage;
- Linear separation controls;
- Southern side boundary setback distance; and
- Overall height of one facade of Unit 1.

It is noted that the design responds, in a positive manner, to the constraints of the site.

The application was advertised and eight (8) submissions were received. The issues raised in the submissions have been discussed and relevant comments provided.

The subject site is on the low side of Clarke Street and is traversed by a council drainage easement and is also subject to overland stormwater flows in major storm events. Council's Development Engineers as well as Drainage Engineer have raised no objection to the proposal, subject to conditions.

ITEM 3 (continued)

Based upon non-compliance with the linear separation provisions of DCP 2010, the application is recommended for refusal. The other variations to the DCP are minor and should not result in any adverse impacts.

ITEM 3 (continued)

ATTACHMENT 1

LDA2011/248 – RECOMMENDED CONDITIONS OF CONSENT

40 CLARKE STREET, WEST RYDE

GENERAL

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

Approved Plans

1. 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
Architectural drawings prepared by Moderinn Group Pty Ltd	August 2011	A-1000(C), A-1001(C), A-1002(C), A-1003(C) and A-1004(C)
Stormwater Concept Plans prepared by AKY Civil Engineering		06083(C)
Landscaping Plans prepared by Ray Fuggle Associates	13 April 2011	2953a L-01(A)

Prescribed Conditions

2. All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. Compliance with all commitments listed in BASIX Certificate(s) numbered 366849M, dated 31 March 2011.

Protection of Adjoining and Public Land

4. Hours of work
Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
5. 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.
6. 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.

ITEM 3 (continued)

ATTACHMENT 1

7. The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

Works on Public Road

8. Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
9. 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.

Stormwater

10. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria 1999 and City of Ryde Development Control Plan 2010 Section 8* except as amended by other conditions.
11. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
12. **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.
13. **Council Inspections.** A Council engineer must inspect the stormwater connection to the existing Council stormwater pipeline. Council shall be notified when the collar connection has been made to the pipe and an inspection must be made **before** the property service line is connected to the collar. The property service line must not be connected directly to Council's pipeline. An inspection fee of \$140.00 shall be paid to Council prior to the issue of the Construction Certificate
14. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, carparking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.

ITEM 3 (continued)

ATTACHMENT 1

15. Driveway Grades. The maximum grade of all internal driveways and vehicular ramps shall be 1 in 4 and in accordance with the relevant section of AS 2890.1. The maximum change of grade permitted is 1 in 8 (12.5%) for summit grade changes and 1 in 6.7 (15%) for sag grade changes. Any transition grades shall have a minimum length of 2.0m. The driveway design is to incorporate Council's issued footpath and gutter crossing levels where they are required as a condition of consent. A driveway plan, longitudinal section from the centreline of the public road to the garage floor, and any necessary cross-sections clearly demonstrating that the driveway complies with the above details, and that vehicles may safely manoeuvre within the site without scraping shall be submitted with the Construction Certificate application.

16. Car Parking. All internal driveways, vehicle turning areas, garage opening widths and parking space dimensions shall comply with AS 2890.

PRIOR TO CONSTRUCTION CERTIFICATE

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

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

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

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

17. A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$ 8,803.66
Open Space & Recreation Facilities	\$21,672.77
Civic & Urban Improvements	\$ 7,371.35
Roads & Traffic Management Facilities	\$ 1,005.51
Cycleways	\$ 628.06
Stormwater Management Facilities	\$ 1,996.34
Plan Administration	\$ 169.34
The total contribution is	\$41,647.04

ITEM 3 (continued)

ATTACHMENT 1

These are contributions under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 (2010 Amendment) adopted by City of Ryde on 16 March 2011.

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.

A copy of the Section 94 Development Contributions Plan may be inspected at the Ryde Planning and Business Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

18. 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. 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 (**dwelling houses with delivery of bricks or concrete or machine excavation**)
20. The following fees must be paid to Council in accordance with Council's Management Plan:
 - (a) Infrastructure Restoration and Administration Fee
 - (b) Enforcement Levy
21. 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**.

Road Opening Permit

22. The Council must be provided with evidence that there has been compliance with all matters that are required by the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993 to be complied with prior to issue of the **Construction Certificate**.

ITEM 3 (continued)

ATTACHMENT 1

23. The development must be acoustically designed and constructed to meet the relevant provisions of Australian Standard AS 2107:2000 *Recommended design sound levels and reverberation times for building interiors*. Written endorsement of compliance with these requirements must be obtained from a suitably qualified person.

Fencing

24. Fencing is to be in accordance with Council's Development Control Plan and details of compliance are to be provided in the plans for the **Construction Certificate**.

25. The front fence shall be redesigned so as to not exceed 1.0m in height and provide for being a minimum of 70% permeable. Details are to be submitted with the Construction Certificate to verify that the fencing achieves these requirements.

Lighting of Common Areas (driveways etc)

26. 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.

27. **Drainage Plans**. The plans and supporting calculations of the proposed drainage system, including the on-site detention system and details addressing any overland flow from upslope properties are to be submitted with the Construction Certificate application.

A positive covenant shall be executed and registered against the title of any lot containing an on site detention system to require maintenance of the system in accordance with Council's standard terms.

Any drainage pit within a road reserve, a Council easement, or that may be placed under Councils' control in the future, shall be constructed of cast in-situ concrete. Details shall be submitted with the Construction Certificate application.

28. **On site stormwater detention Tank**. All access grates to the on site stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 metres in depth must be fitted with step irons.

29. **Water Tank First Flush**. A first flush mechanism is to be designed and constructed with the water tank system. Details of the first flush system are to be submitted with the construction certificate application.

30. **Construction near Pipeline in Drainage Easement**. All footings for buildings and other structures shall be taken a minimum of 100 mm below the invert of the existing pipeline. **The location and depth of the pipeline, along with the design of the footings, are to be shown on the plans submitted to and approved by the Consent Authority.**

ITEM 3 (continued)

ATTACHMENT 1

31. **Overland Flow Channel.** An overland flow channel shall be created above the pipeline within the drainage easement. The channel should be sufficient to transfer runoff exceeding the pipe capacity during storms up to 100 year ARI. **A design of the channel along with the necessary calculations shall be submitted to and approved by the Consent Authority.**
32. **Overland Flow path.** No filling, alteration to the surface levels or other obstructions within the overland flow path across the site shall be made without prior approval of Council.
33. **Fencing within Floodways.** All fencing within the overland flow path shall have a permeable section at least 300 mm above the calculated top water surface level.
34. **Minimum Floor Level.** The villa habitable floor level is to be set to not less than RL 44.85 as recommended in the hydraulic report by AKY Civil Engineering
35. **Soil and Water Management Plan.** A *Soil and Water Management Plan (SWMP)* shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction*" prepared by the Department of Housing. **This is to be submitted to and approved by the Consent Authority prior to the release of the Construction Certificate.** These devices shall be maintained during the construction works and replaced where considered necessary. Suitable erosion control management procedures are to be practiced during the construction period.

The following details are to be included in drawings accompanying the *Soil and Water Management Plan*:

- (a) Existing and final contours
- (b) The location of all earthworks, including roads, areas of cut and fill, and regrading.
- (c) Location of all impervious areas
- (d) Location and design criteria of erosion and sediment control structures including sediment collection basins
- (e) Location and description of existing vegetation
- (f) Site access point/s and means of limiting material leaving the site
- (g) Location of proposed vegetated buffer strips
- (h) Location of critical areas (drainage lines, water bodies and unstable slopes)
- (i) Location of stockpiles
- (j) Means of diversion of uncontaminated upper catchment around disturbed areas
- (k) Proposed techniques for re-grassing or otherwise permanently stabilising all disturbed ground.
- (l) Procedures for maintenance of erosion and sediment controls
- (m) Details for any staging of works
- (n) Details and procedures for dust control.

ITEM 3 (continued)

ATTACHMENT 1

36. **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.
37. Landscaping is to be in accordance with the landscape plan, prepared by Ray Fuggle of RFA, Issue A, dated 15th April, 2011, which is to be amended to show an additional two 100 litre size trees to be planted in the rear open space. Replacement trees should be native endemic trees equivalent to Turpentine (*Syncarpia glomulifera*)
38. The property owner shall enter into a Deed of Charge indemnifying Council against any claims for damage and cost incurred for removing and replacing the pergola, if deemed necessary, at any time for the purpose of accessing Council's pipeline. The costs of preparing the Deed of Charge are to be borne by the applicant.
39. To protect the overland flow paths against blockage and allow free passage of overland flows through the property the flow paths along both sides of the dwelling 4 are to be protected by the creation of a "Restriction As To Use". The overland flowpath is located in the rear yard along the side boundaries and rear yard of the property between the rear property boundary and the proposed dwelling 4.
- The restriction shall be created under Section 88B of the Conveyancing Act 1919 and all associated costs shall be borne by the applicant.
40. The modification of ground levels shall be carried out in accordance with the Flood Assessment Report dated 25 August 2011 and Drawing C-03 Revision F prepared by AKY Civil Engineering.
41. Prior to the issue of the Construction Certificate, a certificate shall be provided to the Principal Certifying Authority from a suitably qualified engineer confirming the building structure is able to withstand the forces of floodwaters having regard to hydrostatic pressure, hydrodynamic pressure, the impact of debris and buoyancy forces up to and including a 100 year flood plus freeboard.
42. Prior to the issue of the Construction Certificate, a certificate shall be provided to the Principal Certifying Authority from a suitably qualified engineer confirming that all new building components below the 100 year ARI flood plus 0.5m freeboard have been designed to be flood compatible.
43. Prior to the issue of the Construction Certificate, a certificate shall be provided to the Principal Certifying Authority from a suitably qualified engineer confirming that all footings in close proximity to the drainage easement have been designed to be founded at a depth below the zone of influence for the stormwater line.

ITEM 3 (continued)

ATTACHMENT 1

44. Fencing is to be constructed in a manner that does not affect the flow of flood waters so as to detrimentally change flood behaviour or increase flood levels on adjacent properties. A certificate to this effect shall be provided to the PCA from a suitably qualified engineer prior to the issue of the Occupation Certificate.
45. Trees that are to remain on site are to be protected against damage during construction. All mature trees to remain shall be clearly marked and a fence erected around their drip line. A qualified arborist shall inspect the tree protection measures and documentary evidence of tree protection measures is to be submitted to Council prior to the issuing of 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.

Prescribed Conditions

46. Site Sign

- (a) A sign must be erected in a prominent position on site:
- (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.

47. 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.

48. 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.

ITEM 3 (continued)

ATTACHMENT 1

(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).

49. **Sediment and Erosion Control.** The applicant shall install appropriate sediment control devices in accordance with an approved plan **prior** to any earthworks being carried out on the site. These devices shall be maintained during the construction period and replaced where considered necessary. Suitable erosion control management procedures shall be practiced. This condition is imposed in order to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

50. **Compliance Certificate.** A Compliance Certificate must be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and the City of Ryde, Development Control Plan 2010: - Part 8.1; Construction Activities.

51. **Council is to be notified in writing before work commences** - The applicant must notify Council of the following particulars in writing at least seven (7) working days before demolition work commences:

- the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
- the date the work is due to commence and the expected completion date.

52. **Site security** - Security fencing must be provided around the perimeter of the site, and other precautions taken, to prevent unauthorised entry to the site during the construction period.

53. The schedule of tree removal/retention and the construction management of all trees to be retained is to be in accordance with the arborist's report prepared by Neville Shields of Redgum Horticultural, dated 12 April 2011, with particular reference to the installation of Tree Protection Zones as per Appendix F, which are to be installed prior to the commencement of demolition, and maintained for the duration of the construction period.

ITEM 3 (continued)

ATTACHMENT 1

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.

Critical stage inspections

54. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*:

- (a) after excavation for, and prior to the placement of, any footings, and
- (b) prior to pouring any in-situ reinforced concrete building element, and
- (c) prior to covering of the framework for any floor, wall, roof or other building element, and
- (d) prior to covering waterproofing in any wet areas, and
- (e) prior to covering any stormwater drainage connections, and
- (f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Noise and vibration

55. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.

56. The L₁₀ noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.

Survey of footings and walls

57. 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.

58. No sediment, dust, soil or similar material shall leave the site during construction work.

59. 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.

60. All materials associated with construction must be retained within the site.

ITEM 3 (continued)

ATTACHMENT 1

61. 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.

62. 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 equivalent 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.

63. 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".

Tree Protection

64. This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or otherwise necessary as a result of construction works approved by this consent.

65. Trees that are shown on the approved plans as being retained must be protected against damage during construction.

66. Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.

67. 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.

68. 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.

Drop-edge Beams

69. Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

ITEM 3 (continued)

ATTACHMENT 1

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.

Prescribed Condition

70. The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 366849M, dated 31 March 2011.

71. All landscaping works approved by condition 1 are to be completed.

72. The submission of documentary evidence to Council of compliance with all matters that are required by the Road Opening Permit issued by Council under Section 139 of the *Roads Act 1993* in relation to works approved by this consent.

Sydney Water

73. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Letterboxes and street/house numbering

74. All letterboxes 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.

ITEM 3 (continued)

ATTACHMENT 1

75. An **Occupation Certificate** must be obtained from the Principal Certifying Authority (PCA) and a copy furnished to Council in accordance with Clause 151 of the Environmental Planning and Assessment Regulation 2000 prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.
76. **Creation of Easements in Favour of Council.** The applicant shall create a new drainage easement 2.5 metres wide in Council's favour over the existing pipeline in which Council has an interest at no cost to Council. The alignment of such easements shall be in accordance with detailed engineering plans prepared or approved by Council. It is noted that the pipeline will in this case not be located centrally within the easement due to the proposed location of the adjacent building relative to the existing pipeline.
77. **Compliance Certificates – Engineering.** Compliance Certificates should be obtained for the following (If Council is appointed the Principal Certifying Authority [PCA] then the appropriate inspection fee is to be paid to Council) and **submitted to the PCA:**
- Confirming that all vehicular footway and gutter (layback) crossings are constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria – 1999 section 4.*
 - Confirming that the driveway is constructed in accordance with the construction plan requirements and Ryde City Development Control Plan 2010: - Part 8.3; Driveways.
 - Confirming that the site drainage system (including the on-site detention storage system) servicing the development complies with the construction plan requirements and City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management
 - Confirming that the on-site detention system will function hydraulically in accordance with the approved design.
 - Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the 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.
 - Confirming that the connection of the site drainage system to the trunk drainage system complies with Section 4.7 of AS 3500.3 - 1990 (National Plumbing and Drainage Code).
 - Confirming that the footings adjacent to the drainage easements have been constructed to below the zone of influence in accordance City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management
78. **Compliance Certificate – Surveyor.** A compliance certificate must be submitted from a Registered Surveyor indicating that all pipelines and associated structures lie wholly within any easements required by this consent.

