

**Meeting Date:** Tuesday 17 July 2012  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 4.00pm

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**1 CONFIRMATION OF MINUTES - Meeting held on 19 June 2012**

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**Report prepared by:** Meeting Support Coordinator**Report dated:** 19 June 2012**File No.:** CLM/12/1/3/2 - BP12/730

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**REPORT SUMMARY**

In accordance with 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 8/12, held on Tuesday 19 June 2012, be confirmed.

**ATTACHMENTS**

- 1 Minutes - Planning and Environment Committee - 19 June 2012

**ITEM 1 (continued)**

**ATTACHMENT 1**

Planning and Environment Committee  
**MINUTES OF MEETING NO. 8/12**

**Meeting Date:** Tuesday 19 June 2012  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 4.00pm

**Councillors Present:** Councillors Pickering (Chairperson) O'Donnell and Salvestro-Martin.

**Apologies:** Councillors Butterworth and Yedelian OAM.

**Staff Present:** Group Manager – Environment & Planning, Manager Assessment, Business Support Coordinator – Environment & Planning, Team Leader – Building Compliance, Team Leader – Assessment, Senior Town Planner, Senior Development Engineer, Town Planner and Meeting Support Coordinator.

**ADJOURNMENT**

In accordance with the Code of Meeting Practice, as there was not a quorum at 4.00pm the meeting was adjourned to reconvene as follows:

- 5.10pm (following inspections)
- Tuesday, 19 June 2012
- Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde

The following Councillors were present:

Councillors Pickering (Chairperson) and O'Donnell.

Apologies had been received from Councillors Butterworth and Yedelian OAM.

**MEETING RECONVENED**

The Meeting reconvened at 5.10pm on Tuesday, 19 June 2012 in Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

Councillors Pickering (Chairperson), O'Donnell and Salvestro-Martin.

Apologies had been received from Councillors Butterworth and Yedelian OAM.

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**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 5 June 2012**

**RESOLUTION:** (Moved by Councillors Salvestro-Martin and O'Donnell)

That the Minutes of the Planning and Environment Committee 7/12, held on Tuesday 5 June 2012, 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.

**2 252 MORRISON ROAD, PUTNEY. LOT 97 DP 8902. Local Development Application for demolition, construction of new dual occupancy (attached). LDA2012/0069.**

Report: The Committee inspected the properties at 252 Morrison Road and 256 Morrison Road, Putney.

Note: Mr Robert Bourne (objector) and Mr Justin Loe (on behalf of the applicant) addressed the Committee in relation to this Item.

Note: Photographs were tabled by Mr Robert Bourne (objector) in relation to this Item and copies are ON FILE.

**RECOMMENDATION:** (Moved by Councillors O'Donnell and Pickering)

- (a) That Local Development Application No. 2012/69 at No. 252 Morrison Road, Putney being LOT 97 DP 8902 be approved 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: Councillors O'Donnell and Pickering

Against the Motion: Councillor Salvestro-Martin

Note: This matter will be dealt with at the Council Meeting to be held on **26 JUNE 2012** as dissenting votes were recorded.



**ITEM 1 (continued)**

**ATTACHMENT 1**

**3 44 DAVID AVENUE, NORTH RYDE. LOT 49 DP 36455. Local Development Application for New two storey dual occupancy. LDA2011/0541.**

Report: The Committee inspected the property at 44 David Avenue, North Ryde.

Note: Mr Harry Koo (applicant) addressed the Committee in relation to this Item.

**RECOMMENDATION:** (Moved by Councillors O'Donnell and Salvestro-Martin)

- (a) That Local Development Application No. 2011/541 at No. 44 David Avenue, North Ryde being LOT 49 DP 36455 be approved subject to the following Conditions of Consent:

**GENERAL**

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

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

Document Description	Date	Plan No/Reference
Site Plan	August 2010	Sheet 1 of 9
Ground Floor Plan	August 2010	Sheet 2 of 9
First Floor Plan	August 2010	Sheet 3 of 9
Elevations (SW, SE, NE)	August 2010	Sheet 4 of 9
Elevation (NW) and Section A-A	August 2010	Sheet 5 of 9

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **BASIX.** Compliance with all commitments listed in BASIX Certificate numbered 386555m\_02, dated 18 October 2011.

**Landscaping**

4. The removal and construction management of trees is to be in accordance with the landscape plan prepared by Michael Siu, Revision A, dated 11th August, 2011.
5. A tree protection zone is to be established around trees 5 & 6, with no construction activity, site storage or stockpiling to occur within the root zone of the subject trees. Tree protection areas are to be installed prior to the commencement of demolition (under a separate application) and maintained for duration of the construction period.

**ITEM 1 (continued)**

**ATTACHMENT 1**

6. Works within the root zone of tree 4 including: the establishment of the building platform, associated paving and stormwater pipes and trenching are to be supervised by a project arborist.

**Protection of Adjoining and Public Land**

7. **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.
8. **Hoardings.**
  - (a) A hoarding or fence must be erected between the work site and any adjoining public place.
  - (b) An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
  - (c) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
9. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

**General Engineering Conditions**

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* and relevant Development Control Plans 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.
13. **Road Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No drainage work shall be carried out on the footpath without this permit being paid and a copy kept on the site.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**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.

14. **Section 94.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

<b>A</b>	<b>B</b>
<b>Community &amp; Cultural Facilities</b>	\$3,991.39
<b>Open Space &amp; Recreation Facilities</b>	\$9,825.97
<b>Civic &amp; Urban Improvements</b>	\$3,341.90
<b>Roads &amp; Traffic Management Facilities</b>	\$455.76
<b>Cycleways</b>	\$284.75
<b>Stormwater Management Facilities</b>	\$904.74
<b>Plan Administration</b>	\$76.78
<b>The total contribution is</b>	<b>\$18,881.29</b>

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>.

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15. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.
16. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: dwelling houses with delivery of bricks or concrete or machine excavation).
17. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
  - (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
18. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
19. **Fencing.** 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**.

**Engineering Conditions to be complied with Prior To Construction Certificate**

20. **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.
21. **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.
22. **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.
23. **Stormwater Runoff.** Stormwater runoff from all roof impervious areas shall be collected and piped to an absorption drainage system located at the rear of the site via an OSD system and a BASIX required rainwater tank(s) in accordance

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**ATTACHMENT 1**

with BASIX and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. *Runoff from driveways and other low lying impervious areas can be collected and piped to directly to the absorption system, by-passing the OSD and rainwater tanks system.*

**Additionally, the BASIX required rainwater tank volume shall be increased for each dwelling to 3000 litres as specified by BASIX.**

Accordingly, detailed amended engineering plans including certification indicating compliance with this condition are to be submitted with the construction certificate application.

24. **Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan (ESCP)* 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. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- a) Existing and final contours
- b) The location of all earthworks, including roads, areas of cut and fill
- c) Location of all impervious areas
- d) Location and design criteria of erosion and sediment control structures,
- 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) Procedures for maintenance of erosion and sediment controls
- l) Details for any staging of works
- m) Details and procedures for dust control.

**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.

**25. Site Sign**

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,

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- (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.
26. **Residential building work – insurance.** In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
27. **Residential building work – provision of information.** Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA has given the Council written notice of the following information:
- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor; and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act.
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder; and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

28. **Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

**Engineering Conditions to be complied with Prior to Commencement of Construction**

29. **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



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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.

30. **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 2006: - Part 8.1; Construction Activities.
31. **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.

**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.

32. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
33. **Noise and vibration.** 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.
34. **Construction noise.** The L<sub>10</sub> 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.
35. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.
36. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
37. **Construction materials.** All materials associated with construction must be retained within the site.

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**38. 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.

**39. Site maintenance**

The applicant must ensure that:

- (a) approved sediment and erosion control measures are installed and maintained during the construction period;
- (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
- (c) the site is clear of waste and debris at the completion of the works.

40. **Tree protection – no unauthorised removal.** 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.

41. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.

**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.

42. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 386555m\_02, dated 18 October 2011.

43. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.

44. **Sydney Water – Section 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



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[www.sydneywater.com.au](http://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.

45. **Letterboxes and street/house numbering.** All letterboxes and house numbering are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.

**Engineering Conditions to be complied with Prior to Occupation Certificate**

46. **Disused Gutter Crossing.** All disused gutter and footpath crossings shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
47. **Compliance Certificates – Engineering.** Compliance Certificates must 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*.
  - Confirming that the driveway is constructed in accordance with the construction plan requirements and Ryde City Council’s *Environmental Standards Development Criteria - 1999*.
  - Confirming that the site drainage system servicing the development complies with the construction plan requirements and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management
  - 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.
  - From Council confirming that all external works have been completed to Council’s satisfaction.
48. **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

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prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in the City of Ryde, Development Control Plan 2006: - 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.

49. **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.
50. **Disused Gutter Crossing.** All disused gutter and footpath crossings shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
51. **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.
52. **Positive Covenant, Dispersal.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater dispersal system. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of On- site Dispersal Systems and to the satisfaction of Council.
53. **Drainage Construction.** The stormwater drainage on the site is to be constructed in accordance with the construction certificate version of plan 22915 sheet 1 revision A dated 29/6/11 prepared by Auswide Engineering as amended in red.

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

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **26 JUNE 2012** as substantive changes were made to the published recommendation.

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**ATTACHMENT 1**

**4 46 DAVID AVENUE, NORTH RYDE. LOT 48 DP 36455. Local Development Application for construction of a two-storey attached dual occupancy. LDA2011/567.**

Report: The Committee inspected the property at 46 David Avenue, North Ryde.

Note: Mr Joe O'Connor (applicant) addressed the Committee in relation to this Item.

**RECOMMENDATION:** (Moved by Councillors Salvestro-Martin and O'Donnell)

- (a) That Local Development Application No. 2011/567 at 46 David Avenue, North Ryde, be approved subject to the following Conditions of Consent:

**GENERAL**

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

**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:
  - Drawing Nos. 1 to 4 and 6 to 10, Issue 'B' prepared by 'Universal Property Group' dated 24 April 2012 and colour schedule, and
  - Arborcultural Assessment prepared by 'Horticultural Management Services' dated 22 November 2011, except as amended by the conditions hereunder.

Prior to the issue of a **Construction Certificate**, the following amendments shall be made:

- (a) The only tree permitted to be removed under this consent is the existing Black Bean tree (*Castanospermum australe*) located along the proposed rear boundary. The proposed screen planting along the front boundary of the site shall be limited to a maximum height of 900mm and the Landscape Plan shall be amended accordingly.
  - (b) The Landscape Plan shall be amended to replace the Black Bean with a suitable advanced native having a minimum pot size of 75litres at the time of planting.
2. **Building Code of Australia** – All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.
  3. **BASIX** – Compliance with all commitments listed in BASIX Certificate No. 398422M\_03 dated 25 April 2012.

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**ATTACHMENT 1**

4. **Drainage Construction** – The stormwater drainage on the site shall be constructed in accordance with the Construction Certificate version of Plan No. 1108181d issue 'C' dated 23 April 2012 prepared by Rammy Associates Pty Ltd.

**Protection of Adjoining and Public Land**

5. **Hours of work** – Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Hoardings** – A hoarding or fence must be erected between the work site and any adjoining public place.  
  
Any hoarding or fence erected pursuant this consent is to be removed when the work has been completed
7. **Development to be within site boundaries** – The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
8. **Public space** – The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

**Works on Public Road**

9. **Public Utilities** – 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.
10. **Roads Act** – Any works performed in, on, or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.

**Engineering Conditions**

11. **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.
12. **Service Alterations** – All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.

**ITEM 1 (continued)**

**ATTACHMENT 1**

13. **Restoration** – Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
14. **Road Opening Permit** – The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No drainage work shall be carried out on the footpath without this permit being paid and a copy kept on the site.

**DEMOLITION CONDITIONS**

The following conditions are imposed to ensure compliance with relevant legislation and Australian Standards, and to ensure that the amenity of the neighbourhood is protected.

A Construction Certificate is not required for Demolition.

15. **Asbestos** – Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
16. **Asbestos disposal** – All asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be retained by the person performing the work for at least 3 years and be submitted to Council on request.
17. **Imported fill type** – All imported fill must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.

**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.

**ITEM 1 (continued)**

**ATTACHMENT 1**

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

18. **Section 94** – A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

<b>A</b>	<b>B</b>
Community & Cultural Facilities	\$3,991.39
Open Space & Recreation	\$9,825.97
Civic & Urban Improvements	\$3,341.90
Roads & Traffic Management Facilities	\$455.76
Cycleways	\$284.75
Stormwater Management Facilities	\$904.74
Plan Administration	\$76.78
<b>The total contribution is</b>	<b>\$18,881.29</b>

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>.

19. **Compliance with Australian Standards** – The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.
20. **Structural certification** – The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements.



**ITEM 1 (continued)**

**ATTACHMENT 1**

21. **Security deposit** – The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan (category: dwelling houses with delivery of bricks or concrete or machine excavation).
22. **Fees** – The following fees must be paid to Council in accordance with Council's Management Plan:
  - (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
23. **Long Service Levy** – Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
24. **Fencing**. 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. **Sydney Water – quick check** – The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect any Sydney Water assets, sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

  - Quick Check agents details - see Building, Developing and Plumbing then Quick Check; and
  - Guidelines for Building Over/Adjacent to Sydney Water assets - see Building, Development and Plumbing then Building and Renovating.

Or telephone 13 20 92.

**Engineering Conditions Prior to Construction Certificate**

26. **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**.
27. **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.

**ITEM 1 (continued)**

**ATTACHMENT 1**

28. **Sight Distance** – To facilitate safe sight distances, all proposed fencing and vegetation forward of the building alignment to McGregor Street shall be limited in height to a maximum of 900mm. Plans detailing compliance with this condition shall be submitted with the **Construction Certificate**.
29. **On-Site Stormwater Detention** – Stormwater runoff from all impervious areas shall be collected and piped by gravity flow to a suitable on-site detention system in accordance with City of Ryde, Development Control Plan 2010: - Part 8.2 Stormwater Management.
- Engineering plans, including certification indicating compliance with this condition are to be submitted with the **Construction Certificate** application.
30. **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 1.2m in depth must be fitted with step irons.
31. **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.
32. **Erosion and Sediment Control Plan** – An *Erosion and Sediment Control Plan (ESCP)* 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 Landcom. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- (a) Existing and final contours
- (b) The location of all earthworks, including roads, areas of cut and fill
- (c) Location of all impervious areas
- (d) Location and design criteria of erosion and sediment control structures,
- (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) Procedures for maintenance of erosion and sediment controls
- (l) Details for any staging of works
- (m) Details and procedures for dust control.



**ITEM 1 (continued)**

**ATTACHMENT 1**

**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.

**33. 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.

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

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

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

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

**ITEM 1 (continued)**

**ATTACHMENT 1**

36. **Safety Fencing** – The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

**Engineering Conditions Prior to Commencement of Construction**

37. **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.

**Note:** 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.

38. **Compliance Certificate.** A Compliance Certificate should be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and City of Ryde, Development Control Plan 2010: - Part 8.1; Construction Activities
39. **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.

**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.

40. **Critical stage inspections** – The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
41. **Noise and vibration** – 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.

**ITEM 1 (continued)**

**ATTACHMENT 1**

42. **Construction noise.** The  $L_{10}$  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.
43. **Survey of footings and walls** – All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.
44. **Sediment/dust control** – No sediment, dust, soil or similar material shall leave the site during construction work.
45. **Construction materials** – All materials associated with construction must be retained within the site.
46. **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; and,
  - (c) the site is clear of waste and debris at the completion of the works.
47. **Work within public road** – At all times when 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”.
48. **Drop-edge beams** – Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.
49. **Plumbing and drainage work** – All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation.
50. Only unpolluted water is to be discharged to Council’s stormwater drainage system.

**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.

**ITEM 1 (continued)****ATTACHMENT 1**

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.

51. **BASIX** – The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate No. 398422M\_03 dated 25 April 2012.
52. **Landscaping** – All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.

**Engineering Conditions Prior to Occupation Certificate**

53. **Disused Gutter Crossing** – All disused gutter and footpath crossings shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
54. **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 and the footpath paving works are constructed in accordance with the construction plan requirements and *Ryde 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 *Ryde Development Control Plan 2010: Part 8.2 - Stormwater Management*.
  - 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.
55. **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.

**ITEM 1 (continued)**

**ATTACHMENT 1**

56. **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.
57. **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.
58. **Positive Covenant, Dispersal** – The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater dispersal system. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of On- site Dispersal Systems and to the satisfaction of Council.
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **26 JUNE 2012** as substantive changes were made to the published recommendation.

The meeting closed at 5.45pm.

CONFIRMED THIS 17TH DAY OF JULY 2012.

Chairperson

- 2 3-5 TRELAWNEY STREET, EASTWOOD. LOTS A & B in DP 401296. Construction and strata subdivision of a mixed use development, consisting of a building with six retail /commercial tenancies; 61 units and basement parking for 108 cars. LDA 2011/0611.**

**INSPECTION: 4.20pm**

**INTERVIEW: 4.40pm**

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**Report prepared by:** Willana Associates, Planning Consultants

**Report approved by:** Team Leader - Major Development Team; Manager  
Assessment; Group Manager - Environment & Planning

**Report dated:** 29/06/2012 **File Number:** grp/12/5/5/3 - BP12/778

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### 1. Report Summary

**Applicant:** Morris Bray Martin Ollmann.

**Owner:** N&G Projects Pty Ltd.

**Date lodged:** 28/11/2011

This report relates to Local Development Application No. 2011/0611 which generally proposes the construction and strata subdivision of a mixed-use development at 3-5 Trelawney Street, Eastwood.

The development will generally consist of a new building with a total of part seven/part eight levels, including two levels of parking. The parking will contain a total of 108 car spaces, as well as a loading bay, four motorbike parking spaces; bicycle parking; service rooms (such as plant rooms and waste bin store rooms), and unit storage areas. The building will consist of 61 units in total. Six retail/commercial tenancies will extend along the Trelawney Street frontage of the site at footpath level. A communal gymnasium will be set back behind.

The development proposal includes some works to the public domain such as the provision of new footpath paving; a new driveway; street trees; bicycle racks and an awning over the footpath. The development proposal also includes a voluntary planning agreement (VPA). A separate report is provided in Appendix 4. The VPA generally involves the payment to Council of a one off monetary contribution of \$150,000. This contribution will be in addition to the payment of all applicable Section 94 contributions required by Council, public domain improvements and construction related fees relating to hoardings, construction parking zone permits and hoarding inspections.

The site is located within the Eastwood Town Centre that is subject to specific local planning controls. The specific controls are generally contained within both the Ryde Local Environmental Plan 2010 (RLEP 2010) and Ryde Development Control Plan 2010 (RDGP), in particular Section 4.1 of the DCP which consist of detailed controls applicable only to development within the Eastwood Town Centre. The RLEP prescribes a height limit of 15.5m in which the development exceeds by a maximum of 5.65m.



**ITEM 2 (continued)**

The development is also subject to various state planning provisions contained within SEPP No. 65 – Design Quality of Residential Flat Development; SEPP (Infrastructure) 2007; SEPP No. 55 – Remediation of Land; SEPP (Building Sustainability Index: BASIX) 2004 and Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Three submissions - two objections and one letter of support - were received during the public notification/exhibition period. The issues raised in the objections relate to inadequate parking, non-compliant building height, excessive scale, loss of privacy and solar access, garbage build up, unsatisfactory shop displays, insufficient infrastructure capacity, and traffic congestion.

The development has been designed in conjunction with that proposed at 7-9 Rutledge Street, Eastwood under Development Application No. 2011/0612 as to achieve a visual “gateway” into the Town Centre. Despite this, the proposal fails to comply with a number of the key controls, in particular the controls relating to height and building envelope. This is not acceptable in terms of the urban design outcome. It also does not achieve an appropriate separation to the north and west. In this regard the development will be forced to borrow amenity from adjoining sites.

The subject development application (DA) is therefore recommended for refusal.

**Reason for Referral to Planning and Environment Committee:** Nature of the proposed development; and received VPA.

Public Submissions: Three submissions were received. One submission was in favour of the development and two submissions were objections.

Is a Clause 4.6 RLEP 2010 objection required? Yes. A variation is proposed to the 15.5m building height standard of Clause 4.3(2) of Ryde Local Environmental Plan 2010.

Value of works: \$ 12,491,314.

**RECOMMENDATION:**

- (a) That Local Development Application No. 2011/0611 at 3-5 Trelawney Street, Eastwood, being Lots A and B in DP 401296 be refused for the following reasons:
  - a. The proposed development is inconsistent with State Environmental Planning Policy No. 65 with respect to Context, Scale, Built Form, Density and Amenity and therefore does not represent a good design outcome, particularly in the following areas:

**ITEM 2 (continued)**

- i. The development does not respect the desired future character of the area as the development extends well beyond the applicable building height and building envelope controls.
  - ii. The development does not respect the desired massing, topography and human scale initiatives.
  - iii. The development will not be stepped to appropriately relate to the existing or anticipated height of the building to the north and topography along Trelawney Street, nor will it appropriately address the site's corner location.
  - iv. The development does not provide adequate separation to the north and west boundaries and in this regard the built form will be forced to borrow amenity from adjoining properties.
- b. The proposed development proposes significant non-compliances with the maximum 15.5m height standard for the site prescribed under Clause 4.3 – Height of Buildings of the Ryde LEP 2010 which has not been justified.
- c. The proposed development application has not been adequately demonstrated by the applicant that the proposed height variance will be satisfactory with respect to Sub-clause 4(a) (ii) in that the development will be in the public interest because it will be consistent with the objectives of the height standard and the objectives of the land.
- d. The design is such that it will not meet the objectives (a), (c), (d) and (e) for building height listed under Clause 4.3 – Height of Buildings of RLEP 2010 and objectives of the zone listed under the Land Use Table of RLEP 2010 with regard to '*creating an attractive environment for pedestrians*' and '*recognising topography and unique location in design*'. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards. It will not achieve a better outcome for and from development.
- e. The proposed development does not meet the objectives (a) of Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village with respect to '*creating an attractive environment for pedestrians*' given the proposed height, scale and lack of regard to the human scale initiatives for height.
- f. The proposed development will not meet the following aims of the DLEP 2011 listed under Clause 1.2 - Objective: (2) (b) (ii) and (iii) and (2) (g) given the massing, height and scale relationship with adjoining development and existing character.
- g. The proposed development does not comply with the maximum permissible height of 15.5m prescribed under Clause 4.3 – Height of Buildings of the DLEP 2011.



**ITEM 2 (continued)**

- h. The proposed development does not achieve objectives (a), (b), (c) and (d) for building height listed under Clause 4.3 – Height of Buildings of the DLEP 2011.
  - i. The proposed development application has not adequately justified that the proposed height variance will be satisfactory with respect to Sub-clause 4(a) (ii) in that the development will be in the public interest because it will be consistent with the objectives of the height standard.
  - j. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards as it will not achieve a better outcome for and from development.
  - k. The proposed development seeks significant variation to the applicable Ryde DCP 2010 controls, particularly in relation to the envisaged urban form. The degree of variation has resulted in an excessive design that is inconsistent with the object of the envelope and corner treatment controls. The development does not achieve a design outcome that is sought by Council's controls nor reflect the future character for the Eastwood Shopping Village.
  - l. Insufficient information has been submitted to verify compliance with the RFDC requirement that private open spaces for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.
  - m. The proposed development is not considered to be in the public interest, particularly as it will set an inappropriate precedent for dispensing with Council's development standards without appropriate justification and given the significant departures to the Ryde LEP 2010 maximum height standards and the Ryde DCP 2010.
- (b) That the persons who made submissions be advised of Council's decision.

**ATTACHMENTS**

- 1 Map
- 2 A4 Plans
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER
- 4 Voluntary Planning Agreement Report
- 5 LEP2010 map extract showing heights

**ITEM 2 (continued)**

Report Prepared By:

**Stuart Harding Associate Director  
Willana Associates, Planning Consultants**

Report Approved By:

**Sandra Bailey  
Team Leader - Major Development Team**

**Liz Coad  
Manager Assessment**

**Dominic Johnson  
Group Manager - Environment & Planning**

## ITEM 2 (continued)

### 2. Site (Refer to attached map)

**Address** : 3-5 Trelawney Street, Eastwood

**Site Area** : Site Area: 2131m<sup>2</sup>  
Frontages: The site has a southern frontage to Rutledge Street of 40.72m in length and an eastern frontage to Trelawney Street of 47.245m (both excluding the 3.405m corner splay).  
Western Boundary: 49.225m  
Northern Boundary: 43.145m

**Topography and Vegetation** : The site comprises two lots, (LOTS A and B in DP 401296) and is located on the northwest intersection of Trelawney Street and Rutledge Street, Eastwood. The submitted survey indicates that the site has a general fall from its southwest to its northeast corner of approximately 3m and from its west to east side boundaries of an average of 1.2m.

However, the slopes/RLs do not represent those that currently exist on the site as the survey is dated 26 May 2010 which is well before the site was altered to remove an existing service station. The service station, which was demolished in March 2011. The site was subsequently subject to remediation work, which included the removal of underground tanks and associated infrastructure and backfilling including the establishment of imported fill on the site. The site is secured by barrier fencing. Some of the fencing is set back from the Trelawney Street frontage and corner splay.

Vegetation is limited to two established trees near the northeast corner and retained garden areas along the Trelawney Street frontage and at the site corner. One tree is a Silky Oak and the other is a Cedar Tree. Directly adjacent to the east boundary are planter beds along the footpath.

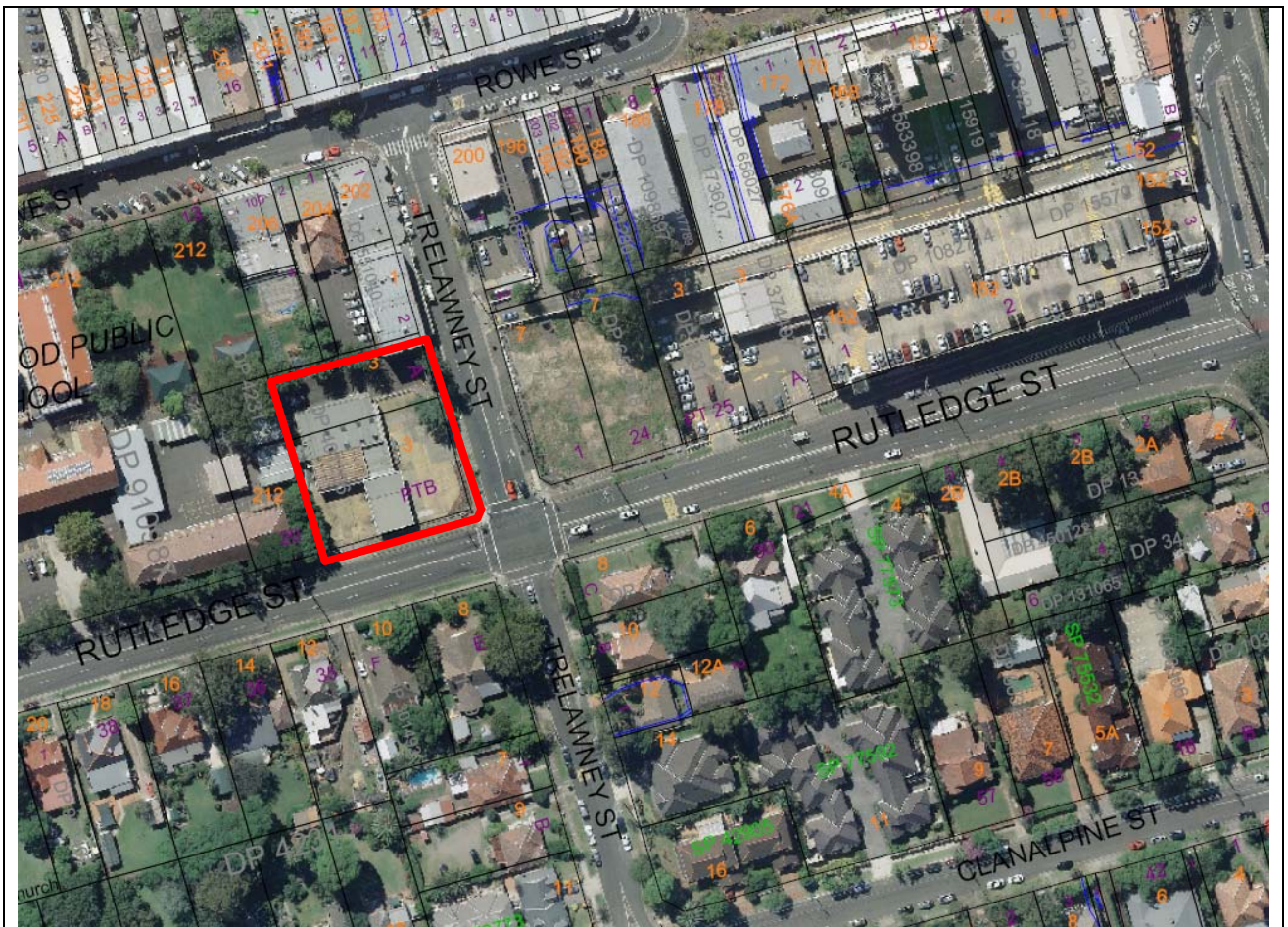
**Existing Buildings** : There are no buildings on the site, with the exception of a small substation along the Trelawney Street frontage. There are two vehicular crossings that service the site. One is located along Rutledge Street (near the southwest corner) and the other is located almost centrally along the Trelawney Street frontage. The site is affected by an easement over and around the substation.

**Planning Controls**  
**Zoning** : B4 Mixed use

**ITEM 2 (continued)**

**Other**

Environmental Planning and Assessment Act 1979  
SEPP No. 55- Remediation of Land  
SEPP (Building Sustainability Index: BASIX) 2004  
SEPP (Infrastructure) 2007  
SEPP No. 65 – Design Quality of Residential Flat Development  
Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005  
Ryde Local Environmental Plan 2010  
Ryde Development Control Plan 2010  
Residential Flat Design Code  
Section 94 Contributions Plan 2007



Subject Site: 3-5 Trelawney Street, Eastwood

Image 1| Extract 2008 City of Ryde Aerial Photo



**ITEM 2 (continued)****3. Councillor Representations**

Name of Councillor: Councillor Maggio.

Nature of Representation: Called up to Planning & Environment Committee.

Date: 3 May 2012.

Form of Representation (e.g. via email, meeting, phone call): Email to the Councillor Helpdesk.

On behalf of applicant or Objectors: Not stated.

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 disclosures.

**5. Proposal**

The subject development application proposes:

- Erection of a mixed-use building, with a total of part seven/part eight levels, including two levels of parking (a basement level and a lower ground level) and part five/part six levels above, arranged around a central court. The sixth level will extend along the length of the Trelawney Street frontage of the site. The parking will contain a total of 108 car spaces , as well as a loading bay; four motorbike parking spaces; bicycle parking, service rooms (such as plant rooms and waste bin store rooms) and unit storage zones. Six retail/commercial tenancies will extend along Trelawney Street at footpath level. A communal gymnasium will be setback behind. The building will contain a total of 61 units, including five units at ground level opposite the retail/commercial tenancies. Two lifts will facilitate access to all levels.
- Establishment of new on-site landscaping.
- Removal of existing vehicular crossings and provision of a new vehicular crossing. Vehicular access is proposed to extend from Trelawney Street and along the northern side of the site.
- Installation of new stormwater infrastructure, including on-site detention.
- Provision of two substations to the front, northeast corner of the site.
- Strata subdivision.

## ITEM 2 (continued)

In addition to the above, the following public domain improvements are proposed:

- Provision of new footpath paving in Rutledge Street.
- Provision of new street tree planting along the Trelawney and Rutledge Street frontages, including the removal of existing footpath planting.
- Erection of awnings over the Trelawney and Rutledge Street frontages.
- Provision of bicycle parking racks along the Trelawney Street footpath.

Prior to building construction the following site preparation works will be undertaken:

- Removal of the existing substation on the subject site.
- Removal of two trees, and existing planter beds. In addition, pruning of at least three trees and the removal of one tree on adjoining properties is likely to be warranted as specified in the submitted Tree Assessment.
- Soil excavation works to an approximate depth of about five to seven metres below existing ground level. The excavation works will extend up to all boundaries of the site. Dewatering may be required during excavation works. It will be pumped out and disposed of off-site, or discharged into the sewer; subject to obtaining the required approvals.
- Remedial and validation works to ensure the site is suitable for residential use. (NB: The site was previously subject to remediation, but this was limited and the site was validated for commercial (non-sensitive) use only).

## Building Composition

In total 13 x 1 bedroom units, 46 x 2 bedroom units and 2 x 3 bedroom units will be provided, including nine units designed to be adaptable in accordance with AS 4299-1995 – Adaptable Housing. Lift access will be provided via two separate cores (one to the north and the other to the south side of the central court), to facilitate convenient access between the building parts and levels, including the rooftop communal areas and parking levels.

The basement level will contain car parking spaces and other ancillary facilities allocated for residential use (such as motorcycle parking and residential stores). Access to the basement level will be restricted by a security roller shutter. Loading facilities, retail parking, visitor parking, some resident spaces, bicycle parking and waste storage facilities will be provided at the Lower Ground Floor Level.

**Table 1: Building Composition**

Level	Building A
<b>Basement Level</b>	67 resident car parking spaces (including 6 accessible spaces and 2 small car spaces)
	2 motorcycle parking spaces

**ITEM 2 (continued)**

<b>Level</b>	<b>Building A</b>
	2 store rooms with storage cages and 2 rows of storage cages for allocation to the residential allotments
	Service rooms (including a grease trap provision)
<b>Lower Ground Floor Level</b>	12 resident car parking spaces (including 1 accessible space)
	14 retail car parking spaces (including 1 accessible space)
	15 visitor car parking spaces (including 1 accessible space)
	1 Loading Dock (suitable for a small rigid vehicle)
	4 Retail Tenancies
	8 bike stores
<b>Ground Floor Level</b>	2 Retail Tenancies
	1 x 1 bed. unit (adaptable) 4 x 2 bed. units
<b>Levels 1 to 4</b>	3 x 1 bed. unit (2 adaptable) 10 x 2 bed. units
<b>Level 5</b>	2 x 2 bed. unit 2 x 3 bed. units

**Landscaping**

It is proposed to remove the existing trees and planter beds on the subject site and provide the following on-site landscaping:

**Ground Level:**

- A central communal area including planter beds with tree planting.
- Private open spaces within the west and north building line setbacks.
- A row of tree planting along the Rutledge Street frontage and west and rear boundaries generally forming part of the private open spaces.
- Masonry fencing along the Rutledge Street frontage and west side boundary.

**Level 1:**

- Private open spaces in the form of balconies around the building.
- Row of planter beds with tree planting along the Trelawney Street frontage and rear boundary.

**Levels 2 – 4:**

- Private open spaces in the form of balconies around the building.

## ITEM 2 (continued)

Level 5:

- Roof top communal area behind Level 6 with perimeter planting, outdoor furniture and pergola over.

### Voluntary Planning Agreement

The VPA generally involves the payment to Council of a one off monetary contribution of \$150,000. This contribution will be in addition to the payment of all applicable Section 94 contributions required by Council, public domain improvements and construction related fees relating to hoardings, construction parking zone permits and hoarding inspections. A separate report is provided in Appendix 4, which provides more details about the VPA.

### Key Figures of the Project

Number of one bedroom apartments	13
Number of two bedroom apartments	46
Number of three bedroom apartments	2
Number of retail units	6
Area of retail/commercial units	534m <sup>2</sup>
Number of car spaces	108, plus one loading bay
Area of communal open space	263m <sup>2</sup>
Area of deep soil planting	Nil

## 6. Background

### i. Previous Applications:

The subject site formerly contained a Mobil service station, including a retail and workshop building with an attached canopy extending to the south and car park area to the north. A development application (LDA 2010/0674) was approved for the demolition of the service station and the remediation of the site on 23 February 2011. The buildings were demolished in March 2011 and the site was subsequently remediated and validated for commercial (non-sensitive) purposes. The demolition included the removal of all underground storage tanks and associated infrastructure, as well as backfilling.

### ii. Background for Subject DA:

The subject LDA was lodged on 28 November 2011, concurrently with LDA No. 2011/0612 for the erection of a mixed use development at 7-9 Rutledge Street, Eastwood.



**ITEM 2 (continued)**

Prior to lodgement, an initial scheme was subject to a 'predevelopment application review' and reviewed by Council's Urban Design Review Panel. The reviews resulted in a number of recommendations. The subject proposal is generally similar to the initial scheme as only a number of minor changes have been made as a result. They have been outlined in the section below titled '*Urban Design Review Panel*'.

Below is a chronology of events, (including meetings, discussions and correspondence), between the applicant/applicant representatives and Council Officers.

Date	Event
<b>Pre-DA Submission</b>	
17/08/2010	A meeting was held between Council's Group Manager, Environment & Planning and the applicant to discuss the concept proposal for the redevelopment of the site.
25/2/2011	A pre lodgement Meeting and UDRP meeting was held.
19/07/2011 4/10/2011	A workshop was held and verbal presentation was made to the Councillors.
<b>Post – DA Submission</b>	
28/11/2011	DA was lodged.
05/12/2011	The DA was placed on public exhibition/notification from 5/12/2011 until 18/1/2012. The applicant was notified of the public exhibition/notification period.
08/12/2011	The Voluntary Planning Agreement (VPA) was referred to the Executive Team (ET).
23/12/2011	A letter was sent to the applicant advising that the VPA offer was not supported by ET at its meeting of 16/12/2011. Amendments were requested.
04/01/2012	A letter was sent to the Eastwood Chamber of Commerce granting an extended submission period until 15/02/2012 as requested.
12/01/2012	Item included in CIB advising that a VPA offer was submitted by the applicant for the DA.
22/02/2012	The applicant submitted a written response to the submissions received during the DA notification/exhibition period. It generally included further justification of the scheme and amendments to address vehicular access/safety. They are addressed in the section below ' <i>Submissions</i> '.
08/03/2012	A letter was sent to the applicant requesting additional information and design changes. (The applicant was advised that the application in the form submitted could not be supported by staff). This resulted in two (2) meetings in which the matters raised in the letter were discussed.
22/03/2012	Flood Information was provided to the applicant
04/04/2012	A meeting was held with the applicant re VPA

**ITEM 2 (continued)**

Date	Event
05/04/2012	CIB item prepared advising of the details of the VPA
13/04/2012	<p>In response to Council's letter dated 8/03/ 2012, the applicant submitted a formal written response with accompanying documentation. (The additional information and amendments requested in the letter are listed in italics below this table). No major changes have been made and further justification in support of the scheme has been provided by the applicant. Changes have been limited to the following:</p> <ul style="list-style-type: none"> <li>- Reduction in the number of retail tenancies from 7 to 6.</li> <li>- Provision of additional basement storage area.</li> <li>- Addition of steps along the Trelawney Street frontage of the site.</li> <li>- Addition of bicycle parking on the footpath and within the lower ground level.</li> <li>- Increase to the lower floor levels to address the flood issue raised by Council's Engineer but no change to the overall building height.</li> </ul>
14/5/2012	<p>The applicant provided a further submission that separately addressed technical issues raised by Council's Public Domain Officer, Waste Officer, Traffic Engineer and Stormwater Engineer. Generally no major changes have been made. Changes have been limited to the following:</p> <ul style="list-style-type: none"> <li>- Minor adjustments to the lower ground bin store areas.</li> <li>- Addition of a hard waste area and collection area at lower ground level.</li> <li>- Minor adjustments to the lower ground floor levels of retail tenancies and ramped vehicular access. (This has included the deletion of steps along the Trelawney Street frontage and provision of accessible entries into retail tenancies via the provision of internal ramping).</li> <li>- Increase to the area of Retail 1 from 169sqm to 171sqm.</li> </ul>
20/04/2012	Amended plans were referred to the Roads and Maritime Services (RMS).
21/05/2012	Amended plans were submitted indicating minor changes to some levels adjacent to the Trelawney Street footpath in response to the flood levels.
19/04/2012	An amended VPA was considered by Council's Executive Team (ET).
29/05/2012	The VPA was considered by Council's Voluntary Planning Agreement Panel. The Panel identified substantial areas of concern in relation to the VPA and the Explanatory Note. The applicant was advised of the issues on the same day.
30 May 2012	Amended explanatory note was received by Council.