ITEM 3 (continued)

ATTACHMENT 1

- 79. Footpath Paving Construction.** The applicant shall, at no cost to Council, construct standard concrete footpath paving across the frontage of the property. Levels of the footpath paving shall conform with levels issued by Council's Engineering Services Division.
- 80. Vehicle Footpath Crossings.** Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements of Council. Crossings are to be constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's Public Works Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.
- 81. Work-as-Executed Plan.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and the date, the stormwater drainage, including the on-site stormwater detention system if one has been constructed and finished ground levels **is to be submitted to the Principal Certifying Authority (PCA)** and to Ryde City Council if Council is not the nominated PCA. If there are proposed interallotment drainage easements on the subject property, **a Certificate from a Registered Surveyor is to be submitted to the PCA** certifying that the subject drainage line/s and pits servicing those lines lie wholly within the proposed easements.
- 82. On-Site Stormwater Detention System - Marker Plate.** Each on-site detention system basin shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. An approved plate may be purchased from Council's Customer Service Centre on presentation of a completed City of Ryde OSD certification form.
- 83. Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.
- 84. Restriction as to User, Floodway.** A restriction as to user is to be placed on the property title to prevent the alteration of the ground surface and maintenance within the 100 year Average Recurrence Interval flow path and also not to have any structure placed inside without Council permission. The terms of the restriction shall be generally in accordance with Council's draft terms for provision for overland flow and to the satisfaction of Council.

ITEM 3 (continued)

ATTACHMENT 1

85. Drainage Construction. The stormwater drainage on the site is to be constructed in accordance with the Construction Certificate version of Plan No 06083 prepared by AKY Civil Engineering

POST OCCUPATION CERTIFICATE

86. Within 2 days of issuing a final Occupation Certificate, the Principal Certifying Authority (PCA) is required to generate a BASIX Completion Receipt in accordance with the provisions of the EP & A Regulation 2000. The PCA is to refer to the BASIX Completion Receipt tool at www.basix.nsw.gov.au/administration/login.jsp in order to generate the BASIX Completion Receipt and a printed copy of the receipt is to be placed on the PCA file.

End of consent

ITEM 3 (continued)

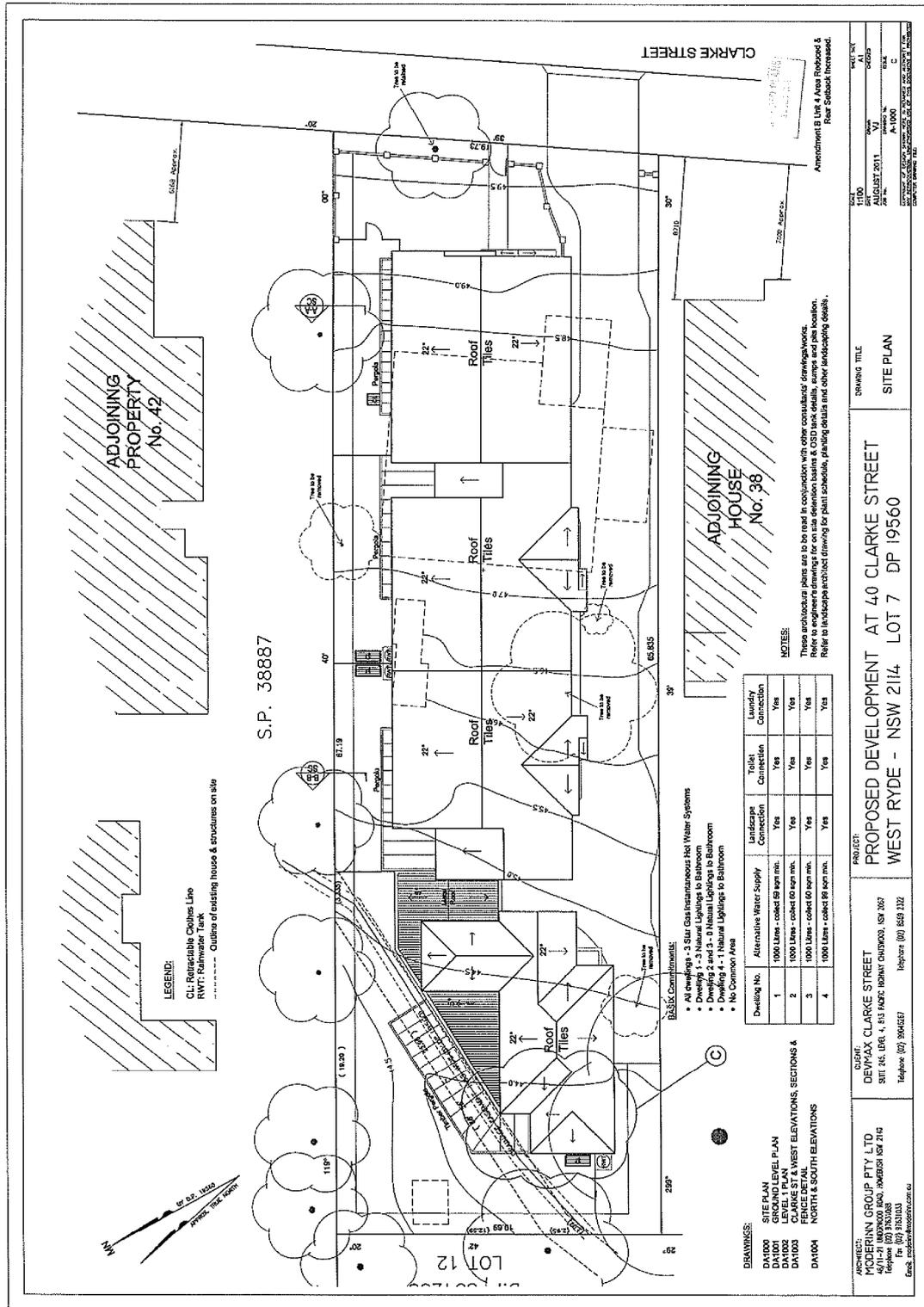
ATTACHMENT 2

 Indicates submissions received



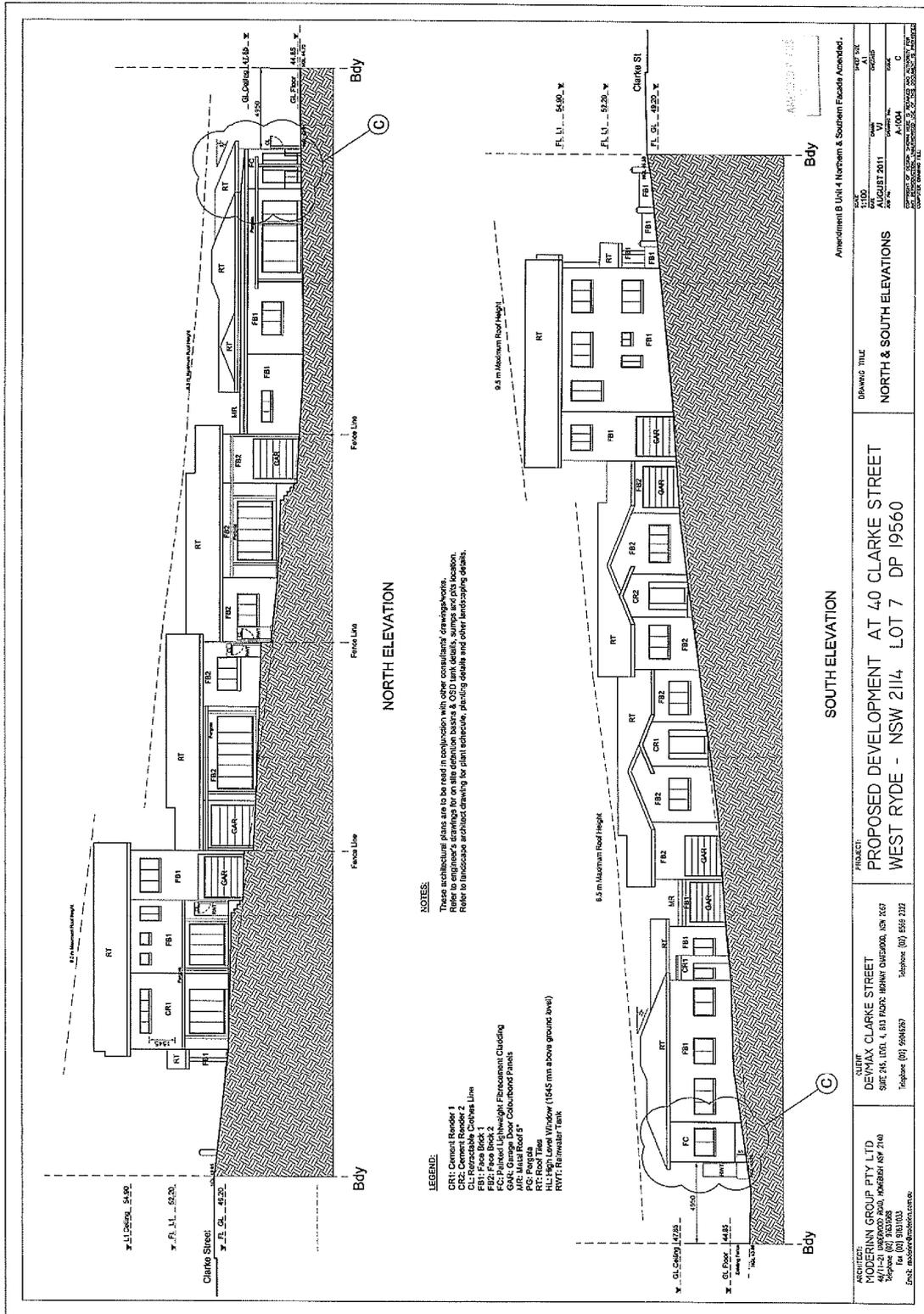
ITEM 3 (continued)

ATTACHMENT 3



ITEM 3 (continued)

ATTACHMENT 3



- 4 64 PELLISIER ROAD, PUTNEY. LOT 102 DP 866280. Local Development Application for Alterations and additions to the existing dwelling including an additional new storey and new cabana in the rear yard. LDA2011/493.**

INSPECTION: 4.50pm

INTERVIEW: 5.25pm

Report prepared by: Senior Town Planner; Team Leader - Assessment

Report approved by: Manager Assessment; Group Manager - Environment & Planning

Report dated: 23/01/2012

File Number: GRP/11/3/6/9 - BP12/39

1. Report Summary

Applicant: S D Balestriere.
Owner: S D Balestriere.
Date lodged: 13 September 2011.

This report considers a proposal to carry out alterations and additions to the existing dwelling house, including a new additional floor on top of the existing flat roof of the dwelling and a new cabana at the rear of the site. The subject site is best described as a “battleaxe” allotment and which enjoys direct water front access to the Parramatta River at Morrison Bay.

The proposal is recommended for refusal.

The proposal includes additions to the rear (waterfront) elevation of each level of the dwelling, a new additional floor on top of the existing dwelling and a new detached cabana in the rear yard adjoining the existing swimming pool. The proposal comprises:

- A minor extension to the existing “utility” room adjoining the existing swimming pool and located on the basement level;
- A new balcony adjoining the rumpus room and study on the lower ground floor;
- Internal alterations and minor external additions to the existing ground floor plan, including a widening of the kitchen and main entry towards the side boundaries and an extended rear balcony; and,
- A new residential level on top of the existing flat roof of the dwelling comprising a bedroom (with ensuite and walk-in wardrobe), a study and a media/lounge room, plus open terrace at the rear.

The DA was notified to adjoining owners in accordance with Council’s Notification DCP, and 4 submissions were received. The issues raised in the submissions relate to the adverse impact upon existing water views, adverse affects upon the amenity of adjoining properties and potential adverse affect upon the heritage significance of the

ITEM 4 (continued)

existing adjoining heritage item (being No. 60 Pellisier Road).

In addition to the assessment of the development proposal against Council's LEP and DCP controls, due to the location of the subject site being along the foreshore of Morrison Bay, the proposal has also been assessed in accordance with the requirements of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and the accompanying *Sydney Harbour Foreshore & Waterways Development Control Plan*.

Although the development has been determined as being consistent with the character of the area, the additional height and number of storeys of the proposal is an inappropriate level of development for the site due to its significant adverse effect upon the amenity of the surrounding properties by overlooking and impact upon views, and is considered to not comply with the objectives for residential development of the Ryde LEP 2010. Also, the development does not comply with the height and number of storeys controls of Council's DCP and numerous sections of Part 3.3 of the Ryde DCP (as detailed in the report).

The development does not comply with clauses 17, 25 and 26 of the Sydney Harbour Catchment SREP and does not comply with clause 5 of the accompanying Sydney Harbour Foreshore and Waterways DCP.

An assessment of the principles relating to view sharing and view loss has also been undertaken and found that there will be a significant amount of water view loss to most adjoining properties, and, in particular to No. 60 Pellisier Rd where all existing water views will be lost. Council's Team Leader, Strategic Planning has noted that the visual and physical connection from the heritage item to the Bay contributes to its heritage significance.

For the reasons mentioned above and for details provided in this report, the application is recommended for refusal.

Reason for Referral to Planning and Environment Committee: Requested by Councillor O'Donnell.

Public Submissions: Four submissions were received objecting to the development.

SEPP 1 (or clause 4.6 RLEP 2010) objection required? No.