**ITEM 2 (continued)**

Date	Event
6 June 2012	Amended VPA was received but did not address all the concerns as raised earlier.
13 June 2012	Further amendments to the VPA was carried out by the applicant but still failed to address a number of that were raised earlier (refer to the VPA report as Attachment to this report for details).
18 June 2012	The applicant/owner was advised again that the VPA documentation had to be amended.
25 June 2012	A further request/ reminder was sent to the applicant/owner and no further response was received.

**iii. Response by Applicant to Council's letter dated 8/03/2012**

The additional information and amendments requested in Council's letter dated 8/03/2012 are provided in italics below this table. A comment is provided for each in relation to the applicant's response.

- **Height / Amendments to Plans** - *A reduction to the overall height of the building to ensure greater compliance with the height development standard including the deletion of the Level 6 units facing Trelawney Street and Units 403 - 406. The roof terraces should be maintained, setback from the eastern side of the building (similar to the setback proposed) and provided with a screen/wall along the eastern side (preferable with landscaped treatment as per other sides of the roof terrace).*
- **Eastwood Urban Village** – *The scheme is required to respond to be consistent with objectives (a) to create a safe and attractive environment for pedestrians and (b) to create a mixed use precinct with emphasis on uses that promote pedestrian activity and safety at ground level as outlined in Clause 6.5 of the RLEP 2010 – Eastwood Urban Village and West Ryde Urban Village with respect to the proposed height, visual bulk and scale of the development.*

Comment: The plans have not been amended to address the building height or objectives for the Eastwood Urban Village. Further justification has been provided by the applicant with respect to the height and urban design outcome of the built form.

- **SEPP No. 65** - *A detailed response is required as to how the design has responded to the comments made in pre lodgement advice regarding SEPP65. Where design changes have not been made, and are pressed by the applicant, justification is required as to why the scheme should be supported by Council. Particular emphasis should be given to levels of amenity and the relationship of the building to the public domain and the adjoining development.*  
Context: *The development doesn't respect the existing and desired future character. The development has extended outside the desired building envelope both in terms of heights and to side boundaries resulting in a building that is excessive in bulk and scale.*

**ITEM 2 (continued)**

Scale: *Bulk/height doesn't reflect the topography, scale of street / surrounding buildings (existing and expected). In particular, the absence of adequate side boundary setbacks would result in a building of a scale which is inconsistent with the desired future character of the area and which has corresponding amenity impacts.*

Density: *The density is dictated by the height, envelope and setback controls in the absence of an FSR or other dwelling or population density controls. Non compliances with these controls verify the development consists of excessive floor space.*

Building Height: *The proposed number of storeys is in excess in comparison to that achievable based on the minimum floor – to – ceiling heights and maximum permissible height of 15.5m. The built form does not express a strong corner form. A step in form of the building along the street is required to reinforce the role of the corner.*

Setbacks: *The 6m separation requirement is not met to the north and west boundaries. The boundary setbacks are not sufficient to ensure adequate amenity. They result in a built form that is forced to borrow amenity form adjoining sites.*

Mass / Apartment Layouts: *Building mass will not deliver a reasonable standard of amenity, solar access, outlook and cross ventilation. The access courtyard/light well configuration creates impacts in terms of reduced solar access, outlook, cross ventilation and poor amenity in inclement weather. The layout does not maximise opportunities to facilitate natural ventilation and solar access. Some apartments exceed 8m in depth from a window and 8m from the back of a kitchen to a window. The number of single-space apartments with a southerly aspect exceeds 10% of the total units.*

Comment: The matters of setbacks and mass/apartment layouts have been addressed below in the section 'Urban Design Review Panel'. The following comments have been provided with respect to the matters of context, scale, and density.

In relation to Context, the applicant has justified the development with respect to its context on the following grounds:

- The desired future character has been established by the approved Eastwood Shopping Centre and proposal will successfully integrate with the future character as established by the approved Centre.
- The approved Eastwood Shopping Centre has established character and massing for the area beyond the RLEP and RDCP.
- The development creates a unified gateway with the development at 7-9 Rutledge, both of which replicate near identical elements in relation to scale, proportion, architectural treatment and colour.
- The remaining built form presents a block edge treatment and is appropriate in scale in context of the desired future character and land to the north and west.

**ITEM 2 (continued)**

The matters raised by the applicant have been addressed previously. As discussed, the planning controls cannot be disregarded for the Eastwood Town Centre based on the approved Eastwood Shopping Centre Development.

In relation to Scale, the applicant has advised that the building generally complies with the LEP height plane along Rutledge Street; successfully delivers the outcomes envisaged by Council's planning controls in terms of bulk and scale; exceeds the height as a result of the topography to a maximum of 1.4m in the northwest corner and height variances will not result in any environmental or amenity impacts and are important to meeting the SEPP 65 objectives and Council's controls.

The concerns with the Rutledge Street frontage as opposed to Trelawney Street frontage and treatment of the sites corner have been addressed previously. Generally, there is less of a concern with the Rutledge Street frontage than the Trelawney Street frontage. A variance in height would be accepted for an appropriately designed corner element. The maximum height variance is indicated in the LEP section above. It is in excess of that stated by the applicant. It has been verified above that the variance will be contrary to some objectives in the LEP in relation to the sites zone and building height.

In relation to Density, the applicant has advised that the proposed density is:

- Appropriate for the site and context since it lies within a transportation hub and growing infrastructure.
- The 61 units will contribute to Council's strategy to increase the population living close to public transport and which will re-energise the Eastwood retail precinct.
- The retail density will provide an active street frontage.

It is concurred that the density is appropriate in the sense advised by the applicant, however it is not appropriate with respect to achieving other objectives for the Eastwood Town Centre, such as those specified by the LEP zone objectives, building height objectives and objectives of Clause 6.5 - Eastwood Urban Village and West Ryde Urban Village.

- **Storage:** *Some units fail to achieve the minimum storage area requirement. Further drawings should include clarification of the division and unit allocation of the basement storage areas.*

Comment: The applicant has amended the plans to provide additional storage areas. The plans indicate the storage areas within the lower ground and basement levels as shaded zones but do not indicate the division or unit allocation of the zones.

- **Bicycle parking:** *No facilities are proposed.*

Comment: The plans have been amended indicating 8 bike stores in the lower ground level, as well as bike racks on the Trelawney Street footpath.



## ITEM 2 (continued)

- **Survey Plan** - *The submitted survey plan is not current and is inaccurate. Our site inspection revealed that the buildings, indicated on the plan, no longer exist. Given the requirements of Clause 55 (as follows) of the State Environmental Planning Policy (Infrastructure) 2007, details of any existing gas pipeline corridors should be provided by the surveyor.*

Comment: The applicant has advised that 'existing boundary levels to the site and existing footpath have not altered following site clearing and therefore the survey can be relied on'. This matter is discussed further below in the section 'Clause 4.3'. Details of the existing gas pipelines have been submitted.

- **Ground Levels** - *The drawings do not adequately illustrate the existing and proposed ground levels. The provided cross sections and elevations fail to clearly indicate the whole building envelopes of existing buildings on adjoining properties, to the north of the site. Additional drawings should be provided accordingly.*

Comment: The applicant has submitted information.

- **Strata Subdivision** – *The subject application proposes strata subdivision. It is requested that the applicant submit three (3) paper copies and a PDF copy of draft strata subdivision plans particularly to indicate the common property, unit entitlements and proposed easements.*

Comment: No draft plans have been submitted. If the development application was to be approved, it would be necessary to include conditions of consent which would require a final plan of subdivision prior to the issue of any Subdivision Certificate.

- **Shadow Diagrams** - *The solar access requirement of the whole development needs to be considered in light of the overshadowing impact of the proposed development at 7-9 Rutledge Street. Accordingly, the shadow diagrams (including elevation solar access diagrams of the development) and the submitted solar access table should be amended to include that impact. The solar access table should also be amended to separately indicate achievement of the solar access requirement in living areas as opposed to the private open spaces / balconies of each unit, as the RFDC indicates the achievement of at least 2 hours of solar access to living rooms and private open spaces.*

*Additional elevation solar access diagrams shall be provided to indicate the impact on the south elevation.*

*A statement shall be provided by the Architect to certify that the solar access diagrams have been prepared to true north.*



**ITEM 2 (continued)**

Comment: The solar table has been amended to indicate the additional impact of 7-9 Rutledge Street. It has not been amended to separately indicate achievement of the solar access requirement in living areas as opposed to the private open spaces / balconies of each unit.

Additional elevation solar access diagrams indicating the impact on the south elevation and a statement certifying that the solar access diagrams have been prepared to true north have been provided by the applicant.

- **Stormwater** - *As required by Clause 3.2(a) of 'Part 4.1- Eastwood Town Centre' of the Ryde Development Control Plan 2010 the applicant is to submit a 'stormwater inundation impact assessment' or 'stormwater management strategy'.*

Comment: Following consultation with Council's Engineer, the plans have been amended to address the 100 year ARI Flood Level with 300mm freeboard.

- **Traffic and Parking** –
  - *Amendments to the plans of the proposed development at either 7-9 Rutledge Street or 3-5 Trelawney Street to indicate an off-set between the proposed driveways of each development site.*

Comment: The plans have not been amended to provide an off-set.

- *Submission to Council of a Road Safety Audit for both accesses from Trelawney Street.*

Comment: A Road Safety Audit has been submitted and reviewed by Council's Engineer and the RMS.

- *Amendments to the plans to specify land dedication (where not already undertaken) as to allow for the future widening of the Rutledge Street and Trelawney Street intersection and along the Rutledge Street frontage, as required by the RMS.*

Comment: Roads and Maritime Services has advised that they have previously acquired a strip of land for road along the Rutledge Street frontage of the site. No other part of the site is required by RMS for road purposes.

- *Amendments to the traffic reports for both the Rutledge Street and Trelawney Street DA's. The results of each traffic report differ in terms of intersection performance. It is requested that both sites are included in each report to give a more accurate representation of the impacts.*
- *Amendments to the SIDRA modelling to take into consideration pedestrian counts.*

## ITEM 2 (continued)

Comment: Additional advice from the applicant's traffic consultant has been submitted and reviewed by Council's Engineer and RMS.

- *Submission of an electronic copy of the SIDRA modelling to Council.*

Comment: An electronic copy has been submitted and reviewed by Council's Engineer and RMS.

- **Architectural Drawings** - *Further drawings should include clarification of the following details:*

- *Which external glazing will be operable or fixed. A schedule shall be provided accordingly.*

Comment: No details have been provided. The applicant has advised that details will be provided at Construction Certificate (CC) stage. These details are necessary to ascertain whether or not units will be provided with natural ventilation opportunities. Natural ventilation is discussed further in the section 'SEPP No. 65' below.

- *The exact nature of the easement encroachment indicated on the lower ground floor plan.*

Comment: The applicant has advised that an easement will be provided over and around the 2 proposed substations in the lower ground level. This matter will be dealt with by the developer and Ausgrid and a satisfactory easement created as per Ausgrid's requirement.

- *Whether or not all balustrades on the west elevation will be glazed. If they are not, then amendments to the solar access diagrams and solar access table for this elevation should be provided to indicate the impact of masonry balustrades.*

Comment: The solar access diagrams have been amended. They take into account the impact of the balustrade materials (i.e. permeable or non-permeable).

- *Further justification with respect to Clause 4.6(3)(b) of Ryde Local Environmental Plan 2010 addressing the additional impact resulting from the non-compliant height portions particularly with respect to privacy, views (including the relevant provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 as the site is within the catchment area), additional overshadowing and achieving the objectives for height. This may include shadow diagrams indicating a compliant situation and/or the impact during the equinoxes.*

Comment: Further justification has been provided. This has been outlined in the section 'Clause 4.6' below.

**ITEM 2 (continued)**

- *Whether or not any car spaces will be caged. This should be considered for any resident spaces on the same level as non-residential spaces for security reasons. The plans shall be amended accordingly.*

Comment: The applicant has advised that the details will be provided at CC stage. If the DA is approved, a condition is recommended to ensure any caged spaces and other surrounding spaces maintain the minimum dimensions as required by AS 2890.1.

- *Whether the proposed 'Gym' will be a communal facility or an independent facility for general public use.*

Comment: The applicant has advised that the 'Gym' will be for the use of residents only. If the DA is approved, a condition is recommended to ensure the area to be indicated as common property on any corresponding strata plan and a management plan include by-laws with respect to the maintenance and use of the gym.

- *Whether any discussions have been had with Energy Australia with respect to the proposed substation and provision of the power supply underground. Whether any discussions have been had with other utility providers with respect to providing installations underground. Any related correspondence should be forwarded to Council to indicate that the utilities can be and will be provided underground.*

Comment: The applicant has provided evidence of discussions with an Ausgrid representative. The evidence indicates that the following matters are being considered by Ausgrid:

- Dispensation to the overhead substation easement encroachment;
- Proposed gap between the easement and site boundary with the kerb;
- Requirement for 2m cable easement in the driveway;
- Provision of a 4m right of way in the driveway for the passage of Ausgrid trucks;
- Erection of steel bollards that do not encroach the substation easement; and
- Fire rating of walls within 3m of the substation.
- Whether the landscape scheme of the landscape plans should be relied on or that indicated on the architectural plans. (Both schemes differ, particularly with respect to the street planting). The landscape plans or architectural plans shall be amended accordingly to reflect the preferred scheme.

Comment: Should the application be approved, a condition is recommended to require the adoption of the landscape scheme indicated on the landscape plan.

- *The proposed RL's along the Trelawney Street footpath adjacent to the site boundary.*

**ITEM 2 (continued)**

Comment: The applicant has advised that the RL's of the footpath will be generally as per the existing levels.

- *The location and height of the rooftop mechanical exhaust structure required for internal toilet/bathroom/laundry areas of the residential units.*

Comment: The applicant has advised that exhaust structures required for internal toilet/bathroom/laundry areas will be below parapet level and therefore screened from view. If the application is to be approved, appropriate conditions should be included in the consent to ensure this and that the same is achieved with respect to the garbage room exhaust.

- **Acoustic Impact of Development** - *It is recommended that the submitted acoustic report be amended to indicate the combined additional acoustic impact of the proposed developments at both 7-9 Rutledge Street and 3-5 Trelawney Street, Eastwood (i.e. the impact of the proposed uses, additional traffic noise and plant / AC/ exhaust noise) on the existing residential properties on the opposite side of Rutledge Street.*

Comment: The acoustic report has not been amended.

- **Voluntary Planning Agreement (VPA)** – *It is also noted that a VPA has been submitted with this development application and the VPA has been rejected by Council's Executive Team. It will be necessary to resolve the VPA matter to enable this assessment to be completed.*

Comment: An amended VPA has been submitted and deemed acceptable by Council's Executive Team on 19 April 2012. The VPA has been discussed in greater detail in the separate report provided in Attachment 4.

**7. Submissions**

The proposal was advertised and notified in accordance with Ryde Development Control Plan 2010 - Part 2.1, Notification of Development Applications (RDCP). The application was advertised / notified from 7 December 2011 until 18 January 2012.

One submission was received in favour of and two submissions were received objecting to the development. The issues raised in the submissions were:

- *Inadequate Parking*

Comment: The RDCP compliance table below indicates that the minimum requirement prescribed under Section 9.3 – Car Parking will be met by the proposal. A condition is recommended to ensure the spaces are appropriately allocated to respect the RDCP requirement.

**ITEM 2 (continued)**

- *The building height is substantial which could potentially invade our privacy and block direct sunlight (6 Rutledge Street)*

Comment: No adverse privacy implications would result given the separation between the existing dwelling house and proposed building. The RFDC recommends a building separation of 18m between habitable rooms and balconies from 5 to 8 storeys (25m in height) and 12m up to 4 storeys (12m in height). The building will have a separation of over 24m.

An adequate amount of solar access will be maintained to the property. In particular, a useable portion of the primary private open space will receive at least 3 hours of sunlight during 9am and 3pm on June 21.

- *I enjoy Asian foods, but do not enjoy the way many of the shops are displayed and maintained and the build up and smell of garbage.*

Comment: The matters are not specific to the subject DA however, conditions are recommended to be included in a consent to ensure appropriate waste storage facilities, maintenance of the facilities, and frequent waste collection services are provided.

At this stage the intended use of the retail uses is not known. In all likelihood any food shop would require a new DA as it may not fall into the category of exempt development. At this stage further attention could be given to waste issues.

- *I am concerned that the infrastructure of the small Eastwood Shopping Centre will not be able to support such a large development and services will be overstretched.*

Comment: The submission has not identified what infrastructure is of concern. Regardless, it is noted that the proposed stormwater drainage scheme has been reviewed by Council's Engineer, who has recommended conditions be included in a consent to ensure an acceptable outcome. Conditions are also recommended to ensure that the applicant liaises with the necessary service providers (for gas, water, electricity and telecommunications) and services are installed in accordance with the requirements of the provider. The RMS and Council's Traffic Engineer have reviewed the application. They have not raised any concerns with respect to the existing road infrastructure. Council's Traffic Engineer has advised that the surrounding roads will adequately cater for the development.

- *Cars and delivery vehicles entering and exiting from the proposed buildings will cause further traffic congestion.*

**ITEM 2 (continued)**

Comment: Council's Engineer and the RMS have reviewed the related traffic impacts of the proposal. They have not raised any concerns to the traffic impact. Council's Traffic engineer advised that increases in queue lengths and average delays are generally acceptable. Conditions have been recommended to be included in a consent, including a condition for queuing spaces at the driveway entrance.

- *Overdevelopment of the site / Excessive Size / The developments are out of scale to the surrounding buildings and are too close to the Eastwood Public School. I would appreciate Council reconsidering the size and height of the developments.*

Comment: Agreed. The development does not meet the RLEP height and objective controls resulting in a building that has excessive height and scale. These matters have been discussed in the section below 'Clause 4.6'. The setback to the school is discussed in the section 'Residential Flat Design Code'.

- *The proposals will complement the Eastwood Centre Development and provide the much needed gateway into the Eastwood town centre from Trelawney Street. The sites as they exist now present a very poor image of the town.*

Comment: The proposal will match the architectural style of the Eastwood Shopping Centre development; however it will represent excessive height and scale which does not meet the RLEP height and a couple of objectives of the control, as well as respect the existing and anticipated massing of neighbouring developments and topography of the area. These matters are discussed further below. The gateway concept can still be achieved, with a development that better responds to the LEP controls and its immediate surrounds.

- *The additional residents are expected to increase the spend within the town centre.*

Comment: It is acknowledged that the development will result in a positive economic impact with respect to supporting the economic viability of existing and proposed shops within the centre.

**8. Clause 4.6 RLEP 2010 objection required?**

Is a Clause 4.6 RLEP 2010) objection required? A variation is sought under Clause 4.6 of RLEP 2010 in respect to the maximum height standard applicable to the site. The maximum height standard is prescribed by *Clause 4.3 – Height of Buildings* is 15.5m, as indicated on the extract below.



## ITEM 2 (continued)

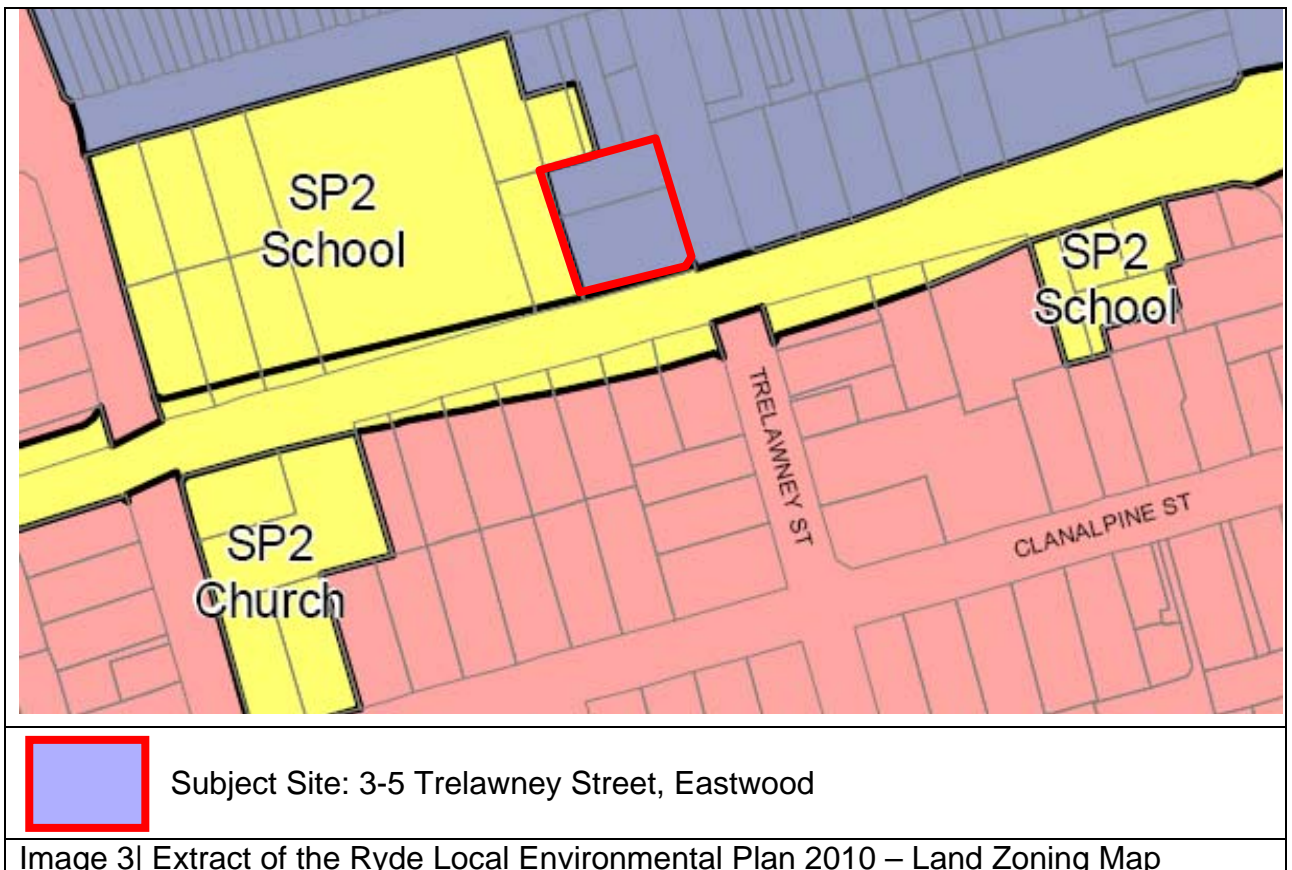
The proposed maximum building height will be 21.15m if the RL's provided on the submitted survey are relied upon. The maximum will be located at the northeast building corner in the location of proposed Unit No. 504. This represents a difference of 5.65m to the maximum permissible height of 15.5m. Whilst both the edge of the sloped roof, above Unit 504 and the rooftop plant will be at a higher RL, they will result in a maximum height of 21.05m for the sloped roof, 19.67m for the plant further north and 19.42m for the plant further south, given that the survey indicates the existing ground levels directly underneath to be higher.

### 9. Policy Implications

Relevant Provisions of Environmental Planning Instruments etc:

#### (a) Ryde Local Environmental Plan 2010

##### Zoning



**ITEM 2 (continued)**

The site is zoned B4 Mixed use under the Ryde Local Environmental Plan (RLEP) 2010. The proposed development is permissible with consent under this zone. The proposal has been considered in relation to the objectives of the zone. Reference should be made to the assessment provided in the table below. In summary, the development will be consistent with the objectives of the zone other than the last two objectives when considered in relation to the proposed height, corner location and topography.

<b>Zone Objectives</b>	<b>Comment</b>	<b>Complies</b>
<i>To provide a mixture of compatible land uses.</i>	The proposal is for a mixed use development, which includes residential and retail/commercial uses, in a compatible manner, with the retail/commercial being contained at street level and the residential predominantly above.	Yes
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	The subject site has convenient access to both bus and rail facilities. The proposal will integrate the proposed uses in a highly accessible location to maximise public transport use, walking and cycling.	Yes
<i>To create vibrant, active and safe communities and economically sound employment centres.</i>	The proposal appears to generally adopt the Crime Prevention Through Environmental Design (CPTED) principles, with respect to passive surveillance to both street frontages, and active retail uses at the street level. Conditions have been recommended by the NSW Police Force to adequately address the other CPTED principles. These conditions should be included in a consent, should the application be approved. The residential use will assist in supporting commercial/retail uses in the area. The development will facilitate active street frontages.	Yes
<i>To create safe and attractive environments for pedestrians.</i>	The development will be excessive in height and bulk/scale, particularly along the Trelawney Street frontage. It will not respect the human scale, fall of the street, existing and anticipated massing of development on adjoining sites or express a strong corner form. (Refer to discussion in Section 'Clause 4.6' below).	No

**ITEM 2 (continued)**

Zone Objectives	Comment	Complies
<i>To recognise topography, landscape setting and unique location in design and land-use.</i>	As above.	No

**Mandatory Requirements**

Clause 4.3 - Height of Buildings

The maximum permissible height applicable to the subject site, as indicated on the RLEP 'Height of Buildings Map' is 15.5m.

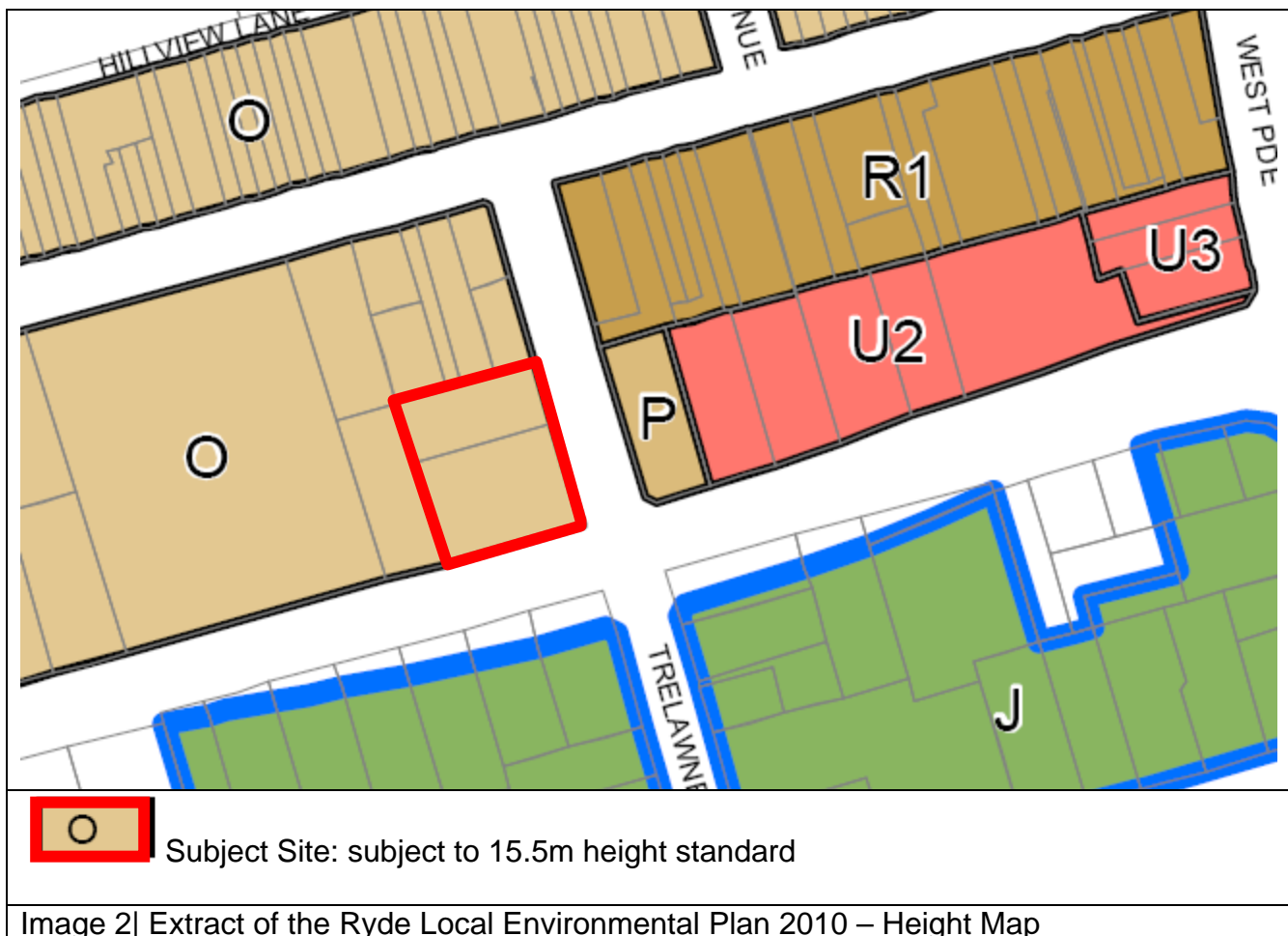


Image 2| Extract of the Ryde Local Environmental Plan 2010 – Height Map

## ITEM 2 (continued)

The definition of 'building height' contained within the RLEP 2010 states:

***'building height (or height of building)'** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

***'ground level (existing)'** means the existing level of a site at any point.*

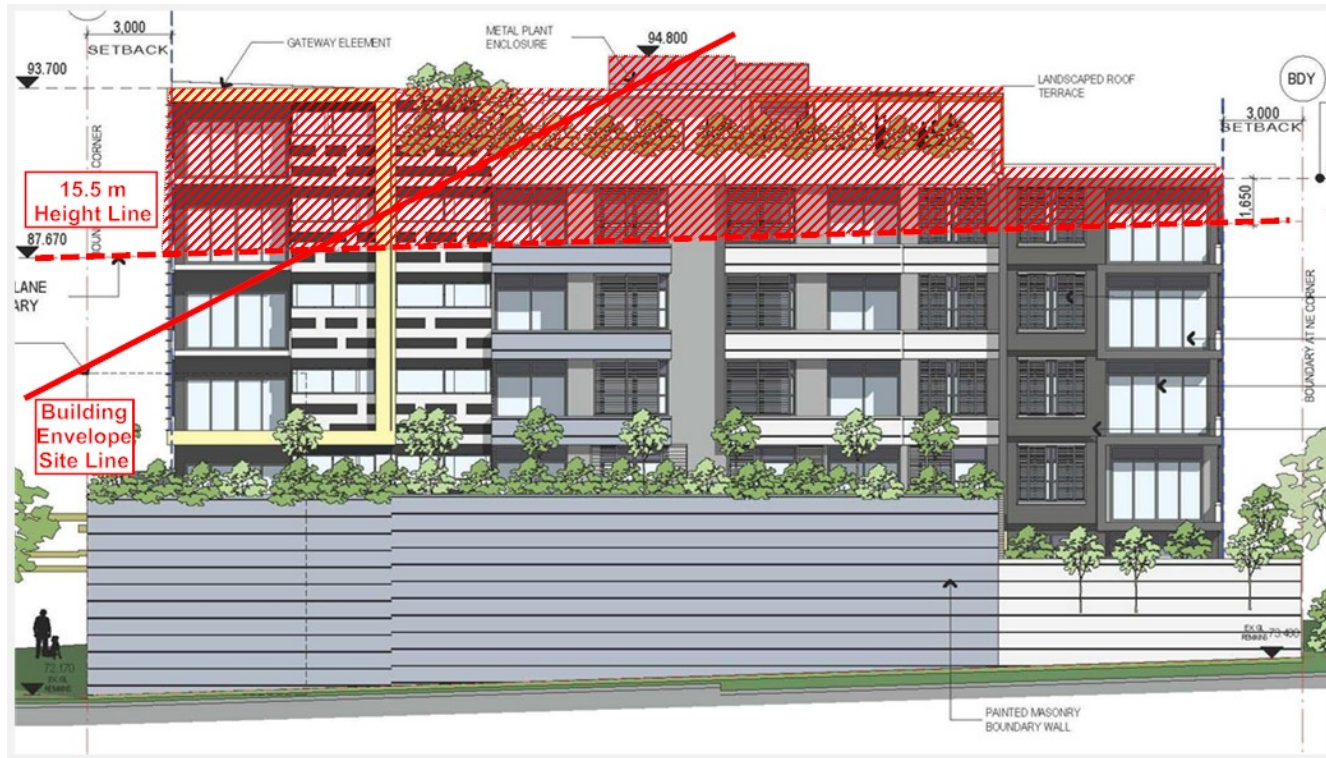
The submitted survey plan does not indicate the 'existing' ground levels. It indicates ground levels and buildings that existed prior to demolition and earthworks undertaken in March 2011, (the subject of Development Consent No. 2010/0674).

The applicant was requested to submit a current survey of the site. In response, the applicant advised that *'existing boundary levels to the site and existing footpath have not altered following site clearing and therefore the survey can be relied on'*. Whether or not the levels at the site boundaries and footpath have been altered is less of a concern in this case. The levels of concern are those located under the proposed higher building sections and the setback from the boundaries of the site. The demolition undertaken in 2011 included the removal of all underground storage tanks and associated infrastructure, and remediation, including filling on the site. Therefore the RL's indicated on the survey over the site (not along the boundaries and footpath), are unlikely to accurately represent the existing levels. The height non-compliances discussed below and referenced in other sections of this report are based on the submitted survey and therefore should not be relied upon to give exact/actual variances. They should be regarded as approximates.


The maximum building height will be 21.15m and located at the northeast building corner in the location of proposed Unit No. 504 (to the west side where the survey indicates an RL of 72.55) and exclusive of the upper, stepped section of the sloped roof. This represents a variation to the prescribed 15.5m height of 5.65m (36.45%). The following diagrams demonstrate the height non-compliance. If the stepped roof is included the height will be approximately 21.35m which represents a variance of 5.85m.



**ITEM 2 (continued)**



**Diagram 1:** North Elevation:

 Area of non-compliance with maximum 15.5m RLEP 2010 Height Standard

 Building Envelope of RDCP 2010

**ITEM 2 (continued)**



**Diagram 2:** East Elevation:



Area of non-compliance with maximum 15.5m LEP Height Standard

— Building Envelope of RDCP 2010 (measured from existing Rutledge Street boundary)

Clause 4.6 – Exceptions to development standards

Clause 4.6 of RLEP 2010 allows exceptions to development standards. Consent must not be granted for development that contravenes a standard unless the consent authority has considered a written request from the applicant that seeks to justify contravention of the standard by demonstrating the following:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The consent authority must be satisfied that the applicant's written request has satisfied the above criteria and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. In addition, consent cannot be granted unless the concurrence of the Director – General has been obtained. These matters are discussed below.



**ITEM 2 (continued)****1. Written request provided by the applicant.**

The applicant has provided a written request seeking to justify the variation to the development standard in Section 7.1 of the Statement of Environmental Effects prepared by Ludvik & Associates and a letter dated 12 April 2012 prepared by Morris Bray Martin Ollmann Architects.

**2. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

The applicant has argued that the variation in respect of the height control is acceptable given the following:

- a. *The 'gateway location' of the site, i.e. it is necessitated 'to create an entrance statement at the Trelawney Street and Rutledge Street intersections together with the proposal at 7-9 Rutledge Street.*
- b. *The future character and form of the Eastwood Town Centre is largely dominated by the approved redevelopment of the Eastwood Shopping Centre site at 3-5 Rutledge Street, 152-188 and 196 Rowe Street. It will provide context for other development in this part of the centre.*
- c. *The approved Eastwood Shopping Centre buildings exceeded the building height standards. Council accepted a SEPP 1 objection against the height standard to allow a twelve (12) storey element adjacent to the corner of Rutledge Street and West Street.*
- d. *It will maintain the character and proportions of development fronting Rutledge Street.*
- e. *It will not have any significant effect on the overshadowing of surrounding development.*
- f. *It will facilitate a satisfactory built form in the context of future development in this locality.*
- g. *It will be satisfactorily located in terms of existing major public transport services and the arterial road network.*
- h. *The proposal is consistent with the objectives of the B4 Mixed Use zone.*
- i. *The land is not visible from Sydney Harbour or the Parramatta River nor have any influence on matters required to be taken into consideration under the terms of the SREP.*
- j. *The RLs of the proposed building are substantially less than that of the approved Eastwood Shopping Centre site development.*

**ITEM 2 (continued)**

The reasons provided by the applicant, are not considered to be well-based, except for reasons, 'e', 'g' and 'j'. They do not adequately address the objectives of the control, particularly with respect to the 'human scale issue' along the Trelawney Street frontage of the site. The non-compliance along the Trelawney Street frontage is excessive, inconsistent with the objectives of the zone and height standard. The development does not achieve a design outcome sought by Council's controls. These issues have been addressed below.

It should be noted that the approved Eastwood Shopping Centre development is not the key determinant of the future character of the Eastwood Town Centre. The key determinants are Council's controls, in particular how a development addresses and achieves these controls.

The DA assessment reports considered by the Planning and Environment Committee with respect to the Eastwood Shopping Centre redevelopment (inclusive of the Section 96 report) indicated a compliant building height, particularly for the building (Building A) directly adjacent to the site 7-9 Rutledge Street. At the time of these approvals, the height control was based on the number of storeys.

The land at the corner of Rutledge Street and West Street, that formed part of the Eastwood Shopping Centre redevelopment is located over 150m away from the subject site, nevertheless it is subject to a higher building height standard of 33.5m under the RLEP 2010 and DLEP. It has little correlation with the subject site in terms of the 'human scale' issue along Trelawney Street. Trelawney Street is identified as being a pedestrian priority street under the RDCP 2010, unlike that part of West Street and Rutledge Street.

The height of the approved buildings of the Eastwood Shopping Centre development are much higher because it has higher maximum height controls (33.5m and 30.5m) prescribed under RLEP 2010, as opposed to that of the subject site, being 15.5m. Based on the LEP 2010 Building Height map, the massing/scale that is intended to be achieved steps down in height along Rutledge Street from east to west. i.e. from 33.5m to 30.5m, then to 18.5m opposite the subject site (on the opposite corner of Trelawney and Rutledge Streets) and then to 15.5m for the subject site.