Value of works: \$200,000

A full set of the plans is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

ITEM 4 (continued)

RECOMMENDATION:

- (a) That Local Development Application No. LDA2011/493 for alterations and additions to the existing dwelling and construction of a cabana at No. 64 Pellisier Rd, Putney, be refused for the following reasons:
1. The proposal does not comply with clauses 17, 25 and 26 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* for the following reasons:
 - (a) Clause 17 (Zoning Objectives). The scale and size of the development is inappropriate to the locality when viewed from the waters in the W8 zone.
 - (b) Clause 25 (Foreshore and Waterways Scenic Quality). The proposal represents an overdevelopment of the land in terms of scale and bulk and will have numerous adverse effects upon adjoining land including overlooking and loss of water views.
 - (c) Clause 26 (Maintenance Protection and Enhancement of Views). The proposal will adversely affect views and vistas from the existing heritage item (60 Pellisier Rd) and will have a detrimental cumulative impact upon views enjoyed by adjoining properties.
 2. The proposal does not comply with clause 5.4 (Built Form) of *Sydney Harbour Foreshore & Waterways Development Control Plan* because: the development does not enhance the existing setting; the shape of the upper floor being 'boxy' does not harmonise with the surroundings; the cumulative visual impact and limited articulation of walls does not reduce its overall bulk; and will adversely affect adjoining views and the existing heritage item.
 3. The development proposal generally does not fulfil the aims and objectives of R2 Low Density Residential requirements of the Ryde LEP 2010 for the following reasons:
 - (a) The additional height and number of storeys of the proposal is an inappropriate level of development for the site due to its significant adverse affect upon the amenity of the surrounding properties by overlooking and impact upon views.
 - (b) Having regard to the topography of the site, the development fails to provide for a predominantly two-storey dwelling and is predominantly a 3-storey dwelling with 4-storeys facing the water.

ITEM 4 (continued)

4. The development is inconsistent with the objectives of clause 4.3 and 4.4 of Ryde LEP 2010 by the following:
 - (a) Clause 4.3 (Height of buildings). The development is overbearing in its height and design and does not respond well to the topography of the site.
 - (b) Clause 4.4 (Floor space ratio). The location of the additional floor space and its significant adverse affect upon the amenity of the surrounding properties (including view loss).
 5. The proposal will have an adverse affect upon the conservation of views to and from the existing heritage item and upon the heritage significance of the adjoining heritage item (No. 60 Pellisier Rd), which is contrary to the controls and objectives of clause 5.10 (Heritage conservation) of the Ryde LEP 2010.
 6. The development does not comply with Part 3.3 of the Ryde DCP 2010, in particular the objectives or controls of: 2.1 – Desired Future Character; 2.2.2 – Alterations and Additions to Dwelling Houses; 2.4 – Public Domain Amenity; 2.4.1 – Streetscape; 2.4.2 – Public Views and Vistas; 2.5 – Site Configuration; 2.5.1 – Deep Soil Areas; 2.5.2 – Topography and Excavation; 2.7 – Height; 2.7.1 – Building Height; 2.9 – Outbuildings; 2.13 – Dwelling Amenity; 2.13.2 – Visual Privacy; and 2.13.4 – View Sharing.
 7. Due to non-compliance with the height and number of storeys development standards of the Ryde DCP 2010, the following adverse residential amenity impacts that the proposal would impact upon adjoining properties are considered to be unreasonable:
 - (a) Adverse visual and view impacts upon the adjoining properties being Nos. 60, 62 and 62A Pellisier Rd; and
 - (b) Adverse visual impact upon the adjoining property to the south (No. 64A Pellisier Rd)
- (b) That the persons who made submissions be advised of Council's decision.

ATTACHMENTS

- 1 Map
- 2 Plans
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER
- 4 Sectional View Assessment - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

ITEM 4 (continued)

- 5** Heritage Assessment of 60 Pellisier Road - CIRCULATED UNDER SEPARATE COVER
- 6** Applicant's response to submissions plus copy of submissions - CIRCULATED UNDER SEPARATE COVER - CONFIDENTIAL

Report Prepared By:

George Lloyd
Senior Town Planner

Chris Young
Team Leader - Assessment

Report Approved By:

Liz Coad
Manager Assessment

Dominic Johnson
Group Manager - Environment & Planning

ITEM 4 (continued)

2. Site (Refer to attached map.)

The following map identifies the subject site by red hatching.



Address	: 64 Pellissier Rd, Putney
Site Area	: 1016m ² (including the access handle) 14.5m allotment width, Depth 48.57m and 58.21m, plus vehicular access to Pellissier Rd. The site is also affected by a 1m wide drainage easement along its northern side boundary.
Topography and Vegetation	: The site slopes significantly (by approx. 8m) down towards the eastern waterfront boundary. No vegetation is proposed for removal in this application.
Existing Buildings	: Partial three storey dwelling house.
Planning Controls	: R2 – Low Density Residential.
Zoning	: SREPP (Sydney Harbour Catchment) 2005 Ryde Local Environment Plan 2010 Ryde DCP 2010
Other	: SREPP (Sydney Harbour Catchment) 2005 Ryde Local Environment Plan 2010 Ryde DCP 2010

ITEM 4 (continued)

3. Councillor Representations

a. Name of Councillor: Councillor O'Donnell

Nature of the representation: Call up to Planning and Environment Committee.

Date: 31 October 2011

Form of the representation (e.g. via email, meeting, phone call): By email.

On behalf of applicant or objectors: Objector/s.

Any other persons (e.g. consultants) involved in or part of the representation: No

b. Name of Councillor: Councillor Pickering

Nature of the representation: Request to expedite DA and refer to Planning and Environment Committee before the end of 2011.

Date: 10 November 2011

Form of the representation (e.g. via email, meeting, phone call): By email.

On behalf of applicant or objectors: Applicant.

Any other persons (e.g. consultants) involved in or part of the representation: No

c. Name of Councillor: Councillor Yedelian OAM

Nature of the representation: Request to expedite DA and refer to Planning and Environment Committee before the end of 2011.

Date: 9 November 2011

Form of the representation (e.g. via email, meeting, phone call): By email.

On behalf of applicant or objectors: Applicant.

Any other persons (e.g. consultants) involved in or part of the representation: No

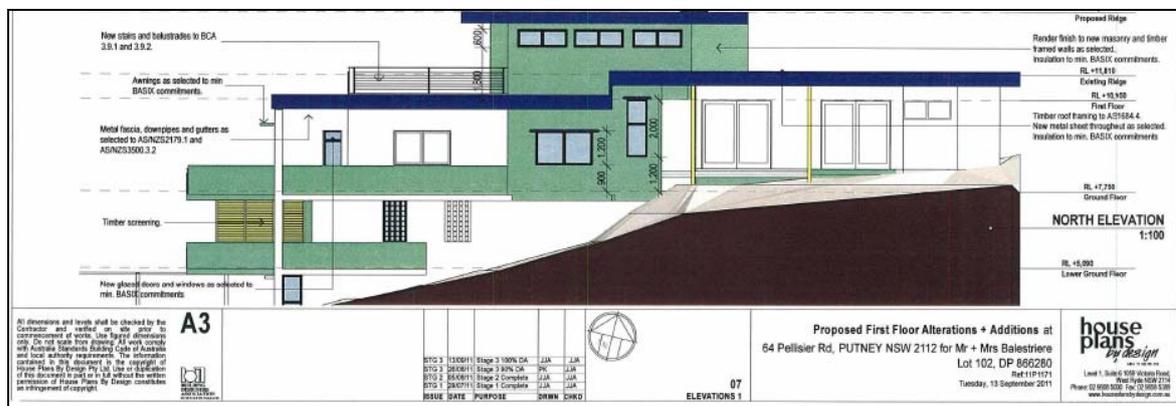
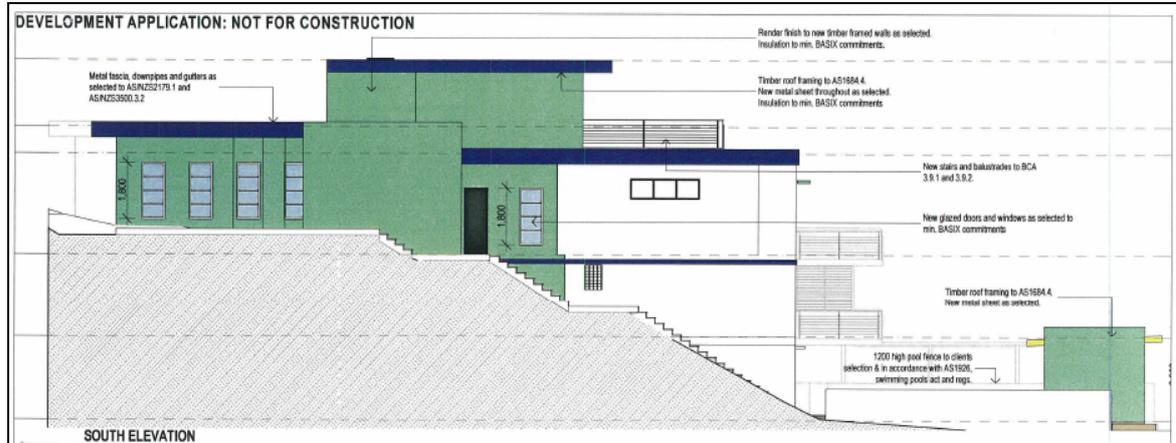
4. Political Donations or Gifts

Any political donations or gifts disclosed: No.

5. Proposal

Alterations and additional floor on top of existing dwelling and new cabana. The front, side and rear elevations showing the dwelling's appearance are provided below:

ITEM 4 (continued)



ITEM 4 (continued)



6. Background

The development application was lodged with Council on 13 September 2011 and notified to adjoining property owners from 29 September till 13 October 2011, during which time 4 submissions were received.

A site inspection was carried out by Council's Senior Town Planner on 23 September 2011.

Due to the topography of the site and because the easternmost 20m of the site is identified as being at risk of slope instability, the DA was referred to Council's Consultant Structural Engineers (Cardno). In a submission dated 11 October 2011, Cardno sought additional information regarding the location and method of construction of the proposed cabana.

In a letter dated 12 October 2011, Council forwarded Cardno's concerns to the applicant.

On 17 October, a response from the applicant was received justifying why a detailed geotechnical report was not necessary for the construction of the cabana and which was forwarded to Cardno on 18 October.

On 21 October, a copy of the submissions received by Council in response to the neighbour notification period were forwarded to the applicant with a view to offering them the opportunity to respond to the issues raised therein. The applicant's response was received on 27 October 2011.

On 26 October, Cardno recommended that if Council were to approve the cabana, then the approval should be conditioned to require the structure to be supported on piers bearing on the natural rock underlying the site.

ITEM 4 (continued)

On 19 October and 11 and 14 November, a site inspection of the neighbouring objectors' properties was undertaken to determine the extent of impact that the development would have particularly in relation to views, which required an inspection of each property.

On 7 November 2011, the applicant wrote an email to the Group Manager Environment and Planning, requesting an update on the status of the DA and requesting that the DA be determined by one of the two remaining Planning and Environment Committee meetings scheduled for the end of last year.

In an email dated 9 November 2011, Council's Team Leader, Development Assessment, responded to the applicant by stating [in part] that due to the complexity of the application and that the assessment the proposal was still on-going and that given the timeframes involved in preparing a Committee report, it was not feasible for the DA to be placed on either of the last two agendas.

On 9 November 2011, the applicant then forwarded a copy of the Team Leaders response to Councillors Yedelian and Pickering with a view to having the matter heard before the end of 2011 (see Councillor Representation earlier in this report).

7. Submissions

The proposal was notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. Notification of the proposal was from 29 September until 13 October 2011.

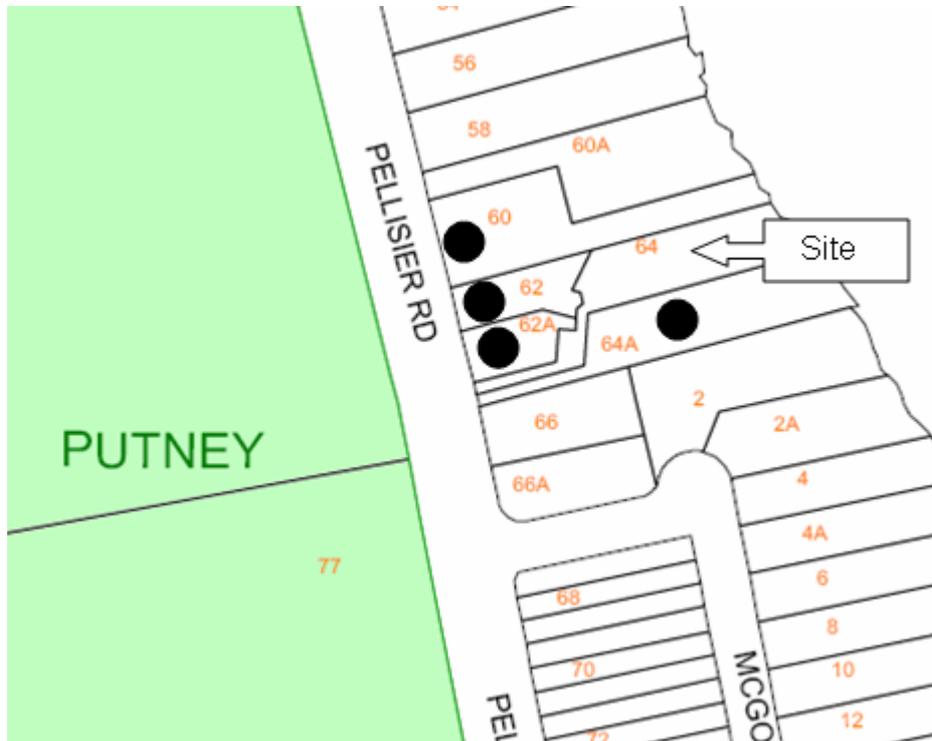
Four submissions were received from immediately adjoining property owner/s. One of the submissions received from the owner/s of No. 60 Pellisier Rd (which is also identified as a heritage item under Ryde LEP 2010) was accompanied by a number of addendums including a heritage consultant's report and details of previous Land and Environment Court proceedings dated 25 April 2005.

A copy of the objections were forwarded to the applicant who responded to (some of) the issues raised therein. A copy of the applicant's response is **CIRCULATED UNDER SEPARATE COVER - CONFIDENTIAL** as additional information provided to Councillors.