The justification of the approved RL's for the Eastwood Shopping Centre Development to allow a breach of any development on the land at the corner of Rutledge and Trelawney Street (forming part of the development of 7-9 Rutledge Street) which is subject to a lower 18.5m height limit and translation of that breach to the proposed development at 3-5 Trelawney Street is not well-based.

The justification of the additional height based on an upgrade to the locality is also not well-founded. The height control does not need to be exceeded to such an extent as to reinvigorate the area.

**ITEM 2 (continued)****3. Environmental grounds to justifying contravening the development standard.**

As demonstrated in this report, the development will not be consistent with the existing and desired future character of the area. The built form will not be acceptable in terms of its massing, scale and height and resultant streetscape impact.

The applicant has indicated that the variation will not adversely affect any views from surrounding residential properties or influence the matters for consideration listed under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This is concurred with.

As discussed below, the west and north boundary setbacks will not comply with the 6m setback requirement of the RFDC. It is acknowledged that there will be no substantial impact on the existing, neighbouring properties however, should these properties be redeveloped/extended the issue of amenity will arise. The proposed development will not facilitate a 12m separation between built forms to ensure adequate amenity is maintained and is therefore borrowing amenity from the neighbouring properties.

**4. Consistent with the zone objectives and objectives of the development standard.**

The development will not be in the public interest because it will be inconsistent with the following height and zone objectives:

The objectives for height:

- (a) *to maintain desired character and proportions of a street within areas,*
- (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.*

The objectives for the B4 Mixed Use zone

- *To create safe and attractive environments for pedestrians.*
- *To recognise topography, landscape setting and unique location in design and land-use.*

The extent of the non-compliance is not considered appropriate in this case. The variances, both the vertical variances and continual horizontal variances, are along major building portions. Of more concern are the variances along the Trelawney Street frontage and part of the rear (north elevation), rather than along Rutledge Street and west side elevations.

**ITEM 2 (continued)**

The main concerns with the variances are as follows:

- The variances are not consistent with the objectives of 'building height' as well as some objectives of the zone.
  - The development does not respect the existing and desired future character of the area.
  - The achievement of a 'gateway entrance' can be achieved without the necessity of varying the height control to such an extent.
  - The development will not respect the fall of the street.
  - The development will be excessive in density.
  - The height has not been supported by the Urban Design Review Panel.
- 
- *The variances are not consistent with the objectives of 'building height' as well as some objectives of the zone. / The development does not respect the existing and desired future character of the area.*

Objective (a) for building height is '*To maintain desired character and proportions of a street within areas*'. Objective (c) is '*To enable the built form in denser areas to create spatial systems that relate to human scale and topography*'.

Any future development on adjoining sites to the north and west will also be subject to a 15.5m height limit. Approval of the proposed development will set precedence in terms of providing a higher height than that anticipated by the RLEP. This is likely to impact on how future development will proceed along Rowe Street, which is also subject to the 15.5m height control. Development will not appropriately respond to the topography of the area. If higher development is provided on surrounding sites, the 'gateway' emphasis proposed (even though not considered appropriate for reasons discussed further below) will be illegible.

It is noted that Draft Ryde Local Environmental Plan 2011 maintains the 15.5m maximum building height standard for the site and surrounding sites to the north and west. This demonstrates the development will not be consistent with the likely future planning controls.

The applicant has advised that the development to the north, on the adjoining site at the corner of Rowe and Trelawney Street is unlikely to be developed as it consists of a relatively new building. Even if this is the case, the proposed development will not provide a sympathetic transition in height to respect the fall of the street and height of the existing and any future building on this property, as well as appropriately emphasise the Trelawney and Rutledge Street corner of the site. (The corner location is discussed below).

**ITEM 2 (continued)**

The proposed Trelawney Street building frontage does not represent a sympathetic transition that respects the fall of the street. The street has a slope from the Rutledge intersection to Rowe Street. The proposed building will achieve a height of 18.9 metres to the outer roof edge and an approximate height of 19.1 metres to the stepped roof edge, both of which extend along most of the length of the Trelawney Street frontage of the site and a building length of 46m. Accordingly, the building will step down from the corner along Trelawney Street to respect the fall and achieve a corner emphasis.

The building on the adjoining site to the north, has a height of approximately 10.81 metres adjacent to the proposed development. The proposed height of the development represents a variance of 7.7m – 7.5m in comparison to the neighbouring building. This is excessive and will not facilitate a sympathetic transition between buildings and generally along Trelawney Street.

If the proposed development were to achieve the maximum permissible building height of 15.5m, a sympathetic stepping along the streetscape would be created with the neighbouring building. If the proposal were to remain as proposed and neighbouring buildings were to be increased in height to the maximum permissible of 15.5m, the proposed development would represent a variance of two levels, i.e. a height difference of approximately 6m. This would provide some improvement but is still representative of excessive height based on the maximum permissible heights indicated on Council's LEP map. The RLEP height standard suggests the massing and visual presentation anticipated between the subject site and neighbouring site is reliant on the topography rather than any height differences as the same height standards apply. This is also the case with the DLEP. In addition, as advised by the applicant the building is unlikely to be further developed as it consists of a more recently constructed building. Regardless, this would not resolve the other concerns with the proposed height with respect to the strong corner emphasis and human scale issue discussed below.

- *A 'gateway entrance' can be achieved without the necessity of varying the height control to such an extent.*

Objective (d) of building height is '*to enable focal points to be created that relate to infrastructure such as train stations or large vehicular intersections*'. Objective (e) is '*to reinforce important road frontages in specific centres*'. Objective (e) can be related back to Objective (d) with respect to the road intersection treatment.

The proposed urban design outcome creates an extensively high and long facade along the Trelawney Street frontage. This solution does not frame the corner of the site, but effectively the length of the site, which is not an appropriate design approach for corner sites based on standard practices, (as expressed in RDCP 2010) and achieving Objective (c) which refers to the human scale. This scale is important along Trelawney Street particularly given that the DCP aims to retain this street as a high



**ITEM 2 (continued)**

pedestrian amenity street and sets a building envelope control to limit the height of buildings. The objective for the building envelope is stated to be: *'To ensure that the existing human scale element of the streetscape is retained'*.

Council's RDCP 2010 provides further details on acceptable design solutions to treating corner sites. As is evident, elements should be limited specifically to defining the sites corner rather than the whole length of a site. It includes the diagram below. Any variance to the height control could be justifiable and likely to be supported in the circumstance of providing appropriate definition to a site's corner.

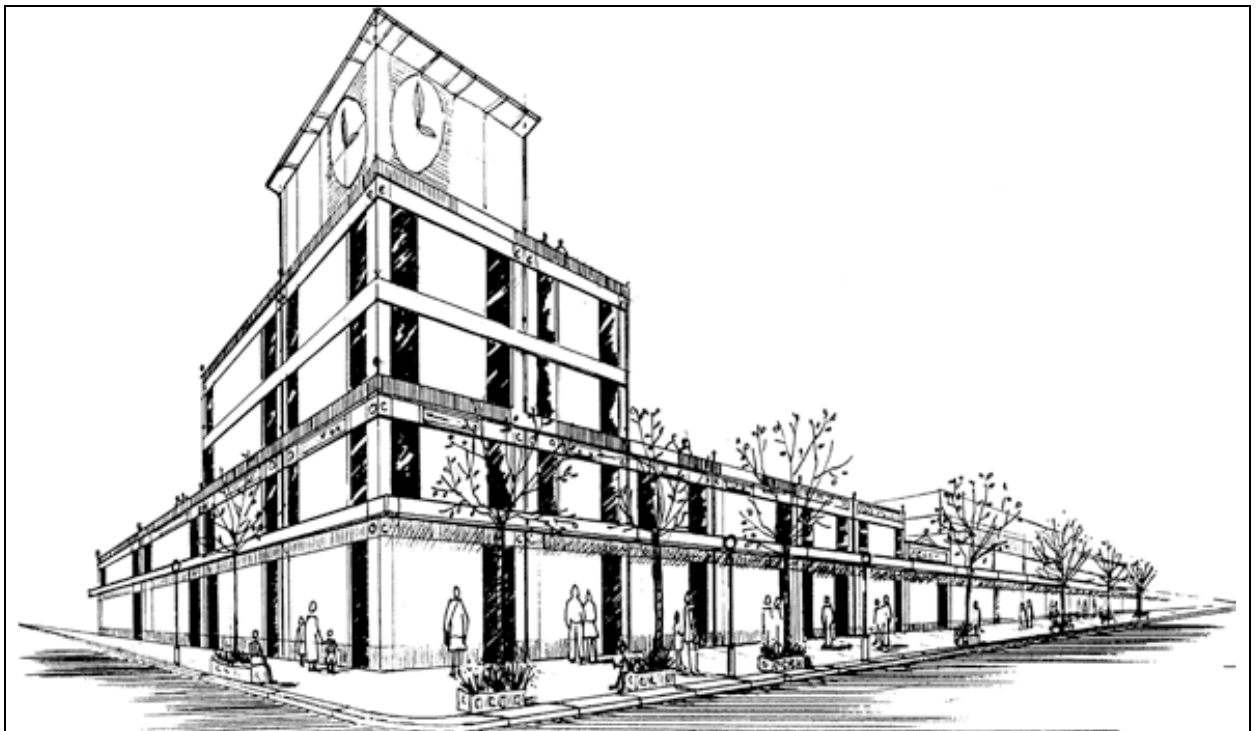


Image 4: Extract Ryde Development Control Plan 2010

The specified DCP objective for corner allotments is: *'To ensure buildings situated on corner allotments provide for visual interest and address intersection that they front'*. This supports that the emphasis that buildings should be limited to the corner of the building rather than the whole length of the corner location of the site. In addition, the following controls also support this:

*The design of buildings at gateway locations should consider the following:*

1. *The height of adjacent buildings;*
2. *Stepping the building up where the building turns the corner;*



**ITEM 2 (continued)**

As stated above, Objective (e) is *'to reinforce important road frontages in specific centres'*. Objective (e) can be related back to Objective (c) which is *'to enable the built form in denser areas to create spatial systems that relate to human scale'* and Objective (a) which is *'to maintain desired character and proportions of a street within areas'*. The Trelawney Street frontage is identified in Council's DCP 2010 to be an important pedestrian priority street. The 'future character statement' and provisions of Section 3.3 - Architectural Characteristics of the DCP, reinforce that an attractive public domain and desirable setting for users needs to be aimed for. The DCP refers to the *'Eastwood Commercial Centre Planning Study and Masterplan'* (master plan) which provides guidance for development of the town centre to the year 2020. The essence of the master plan is to provide for future development that is consistent with the urban village character. In terms of the height and scale, a natural relationship between people and the built environment needs to be maintained.

The importance of the 'human scale' issue is further reinforced by a building envelope control prescribed under Section 4.1 of the RDCP 2010, (which is specific to development in the Eastwood Town Centre), as well as the judgement of *Crown Atlantis Joint Venture v Ryde City Council*. As discussed in the table below of the section RDCP 2010 Part 4.1 Eastwood Town Centre, the proposed development will result in substantial variances to the required envelope and fail to achieve the related objective.

The court findings for *Crown Atlantis Joint Venture v Ryde City Council* indicate that the achievement of the 'human scale' is important to the design outcome and should not be disregarded. The relevant findings are stated below:

- 1. The intention of DCP 39 is that new development should have an urban village character. Development should be of human scale in the streetscape, being generally two to three stories in height. Taller building elements set back from street are permissible but they should not dominate.*
- 2. Trelawney Street is to be developed for the enjoyment and utility of pedestrians with a high level of aesthetic amenity at street level.*
- 3. Trelawney Street is a retail/pedestrian priority street, and at its intersection with Rutledge Street, forms a gateway to the Eastwood Town Centre. The street corner portion of the site is therefore a gateway site for the purposes of DCP 39 and notwithstanding the first objective above should be developed accordingly. More particularly the corner element of the building should address both streets and be stepped up especially in relation to structures at the street frontages.*

**ITEM 2 (continued)**

The third point verifies that the street corner portion of the site, not the whole length of the site, is that part that should form a gateway feature and should be developed accordingly. If appropriately designed and limited to the corner of the building, this would have minimal impact on retaining the human scale along Trelawney Street, reflecting the topography and providing a sympathetic transition to neighbouring properties to the north, if the remainder of the building is stepped down as discussed above.

The applicant was requested to make changes to the building to require some units above the 15.5m height limit along the Trelawney Street frontage and north elevation to be deleted, minor structures to be setback within the height plane and the corner to be redefined. Deletion of the units along the north elevation would achieve a transitional massing, scale and height with respect to neighbouring properties and topography, as well as increase sunlight penetration within the proposed building and provide a better relationship to the human scale.

- *The development will be excessive in density.*

The development is representative of excessive floor space and density. In the absence of any specific density controls, (such as floor space ratio, population or dwelling density), the density of the development is dictated by the applicable height, envelope and setback controls. The proposal fails to meet these controls, as discussed above with respect to building height, and below with respect to setbacks and building envelope.

- *The height has not been supported by the Urban Design Review Panel.*

The applicant was advised in the pre-lodgement meetings that the proposed height is not acceptable and compliance should be achieved. The height was also not supported by Council's Urban Design Review Panel, who raised the following:

*'The Panel considers that the development should remain entirely within the statutory height limit to respect the topography of the street which falls to the north along Trelawney Street. A step in the form of the building along the street reinforces the role of the corner as an entry way to the centre.'*

The above discussion reinforces that the following objectives for the B4 Mixed Use zone are not satisfied:

- *To recognise topography, landscape setting and unique location in design and land-use.*
- *To create safe and attractive environments for pedestrians.*

**ITEM 2 (continued)**

As discussed above, little regard has been given to the topography with respect to height and scale. The gateway design approach has not been properly applied as intended by Council's controls. An attractive pedestrian environment will not be achieved as inadequate regard has been given to the 'human scale' issue.

It is noted that the applicant has not submitted information, as requested, to indicate that the private open spaces will meet the RFDC requirement of a minimum of 2 hours solar access during 9am and 3pm on 21 June. In this respect it cannot be confirmed that objective (b) for building height is satisfied. This objective is *(b) to minimise overshadowing and ensure a desired level of solar access to all properties.*

**5. Concurrence of the Director General.**

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-Generals concurrence for exceptions to development standards.

**Conclusion**

The submission does not satisfy the criteria outlined in Clause 4.6. Therefore the variation is not supported.

**Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village**

Sub clause (3) requires that the consent authority must not grant consent to development on land within the Eastwood Urban Village unless it has considered whether the proposal is consistent with the following objectives:

- a. *To create a safe and attractive environment for pedestrians,*
- b. *To create a mixed use precinct with emphasis on uses that promote pedestrian activity and safety at ground level (existing),*
- c. *To create a precinct that contains opportunities and facilities for living, working, commerce, leisure, culture, community services, education and public worship,*
- d. *To increase the number of people living within walking distance of high frequency public transport services,*
- e. *To increase the use of public transport.*

The previous discussion with respect to building height has established that the development will not be consistent with Objective 2(a).

**ITEM 2 (continued)****Other Relevant Clauses from the RLEP 2010****Clause 1.4 – Definitions**

The development is defined as '*mixed use development*', and also falls under the definition of '*shop-top housing*', both of which are permissible uses under the zone of the land.

**Clause 2.6 – Subdivision-consent requirements**

Clause 2.6 requires development consent for subdivision. Whilst the proposal includes strata subdivision, no draft plans have been submitted for assessment. Draft plans are not normally provided at this stage. Conditions of consent can be imposed to ensure that final plans are submitted prior to the issue of any Subdivision Certificate.

**Clause 2.7 – Demolition requires development consent**

The development necessitates some minor demolition works. On site works relate to the removal of the existing substation and low retaining walls, such as those around planter beds. Public road works relate to the removal of existing road paving and vehicular crossings.

**Clause 5.9 - Preservation of trees and vegetation**

Refer to 'Landscape Officer' comments below. As indicated in the proposal description above, the proposal will result in the removal of two (2) trees, (both located near the northeast corner and adjacent to the Trelawney Street frontage), the pruning of at least three (3) trees on adjoining properties and the removal of one tree on an adjoining property. Consent for the removal of the tree will be required from the adjoining owner before the issue of a Construction Certificate.

**Clause 6.2 - Earthworks**

Refer to 'Engineer' and 'Environmental Health' comments below.

**Clause 6.4 – Eastwood Urban Village**

This clause applies to land in Eastwood as identified on Council's '*Eastwood Urban Village Map*'. It relates to addressing stormwater inundation / and potential flooding on this land.

**ITEM 2 (continued)**

While the subject site is not indicated on the '*Eastwood Urban Village Map*', the applicant has made amendments to the ground floor level based on flood data provided by Council's Engineer. To cater for a 1 in 100 Year ARI flood event / minimise risks, the ground level has been raised by 300mm. This has not altered the overall proposed building height.

**(b) Relevant SEPPs****SEPP No. 55- Remediation of Land**

The provisions of *SEPP 55 – Remediation of Land* (SEPP 55) apply to the subject DA. Clause 7 of SEPP 55, states that a consent authority must not consent to any development on land unless it has considered whether the land is contaminated. If the land is contaminated, the consent authority must be satisfied the land will be suitable in its contaminated state, or will be suitable after remediation, for the purpose for which development is proposed. If the land requires remediation, it must be satisfied that the land will be remediated before the land is used for that purpose.

The policy requires the submission of a preliminary investigation and, (where necessary), a detailed investigation of the land. The applicant has submitted a Remedial Action Plan as the site previously contained a Mobil Service station that was demolished in March 2011 and subsequently remediated and validated for commercial (non-sensitive) purposes only.

Council's Environmental Health Officer has reviewed the DA and recommended conditions of consent, should the application be approved.

**SEPP BASIX**

Clause 3 of the *Environmental Planning and Assessment Regulation 2000* defines a '*BASIX affected building*' as a building that contains one or more dwellings, but does not include a hotel or motel. Clause 2A of Schedule 1 of *Environmental Planning and Assessment Regulation 2000* requires the submission of a BASIX Certificate/s (issued no earlier than 3 months before the date on which the application is made) with a DA for a BASIX affected development.

The proposed development is a '*BASIX affected building*'. Accordingly, the subject DA is accompanied by a BASIX Certificate (No. 385935M issued on 12 October 2011) that indicates the development will achieve the minimum ratings for energy, thermal comfort and water.

Should the subject DA be approved, conditions are recommended to require compliance with the BASIX commitments detailed within the submitted certificate.



**ITEM 2 (continued)****SEPP (Infrastructure) 2007**Clause 55 - Development adjacent to corridor

Clause 55 (1) states that *'before determining an application for development adjacent to a gas pipeline corridor, the consent authority must:*

- (a) be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development or modification to which the application relates have been identified, and*
- (b) take those risks into consideration.*

The applicant has provided details on the location and type of gas infrastructure on and around the site. Should the application be approved, a condition is recommended to require compliance with the following to minimise any risks to gas pipelines that are located on or near the site, where works will be undertaken:

- The location of gas pipelines are to be confirmed by carefully pot-holing by hand excavation prior to proceeding with mechanical excavation in the vicinity of gas pipelines. If the gas main is not located, the local depot should be contacted on 131 909.
- All excavation (including pot-holing by hand) should be performed in accordance with 'Work Near Underground Assets Guidelines' published in 2007 by the Work Cover Authority.

Clause 101 - Development with frontage to classified road

Clause 101 refers to development with frontage to a classified road. It states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

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

**ITEM 2 (continued)**

Clause 101 applies to the subject DA as Rutledge Street is identified as a classified road. With respect to matter (a) vehicular access will not be provided by Rutledge Street, or any other classified road.