The issues in the submissions and the applicant's response are summarised below. Due to the location and nature of the development (and particularly its adverse affect upon the amenity and existing views enjoyed from neighbouring properties), the property address of those persons who made a submission is provided below with a response to the issues raised therein. This is done in addition to the more detailed assessment of the effect of the development proposal in relation to the extent of existing views and view sharing as set out by principles of the Land and Environment Court (vide *Tenacity Consulting v Warringah Council* [2004]) and which is addressed later in this report (see section 10 – Likely Impacts of the Development).

ITEM 4 (continued)

The map below identifies the site and from where the submissions were received:



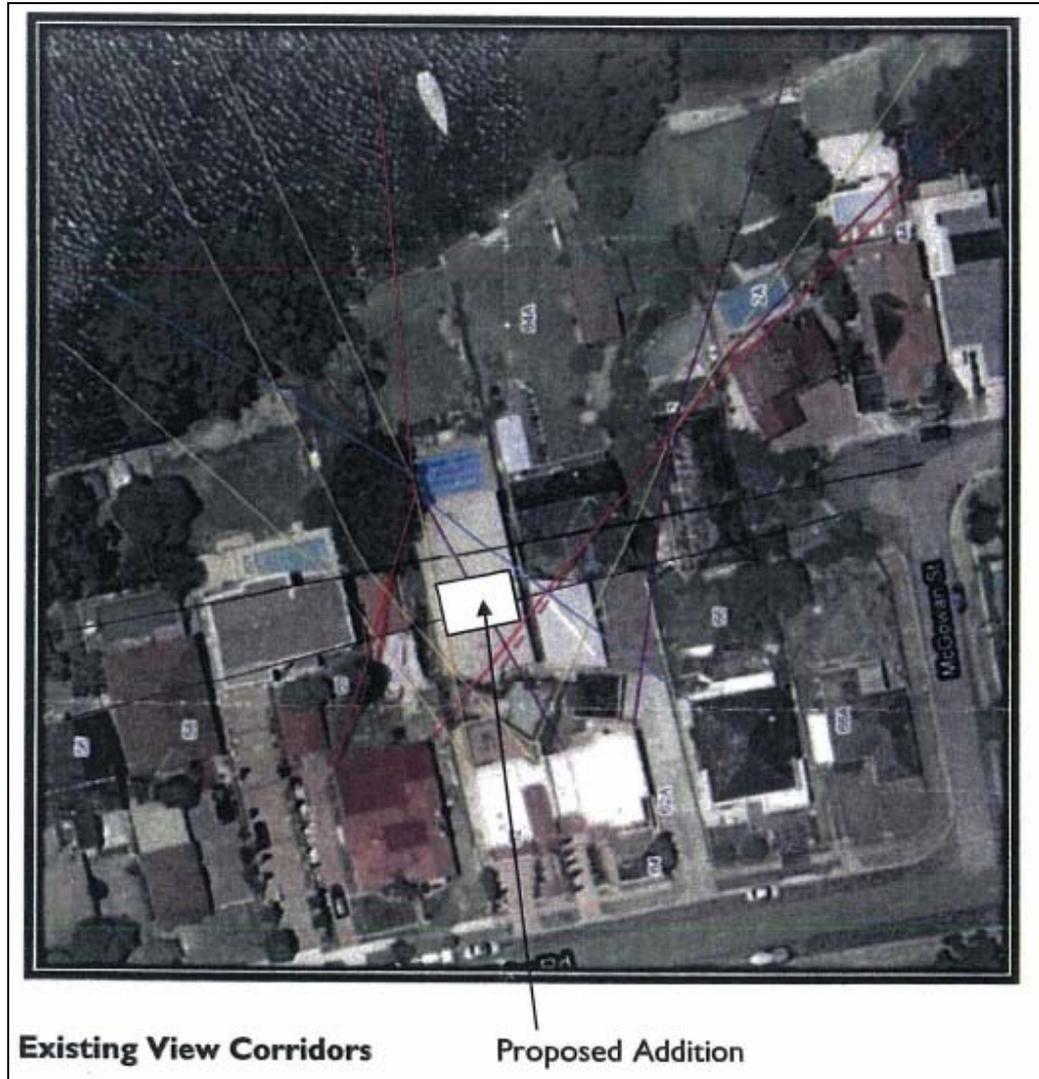
Issues raised in submission from No. 62A Pellisier Road:

1. *Request for a detailed view analysis/assessment. The view analysis should include a plotting of elevations, maximum height of buildings and ceiling heights.*

Officers Comments: Objection is raised that the view loss assessment provided by the applicant only takes into account the extent of view loss from No. 62 Pellisier Road.

Part of the applicants' submission included the following aerial. A sectional view assessment is **CIRCULATED UNDER SEPARATE COVER**.

ITEM 4 (continued)



The applicant has responded to the loss of views from this property by generally stating that the site (No. 62) will lose a small section of their views while still enjoying other significant views to the water which will not be impaired by the development.

A detailed assessment of view loss is provided later in this report (see section 10). Briefly, the objection is generally concurred with as the view assessment provided by the applicant does not thoroughly determine the extent of view loss for all neighbouring properties.

2. *The development proposal is contrary to the maximum number of storeys as required by Council's DCP.*

ITEM 4 (continued)

Officers Comments: Agreed. Part of the application proposes to construct an additional storey on top of the dwelling which will in part be 3-storeys and thereby contrary to the maximum number of storeys of Council's DCP controls (being 2-storeys in total). This DCP non-compliance is addressed in greater detail below (see DCP Compliance section of this report).

- The DCP requires "that building form and design allow for view sharing where possible are not substantially affected by the bulk and scale of the new development". Our home was purposely designed with bedrooms on the ground floor and living areas on the first floor to take advantage of the view. We understand that view loss is assessed quantitatively, but the proposed additional storey would block our direct view. It is understood that the impact on living areas is of greater importance than loss of views from bedrooms, and the value of a view from a kitchen window is of even greater importance. At present, we have uninterrupted views from our kitchen window and from a seated position at our dining table. The proposed additional fourth storey would obstruct a significant amount of this view. The view sharing objective of the DCP is "to ensure new dwellings endeavour to respect important views from living areas within neighbouring dwellings", however I do not see what effort has been made towards view sharing. Prior to any approval we request that the applicant have a qualified person erect height poles extending the full height, depth and length of the proposed development.*

Officers Comments: Agreed. The extent of existing views and the affect that the proposal will have on them is addressed later in this report. Generally, the proposal does not comply with the objectives or performance criteria of the DCP with respect to view sharing. Also, it does not fulfil the principles relating to view sharing and view loss as established by the Land and Environment Court (also detailed later in this report).

- The original design of the properties on 64, 64A, 62 and 62A allowed all properties to share a view of Morrison Bay. Allowing 64 to add a fourth storey would allow 64 to completely monopolise the views across four (4) levels and set a precedent for other three (3) storey waterfront properties.*

Officers Comments: Agreed. A number of properties that face Pellisier Rd currently enjoy their only existing water views over the roof of the subject site. The additional floor level will adversely affect their views to varying degrees. The extent of view affectation/loss is addressed in greater detail later in this report.

- The existing home is already of considerable size and we would question whether or not the proposed development would comply with building/land ratio.*

ITEM 4 (continued)

Officers Comments: A detailed assessment of the development proposal and its compliance with the requirements of the Ryde LEP 2010 and DCP 2010 has been undertaken. The extent of variation and non-compliance with Council's controls is addressed below. In short, it is considered that adequate site area exists for the applicant to increase their floor area without adversely affecting the amenity or view loss of the surrounding properties.

Additional issues raised in submission from No. 64A Pellisier Road:

6. *Location and area of cabana will reduce impervious area and will exceed allowable building area of property. Combined with the previously approved boatshed, the total area for all outbuildings will exceed 20m². The cabana will also affect existing views from lower ground floor windows and amenity.*

Officers Comments: A detailed assessment of the development proposal and its compliance with the requirements of the Ryde LEP 2010 and DCP 2010 has been undertaken and is detailed below. The location of the proposed cabana is not considered to have an adverse effect upon the water views from the lower ground floor windows of 64A Pellisier Road. However, there is a significant degree of 'inter-overlooking' by numerous adjoining properties along this part of Morrison Bay, and the location of the proposed cabana will have an additional adverse impact upon the visual amenity and general (not water) views of No. 64A Pellisier Road.

7. *The proposed building will be imposing and out of character with the surrounding area.*

Officers Comments: This part of Putney is generally characterised by large 2-storey dwelling houses which face the water. The proposed additional floor level on top of the existing dwelling will result in a development which is not considered to be entirely out of character with the existing residences by virtue of its bulk and scale. However, unlike the other 'larger' surrounding residences in this area, the development proposal will result in an adverse affect upon the amenity of the adjoining properties by virtue of their view loss.

8. *The proposed additional floor will result in additional overshadowing and will affect natural light and heat penetration. The proposed terrace will have an adverse affect upon privacy.*

Officers Comments: Immediately adjoining the subject site to the south is the front courtyard of 64A Pellisier Road, which is improved by various plantings and a number of north and west facing windows (see photos below).

ITEM 4 (continued)



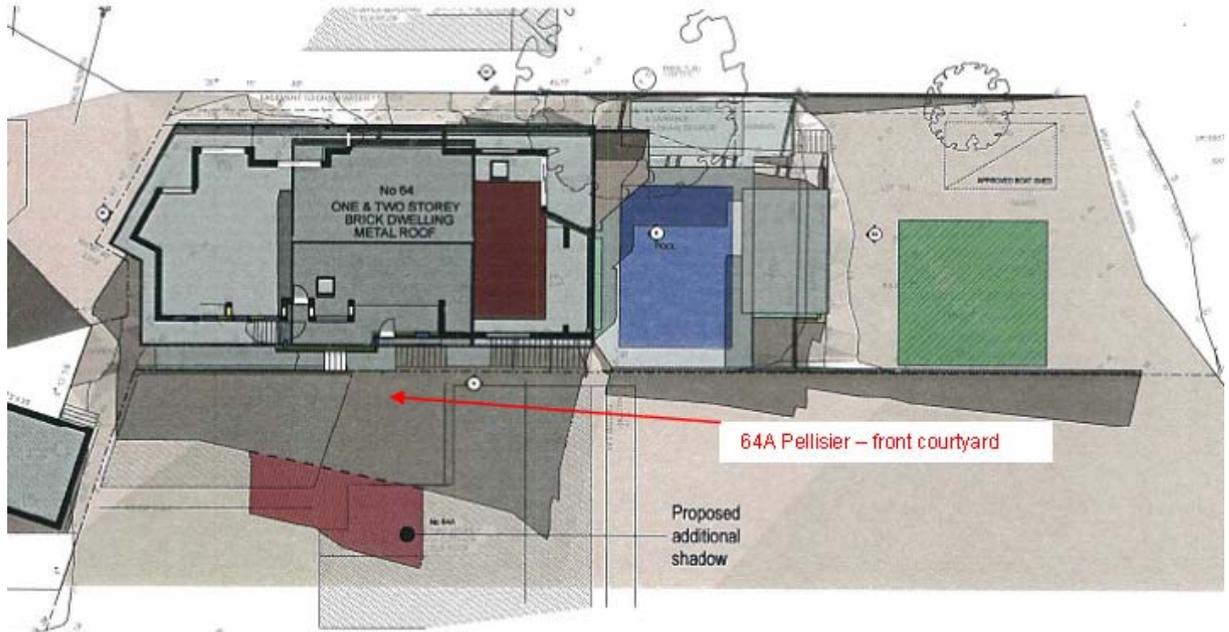
Front courtyard of No. 64A Pellisier Road and west facing windows (note adjoining location of No. 64 Pellisier Road)



Northern facing windows of 64A Pellisier Road

Overshadowing diagrams provided by the applicant indicate overshadowing of this part of the adjoining property will not be increased (see plans below). However, it is true to say that the extent of broader light penetration will be adversely affected by the development proposal as will amenity impacts from the additional floor level, especially from the rear proposed 'terrace' area and the cabana.

ITEM 4 (continued)



9. *Concern is raised that the shared common driveway will be impeded by builders vehicles and construction material during the construction phase of the development (if approved).*

Officers Comments: The existing right-of-carriageway can only be use by those having legal vehicular access and in accordance with the terms and conditions of the relevant property title.

Should any resident object to the illegal parking of any vehicle/s along a right-of-carriageway at any time, a complaint would need to be made to the local police who would attend the scene and issue any appropriate infringement notices.

Additional issues raised in submission from No. 62 Pellisier Road:

10. *Request for a complete view analysis report.*

Officers Comments: Agreed. Objection is raised that the view loss assessment provided by the applicant only takes into account the extent of view loss from the balcony of No. 62 and has not considered the extent or effect of view loss from the living, dining and kitchen room windows.

No. 62 Pellisier Rd has bedrooms on the lower floors and habitable rooms located above, which thereby overlook the roof of the subject site to enjoy visual access to the existing water views.

ITEM 4 (continued)

A more detailed assessment of the extent of view loss is given later in this report. No. 62 will generally be adversely affected in terms of view loss. In addition, due to the proximity of the additional floor level, it is generally agreed that the development will result in a loss of amenity from within the complainants' dwelling and from the adjoining balcony.

11. *The proposal fails to comply with the 8m and 7.5m building height elevations and sections. The development will result in an unacceptable precedence for bulky foreshore developments. Prior to any approval a request is made for the applicant to provide height poles on the subject site which accurately locates the extent of the additional storey.*

Officers Comments: The extent of the buildings compliance with Council's height controls is addressed below. Generally speaking the development does not comply with the maximum height or storeys provisions of Ryde DCP 2010.

The applicant responded to the request for height poles to be constructed on the subject site by stating (in part):

"I will not erect height poles as I cannot make the finished roof any lower and I am 3 metres below the maximum. The direct views for the properties in the rear will be impaired. Measuring them 20 different ways will not change the facts. The building form is minimal as required to meet the Tenacity vs Warringah ruling in the LEC."

12. *The description of the development by the applicant as being (in part) a "first floor addition" is misleading. The proposal when viewed from the waterway would be 4 storeys in appearance.*

Officers Comments: The additional floor on top of the existing dwelling will be 3 storeys in height and section which does not comply with Council's requirements.