Both Council's Traffic Engineer and the RMS have reviewed the proposed development. No major concerns have been raised with respect to the safety, efficiency and ongoing operation of Rutledge Street. Conditions have been recommended should the application be approved.

The submitted acoustic assessments indicate that the traffic volumes of the adjacent streets, will result in intrusive internal noise levels that exceed the acceptable standards for dwellings and therefore measures need to be provided to minimise the impact. The measures include the installation of acoustic glazing to outward facing windows, and sealing of windows and door frames. Should the application be approved, conditions should be included in a consent to require acoustic glazing and sealing of window frames and door frames. The windows should not be inoperable, as this would limit natural ventilation opportunities.

Clause 104 - Traffic-generating development

This clause applies to the proposed development as it constitutes traffic generating development given:

- It is a type of development specified in Column 1 and of a size/capacity specified in Column 3 of the Table to Schedule 3 of the SEPP; and
- The site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection the size or capacity specified opposite.

Clause 104 generally requires the consent authority to give written notice to the RMS prior to determining the DA and consider any submission made in response to that notice.

The DA was notified as required and in response, the RMS requested additional information. The applicant submitted information. The RMS has reviewed the additional information and has raised no major concerns subject to certain details being provided and/or complied with. These can be addressed via the inclusion of conditions in a consent, should the application be approved.

Clause 104 also requires the consent authority give consideration of the following prior to determining the DA:

- (ii) *the accessibility of the site concerned, including:*
  - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*

**ITEM 2 (continued)**

- (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
- (iii) *any potential traffic safety, road congestion or parking implications of the development.*

The above relevant matters have been considered. Reference should be made to the comments provided by Council's Traffic Engineer and DCP assessment in relation to adequacy of the proposed parking.

**SEPP No. 65 - Design quality of Residential Flat Development**

This policy aims to improve the design quality of residential flat buildings in NSW. It encourages that the design quality of residential flat developments is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

There are 10 design quality principles identified within the SEPP 65. The following table provides an assessment of the development proposed against the 10 design principles.

Planning Principle	Comment	Complies
<b>Principle 1: Context</b>  Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.  Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.	It is evident by the discussion in the 'Clause 4.6' above, the development will not reflect the desired future character as stated in local planning and design policies. In particular, the height, massing and scale will not respect the provisions prescribed by the LEP, DCP, and masterplan relating to the 'human scale', 'urban village character', topography, and/or neighbouring built forms.	No

**ITEM 2 (continued)**

Planning Principle	Comment	Complies
<p><b>Principle 2: Scale</b></p> <p>Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.</p> <p>Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.</p>	<p>As discussed previously, the resultant scale will not be appropriate with respect to the topography and surrounding buildings, as well as the desired future character anticipated by Council's LEP, DCP and master plan.</p>	<p>No.</p>
<p><b>Principle 3: Built form</b></p> <p>Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The development does not appropriately contribute to the character of the streetscape.</p> <p>The building bulk has not been appropriately manipulated to adequately address the gateway aspect, fall of the land, and scale of development on adjoining land to the north (at the corner of Rowe and Trelawney Streets), including the general massing anticipated by the maximum allowable height prescribed under the RLEP. The built form does not express a strong corner built form.</p>	<p>No</p>
<p><b>Principle 4: Density</b></p> <p>Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).</p> <p>Appropriate densities are sustainable and consistent with</p>	<p>There is no applicable floor space ratio or other density controls, (such as dwelling or population density), that are applicable to the site. The density is therefore governed by the height, setback and envelope controls applicable to the site. As discussed above and below, the development</p>	<p>No</p>

**ITEM 2 (continued)**

Planning Principle	Comment	Complies
<p>the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.</p>	<p>does not achieve compliance with these controls and therefore represents a greater density.</p>	
<p><b>Principle 5: Resource, energy and water efficiency</b></p> <p>Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.</p> <p>Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.</p>	<p>The applicant has submitted a BASIX Certificate which indicates that the residential component will meet the energy and water use targets set by the BASIX SEPP.</p> <p>A waste management plan has been submitted and reviewed by Council's Environmental Health Officer. The plan is considered acceptable.</p> <p>Should the application be approved a condition of consent is recommended to ensure appropriate soil depths are provided for tree planting as recommended in the Residential Flat Design Code.</p>	<p>Subject to conditions</p>
<p><b>Principle 6: Landscape</b></p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</p>	<p>The landscaping will assist in improving the aesthetics of the building as well as improving the on-site amenity of the future residents.</p> <p>The landscaping along the building elevations will ensure that the appearance of the development is</p>	<p>Subject to conditions</p>



**ITEM 2 (continued)**

Planning Principle	Comment	Complies
<p>Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise usability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.</p>	<p>softened as viewed from the surrounding streets.</p> <p>The landscaping of the communal open space as well as other design features (such as seating and a BBQ area) will ensure that this space provides an aesthetically pleasing and useable facility for the residents.</p> <p>The development will be void of any deep soil planting. In this regard, appropriate soil depths should be provided for substantial tree growth. Council's Engineer has recommended conditions to ensure an effective and appropriate stormwater drainage system is provided. The RFDC recommends appropriate stormwater treatment measures in circumstances where deep soil planting is not provided. Related conditions should be included in a consent to address this. This matter is also discussed in the section below <i>'Urban Design Review Panel: Communal Open Space and Rooftops'</i>.</p>	
<p><b>Principle 7: Amenity</b></p> <p>Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.</p>	<p>The separation requirement is not met to the north and west boundaries. It is acknowledged that there will be no substantial impact on the existing neighbouring properties, however should these properties be redeveloped/ extended the issue of amenity will arise. The proposed development will not facilitate a 12m separation between built forms to ensure adequate amenity and is therefore forced to borrow amenity from the neighbouring properties.</p> <p>As discussed below, the acoustic assessment submitted with the DA</p>	<p>No</p>

**ITEM 2 (continued)**

Planning Principle	Comment	Complies
	<p>indicates that certain measures will need to be adopted to ensure that the units meet the required standards for internal amenity. The measures include double glazing, and sealing of door frames and externally facing windows. The sealing of externally facing windows is not appropriate as it will limit natural ventilation opportunities. The amenity of private open spaces has not been considered in the acoustic assessment, particularly the impact of traffic noise on the use of ground level private open spaces facing Rutledge Street. The objective for acoustic privacy contained in the RFDC refers to ensuring a high level of amenity both within units and private open spaces. Should the application be approved, conditions should be included to require an acoustic assessment and adoption of recommended measures.</p> <p>The visual privacy impact to ground level units has not been adequately addressed by the proposed design. As indicated in the RFDC assessment below the following measures have not been incorporated in the design: stepping up of the ground level of units from the footpath level and establishing window sill heights to minimise sight lines into units. Boundary screening through vegetation is proposed to mitigate overlooking into units. A more appropriate solution that also adequately addresses security is a 1.8m high wall that steps into the site with a planter bed in front to shield its upper portion as to minimise its visual impact to the street. Should the application be approved, a condition is recommended to require this.</p>	

**ITEM 2 (continued)**

Planning Principle	Comment	Complies
<p><b>Principle 8: Safety and security</b></p> <p>Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.</p>	<p>NSW Police has reviewed the application and have made recommendations to improve the development with respect of achieving better consistency with the CPTED principles. As stated above, appropriate fencing needs to be provided adjacent to the ground level units facing Rutledge Street. Should the application be approved, conditions should be included in a consent accordingly.</p>	<p>Subject to conditions</p>
<p><b>Principle 9: Social dimensions and housing affordability</b></p> <p>Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community. New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing</p>	<p>The development will include dual aspect, single aspect and corner apartment layouts, as well as adaptable housing. The following housing mix is proposed:</p> <ul style="list-style-type: none"> <li>• 13 x 1 bedroom apartments;</li> <li>• 46 x 2 bedroom apartments;</li> <li>• 2 x 3 bedroom apartments.</li> </ul> <p>Given the limited size of the site it would be difficult to accommodate a greater mix on the site. The proposed mix will result in an affordable range of housing which should attract singles, couples and family occupants into an area which is highly accessible to public transport and local shopping. In this regard, as a guide the Housing NSW Centre for Affordable Housing</p>	<p>Yes</p>

**ITEM 2 (continued)**

Planning Principle	Comment	Complies
types to cater for different budgets and housing needs.	suggests 1 and 2 bedroom apartments contribute towards achieving housing affordability.	
<b>Principle 10: Aesthetics</b>  Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.	The development will consist of a variety of materials and finishes to assist in the articulation and visual interest of the building, as well as facilitate the differentiation between the uses and different building sections.	Yes

**Residential Flat Design Code**

The SEPP also requires the Council to take into consideration the requirements of the *Residential Flat Design Code*. The development generally complies with the requirements provided in this document relating to unit sizes for housing affordability, internal building separations, stormwater management, waste management, bicycle parking, housing choice, driveways, roof designs, and energy efficiency appliances. The non-compliances are indicated and discussed in the table below.

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Building Height	Test heights against the number of storeys and the minimum ceiling heights	When tested against the maximum permissible height (15.5m), the number of storeys is attainable is about 4 storeys. In actual practice it would be around 3 storeys, if the height of the proposed rooftop plant is deducted (3.8m max). (It is assumed that the retail level will	No

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>have a floor to ceiling height of 3m, all levels above will have a floor to ceiling height of 2.7m, the general floor/ceiling slabs will have a thickness of 300mm).</p> <p>The number of storeys proposed (taking into account basement projections as per SEPP 65 definition of RFB) is 6 storeys to the west and east.</p>	
Floor Space Ratio	FSR in denser Urban Areas: 80% of Building Envelope. (Footprint area x no. storeys x 80%)	There is no FSR control applicable to the development.	N/A
Building Depth	Apartment building depth: 10-18m.	<p>The building depth is compliant in the location of the central court, otherwise if it is measured on the shorter axis where no break occurs (i.e. along the Rutledge St frontage and north elevation), the development will provide a maximum depth of 37m. This is satisfactory with respect to the street frontage as the Urban Design Review Panel has advised that a continuous street frontage should be created by the built form along Trelawney and Rutledge Streets.</p> <p>The depth along the north elevation is not appropriate when related back to the bulk/massing discussed above. In this respect, the proposal will not satisfy the following objectives of the control where the non-compliant height will result:</p>	Satisfactory



**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>- To ensure that the bulk of the development is in scale with the existing or desired future context. However, even if compliance is met with the height control; the building will still maintain a depth of 37m for the levels below. Since compliance will be achieved with the other objectives, no concerns are raised to the depth.</p>	
Building Separation	Up to 4 storeys (12m height): <ul style="list-style-type: none"> <li>▪ 12m between habitable rooms and balconies</li> <li>▪ 9m between habitable rooms/balconies &amp; non-habitable rooms</li> <li>▪ 6m between non-habitable rooms</li> </ul> From 5 to 8 storeys (25m height): <ul style="list-style-type: none"> <li>▪ 18m between habitable rooms and balconies</li> <li>▪ 13m between habitable rooms/balconies &amp; non-habitable rooms</li> <li>▪ 9m between non-habitable rooms</li> </ul>	External separation: <ul style="list-style-type: none"> <li>▪ Between proposed development at 7-9 Rutledge Street: 26m</li> <li>▪ Between school building: 4.6m - 10m</li> <li>▪ Between building to the north: 4m</li> </ul> <p>As discussed in the SEPP 65 table above, the boundary setbacks are not sufficient to ensure adequate amenity in terms of privacy. They will result in a built form that is forced to borrow amenity from adjoining sites.</p>	No
Deep Soil Zones	Minimum of 25% of the open space area	It is not possible to provide any deep soil zones given the boundary to boundary construction. Refer to below section 'Urban Design Review Panel'. As discussed above,	Subject to conditions

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		conditions should be included in consent to require appropriate soil depths and stormwater treatment measures.	
Communal Open Space	Communal Open Space: 25-30% of site area.	30.5% of the site is to be allocated for communal open space.	Yes
Stormwater Management	Reduce the volume impact of stormwater on infrastructure by retaining it on site.	The proposal has been reviewed by Council's Stormwater Engineer who has advised that the proposal is satisfactory subject to conditions.	Subject to conditions
Safety	Reinforce boundary to strengthen the distinction between public and private space.	Adequate distinction will be provided.	Yes
Privacy	<p>Locate and orient new development to maximise visual privacy between buildings on site and adjacent buildings. Design building layouts to minimise direct overlooking of rooms and POS adjacent to apartments.</p> <p>Use detailed site and building design elements to increase privacy without compromising access to light and air.</p>	<p>The building will not achieve the minimum 6m building separation requirement to the north and west elevations. The development will result in a built form that is forced to borrow amenity form adjoining sites.</p> <p>Ground level units proposed to face Rutledge Street will be at a similar level to the footpath and screening will be provided via planting. The provision of a wall and planting along the private open spaces of ground level units (as discussed above under the section 'Principle 7: Amenity') will better assist in minimising the privacy implications to the ground level units. Conditions should be included in a consent to address</p>	No

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>this matter.</p> <p>The submitted acoustic report indicates that certain measures need to be adopted to mitigate surrounding traffic noise and provide an acceptable internal living environment to the units. Conditions should be included in a consent require the adoption of the measures, except for the sealing of windows to ensure opportunities for natural ventilation are provided, plus measures be adopted to minimise the acoustic impact on private open spaces facing Rutledge Street.</p>	
Pedestrian Access	<p>Follow the accessibility standards of AS 1428.</p> <p>Promote equity by ensuring the main building entrance is accessible for all from the street and from car parking areas.</p>	<p>The plans have been amended to delete steps along the Trelawney Street frontage of the site and add ramps inside most retail / commercial tenancies. To provide appropriate wheelchair access, a condition is recommended to ensure the entries into the retail/commercial tenancies are flush with the footpath level and that an internal ramp is provided, where necessary and openings are wide enough to cater for wheelchair access.</p>	Subject to conditions
Apartment Layout		<p>Opportunities for natural ventilation need to be maximised by providing operable windows. Should the application be approved, conditions are recommended to require all windows to be operable.</p>	Subject to conditions

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	<p>Single-aspect apartments = 8 m max. in depth from a window.</p>	<p>Generally the single aspect apartments are considered to be those enclosed to the inner facing side by the circulation cores with no windows on this side. The following apartments do not achieve compliance: Units 111-411, 112-412, and 113-413, 105-405, 106-406.</p> <p>The non-compliances for the units to the south elevation are accepted in this case given:</p> <ul style="list-style-type: none"> <li>-Indents have been provided adjacent to main living areas to ensure compliance.</li> <li>-The variances are minimal.</li> <li>-The non-compliant portion contains areas other than main living areas.</li> <li>-Light access is less important in bedrooms and non-habitable areas, where the non-compliance occurs.</li> <li>-The variances will provide more functional space.</li> </ul> <p>The variances to Units 105-405, 106-406 are accepted given the following:</p> <ul style="list-style-type: none"> <li>-The variances are minimal.</li> <li>-The units will have adequate access to sunlight and ventilation.</li> <li>-The variances will provide more functional space.</li> </ul>	<p>Satisfactory</p>
	<p>The back of a kitchen = 8m max. from a window.</p>	<p>Generally the apartments achieve this, although Units 105, 106, 205, 206, 305, 306, 405, and 406 fail this control. The kitchens of</p>	<p>Satisfactory</p>

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>these units are approximately 10m from a window and 8-10m from a side sliding door. Given that the variance from the sliding door to the cooking area is minimal (i.e. not more than 500mm), the non-compliance is accepted in this case.</p>	
<p>Internal and External Areas</p>	<p>1 Bed cross through: 50/8m<sup>2</sup>            1 Bed single aspect: 63.4/10m<sup>2</sup>             2 Bed corner: 80/11m<sup>2</sup>            2 Bed cross through: 89/21m<sup>2</sup>             3 Bed: 124 / 24m<sup>2</sup></p>	<p>The following units do not achieve compliance:            G03: 87 / &gt;22 (2 bed cross)            G04: 87 / &gt;22 (2 bed cross)            107: 93 / 10.5 (2 bed cnr)            108: 86 / 8.8 (2 bed)            109: 87 / 8.8 (2 bed)            110: 83 / 8 (2 bed cnr)            111: 57 / 6.45(1 bed single)            112: 59 / 6.8 (1 bed single)            113: 63 / 8 (1 bed single)            202-402: 92/9.46 (2 bed cross)            203-403: 92/ 9.46 (2 bed cross)            204-404:88/9.42 (2 bed cnr)            205-405: 89/ 12.6 (2 bed)            206-406: 88/ 12.6 (2 bed)            207-407: 93 / 9.6 (2 bed cnr)            208-408: 86 / 8.8 (2 bed cross)            109-409: 87 /8.8 (2 bed cnr)            110-410: 83 / 8.85 (2 cnr)            211-411: 57 / 7 (1 single)            212-412: 59/ 7.74 (1 single)            213-413: 63 / 7.74 (1 single)            502: 92/ 9.46 (2 bed cross)            503: 92/ 9.46 (2 bed cross)            504: 117 / 9.42 (3 bed cnr)</p> <p>The variances to private open spaces are more significant in circumstances where 2 bedroom cross through and 3 bedroom apartments are proposed as a</p>	<p>Satisfactory</p>



**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>minimum private open space of 21sqm and 24sqm is required respectively. The private open spaces or unit areas cannot be extended without further breach to building separations and setbacks. This is indicative that the proposal represents an overdevelopment of the site. Given this and the following the non-compliances are accepted in this case:</p> <ul style="list-style-type: none"> <li>- The absolute minimum of 8-11sqm is generally met for the private open spaces</li> <li>- Variances for the private open spaces of 1 bedroom units are minimal.</li> <li>- Variances to unit areas are minimal.</li> <li>- Smaller unit areas and private open spaces will encourage affordable housing.</li> <li>- Ample communal area will be provided.</li> </ul>	
Ceiling Heights	<p>Minimum Floor to Ceiling Heights:            Mixed use buildings: 3.3m for ground floor retail or commercial and 1st floor residential, retail or commercial.</p> <p>RFB's or residential floors in mixed use buildings: 2.7m for all habitable rooms,</p>	<p>Retail tenancies will have a minimum F-to-C height of at least 3m. This is satisfactory as the floor levels have been altered to cater for flood level concerns raised by Council's Engineers.</p> <p>Residential units will have a F-to-C height of 2.7m.</p>	Satisfactory

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	2.4m for all non-habitable rooms, however 2.25m is permitted.		
Ground Level Units	Ensure adequate privacy and safety of ground floor units with no street setbacks by stepping up grnd floor from footpath a max. of 1.2m; design balustrades & window sill heights to minimise site lines; ensuring safety bars/ screens are integrated in design.	This matter has been discussed above.	Subject to conditions
	Private Open Space at Ground Level: 25m <sup>2</sup> & min. dimension 4m.	The units do not meet the minimum 25sqm requirement but achieve the minimum external area requirement listed above.	Satisfactory.
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>▪ studio apartments 6m<sup>3</sup></li> <li>▪ one-bedroom apartments 6m<sup>3</sup></li> <li>▪ two-bedroom apartments 8m<sup>3</sup></li> <li>▪ three plus bedroom apartments 10m<sup>3</sup></li> </ul>	The plans indicate the storage areas within the lower ground and basement levels as shaded zones but do not indicate the division or unit allocation of the zones. This is required to confirm the zones are large enough (excluding any access ways, enclosures, etc) to cater for the minimum storage area requirement per unit. The applicant has provided an amended table which lists the amount of storage area per unit. This table demonstrates that each unit will achieve compliance with the minimum requirement, except for Units 502 and 503. They will	Subject to conditions