13. *The Statement of Environmental Effects erroneously refers to a maximum permissible height of 9.5m, whereas the proposal has a continuous parapet and the maximum 8m height provision applies with a max. 7.5m high wall height.*

Officers Comments: The extent of the proposal's compliance with Council's requirements is addressed later in this report (see compliance tables below). The 9.5m height limit is a requirements of the Ryde LEP 2010, while the wall height and parapet height limits are controls imposed by the Ryde DCP.

14. *The site area of the subject site has been miscalculated and therefore represents an overdevelopment of the site. Also, the setback from the southern elevation is within the minimum 1.5m setback requirement.*

ITEM 4 (continued)

Officers Comments: Survey plans provided by the applicant confirm the site area as 1016m² (see calculations below). The maximum FSR and setback requirements complies with Council's controls.

The part of the development to which the objector refers is the amended entrance level of the building which is to become wider and which will be set back 1.2m from the southern side boundary (for a lateral distance of 5.5m). Because this part of the dwelling is only single storey (at that point), and does not contain a residential level immediately below that point, the minimum setback requirement of 900mm is compliant.

15. *The bulk, height and scale of the development is an overdevelopment of the site and does not comply with Council's guidelines and DCP in terms of the adverse affect upon the amenity of adjoining properties.*

Officers Comments: Agreed. The proposal is generally considered be an overdevelopment of the site and does not comply with a number of Council's requirements as detailed in this report.

16. *Potential for dwelling to be used as two distinct residences.*

Officers Comments: The internal configuration of the proposed residence does not lend itself to be easily converted into two fully-equipped residences. Were the application to be approved, it could be conditioned to be used as a single residence.

17. *The development should have been advertised as an 'integrated development' being within 40m of the waterway, and therefore the notification period should have been 30 days.*

Officers Comments: 'Integrated development' is development (not being State significant development or complying development) that in order for it to be carried out, requires development consent and approval from a concurring authority. Developments within 40m of a waterway were previously classified as 'Integrated Development', however this legislation has since been amended to exclude such works associated with a dwelling. In this case the development proposal does not require the approval of any concurring authority and does not therefore constitute 'integrated development'.

18. *The proposed development does not specify placement or location of air conditioning units on the roof which may further impact upon view loss.*

Officers Comments: Were the application to be approved by Council, an appropriate condition of consent could be imposed to ensure that such utility structures were not located on the roof.

ITEM 4 (continued)

Additional issues raised in submission from No. 60 Pellisier Road ('Hazelville'):

19. *The development is adjacent to a Council listed heritage item (being Hazelville) and the impact on the current curtilage/public views from the water and other properties from the other side of Morrison Bay to the heritage property would be significant, in that it would be totally hemmed in and blocked from public view by the development. Hazelville was the original house on the peninsula, given its prominent position and was visible from all around the foreshore areas and has expansive unrestricted views over Morrison Bay prior to all current developments. The proposal would be a significant detriment to the heritage value on Hazelville, which was heritage listed by Ryde Council for the benefit of future generations.*

Officers Comments: The owner/s of No. 60 Pellisier Rd have also submitted (under separate cover) a heritage assessment of their property undertaken by Robert A Moore Pty Ltd (Architects and Conservation Consultants). A copy of this heritage assessment is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors.

Issues associated with the heritage significance of No. 60 Pellisier Rd, and the detrimental affect that the development proposal may have on that significance has been reviewed by Council's Team Leader, Strategic Planning whose comments are provided in details later in this report (see Referrals section).

Council's Team Leader, Strategic Planning found that the visual and physical connection from the heritage item to Morrison Bay contributes to its significance, but that views from the Bay to the item do not contribute to its significance because the item is not easily viewable and is obscured by recent additions.

20. *Due to the location of the subject site adjoining an existing heritage item, the subject application should be accompanied with a heritage impact report. The information provided within the Statement of Environmental Effects is inadequate and has not been done by a heritage consultant.*

Officers Comments: In accordance with clause 5.10(5) of the Ryde LEP 2010, Council may request a heritage impact statement to be prepared where the development is within the vicinity of a heritage item or conservation area. It is however not a mandatory requirement. An assessment of the impact of the development proposal upon the heritage significance of the adjoining site has been undertaken by Council's Team Leader, Strategic Planning (see Referrals section below).

ITEM 4 (continued)

Having regard to the nature of the development, the circumstances of the case and the adverse impact that the proposal will have on adjoining and surrounding properties, it was not considered that the submission of a detailed heritage report by the applicant would serve any practical support of the development, particularly when considering the numerous non-compliances with existing state and local controls, and the overall adverse affect upon amenity and view loss of other adjoining properties (including the heritage item).

21. *The proposed upper level addition will completely block our direct views (whether seated or standing) from all living areas (kitchen, dining room and outdoor living area) and further block the current public view from Morrison Bay foreshore towards and of our heritage property. (Refer photos below)*



ITEM 4 (continued)

Officers Comments: Although the extent of impact of the proposed development as depicted in the photo above has not been confirmed, a site inspection of No. 60 Pellisier Road has been undertaken and the impact upon the loss of views will be 'severe' to 'devastating' (see detailed assessment of view loss later in this report).

Briefly, the only existing water views enjoyed from No. 60 Pellisier Road is currently enjoyed over the top of the subject site. The development proposal will result in the loss of all existing water views from the rear habitable rooms of the heritage item.

22. *The Council listed Port Jackson fig tree located at the rear of No. 60 Pellisier and immediately adjoining the boundary with the subject site (No. 64 Pellisier) would be significantly impacted by the development and would be likely to be sought to be trimmed and cut by the applicant in the future given the proximity of the canopy to the proposed new verandahs and top deck. The tree has been recently and in the past trimmed by the applicant, changing the shape of the canopy and any proposal should be assessed based on the then existing canopy.*

Officers Comments: The impact of the proposal on the existing fig tree has been assessed by Council's Landscape Architect who has stated that the location of the column, shown on the lower floor plan which is within the structural root zone of the Port Jackson Fig is to be determined subject to the advice of a project arborist who shall ensure the final location [of the column] is free of any significant structural roots and minimises construction impacts. In addition the project arborist shall provide advice for minor canopy pruning to establish building clearances, which should not include the removal of significant woody branches (see Referrals section below).

23. *The development will present a blank 'factory' wall towards our premises which is unsightly and not in line with the visual aesthetics of surrounding waterfront properties.*

Officers Comments: The development proposal from an aesthetic viewpoint (if approved) is otherwise considered to be reasonably consistent with the architectural style of the existing dwelling.

24. *The new balconies and privacy screens along the northern elevations will further block water views from both the living areas and rumpus room.*

Officers Comments: Agreed. The extension of the building envelope at the rear of the development and the location of the new balconies will further inhibit the water views currently enjoyed from the objectors site.

25. *The proposed cabana, together with the existing awning over the pool plus the new boat shed and existing double garage exceed Council's requirements for 'outbuildings'.*

ITEM 4 (continued)

Officers Comments: The extent of the proposal's compliance with Council's requirements is addressed later in this report. In short, the proposed cabana together with the previously approved boatshed would not comply with Council's requirements regarding the total permissible area of all outbuildings on a site.

26. *The view analysis provided appears to be incorrect and does not show the full extent of the proposed development. This report should include plotting of elevations, maximum heights of building and maximum ceiling height.*

Officers Comments: Agreed. The view assessment submitted with the application is not considered to be detailed or thorough enough to be able to accurately determine the full extent of view loss from all of the neighbouring and adjoining properties.

27. *Privacy impacts of existing (unapproved) structures like the existing awning adjoining the pool and the new wooden fence should be treated as 'new' and not 'existing'.*

Officers Comments: The location of the 'existing' awning immediately adjoining the swimming pool appears to have been constructed without development consent. In accordance with SEPP (Exempt and Complying Development Codes) 2008, a cabana is exempt development provided it has an area of not more than 20m² and is located 900mm from any property boundary which appears would comply in this case.

The detailed assessment of this development proposal has taken into consideration all existing and previously approved buildings (see detailed assessment below).

28. *The SEE states that overall land size is 1016m² with an allotment area (excluding access handle) is 891.7m². DCP calculations show a site area of land suitable for the footprint of a dwelling to be approx. 820m² (excluding garage and driveway). As such, the proposed development does not comply with FSR and site coverage requirements of the DCP.*

Officers Comments: A detailed assessment of the development proposal and its compliance with Council's controls is provided later in this report. In accordance with the requirements of Council's LEP and DCP, floor space and site coverage requirements are calculated as a ratio against the entire site area (inclusive of the access handle).

Notwithstanding the above, the total gross floor area of all building works proposed and approved on the site have a total floor area of 390m² which would be a total FSR of 0.48:1 based on a developable site area of 820m² and which would otherwise comply with Council's requirements regarding FSR (being less than 0.5:1).

ITEM 4 (continued)

29. *The plans do not show any stormwater details to comply with Council's current controls.*

Officers Comments: The suitability of the development proposal and its ability to comply with Council's requirements with respect to stormwater drainage is addressed by the comments received from Council's Development Engineers (see Referrals section below).

8. SEPP1 (or clause 4.6 RLEP 2010) objection required?

Not required for this application.

9. Policy Implications

Relevant Provisions of Environmental Planning Instruments etc:

(a) Ryde Local Environmental Plan 2010

Zoning

The subject site is zoned *R2 – Low Density Residential* under the provisions of the Ryde LEP 2010. The proposed works are permissible with the consent of Council.

Aims and objectives for residential zones

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood.*
- *To ensure that new development complements or enhances the local streetscape.*
- *To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.*
- *To ensure that land uses are compatible with the character of the area and responsive to community needs.*

ITEM 4 (continued)

It is considered that the development proposal generally does not fulfil the aims and objectives of the LEP for the following reasons:

- The height and number of storeys of the development proposal is generally consistent with the character of the surrounding area but will result in a significant adverse affect upon the amenity of immediately surrounding properties by virtue of overlooking and loss of views.
- Having regard to the topography of the site, the development fails to provide for a predominantly two-storey dwelling and is partly 3-storey in section, and presents as a 4-storey dwelling when viewed from the water.

Mandatory Requirements

Ryde LEP 2010	Proposal	Compliance
4.3(2) Height		
9.5m	9–9.5m (max)	Yes
4.4(2) & 4.4A(1) FSR		
0.5:1	Basement: 40.6m ² Lower Ground: 55.7m ² Entry Level: 196.2m ² Additional floor: 63.45m ² Cabana + boatshed: 34m ² Total (Gross Floor Area): 389.95m ² (0.38:1)	Yes

Clause 4.3 Height of buildings, specifies the height of a building on any land is not to exceed the maximum height shown on the '*Height of Buildings Map*'. Objectives of this clause are:

- (a) to maintain desired character and proportions of a street within areas,
- (b) to minimise overshadowing and ensure a desired level of solar access to all properties,
- (c) to enable the built form in denser areas to create spatial systems that relate to human scale and topography,
- (d) to enable focal points to be created that relate to infrastructure such as train stations or large vehicular intersections,
- (e) to reinforce important road frontages in specific centres.

ITEM 4 (continued)

Due to the site being a 'battleaxe' allotment, objectives (a), (d) and (e) are not applicable in this case.

Although the extent of additional overshadowing provided by the development is within the tolerable requirements of Council's DCP, the additional storey will inhibit access to natural daylight to the immediately adjoining property to the south of the site (No.64A Pellisier). Also, due to the location of the site being on the waterfront, the additional storey will generally create an 'enclosed' feeling to those residents who have frontage to Pellisier Road and who currently enjoy water views over the subject site. Consequently, the development is considered to be overbearing in its height and design and does not respond well to the topography of the site.

Clause 4.4 Floor space ratio specifies the maximum floor space ratio (FSR) for a building on any land is not to exceed the FSR shown on the '*Floor Space Ratio Map*'. Objectives of this clause are:

- (a) *to provide effective control over the bulk of future development,*
- (b) *to allow appropriate levels of development for specific areas,*
- (c) *to enable the consent authority to assess and respond appropriately to future infrastructure needs.*

Despite the proposal's compliance with the numeric FSR requirements, the bulk of the proposed building is considered to be excessive especially when viewed from the waterfront. This bulk is further exacerbated by the partial 3-storey component and wall plate height which does not comply with Council's DCP requirements.

Although the development proposes a bulk and scale which is otherwise reasonably consistent with surrounding dwellings, it is however the location of the additional floor space which results in an inappropriate level of development for the site due to its significant adverse affect upon the amenity of the surrounding properties (including their view loss), and thereby does not adequately fulfil the objectives of this clause.

Clause 5.10 Heritage conservation, lists objectives of heritage conservation which includes not only to conserve the environmental heritage of Ryde, but also "*to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views*"

It is considered that the proposal will have an adverse affect upon the conservation of views to and from the existing heritage item at No. 60 Pellisier Rd, which will in turn have an overall significant detrimental impact upon its heritage significance.

Clause 5.10(5) Heritage impact assessment, specifies that Council may, before granting consent to any development on land within the vicinity of either a heritage item or conservation area, require the preparation and submission of a heritage impact statement that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage

ITEM 4 (continued)

conservation area concerned. It is however not a mandatory requirement. While an assessment of the impact of the development proposal upon the heritage significance of the adjoining site has been undertaken by Council's Team Leader, Strategic Planning (see Referrals section below).

Under the heading of "heritage", the Statement of Environmental Effects provided with the application only briefly states "*that the proposed additions will have minimal impact on the views of the existing cottage [being No. 60 Pellisier Rd], as the existing trees and buildings surrounding the area obstruct existing views from the water.*"

The owner/s of the identified heritage item at No. 60 Pellisier Rd, have submitted to Council an assessment undertaken by Robert Moore (Heritage Consultant) which emphasises the significance of the site when viewed from the adjoining waterway.