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>require another 2m<sup>3</sup> of storage area each. Should the application be approved, a condition is recommended to require each unit (particularly Units 502 and 503) to be provided with the following minimum storage areas and such areas to be indicated on the plans, including the division of storage zones within the basement and lower ground levels:</p> <p>1 bedroom Unit: 6m<sup>3</sup>            2 Bedroom Unit: 8m<sup>3</sup>            3 Bedroom Unit: 10m<sup>3</sup></p>	
Acoustic Privacy	<p>Resolve conflicts between noise, outlook and views by using design measures adequate building separation within the development and from neighbours.</p> <p>Reduce noise transmission from common corridors or outside the building by providing seals at entry doors.</p>	Addressed in above section 'privacy' and DCP table below.	Subject to conditions.
Daylight Access – skylight and sunlight	Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units and increase their window area	The number of single aspect units with a southerly aspect: 13. This represents 21.3% of the total number of units. (Units G01, 111-113, 211-213, 311-313, 411-413). This is satisfactory given that: The Urban Design Review Panel has advised that a continuous street wall should be created	Satisfactory

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>along Rutledge Street. Even if the units at the top level are deleted to achieve strict compliance with the height standard, compliance would not be achieved with the 10% requirement.</p>	
	<p>Design for shading and glare control, particularly in summer.</p>	<p>A condition can be included in a consent to avoid reflective films; require use a glass reflectance below 20%; and consider reduced tint glass.</p>	<p>Subject to conditions</p>
	<p>Living rooms and private open spaces for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.</p>	<p>Living rooms of 75% of units will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.  The applicant has not submitted details that verify private open spaces of at least 70% of the units will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.</p>	<p>Satisfactory  Insufficient details</p>
<p>Natural Ventilation</p>	<p>60% of units should be naturally cross ventilated.  Select doors and operable windows to maximise natural ventilation opportunities established by the apartment layout.</p>	<p>The details of operable and fixed windows have not been provided. Should the application be approved, a condition is recommended to require all windows to be operable. In this regard approximately 65% of units will have access to natural cross ventilation via window openings and doorways. Doorways on the inner facing elevations will assist in natural ventilation opportunities given that the circulation core will be partly open.</p>	<p>Subject to conditions</p>

**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	25% of kitchens (i.e. 15) should have access to natural ventilation	86.88 %. Refer to section above 'Apartment Layout'. The back of a kitchen = 8m max. from a window. (NB: It is assumed that if a kitchen is 8m or less from a window or sliding door, then it has access to natural ventilation).	Yes
Energy Efficiency	Reduce reliance on artificial lighting by: <ul style="list-style-type: none"> <li>▪ providing a mix of lighting fixtures, including dimmable lighting, to provide for a range of activities in different rooms</li> <li>▪ designing to allow for different possibilities for lighting the room, for example, low background lighting supplemented by task or effect lighting for use as required</li> <li>▪ using separate switches for special purpose lighting</li> <li>▪ using high efficiency lighting</li> <li>▪ using motion detectors for common areas, lighting</li> <li>▪ doorways and entrances, outdoor security</li> </ul>	Units will have access to energy efficient lighting. Conditions can be included in a consent to ensure the implementation of the commitments indicated on the BASIX certificate, as well as require: <ul style="list-style-type: none"> <li>▪ lighting adjacent to windows be switched separately to those not adjacent to windows;</li> <li>▪ dimmable lighting in living areas; and</li> <li>▪ security lighting for units doorways/entrances.</li> </ul>	Subject to conditions



**ITEM 2 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	lighting.		
Water Conservation	To reduce mains consumption of potable water. To reduce the quantity of urban stormwater runoff.	It is stated that there is potential for rainwater harvest and reuse. The application will also comply with BASIX in terms of meeting the water efficiency target.	Subject to conditions
	Use AAA rated appliances to minimise water use;	Should the application be approved, a condition can be included in a consent.	Subject to conditions

**Urban Design Review Panel**

Council's Urban Design Review Panel (Panel) considered a similar scheme to that proposed development on the 25 February 2011. This was prior to lodgement of the subject DA. Comments made by the Panel have been included in bold, italics below. A response in respect to this comment has also been provided below, including any changes made by the applicant to address concerns raised by the Panel or further justification of the scheme provided by the applicant.

*Building Height:*

***The panel considers that the development should remain entirely within the statutory height limit to respect the topography of the street which falls to the north along Trelawney Street. A step in the form of the building along the street reinforced the role of the corner as an entry way to the centre.***

Comment: The applicant has justified the building height on the following grounds:

- *It will enable the development to directly relate to the scale and proportion of the proposed development at 7-9 Rutledge Street and provide an opportunity to design a significant gateway.*
- *Suggesting to step the top section of the building along Trelawney Street is directly at odds with what SEPP 65 describes as a desirable outcome for sloping sites. In addition this would destroy the sense of duality with the development at 7-9 Rutledge Street.*
- *There are no adverse impacts in relation to bulk, scale and public amenity.*
- *The development more than satisfies the objectives of Council's LEP controls.*

**ITEM 2 (continued)**

The issues raised by the applicant relating to the gateway presentation, impact on bulk/scale, impact on public amenity and meeting the objectives of Council's LEP controls have been addressed previously. The justifications are not well founded.

The applicant has advised that the resultant outcome with respect to the proposed building scale is necessary to produce 'appropriate built forms' as referred to in diagram 1.54 of SEPP 65. No diagrams are provided in SEPP 65. Diagram 1.54 in the RFDC refers to sites with steep slopes and states 'the height plane should be modified along the street edge to facilitate appropriate built forms'. Diagram 1.53 refers to gently sloping sites and states that 'the height plane should follow the slope of the site'. The latter is relevant in this case based on the topography.

Street Setback

***The Panel considers that the building should comply with the statutory street setbacks required in the DCP. The non compliance on the corner of Rutledge and Trelawney Street where the residential portion of the building encroaches into the required setback towards Rutledge Street is not supported and should be deleted. The resultant built form should still express a strong corner form. Retail 1 on the Street corner should be extended to the Rutledge Street boundary to provide strong corner definition.***

Comment: The pre-DA plans were amended to reduce a 1.045m encroachment as well as extend Retail 1 to the Rutledge Street elevation which was originally setback 2m from Rutledge Street. These amendments appropriately addressed the street setback issue raised by the Panel.

Boundary Setbacks

***The Panel considers that the proposed boundary setbacks are not sufficient to ensure adequate amenity and result in a building form that is forced to borrow amenity from adjoining sites.***

***All boundary setbacks to residential uses are to be increased to 6m to provide a reasonable outlook, amenity and separation from the existing and likely future building form.***

***The panel considers that a relaxation of this 6 metre dimension may be appropriate at the northern boundary immediately adjacent to Trelawney Street. The panel encourages the applicant to consider a nil setback for the height of the building for a minimum depth of 6m to achieve a continuous street wall scale for the development to***

**ITEM 2 (continued)**

***Trelawney Street. This will require redesign of the end apartment to achieve an outlook to Trelawney Street or into the site rather than the side boundary.***

Comment: The end unit has been redesigned to achieve an outlook to both the north and Trelawney Street.

The applicant has advised that a 3m setback to the west boundary (adjacent to the school) is appropriate given the following:

- *There are no privacy issues to adjacent residential buildings.*
- *There is very little likelihood of any future residential buildings occupying this land so the potential for amenity impacts on the residents are extremely low to non-existent.*
- *There are no adverse shadow impacts since most of the playground adjacent to the western boundary of the site, is already shaded by the large trees and even if these trees were removed there is little percentage change to the shadow impacts of a building 3m or 6m away. There is no potential for any shadow impact on the school site after 11.00am mid winter, no matter what the circumstances.*
- *Acoustic impacts on the residents throughout school hours are the same whether a 3m or 6m is provided.*
- *As a result of reasonable boundary setback of 3m, then the size of the internal courtyard can be maximised and cross ventilation, solar access and quality of residential amenity in this area can be optimised.*
- *The existing interface to the school is heavily screened on both boundaries with well established planting to provide screening and privacy.*
- *Additional privacy planting is proposed within the subject site boundary between the school and the proposed development.*
- *Consultation has been undertaken with the school principle and no concerns have been raised.*

The school is subject to a 15.5m height limit and therefore could be developed as a result to provide additional school facilities. In this regard, the visual and acoustic privacy implications would need to be addressed in the interest of protecting the amenity of the proposed units facing west. The provision of a 6m separation for the proposal would facilitate the achievement of the minimum separation requirement of 12m between habitable rooms and balconies for appropriate visual and acoustic privacy.

**ITEM 2 (continued)**

The applicant has advised that a 3m setback to the north boundary, adjacent to the retail/commercial properties, is appropriate in this case given:

- *The land is under various ownerships. If amalgamation ever occurred and redevelopment was to take place, then it is most likely that the bulk of the building would sit towards the Rowe Street frontage, and substantial setbacks to the south would likely occur to accommodate access and parking.*
- *The UDRP suggested that a 3m setback in the NE corner would be a reasonable outcome in relation to achieving a continuation of built form along Trelawney Street.*
- *To initiate any future adverse impacts on residents, the units numbered 4 & 5 on each floor have been designed to have their living spaces in the NE and NW corners respectively, to maximise the view potential and solar access opportunity, should a new development occur to the north adjacent to these units.*

The justification provided is not considered well based in this case. Any future building/s on the properties is likely to consist of residential levels above any basement parking and take advantage of providing a built form up to the minimum setback. The 3m setback recommended by the Panel would be limited to the building corner. The proposed units that are likely to be adjacent to any future residential development would be located on Levels 1, 2 and 3. (This assumption is based on maximum height limit of 15.5m applicable to the neighbouring properties and the fall of the land). To ensure the 12m separation distance between this development and any future residential development, it will be necessary to provide a 6m setback for this site rather than the proposed 3m setback. The provision of a 6m separation is not only important to the residential amenity but also providing consistent spacing between built forms.

The Panel's suggestion to consider a nil setback for the height of the building for a minimum depth of 6m to achieve a continuous street wall to Trelawney Street has not been adopted. The applicant has advised that the development '*has been designed in concert with 7-9 Rutledge Street. The gateway element if continued down Trelawney Street to provide a continuous avenue of consistent built form*'. As discussed above, this gateway solution is not appropriate.

**Mass and Apartment Layout**

***The Panel considers that the building massing as proposed, does not deliver a reasonable standard of amenity.***

***An alternative or significantly modified building form should be investigated to deliver a higher standard of amenity, solar access outlook and cross ventilation. Forms such as U or L***

**ITEM 2 (continued)**

***shapes with continuous frontage to the two streets should be considered.***

***The development should also have two lift and stair cores rather than seeking to link all apartments to one core within a light well. A two core solution can avoid the open external walkway access, meet the Residential Flat Code requirements for the number of units per floor and also provide an address to each of the buildings to both streets.***

***The Panel does not support the open walkway system. This solution creates issues of acoustic and visual privacy, poor amenity in inclement weather and results in units relying on ventilation and outlook onto and over the open access way.***

Comment: The applicant has made changes to the scheme to address the issues raised by the UDRP. These changes include:

- Provision of a two core lift solution.
- Deletion of the central bridge and lift.
- Increase in the separation between habitable rooms from 12m to a minimum of 16.4m
- Relocation of habitable rooms from the internal facades, (facing the circulation routes) to the external facades.
- Provision of courtyard surface finishes and treatment to mitigate acoustic impacts.
- Changes to the Trelawney and Rutledge Street facades to provide continuous frontages.
- Deletion of high level windows.
- Addition of screening to bedroom windows of units to the east and west. (NB: This will limit ventilation opportunities unless the screens consist of adjustable louvers to facilitate air flows. Consent can be conditioned accordingly).

**NB: The Panel's recommendations with respect to the street frontages were made in the context of providing a 'U' or 'L' shaped form with continuous street frontages. However, the development does not adopt any of these forms.**

*Street Frontages*

***The panel believes that a better solution would be achieved for the ground floor apartments and terraces facing Rutledge Street if there was a reasonable grade difference between the street and the level of the terrace.***

***This would allow some outlook whilst avoiding privacy issues and the need for a 1.8m high screen to the street.***

**ITEM 2 (continued)**

Comment: The applicant has advised that the location of the ground level units facing Rutledge Street are appropriate as living spaces will be set back 5.5m from the street and it is proposed to reduce the fence height to Rutledge Street and provide screening through vegetation to mitigate any outlook issues. As discussed above, a more appropriate solution to providing appropriate security and privacy is to erect a 1.8m high wall with a setback at approximately 1.2m in height and planting box within the setback. The planting will screen the visual impact of the wall.

*Internal Apartment Amenity*

***Generally the internal layout of the units is supported other than where the design results in bedrooms looking onto access ways.***

***The Panel believes that all bedrooms should have openable windows that provide a reasonable outlook without compromising visual and or acoustic privacy. High level windows above 1.5m are not considered adequate for the primary bedroom window.***

Comment: The plans have been amended to remove all bedrooms looking out onto the access way and high level windows.

A limited number of bedrooms will face onto the central courtyard. Through stepping in the building form and erection of privacy screens, the visual and acoustic privacy implications will be reduced. As mentioned above, the screening is likely to impact on natural ventilation flows unless it consists of adjustable louvers.

*Communal Open Space / Deep Soil and Rooftops*

***Communal Open Space is to be provided to meet the RFDC requirements. Deep soil planting or sufficient soil volume and depth is to be provided to support mature trees, particularly within any communal open space and along the boundary to the school.***

Comment: The development will be void of any deep soil planting. In this regard, appropriate soil depths should be provided for substantial tree growth as recommended in the RFDC. Consent can be conditioned accordingly.

The RFDC recommends appropriate stormwater treatment measures in circumstances where deep soil planting is not provided. Council's Engineer has recommended conditions to ensure an effective and appropriate stormwater drainage system is provided.



**ITEM 2 (continued)**Architectural Character

***The architectural expression of the development is considered appropriate for its context***

Comment: Noted.

**(c) Relevant REPs****Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The site is located within the catchment area identified under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. Division 2 lists matters that Council must consider before granting consent to an application. The proposed development will be satisfactory with respect to the relevant matters, as discussed below.

Biodiversity, Ecology and Environment Protection:

The scale and setback of the development and proposed drainage and sediment and erosion control measures will limit any of the following:

- Potential threat to any terrestrial and aquatic species, ecological communities, populations or their habitats;
- Adverse impacts to any natural intertidal foreshore areas, natural landforms, native vegetation and riparian land;
- Pollution or siltation of the waterway; and
- Changes to drainage patterns.

Conditions should be included in a consent to ensure the site is appropriately remediated to minimise any detrimental impact on the water quality. The objectives for water quality have also been addressed below with respect to Section 8.2 of DCP 2010. Council's Engineer has advised that the stormwater disposal is generally in accordance with Part 8.2.

Interrelationship of Waterway and Foreshore Uses:

There will be minimal interrelationship between the proposed development and the use of the foreshore and waterway, as well as any access thereto, given the setback of the site from the waterway and foreshore.

Foreshore and Waterways Scenic Quality:

There will be no imposing impact to the scenic quality as the site is set back from the foreshore and waterway and surrounding built form will shield views of the development.

## ITEM 2 (continued)

### Maintenance, protection and enhancement of views:

No unreasonable obstruction of views or vistas is expected. The site is set back from the foreshore and waterway, amongst other built forms.

### Part 5 – Heritage Provisions

Clause 57 refers to Aboriginal heritage. There is little evidence to suggest that the site is a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or an archaeological site of a relic that has Aboriginal heritage significance. However, should the application be approved, a condition is recommended to ensure that in the instance, any Aboriginal cultural materials are discovered during any stage of construction, all work will cease and the Metropolitan Local Aboriginal Land Council and NSW National Parks and Wildlife Service will be notified.

Clause 58 refers to non-Aboriginal heritage. The subject site is not identified as being an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance.

Clause 59 requires Council to assess the impact of development on the significance of any heritage items within the vicinity. There are no heritage items identified under the deemed SEPP within the vicinity.

### (d) Any draft LEPs

#### **Draft Ryde Local Environmental Plan 2011**

The relevant provisions of the '*Draft Ryde Local Environmental Plan 2011*', in addition to those addressed above with respect to RLEP 2010, are addressed in the table below.

Control	Comment	Complies
<p><i>Clause 1.2 – Aims of Plan</i></p> <p>Aims of Plan            (2) (b) <i>to provide opportunities for a range of housing types and density that: (ii) are compatible with the existing environmental character of the locality,</i></p> <ul style="list-style-type: none"> <li>▪ <i>(iii) have a sympathetic and harmonious relationship with adjoining development.</i></li> <li>▪</li> </ul>	<p>As discussed above, the development will not have a sympathetic and harmonious relationship with adjoining development or existing character and therefore would not meet the objective (2)(b). The development will not preserve or improve the 'urban village' character (particularly with respect to the 'human scale' issue discussed</p>	No

**ITEM 2 (continued)**

Control	Comment	Complies
<ul style="list-style-type: none"> <li>▪ (2) (g) <i>to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies.</i></li> </ul>	above) and therefore will not be consistent with objective (2) (g)	
<p><i>Clause 2.3 – Zone Objectives and land use table</i></p> <p>Zone B4 Mixed Use Objectives of zone</p> <ul style="list-style-type: none"> <li>▪ <i>To provide a mixture of compatible land uses.</i></li> <li>▪ <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></li> </ul>	The proposed mixed use development is permissible with consent and consistent with the objectives of the zone.	Yes
<p>Clause 4.3 – Height of Buildings</p> <p>O2 = 15.5m</p> <p><i>(a) to maintain desired character and proportions of a street within areas, (a) to minimise overshadowing and ensure a desired level of solar access to all properties, (b) to encourage a built form that relates to human scale and topography, (c) to concentrate building heights around railway station, to provide focal points that clearly highlight the role of railway stations, transport nodes, or large vehicular intersections. (d) to reinforce the important road frontages along road corridors.</i></p>	<p>The reference to the height control has changed from O1 to O2 but not the actual standard.</p> <p>The objectives indicated are similar to those of RLEP 2010. There has been some minor rewording but the inconsistency of the development in the section 'Clause 4.6' above remains the same.</p>	No
<p>Clause 6.7 - Environmental Sustainability</p> <p>All buildings with a minimum of 1,500m<sup>2</sup> in gross floor area</p>	<p>The BASIX provisions override this control. The subject DA is accompanied by BASIX Certificate No. 385935M issued on 12 October 2011</p>	-

**ITEM 2 (continued)**

Control	Comment	Complies
constructed on land zoned business or industrial, are required to have at least a 4 Star Green Star certified rating issued from the Green Building Council of Australia where the Green Building Council rating tool can be applied.	that indicates the development will achieve the minimum targets.	
Clause 6.8 - Stormwater Quality	Council's Engineer has advised the stormwater drainage scheme is acceptable subject to conditions.	Subject to conditions.

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

The relevant provisions of Council's DCP are addressed in the table below.