In his statement dated 21 December 2011, part of the justification of the heritage significance of the site when viewed from the waterway is argued by Mr Moore as follows:

Most importantly, the house bears witness to the early development of the locality in which the relationship with the adjoining limb of Sydney Harbour, Morrison Bay, was of immense practical and symbolic importance. The Harbour was still a principal means of transport to and from the cities of Sydney and Parramatta, and the views to the city afforded connection and no doubt comfort from what was then a "remote" locality. The visual connections of the house to the water, and the views to and from the house in its larger setting are still of heritage significance notwithstanding the intense subdivision that has occurred around it. If anything this lends an added importance to the maintenance of what is left...

The important remnant view from your verandah – where it would be appreciated by most visitors to the home – to the Bay and views of the house from the water and across the Bay, will be eclipsed. This will diminish the heritage significance of your home, in my opinion, which is contrary to the aims and objectives of Ryde Council's planning controls...

In summary, it is my opinion that the heritage value of your home will be adversely affected by the proposal, and that the amenity of the home will also be affected by view loss and the increased intrusive bulk and scale of the proposed new top level to No. 64 in particular...

The heritage opinion presented above is generally concurred with except for the significance of the view to the heritage site from the water, the significance of which is not generally agreed with by Council's Team Leader, Strategic Planning.

ITEM 4 (continued)

Provision	Proposal	Compliance
<p>conforms closely to the shore, that development maximises open and unobstructed waterways and maintains and enhances views to and from waters in this zone</p> <p>(c) To restrict development for permanent boat storage and private landing facilities in unsuitable locations</p> <p>(d) To allow water-dependent development only where it can be demonstrated that it meets a demonstrated demand and harmonises with the planned character of the locality</p> <p>(e) To ensure that the scale and size of development are appropriate to the locality and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or areas of public access</p>	<p>Boatshed approved under LDA2011/168.</p> <p>Considered under LDA2011/168.</p> <p>When viewed from the waters in the W8 zone, the development is considered will neither improve the natural or cultural scenic quality of the surrounding area due to its bulk, scale and 3-4 storey (visual) height.</p>	<p>N/A</p> <p>N/A</p> <p>No</p>
<p>Matters for Consideration</p>		
<p><i>Cl. 21 Biodiversity, Ecology and Environmental Protection</i></p> <p>(a) Development should have neutral or beneficial effect on quality of water entering waterways</p> <p>(b) Development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and</p>	<p>Neutral effect on water quality.</p> <p>Proximity of development from water would not affect existing vegetation in the waterway.</p>	<p>Yes</p> <p>Yes</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)		
(c) Development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)	N/A	N/A
(d) Development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access	No impact. Works will all be above MHWM and will not increase access to that which has already been previously approved (ie: boatshed LDA2011/168).	Yes
(e) Development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation	None affected by proposal.	N/A
(f) Development should retain, rehabilitate and restore riparian land	No detrimental impact by proposal.	Yes
(g) Development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetation buffer to protect the wetlands	Development will not affect the ecological integrity of adjoining wetlands.	Yes
(h) The cumulative environmental impact of development	No significant impact	Yes
(i) Whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance	Located above impact zone. Sediments in adjoining waterway will not be disturbed.	Yes

ITEM 4 (continued)

Provision	Proposal	Compliance
<p><i>Cl. 22 Public Access to, and Use of, Foreshores and Waterways</i></p> <p>(a) Development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation</p> <p>(b) Development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation</p> <p>(c) If foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land</p> <p>(d) The undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided.</p> <p>(e) The need to minimise disturbance of contaminated sediments</p>	<p>There is no existing public use of this part of the foreshore. Access to public will not be made any worse than existing.</p> <p>Proposal will not impede or alter existing public access to river.</p> <p>Land below high water mark remains available for public access (by boat).</p> <p>None proposed</p> <p>Located on land & will not disturb (any) contaminants in water.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>
<p><i>Cl. 24 Interrelationship of Waterway and Foreshore Uses</i></p> <p>(a) Development should promote equitable use of the</p>	<p>Proposal will not inhibit or prevent equitable use of</p>	<p>Yes</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
waterway, including use by passive recreation craft (b) Development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses	waterway by recreation craft. Private use only	Yes
(c) Development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore	Private use only by owner	Yes
(d) Water-dependent land uses should have propriety over other uses	N/A	N/A
(e) Development should avoid conflict between the various uses in the waterways and along the foreshores	No change to existing use of site & waterway	Yes
Cl. 25 Foreshore and Waterways Scenic Quality		
(a) The scale, form, design and siting of any building should be based on an analysis of:	Scale considered bulky and excessive in context of existing and neighbouring dwellings.	No
(I) the land on which it is to be erected, and	Proposal represents an overdevelopment of the existing land in terms of scale and bulk.	No
(II) the adjoining land, and	Numerous adverse effects upon adjoining land incl. overlooking and loss of existing water views.	No
(III) the likely future character of the locality	No change to existing character.	Yes
(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries	The visual qualities of the foreshore will be maintained due to location of the proposed development within the residential zoned part of	Yes

ITEM 4 (continued)

Provision	Proposal	Compliance
(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores	the site. N/A – the proposal is not 'water-based' development.	N/A
<p>Cl. 26 Maintenance, Protection and Enhancement of Views</p> <p>(a) Development should maintain, protect and enhance views (including night views) to and from Sydney Harbour</p> <p>(b) Development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items</p> <p>(c) The cumulative impact of development on views should be minimised</p>	<p>N/A</p> <p>The development will significantly adversely affect views & vistas from the adjoining heritage item (No. 60 Pellisier Rd).</p> <p>Detrimental cumulative impact upon views enjoyed by adjoining properties.</p>	<p>N/A</p> <p>No</p> <p>No</p>
Wetlands Protection Area		
<p>Cl.61 Objectives</p> <p>(a) to preserve, protect and encourage the restoration and rehabilitation of wetlands,</p> <p>(b) to maintain and restore the health and viability of wetlands</p> <p>(c) to prevent the fragmentation of wetlands</p> <p>(d) to preserve the scenic qualities of wetlands</p> <p>(e) to ensure that wetlands continue to perform their</p>	<p>The proposal will not affect the existing wetlands by virtue to its location within the existing developable part of the site.</p> <p>N/A – for reasons above</p> <p>N/A – for reasons above</p> <p>The scenic qualities of any remnant wetlands will become restricted from adjoining properties.</p> <p>N/A – for reasons above</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
<p>development would not adversely affect the wetland or wetlands protection area, and</p> <p>(b) The proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with this subclause and that development consent is not otherwise required by this plan.</p>	<p>not adversely affect the existing wetland or wetlands protection area.</p> <p>Consent has been sought by the lodgement of the current DA.</p>	<p>Yes</p>
<p>Cl. 63 Matters for Consideration</p> <p>(2) The matters to be taken into consideration are as:</p> <p>(a) The development should have a neutral or beneficial effect on the quality of water entering the waterways,</p> <p>(b) The environmental effects of the development, including effects on:</p> <p>(i) the growth of native plant communities,</p> <p>(ii) the survival of native wildlife populations,</p> <p>(iii) the provision and quality of habitats for both indigenous and migratory species,</p> <p>(iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the</p>	<p>Proposal would not result in any additional adverse effect upon water quality.</p> <p>No impact on plant community.</p> <p>None affected by proposal.</p> <p>None affected by proposal.</p> <p>Water drained to site then dispersed through soil</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
<p>surrounding areas, including salinity and water quality and whether the wetland ecosystems are groundwater dependant,</p>		
<p>(c) Whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment.</p>	<p>Water drained to site then dispersed through soil.</p>	<p>Yes</p>
<p>(d) Whether carrying out the development would be consistent with the principles set out in <i>The NSW Wetlands Management Policy</i> (as published in March 1996 by the then Department of Land and Water Conservation).</p>	<p>Proposal will not adversely affect any wetland areas.</p>	<p>Yes</p>
<p>(e) Whether the development adequately preserves and enhances local native vegetation,</p>	<p>N/A</p>	<p>N/A</p>
<p>(f) Whether the development application adequately demonstrates:</p>		
<p>(i) how the direct and indirect impacts of the development will preserve and enhance wetlands, and</p>	<p>Adjoining and on top of existing dwelling & will not impact on wetlands or sea vegetation.</p>	<p>Yes</p>
<p>(ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and</p>	<p>As above</p>	<p>Yes</p>
<p>(iii) how soil erosion and siltation will be minimised both while the development is being carried out and after it is completed,</p>	<p>Erosion and siltation will not be affected by the DA.</p>	<p>Yes</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
and		
(iv) how appropriate on-site measures are to be implemented to ensure that the intertidal zone is kept free from pollutants arising from the development, and	N/A	N/A
(v) that the nutrient levels in the wetlands do not increase as a consequence of the development, and	The development will not result in an increase in nutrient levels in any surrounding wetlands.	Yes
(vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and	N/A	N/A
(vii) that the development minimises physical damage to aquatic ecological communities, and	The proposal should not adversely affect any existing ecological communities.	Yes
(viii) that the development does not cause physical damage to aquatic ecological communities,	See above	Yes
(g) Whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any surrounding wetlands.	N/A.	N/A

A Development Control Plan has been prepared to support the REP (see below).

Sydney Harbour Foreshore & Waterways Development Control Plan:

Compliance with the relevant provisions is illustrated in the table below.

ITEM 4 (continued)

Provision	Proposal	Compliance
<i>Cl. 2-Ecological Communities and Landscape Characters:</i>		
<ul style="list-style-type: none"> ○ Urban Development with Scattered Trees (low status): - Conserve and enhance vegetation - Minimise risk of predation on native fauna by domestic pets. - Minimise impacts of soil erosion, water siltation and pollution. 	<p>Existing vegetation to be conserved on the site.</p> <p>Risk minimised by virtue of limited access to waterway.</p> <p>Proposal would not increase likelihood of soil erosion.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<ul style="list-style-type: none"> • Aquatic Ecological Community: ○ Mudflats (medium status): - To minimise impacts on communities from shading. - To minimise effects from reclamation where it provides the optimum environmental outcome. - To minimise the effects from urban run-off. - To minimise the effects from dredging. 	<p>Proposal will not adversely affect mudflats with additional shading.</p> <p>N/A</p> <p>The extent of the proposed development would not increase urban run-off.</p> <p>N/A</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>N/A</p>
<i>Cl. 3 Landscape Character Type 14</i>		
<p>Performance Criteria:</p> <ul style="list-style-type: none"> • Consideration given to cumulative and incremental effects of further development along foreshore and to preserving the remaining special features. • Development to avoid substantial impact on landscape qualities of foreshore and minimise removal of natural foreshore vegetation, radical alteration of 	<p>Existing foreshore features would not be affected by the proposed development.</p> <p>Proposal would not lead to adverse impact on existing natural foreshore vegetation.</p>	<p>Yes</p> <p>Yes</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
natural ground levels, dominance of structures protruding from rock walls or ledges or the erection of sea walls, retaining walls or terraces. <ul style="list-style-type: none"> • Landscaping between buildings to soften the built environment; • Existing ridgeline vegetation and its dominance as backdrop to waterway, is retained. 	Limited existing landscape to soften building appearance. N/A	N/A N/A
Cl. 4 Water Based and Land/Water Interface Developments	N/A	N/A
Cl. 5 Land Based Developments		
5.2 Foreshore access		
<ul style="list-style-type: none"> • Maintain, encourage and secure public access along foreshore and intertidal zone • If possible provide linkage through streets where foreshore access cannot be achieved 	Foreshore access not affected by development proposal. N/A	N/A N/A
<ul style="list-style-type: none"> • Boardwalks not recommended. May be acceptable in certain circumstances. 	N/A	N/A
5.3 Siting of Building and Structures		
<ul style="list-style-type: none"> • Maintain foreshore building lines and observe the following: <ul style="list-style-type: none"> ○ where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbing it; 	Proposal to be built on existing building envelop or on land previously developed (ie pool area).	N/A
<ul style="list-style-type: none"> ○ buildings should address the waterway; 	Building faces/addresses the waterway.	N/A
<ul style="list-style-type: none"> ○ buildings should not obstruct views and vistas from public places to the waterway; 	Obstruction of views from existing public places will be limited.	Yes
<ul style="list-style-type: none"> ○ buildings should not obstruct 	N/A – Putney Wharf	N/A

ITEM 4 (continued)

Provision	Proposal	Compliance
<p>views of landmarks and features identified on the maps accompanying this DCP,</p> <ul style="list-style-type: none"> ○ where there are cliffs or steep slopes, buildings should be sited on the top of the cliff or rise rather than on the flat land at the foreshore. 	<p>Building works will not take place along foreshore.</p>	<p>Yes</p>
<p>5.4 Built Form</p>		
<ul style="list-style-type: none"> • Buildings and other structures generally be of a sympathetic design to their surroundings; well designed contrasts, considered where they enhance the scene. Following guidelines to reinforce local council requirements: ○ where buildings of contrasting scale or design to existing buildings, care needed to ensure contrast would enhance setting; ○ where undeveloped ridgelines occur, buildings should not break these unless a backdrop of trees; ○ while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with surroundings. Preferable to break up facades and roof lines into smaller elements and to use pitched roofs. ○ walls and fences should be kept low enough to allow views of private gardens from waterway; ○ bright lighting and especially floodlighting which reflects on the water can cause problems with night navigation and 	<p>Development out of scale with surrounding development by virtue of its bulk, scale and height.</p> <p>N/A</p> <p>Rectangular 'boxy' shaped upper floor addition will not harmonise with existing surrounds.</p> <p>N/A</p> <p>N/A</p>	<p>No</p> <p>N/A</p> <p>No</p> <p>N/A</p> <p>N/A</p>

ITEM 4 (continued)

Provision	Proposal	Compliance
<p>should be avoided. External lights should be directed downward, away from the water.</p> <ul style="list-style-type: none"> ○ use of reflective materials is minimised and relevant provisions of BCA are satisfied. ○ colours to be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3 of this DCP; ○ cumulative visual impact of a number of built elements on a single lot mitigated through bands of vegetation and by articulating walls and using smaller elements; ○ the cumulative impact of development along the foreshore is considered having regard to preserving views of special natural features, landmarks or heritage items. 	<p>N/A (can be conditioned if required)</p> <p>Colours sympathetic to existing building.</p> <p>Cumulative visual impact cannot be mitigated by vegetation. Articulation of side walls limited and does not reduce overall bulk.</p> <p>Cumulative impact will adversely affect adjoining views and existing heritage item identified by Ryde LEP 2010.</p>	<p>N/A</p> <p>Yes</p> <p>No</p> <p>No</p>

(c) Any draft LEPs

None applicable.

(d) Any DCP (e.g. dwelling house, villa)

City of Ryde Development Control Plan 2010:

Part 3.3 – Dwelling Houses and Duplex Buildings

Part 7.2 – Waste Minimisation and Management

Part 8.2 – Stormwater Management

Part 9.2 – Access for People with Disabilities

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
Part 3.3 – Dwelling Houses and Duplex Buildings		
Desired Future Character		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is generally consistent with the character of the existing residential area.	Yes
Dwelling Houses		
<ul style="list-style-type: none"> - To have a landscaped setting which includes significant deep soil areas at front and rear. - Maximum 2 storeys. - Address street, public and private space is to be clearly articulated - Dwelling to respond appropriately to the site's constraints & opportunities as identified in the site analysis. 	<p>Landscaped setting provided with existing deep soil landscaping at rear only (due to battleaxe allotment)</p> <p>Partly 3 storeys N/A</p> <p>Development does not respond to existing topography – additional floor area could be added to site with less adverse impact upon surrounding properties.</p>	<p>Yes</p> <p>No N/A</p> <p>No</p>
Public Domain Amenity		
Streetscape		
<ul style="list-style-type: none"> - Site design, setbacks and height are to respect the existing topographic setting. - The design of front gardens is to complement and enhance streetscape. - Front doors and windows are to face the street. Side entries to be clearly apparent. - Orientation to match existing buildings in streetscape. 	<p>The dwelling design and height does not accord with existing topography. N/A – no front garden.</p> <p>N/A – redesigned entry remains on side as existing.</p> <p>Orientation towards water matches existing and adjoining residences.</p>	<p>No</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>
Public Views and Vistas		
<ul style="list-style-type: none"> - A view corridor is to be provided along at least one side allotment boundary 	Existing view over the top of the existing dwelling will be removed – no alternate	No

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
where there is an existing/potential view of water. - Landscaping is not to restrict views. Fence 70% open where height is >900mm. - View corridors in battleaxe allotments are to be co-ordinated with the front allotment. - Landscape elements such as ancillary structures, plantings, are not to restrict views. - Garages/ carports and outbuildings are not to be located within view corridor if they obstruct view.	corridor provided Landscaping will not restrict views. Water views of street facing residence/s will be adversely affected – no coordination. Proposed cabana will restrict views from habitable rooms of adjoining property (No. 64A) Existing garage does not obstruct view corridors.	Yes No No Yes
Site Configuration		
Deep Soil Areas - 35% of site area min. - Min 8x8m deep soil area in backyard.	210m ² (20%) 8 m x 8m (+ swimming pool)	No Yes
Topography & Excavation		
Building form and siting are to relate to original topography	NB: The subject site has a 8.3m fall from the “front” (western) boundary to the “rear” waterfront (eastern) corner. Additional storey does not adequately relate to original topography – overall height is not minimised.	No
Cut and fill within and outside building footprint.	N/A – there is no additional cut and fill proposed beyond that which already exists on the site.	N/A
Floor Space Ratio (for both dwellings)		
Basement	40.6m ²	
Lower Ground	55.7m ²	

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
Entry Level	196.2m ²	
New Floor	63.45m ²	
Cabana/boatshed	34m ²	
Garage (< 36m ²) – not included in total GFA or FSR	28.85m ²	
Total (Gross Floor Area)	389.95m ²	
FSR (max 0.5:1) or 508m²	0.384:1	Yes
Height – (Dwelling)		
- 2 storeys maximum	Partly 3 storeys.	No
Wall plate (Ceiling Height) - 7.5m max above FGL or - 8m max to top of parapet <i>NB: TOW = Top of Wall EGL = Existing Ground Level FGL = Finished Ground Level</i>	Upper floor TOW: RL 13.55 (ceiling) FGL/NGL below: RL 5.09 TOW Height (max)= 8.46m Entry level TOW: RL 10.55 (ceiling) FGL/NGL below: RL 2.44 TOW Height (max)= 8.11m	No No
8m Overall Height (for roof with continuous parapet) <i>NB: EGL = Existing Ground Level</i>	Max point of dwg: RL 13.95 EGL below ridge (lowest point): RL 5.09 Overall Height (max): 8.86m	No
Habitable rooms to have 2.4m (min) floor to ceiling height.	2.4m (min)	Yes
Height – (Cabana)		
4.5m (max height for all outbuildings)	Overall Height (max): 2.6m	Yes
Setbacks		
Side		

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
<p>Single storey dwelling</p> <ul style="list-style-type: none"> - 900mm to wall (includes balconies etc) 	<p>1m (to single storey component – southern elevation/entry)</p>	<p>Yes</p>
<p>Two storey dwelling</p> <ul style="list-style-type: none"> - 1500mm to wall (includes balconies etc) 	<p>1.8m (min)</p>	<p>Yes</p>
<p>Rear</p> <ul style="list-style-type: none"> - 8m to <u>rear of dwelling</u> OR 25% of the length of the site, whichever is greater. 	<p>25 – 30m (50 – 52%)</p>	<p>Yes</p>
<p>Outbuildings</p>		
<ul style="list-style-type: none"> - The use of outbuildings is to be ancillary to the residential use of the dwelling. 	<p>Proposed cabana is ancillary to the residential use of the dwelling.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - The total area for all outbuildings is not to exceed 20m². 	<p>Cabana + boatshed: 34m².</p>	<p>No</p>
<ul style="list-style-type: none"> - Outbuildings cannot be erected between the street alignment and the front building alignment of the dwelling. 	<p>Cabana located in rear yard.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - The design and materials of outbuildings are to complement the existing dwelling. 	<p>Design consistent with dwelling.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - An outbuilding may contain a toilet, shower and hand basin but cannot contain a bar, sink or any other kitchen facilities. 	<p>No internal facilities.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - An outbuilding may be located on the side or rear boundary so long as the external wall is maintenance free and there is no eaves overhang. 	<p>3m (min) setback from side boundary.</p>	<p>Yes</p>
<ul style="list-style-type: none"> - The windows of outbuildings are to be at 	<p>No side windows.</p>	<p>Yes</p>

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
least 900mm away from a boundary. - Outbuildings are not to adversely affect the privacy and/or amenity of neighbours. - Outbuildings are not to be located in view corridors to the water. - An outbuilding is not to be used as a dwelling.	Cabana will not adversely affect the privacy or amenity of any neighbours. Located in partial view corridor/s. No potential for use as dwelling	Yes No Yes
Landscaping		
Trees & Landscaping - Major trees retained where practicable - Physical connection to be provided between dwelling and outdoor spaces where the ground floor is elevated above NGL eg. stairs, terraces. - Obstruction-free pathway on one side of dwelling. - Back yard to have at least 1 tree with mature ht of 15m and a spreading canopy. - Hedging or screen planting on boundary mature plants reaching no more than 2.7m.	All existing major trees retained. Physical connection provided at rear. Obstruction free pathway on both sides of dwelling. Back yard: no mature trees. Screen planting provided where site permits.	Yes Yes Yes N/A Yes
Dwelling Amenity		
Daylight and Sunlight Access - Living areas to face north where orientation makes this possible. <u>Subject Dwelling:</u> - Subject dwelling north facing windows are to receive at least 3hrs of sunlight to a portion of their surface between 9am and	Site faces E-W. Dwelling designed to maximise internal light penetration. 3+ hours to north facing windows	Yes Yes

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
<p>3pm on June 21.</p> <ul style="list-style-type: none"> - Private open space of subject dwelling is to receive at least 2 hours sunlight between 9am and 3pm on June 21. <p><u>Neighbouring properties are to receive:</u></p> <ul style="list-style-type: none"> - 2 hours sunlight to at least 50% of adjoining principal ground level open space between 9am and 3pm on June 21. - At least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows between 9am and 3pm on June 21. 	<p>POS: receives 3⁺ hours of sunlight.</p> <p>Hours of sunlight to adjoining principal open space: 3+ hrs.</p> <p><3 hrs sunlight to adjoining <u>northern</u> facing windows. Can be justified due to location of property south of subject site.</p>	<p>Yes</p> <p>Yes</p> <p>N/A – Affected property lies directly south of subject site.</p>
<p>Visual Privacy</p> <ul style="list-style-type: none"> - Orientate windows of living areas, balconies and outdoor living areas to the front and rear of dwelling. - Windows of living, dining, family etc. placed so there are no close or direct views to adjoining dwelling or open space. - Terraces, balconies etc not to overlook neighbours. - Side windows offset from adjoining windows. 	<p>Living area windows and outdoor areas are orientated to the rear of dwelling.</p> <p>Windows are set back so no close or direct views to adjoining dwellings or private open space.</p> <p>Terrace faces rear – direct views over neighbours.</p> <p>Side windows offset.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p>
<p>View Sharing</p> <ul style="list-style-type: none"> - The siting of development is to provide for view sharing. 	<p>The siting of the development will adversely obstruct adjoining neighbour's views.</p>	<p>No</p>
<p>Cross Ventilation</p> <ul style="list-style-type: none"> - Plan layout is to optimise access to prevailing breezes and to provide for cross ventilation. 	<p>Plan layout optimises cross-ventilation.</p>	<p>Yes</p>

ITEM 4 (continued)

DCP 2010	Proposed	Compliance
External Building Elements		
Roof <ul style="list-style-type: none"> - Articulated. - 450mm eaves overhang minimum. - Not to be trafficable terrace. - Attic to be within roof space. - Skylights to be minimised and placed symmetrically. - Front roof plane is not to have both dormer windows and skylights. 	Articulated roof form. Flat roof with 500mm eaves. No trafficable roof terrace. No roof attic. No skylights. Front roof plane free of dormer windows and skylights	Yes Yes Yes Yes Yes Yes
Part 7.2 – Waste Minimisation & Management		
Submission of a Waste Management Plan in accordance with Part 7.2 of DCP 2010.	The applicant has submitted a Waste Management Plan in accordance with Part 7.2 of DCP 2010.	Yes
Part 8.2 – Stormwater Management		
Stormwater		
Drainage is to be piped in accordance with Part 8.2 - Stormwater Management.	The development proposal was referred to Development Engineers, who raised no objection against the proposal subject to appropriate conditions of consent.	Yes
Part 9.2 – Access for People with Disabilities		
Accessible path required from the street to the front door, where the level of land permits.	Level of land does not permit full accessibility of dwelling. Note: not been made worse.	Yes

ITEM 4 (continued)

10. Likely Impacts of the Development

Impact upon existing views from adjoining properties

The DCP requires building form and design to allow for view sharing where possible. Given the subjectivity of the issue, and having regard to the extent of objections made against the potential loss of views that may arise as a result of this development, it is appropriate that assessment of this matter should follow the four-step procedure established by the Land & Environment Court Planning Principle on View Loss (*Tenacity Consulting v Warringah Council [2004] NSWLEC 140 pars 23–33*).

The court adopted the following four step assessment of view sharing:

1. *The assessment of the views affected;*
2. *Consideration from what part of the property views are obtained;*
3. *The extent of the impact; and*
4. *The reasonableness of the proposal that is causing the impact.*

An assessment of the development proposal and its ability to comply with the above court principles is addressed below.

1. What views will be affected?

The Court said: “*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*”

Comment: Existing water views from the surrounding properties at Nos. 60, 62 and 62A Pellisier Road will be affected by the proposed additional storey on top of the existing dwelling house. Although the water views in this locality do not contain any “iconic” landmarks, the views are distinctive and highly valued.

2. From what part of the property are views obtained?

The Court said: “*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*”

ITEM 4 (continued)

Comment:

The affected water views from Nos. 60, 62 and 62A Pellisier Road is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors.

3. What is the extent of the impact?

The Court said: “The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

Comment: The extent of water view loss from No 60 Pellisier Road would best be described as either ‘severe’ or ‘devastating’. The only water view currently enjoyed from this site would be totally removed were the roof-top extension approved by Council.

The water view loss from Nos. 62 and 62A Pellisier Road would be best described as ‘moderate’.

4. What is the reasonableness of the proposal that is causing the impact?

The Court said: “The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment: The Court poses two questions in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23–33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

As the view loss is linked to non-compliances with Council’s height and maximum number of storeys development standards, even a minor extent of view loss is considered to be unreasonable.

ITEM 4 (continued)

Accordingly, the proposal is considered to be unacceptable with regard to the objectives and performance criteria under Part 3.3 of the Ryde DCP 2010 which will result in the loss of views contrary to the principles established by the Land and Environment Court.

11. Suitability of the site for the development

A review of Council's Map of Environmentally Sensitive Areas (held on file), identifies the site is as not being classified as a heritage item or subject to any natural constraints such as flooding or subsidence.

The design of the development proposal would need to be radically altered in order to achieve the maximum floor space potential of the site without adversely affecting the amenity and views of surrounding properties and also be able to comply with the maximum height a number of storeys provisions of Council's DCP.

12. The Public Interest

Having regard to the assessment contained in this report and in particular the adverse effect the development will have upon the neighbouring properties, it is considered that approval of the development is not in the public interest.

13. Consultation – Internal and External

Internal Referrals

Team Leader Strategic Planning (16 January 2012): Due to the proximity of the development proposal to an existing heritage item (Item No. 86, being No. 60 Pellisier Road), heritage advice was sought from Council's Team Leader Strategic Planning.

Council's Team Leader, Strategic Planning has recommended that the development not be approved and provided the following comments:

Heritage Listing:

<i>Heritage item:</i>	<i>No</i>
<i>In the vicinity of a heritage item</i>	<i>Yes, no. 86, 60 Pellisier Rd, Federation dwelling</i>
<i>Conservation area:</i>	<i>No</i>

Heritage Controls:

LEP2010 Clause 5.10 Heritage Conservation.

ITEM 4 (continued)



Heritage item at 60 Pellisier Rd –street view

Proposal:

It is proposed to construct a new additional fourth storey on the flat roof.

Documentation:

This comment responds to the submission by the owners of 60 Pellisier Road of a letter authored by Robert Moore who was the court appointed heritage expert in relation to a Development Application for the heritage item some years ago.

Mr Moore has a detailed knowledge of the immediate locale and the heritage item as a consequence of the court case. In relation to this DA proposal Mr Moore argues that:

“...important remnant views from [the] verandahto the bay and views of the house from the water and across the Bay will be eclipsed [by the proposal]. This will diminish the heritage significance of [the] home.”

Assessment of Heritage Impact:

On 11 January I visited the heritage item at 60 Pellisier Road and Morrison Bay. The owner gave access to rear the verandah and backyard.

I observed the following:

A fig tree partially blocks views from the house to Morrison Bay. The tree is listed on Council’s Significant Tree Register. As a result of the substantial tree the outlook to Morrison Bay from the rear of the heritage item is only available across the existing flat roof of the subject site. Any increase in height on that site will certainly reduce the views from the heritage item to Morrison Bay.

ITEM 4 (continued)



Remnant views of Morrison Bay across the roof of the subject site

Are views from the Heritage Item to Morrison Bay significant?

No 60 Pellisier Road was at one time part of a much larger site which connected to the Bay. Though now much reduced, the site runs down to the foreshore and includes a boatshed. There is some architectural evidence that the house may have had a “widow’s walk” though this is not conclusive. A widow’s walk traditionally functioned as an observation platform usually linked to views of the water. Its purpose was to allow widows access to the open air and views in privacy.

Based on its historic characteristics and links to the bay it is my opinion that the visual and physical connection from the Heritage Item at 60 Pellisier Road to the bay contributes its heritage significance. Due to its significance the existing fig tree may not be removed to afford views to the Bay. As a consequence views from the heritage item to the bay are only afforded across the subject property at 64 Pellisier Road.

Are views from the Bay to the Heritage Item Significant?

Views from the bay were considered from two vantage points - one at the end of Beach Street and the other from a contemporaneous heritage item at 139 Tennyson Road.

60 Pellisier Road (including the roof) is not visible from either vantage point. Photographs following highlight the location of 60 Pellisier Road in red.

Even if 60 Pellisier Road were visible from vantage points across the bay it would not be possible to appreciate any significant fabric as the rear of the heritage item has been obscured by a recent addition including family areas and a verandah.

ITEM 4 (continued)



Views of the rear verandah above



Views from 139 Tennyson Road above and right

ITEM 4 (continued)



Views from Beach Street above

Conclusion

The visual and physical connection from the heritage item at 60 Pellisier Road to Morrison Bay contributes to its significance. For this reason the development application is not recommended to proceed.

Views from the Bay to the item do not contribute to its significance as the item is not visible and even if it were; the item would be obscured by recent additions.

Landscape Architect (13 January 2012): Council's Landscape Architect has raised no objection to the application subject to 1 condition, and provided the following comments:

Further to my email advice dated 7 December, 2012, the site was accessed and inspected on the 5 December, 2011. The owner was in attendance at the inspection and explained in detail the nature of the work to be undertaken.

ITEM 4 (continued)



*The subject significant tree is a Port Jackson Fig (*Ficus rubiginosa*). The tree occurs on the adjoining property (No. 60 Pellisier Road) and abuts the common boundary of the development site, and is scheduled on council's Significant Tree Register:*

Port Jackson Figs are important remnant endemic canopy trees and this specimen is located approximately 25 metres from the shoreline. There are no implications for this application with respect to the significant tree register, which allows minor pruning, but requires a council resolution for the removal of any tree on the register. This application does not require the removal of the tree and is subject to only some very minor pruning, which can be dealt with as condition a of consent.

It is estimated that nearly 50% of the structural root zone (SRZ) occurs on the subject development site, mostly between the boundary fence and the existing pool. As can be seen from the attached photo almost all of this area is protected by the existing deck, so the tree is not adversely affected by the current use occurring within its SRZ. The use around the base of the tree will remain essentially the same following construction, therefore there are no new impacts to consider in this regard.

The construction impact of the proposal on the ground involves the location of a single post/column within the SRZ and this is seen as an incursion that can reasonably managed subject to appropriate arboricultural supervision.

ITEM 4 (continued)

The other potential impact is some pruning associated with the establishment of building clearances for the upper storey construction. The tree in the past has been pruned away from the present building envelope, therefore the nature of proposed pruning is relatively minor, and does not entail the removal of significant woody branches, and the current overall form and visual amenity of the tree will be maintained.

Conclusion

No objections to the development subject to the following condition.

Conditions

*The location of the column, shown on Lower Floor Plan 05, within the Structural Root Zone (SRZ) of the Port Jackson Fig (**Ficus rubiginosa**) is to be determined subject to the advice of a project arborist who shall ensure the final location is: 1) free of any significant structural roots; and, 2) minimises construction impacts. In addition the project arborist shall provide advice for minor canopy pruning to establish building clearances, which should not include the removal of significant woody branches.*

Development Engineer (24 October 2011): Council's Development Engineer has raised no objection to the application on drainage grounds subject to 3 conditions of consent.

14. Critical Dates

There are no critical dates or deadlines to be met.

15. Financial Impact

Adoption of the option outlined in this report will have no financial impact.

16. Other Options

An option available to Council would be to defer consideration of the current proposal and request the applicant submit amended plans that address the concerns of the neighbours and the non-compliance with planning controls.

Also, any amended proposal would be required to be accompanied by a detailed assessment of view loss and heritage impact assessment by a suitably qualified heritage consultant in terms of impact upon the heritage significance of No. 60 Pellisier Road, Putney.

ITEM 4 (continued)

17. Conclusion

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 and is generally considered unacceptable.

The main issues of concern is that the proposed development will not comply with Council's requirements with respect to the overall height and the maximum number of storeys which exceeds Council's DCP requirements and results in an unacceptable and adverse affect upon the amenity and extent of views currently enjoyed by adjoining properties.

Although the degree of view loss varies, one particular site (No. 60 Pellisier Rd), which also happens to be a heritage item under Council's LEP, will lose all of their existing water views currently enjoyed over the top of the subject site.

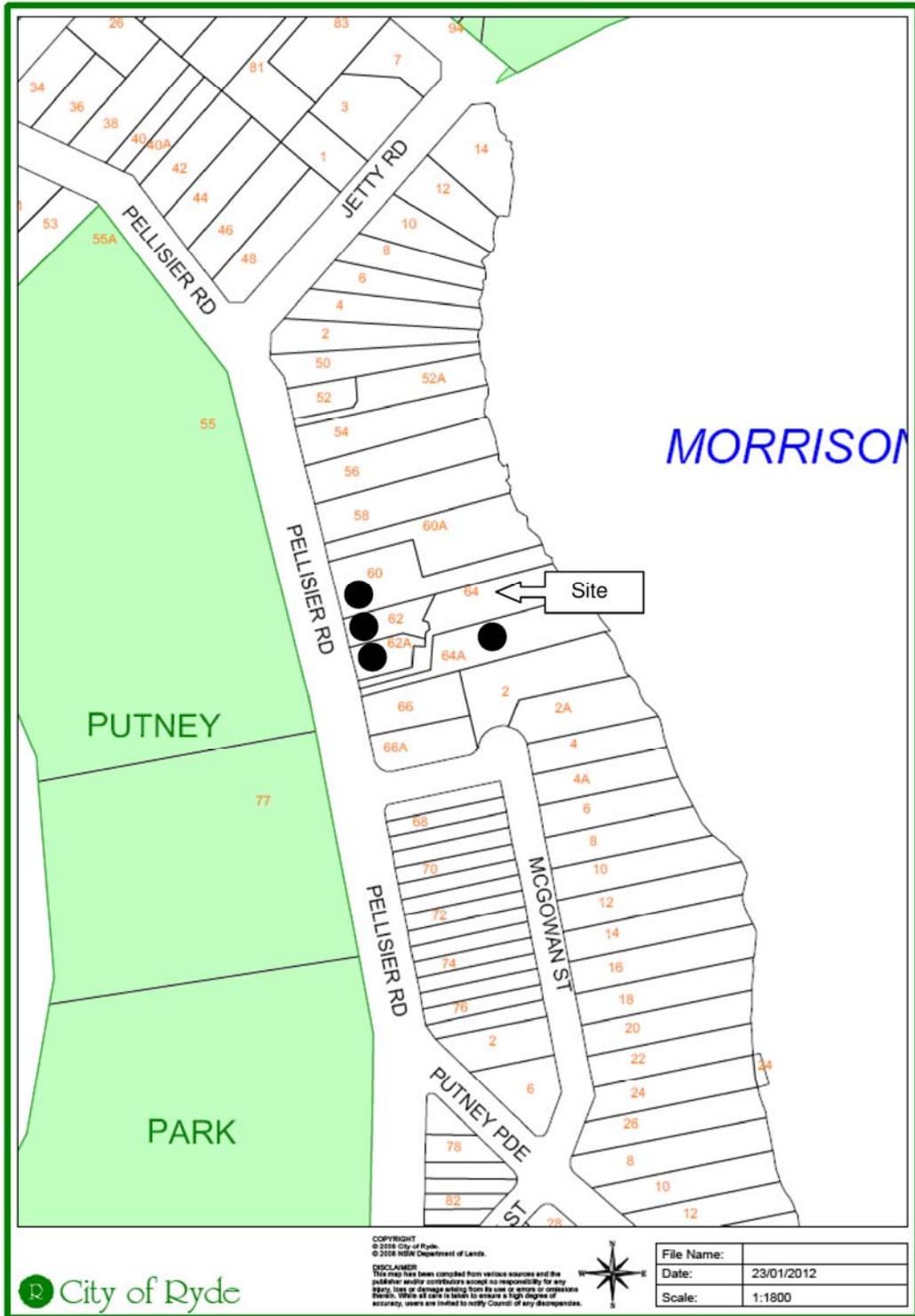
Having regard to the nature, location and area of the site, its constraints and opportunities and the extent of the existing development, it is considered feasible that by implementation of an alternate design scheme, alterations and additions to the existing residence could take place which would also fulfil state and local planning requirements without adversely affecting the adjoining properties.

Having regard to the numerous non-compliances of the development proposal as detailed in this report and the overall adverse affect that the proposal will have upon the amenity and impact upon the water views enjoyed by adjoining properties, the development proposal is recommended for refusal for reasons detailed below.

ITEM 4 (continued)

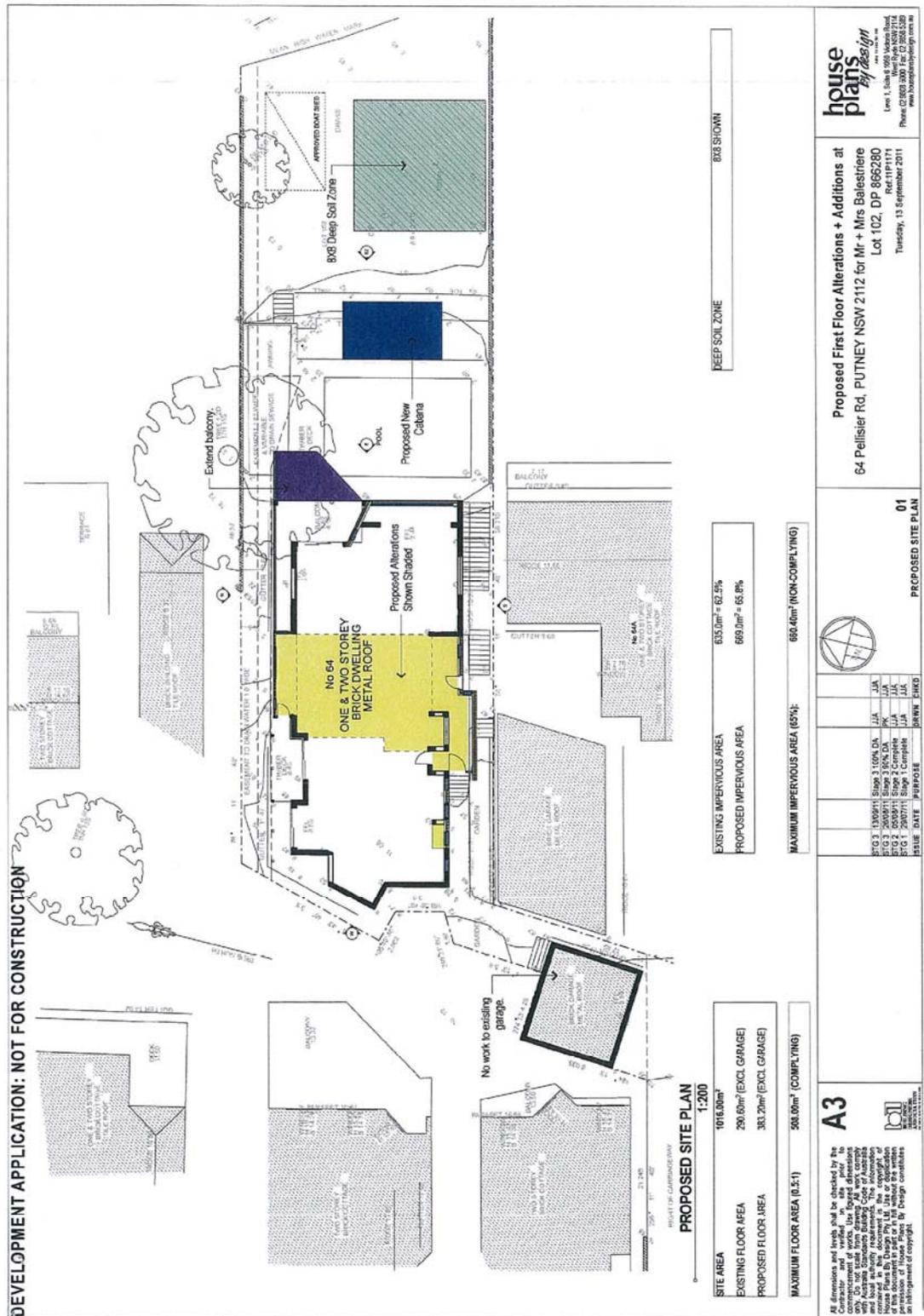
ATTACHMENT 1

 Indicates submissions received



ITEM 4 (continued)

ATTACHMENT 2



ITEM 4 (continued)

ATTACHMENT 2