Control	Comments	Compliant
<b>Ryde Development Control Plan 2010 Part 4.1 Eastwood Town Centre</b>		
<b>2.1.1 Planning Principles for Eastwood</b>		
<b>Regional Role</b>  Development should contribute to the status of Eastwood as an important business, employment and residential location. Development is to promote a compact working and living environment to maximise the efficient use of resources and infrastructure provision.	The proposal is for a mixed use development. It will: provide two active, retail/commercial street frontages; and promote a compact working and living environment.	Satisfactory
<b>Integrated Planning and Development</b>  Planning and development is to ensure that social, economic, environmental and urban design issues are considered together and with proper regard of their	The only concern is the cumulative impact with respect to the excess height, scale and massing and disregard to achieving the 'human scale' initiatives for the locality.	No

**ITEM 2 (continued)**

Control	Comments	Compliant
<p>mutual and cumulative impacts. All planning, design and development activities must take account of and effectively respond to the linkages and interfaces between public space and private land.</p>		
<p><b>Public Domain</b></p> <p>Development is to define and contribute to the public domain so as to create a high quality physical setting for buildings, which is safe and accessible and can be enjoyed by shoppers, residents and workers.</p> <p>Development of the public domain is to enhance the integration between individual precincts and their surrounding areas.</p> <p>Public space areas will be set aside for public use and enjoyment. Development that enhances the enjoyment of these public spaces, such as kiosks, restaurants, recreation facilities, will be encouraged.</p> <p>Car parking facilities should be set back away from the public spaces and should not prejudice pedestrian and cycle use of the public space.</p> <p>Public streets and spaces will be created generally in accordance with the Master Plan for Eastwood.</p>	<p>Should the subject application be approved, a condition is recommended to ensure that the public domain is upgraded to reflect the 'Eastwood Public Domain Manual'.</p>	<p>Subject to conditions</p>
<p><b>Urban Form</b></p> <p>Urban form is to reflect its location in relation to transport nodes, existing residential and commercial precincts, be architecturally rich and diverse,</p>	<p>The development doesn't reflect the location in terms of respecting Trelawney Street as being a street of high pedestrian amenity and the corner location of the site. The development will not enhance the public domain</p>	<p>No</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
<p>define and enhance the public domain and allow for mixed uses. Building form within specific blocks is to be articulated both in height and mass to provide interest, resolve urban design and environmental issues and satisfy other principles in this plan. Buildings are to be of high quality and adaptable to a variety of uses over time, to ensure their long life.</p> <p>d. Buildings are to support and be integrated into the public domain network to achieve coherence and purpose.</p> <p>e. The integrity of heritage items and significant landscape elements is to be protected and enhanced.</p>	<p>in terms of being sympathetic to the human scale. It lacks appropriate articulation in height and mass, as discussed above.</p>	
<p><b>Land Use Mix</b></p> <p>Development is to provide a variety of housing types and employment-based activities and contribute to the character of the Village.</p> <p>Development is to contribute to an integrated mixed use development pattern (both vertical and horizontal) containing a wide range of housing, employment and recreation opportunities.</p> <p>Development is to facilitate the increase and diversity of employment opportunities, which are to be compatible with achieving a high quality, mixed shopping, living and working environment.</p>	<p>The proposed land use mix is appropriate.</p>	<p>Satisfactory</p>
<p><b>Transport and Access</b></p> <p>a. Development is to promote the</p>	<p>Development promotes the reduction of motor vehicle dependency and encourages the</p>	<p>Subject to conditions</p>



**ITEM 2 (continued)**

Control	Comments	Compliant
<p>reduction of motor vehicle dependency and actively encourage the use of public transport, walking and cycling.</p> <p>b. Accessible environment for people with disabilities and mobility difficulties is to be created to ensure access equity.</p> <p>c. The intensity of development is to be in accordance with the capacity of existing and proposed public transport and road systems.</p> <p>d. Parking provision is to acknowledge accessibility by foot, bicycle and public transport.</p>	<p>use of public transport, walking and cycling.</p> <p>Subject to conditions, an accessible environment for people with disabilities and mobility difficulties will be created.</p> <p>The intensity of development is to be in accordance with the capacity of existing and proposed public transport and road systems.</p>	
<p><b>Environmental Performance</b></p> <p>Development is to create a safe and comfortable environment for shoppers, residents and workers in both the private and public space, by “best practice” design to ensure buildings and spaces achieve maximum environmental performance and minimum resources use.</p> <p>Development is to be designed having regard to:</p> <p>a. Wind effect; reflectivity; noise attenuation; solar access and energy conservation; water conservation and re-use; stormwater management; use of recycled materials; and waste reduction.</p> <p>b. The development of public spaces must contribute to greater bio-diversity, habitat protection and enhancement, and air and water quality.</p>	<p>The submitted BASIX certificate indicates that the development will achieve the minimum energy and water targets.</p> <p>The following matters have been discussed in sections below: of wind effect; reflectivity; noise attenuation; solar access and energy conservation; water conservation and re-use; stormwater management; and waste management.</p>	<p>Satisfactory</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
<b>3.0 Development Policies</b>		
<b>3.1 Mixed Use Development</b>		
Car parking should be provided at either street level or basement level(s).	All the parking is provided internally at and below street level.	Satisfactory
Retail and other more active public uses, such as restaurants/cafes and libraries should be located at or around street level.	A retail level is proposed at the street level.	Satisfactory
Upper levels of development could be used for either commercial or residential.	Upper levels are residential.	Satisfactory
Buildings should be designed to overlook public and communal streets and other public areas to provide casual surveillance.	The building incorporates adequate casual surveillance opportunities.	Satisfactory
Private living spaces and communal or public spaces should be clearly identified and defined.	Public and private areas are clear and well defined.	Satisfactory
<p>Sufficient lighting is to be provided to all pedestrian ways, building entries, driveways and car parks to ensure a high level of safety and security for residents.</p> <p>Pedestrian and communal areas to be well lit and designed to minimize opportunities for concealment.</p>	<p>The SEE states '<i>a lighting and security access system are to be installed to achieve a satisfactory level of safety and security</i>'. Additional detail of the lighting will be required as a condition of consent. Any such lighting should have an intensity and be directed as not to cause a nuisance to surrounding properties and traffic.</p>	Subject to conditions
Pedestrian entry to the residential component of mixed use developments should be separated from entry to other land uses in the building/s.	A separate residential lobby has been provided.	Satisfactory

**ITEM 2 (continued)**

Control	Comments	Compliant
<b>3.2 Stormwater Management</b>		
<p>A stormwater inundation impact assessment or stormwater inundation management strategy is to be submitted for all developments.</p> <p>Floor levels within any new development should be a minimum of 300mm above the calculated flood level for the 100 year ARI event.</p> <p>Developments should comply with Part 8.2 Stormwater Management of this DCP.</p>	<p>Refer to 'Engineer Comments' below. Conditions are recommended to be included in a consent. NB: The plans have been amended to cater for the flood levels.</p>	<p>Subject to conditions</p>
<b>3.3 Architectural Characteristics</b>		
<b>3.3.1 Height</b>		
<p>Buildings must comply with the maximum height limit shown on the Height of Buildings Map under Ryde Local Environmental Plan 2010.</p>	<p>Refer to LEP assessment above.</p>	<p>No</p>
<p>Development is to be within the envelope of the "sun altitude height plane" being the plane projected at an angle of 26° over a building site measured from the property boundary on the opposite side of the road.</p>	<p>Refer to discussion at the end of this table.</p>	<p>No</p>
<b>3.3.2 Setbacks</b>		
<p>New buildings are to have street frontages built predominantly to the street alignment for the first 2 storeys.</p>	<p>For the lower ground level and ground level the building is proposed to be built to the boundary along both frontages to Rutledge Street and Trelawney Street, with the exception of the residential component along Rutledge Street. This treatment is</p>	<p>Satisfactory</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
	appropriate as it reduces the interface of the ground level units with Rutledge Street, being busy street, and enables legibility of the residential as opposed to the adjacent retail/commercial component.	
Buildings may be constructed to the side and rear boundaries for the first 2 storeys.	The building is partially setback for the residential component.	Satisfactory
Buildings (including balconies) are to be set back a minimum of 3 metres from all boundaries above the first 2 storeys.	The building maintains a 3m setback above the first two floors, with the exception of minor encroachments. No concerns are raised to the encroachments, as they are minor. The encroachments occur at the corner of Rutledge and Trelawney Streets. The setback control is a minimum. In order to maintain adequate building separation as required by the RFDC, the development should provide a minimum 6m setback from the northern and western boundaries. Maintaining the 3m setbacks along these boundaries results in a development relying on amenity from the adjoining properties.	No
<b>3.3.3 Urban Design/Exterior Finishes</b>		
Building exteriors are to be designed to avoid extensive expanses of blank glass or solid wall.	The design avoids large areas of blank walls or glass.	Satisfactory
Balconies and terraces should be provided, particularly where buildings overlook public spaces.	Balconies are provided on every elevation which overlooks public spaces.	Satisfactory

**ITEM 2 (continued)**

Control	Comments	Compliant
All new buildings and renovations should incorporate a colour scheme using the colour palette.	The colour palette is acceptable.	Satisfactory
The siting and configuration of buildings should take into account the impact on surrounding development and public spaces in terms of amenity, shadowing and visual privacy.	<p>There will be no significant impact on existing surrounding development in terms of overshadowing and privacy. The only concern is the scale/massing of the proposed development along Trelawney Street and its relationship with that of the neighbouring building to the north and general topography.</p> <p>If neighbouring buildings were to be redeveloped / extended then the proposal would not facilitate a 12m separation for adequate amenity (as required under the RFDC). As such the inadequate setbacks to the north and west will force the development to borrow amenity from adjoining properties.</p> <p>As discussed above, any overdevelopment of the site in terms of height and massing will set a precedent and is likely to adversely impact on the urban design outcome of the Eastwood Urban Village.</p>	No
<b>3.3.4 Corner Allotments</b>		
<p>The design of buildings should consider the following:</p> <ul style="list-style-type: none"> <li>i. The height of adjacent buildings;</li> <li>ii. Stepping the building up where the building turns the corner;</li> </ul>	Matters i, ii, iii and iv have been discussed previously. With respect to matter (v)., should the application be approved, a condition is recommended to require the submission of a DA for a signage scheme as to	No

**ITEM 2 (continued)**

Control	Comments	Compliant
iii. The incorporation of distinctive features to enhance the streetscape, i.e. clocks, flag poles, towers, etc; iv. Giving the corner a splayed, concave, convex or square recess treatment such that it signifies the intersection; and v. Incorporating the removal of clutter such as power poles and advertising signage from around intersections.	avoid visual clutter.	
<b>3.4 Access &amp; Parking</b>		
<b>3.4.2 Contributions</b>		
Cash contributions are to be paid for the number of parking spaces not provided on site.	No cash contribution is applicable in this case.	N/A
<b>3.4.3 Location of Vehicle Access and Footpath Crossings</b>		
The design and location of vehicle access to developments should minimise: <ul style="list-style-type: none"> <li>▪ Conflicts between pedestrian and vehicles on footpaths, particularly along pedestrian priority streets; and</li> <li>▪ Visual intrusion and disruption of streetscape continuity.</li> </ul>	The visual impact of the entrance will be satisfactory. No major concerns have been raised at conflicts between pedestrian and vehicles by the RMS and Council's Traffic Engineer. Conditions are recommended to ensure an appropriate queuing area is provided.	Subject to conditions
<b>3.5 Pedestrian Access &amp; Amenity</b>		
<b>3.5.1 Street Frontage Activities</b>		
Buildings with frontages to retail/pedestrian priority streets are to contribute to the liveliness and vitality of those streets by providing one or more of the	The proposed retail/commercial tenancies provide opportunities to facilitate the liveliness and vitality of the Trelawney Street frontage by providing glazed	Subject to conditions



**ITEM 2 (continued)**

Control	Comments	Compliant
following at ground level: <ul style="list-style-type: none"> <li>▪ Retailing, food/drink outlets, customer counter services or other activities which provide pedestrian interest;</li> <li>▪ Enclosed shop-fronts with window displays of goods and services within, and/or artworks;</li> <li>▪ Open shopfronts to food outlets and/or interiors with tables and chairs for diners;</li> <li>▪ Indoor queuing space for activities that may involve queuing (including automatic teller machines) so that footpaths remain free for pedestrian movement. Recesses in the street alignment for these activities are appropriate; and</li> <li>▪ A high standard of finish for shop fronts.</li> </ul>	shop fronts, direct access to the footpath and a high standard of finish. As indicated above, a condition should be included in a consent to require a separate development application for the use of each retail/commercial tenancy.	
Buildings with frontages to other streets and lanes are to contribute to the liveliness and vitality of those streets by: <ul style="list-style-type: none"> <li>▪ Providing visual interest;</li> <li>▪ Providing well designed and attractive entrances, lobbies and commercial uses at ground level; and</li> <li>▪ Incorporating, where practicable, either open or enclosed shop fronts with window displays of merchandise or services within, and/or artworks.</li> </ul>	A non-residential tenancy will be located at the corner of Rutledge and Trelawney Street. Behind this will be an access core followed by units. Minimising active frontages along Rutledge will be sympathetic with the proposed residential uses.	Satisfactory
Ground floor uses are to be at the same level as the footpath. Split level arcades or open retail forecourts at a different level to the	The ground floor retail/commercial tenancies have been amended to be slightly raised above footpath level. This	Satisfactory

**ITEM 2 (continued)**

Control	Comments	Compliant
footpath are inappropriate because they separate the activities within them from the street.	has been necessitated to address the flood levels.	
The ground floor of all development is to be flush with the street footpath for the predominant level of the street frontage and at the main entry to the building.	Main entries will be ramped to facilitate wheel chair access. Conditions are recommended to ensure appropriate gradients and widths are provided to achieve compliance with the Australian Standard.	Subject to conditions
All street frontage windows at ground level are to have clear glazing.	Should the application be approved, a condition can be included in a consent to ensure retail/commercial tenancies consist of clear glazing.	Subject to conditions
Security grilles are to be fitted only within the shop front. Such grilles are to be transparent.	A condition can be included in a consent to advise that no grilles or barriers are permitted on the shop front. This would require separate approval.	Subject to conditions
Recesses for roller doors and fire escapes are to be wide and shallow to provide for personal security. Narrow, deep recesses are to be avoided.	A condition is recommended to ensure that, where appropriate, a barrier/gate is provided along the opening to the 'fire hydrant / sprinkler / booster valves and meter' zone. It may not be appropriate to do the same for the adjacent fire exit given the access requirements, however a condition is recommended to delete the planting next to the fire door (shown in plan only) or provide low lying vegetation (not more than 1m in height).	Subject to conditions
<b>3.5.4 Landscaping &amp; Trees</b>		
Development proposals, incorporating landscaped	A landscape plan has been submitted and reviewed by	Satisfactory

**ITEM 2 (continued)**

Control	Comments	Compliant
elements, are to be accompanied by a landscape plan.	Council's Landscape Officer.	
Where appropriate, developments should incorporate landscaping in the form of planter boxes incorporated into the upper levels of the building to soften building form.	The proposal incorporates planter boxes along the perimeter of Level 1 and on the roof garden.	Satisfactory
Ground level entry areas to upper level dwellings should be well lit and not obstructed by planting in a way that reduces the actual or perceived personal safety and security of residents or pedestrians.	Should the application be approved, a condition can be included in a consent to ensure areas are well lit and planting is low in height (not more than 1m) if it is dense or consists of trees with a sparse canopy, (preferably above eye level), and narrow trunk.	Subject to conditions
Street trees shall be provided in accordance with the Master Plan for the Centre and shall be provided at the developers' cost in conjunction with any new building work involving additional floor space.	Should the application be approved, a condition can be included in a consent, requiring that street trees be provided at the developers' cost.	Subject to conditions
Street trees at the time of planting shall have a minimum container size of 200 litres, and a minimum height of 3.5m, subject to species availability.	A condition can be included in a consent to ensure this.	Subject to conditions
Tree sites in the footpath area shall be 1.2m by 1.2m, filled with approved gravel and located 200mm from the back of the kerb line.	This will be as per Council's specification for public domain improvements. A condition can be included in a consent to ensure this.	Subject to conditions
A tree grate of a type that meets Council's specifications shall protect all trees.	A condition can be included in a consent to ensure this.	Subject to conditions

**ITEM 2 (continued)**

Control	Comments	Compliant
<p>Where a proposal involves redevelopment of a site with a frontage of at least 40m to a public road, the developer shall arrange for electricity and telecommunication utilities to be placed underground along the entire length of all street frontages. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g. Energy Australia).</p>	<p>Submitted correspondence from Ausgrid does not confirm that the above ground power lines existing in Rutledge Street cannot be placed underground. However this restriction applied to the approval of the Eastwood Shopping Centre with respect to the 66 kv power lines along Rutledge Street. Should the application be approved, a condition should be included to specify that all services and power lines be located underground, unless otherwise advised by Ausgrid and for written confirmation to be submitted to Council and the private certifying authority prior to the commencement of works.</p>	<p>Subject to conditions</p>
<p>Where utility installations are placed underground in conjunction with new development, Council will waive 50% of the total contribution towards public space acquisition and embellishment, normally payable under Council's relevant Section 94 Contributions Plan.</p>	<p>Electricity lines along Rutledge Street are unlikely to be placed underground. However, undergrounding will be required along Trelawney Street. If the application were to be approved, a condition could be imposed to ensure compliance with this requirement. Accordingly, no reduction applies in this case.</p>	<p>Satisfactory</p>
<p><b>3.5.5 Awnings and Colonnades</b></p>		
<p>Buildings with frontage to any street must incorporate an awning or colonnade along that boundary.</p>	<p>An awning is proposed along Trelawney Street and most of Rutledge Street, where pedestrian activities will be generated. This is acceptable given that:</p> <ul style="list-style-type: none"> <li>- It will discourage high pedestrian traffic and associated acoustic and visual privacy impacts adjacent to ground level</li> </ul>	<p>Satisfactory</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
	units. - Continuation of an awning further west is unlikely given the school use.	
The pavement level of a colonnade or covered walkway shall be at the same level as the footpath to which it is adjacent.	The same level is provided for the residential entry.	Satisfactory
The height of a colonnade, awning or covered way shall not be less than 3 metres or greater than 4.5 metres.	A minimum height of the awning, indicated on the drawings is 3m and the maximum indicated is 4m.	Satisfactory
The width of a colonnade, awning or covered way shall not be less than 3 metres.	A condition is recommended to ensure the minimum width is complied with, except where tree cut-outs are proposed.	Satisfactory
Any new awnings should: <ul style="list-style-type: none"> <li>▪ Be continuous for the entire length of the site frontage;</li> <li>▪ Be set back from the face of the kerb by 0.6m;</li> <li>▪ Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate a street tree in accordance with the master plan or any public domain improvement plan;</li> <li>▪ Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;</li> <li>▪ Have a height clearance above the footpath level of at least 3m or a height consistent with adjacent awnings; and</li> <li>▪ Maintain sufficient clearances from any overhead electricity or telecommunication</li> </ul>	The awning along Rutledge Street ends after the main residential lobby entry. This is appropriate for the reasons discussed above.  The proposed awnings are 3m in width, with a 600mm setback for the tree plantings.  Should the application be approved, a condition should be included to require 1m x 1m cut-outs, a 600mm setback from the face of the kerb and weather sealing to the facade of the building, where appropriate.	Subject to conditions

**ITEM 2 (continued)**

Control	Comments	Compliant
installations.		
Ground level shop fronts may incorporate see-through security grilles or translucent barriers to ensure that maximum light is transmitted to footpath areas. Blank roller-shutter type doors will not be permitted.	A condition can be included in a consent to ensure this.	Subject to conditions
<b>3.7 Environmental Management</b>		
<b>3.7.1 Sunlight</b>		
Major public spaces should receive a minimum of 50% sunlight on the ground plane for at least 2 hours between 10am and 2pm on June 21.	There are no major public spaces likely to be affected by the proposal in terms of overshadowing.	Satisfactory
All new buildings should have an area of roof, with appropriate orientation and pitch that is suitable for the installation of solar collectors and photovoltaic cells.	The application will comply with BASIX in terms of energy conservation targets.	Satisfactory
<p>In new residential developments, windows to north-facing living areas should receive at least 3 hours of sunlight between 9am and 5pm on June 21 over a portion of their surface.</p> <p>North-facing windows to living areas of neighbouring dwellings should not have sunlight reduced to less than the above 3 hours.</p>	<p>The north facing living room windows of all units will meet the minimum 3 hour solar access requirement.</p> <p>North-facing windows to living areas of neighbouring dwellings will not have sunlight reduced to less than the above 3 hours, where existing.</p>	Satisfactory
<b>3.7.2 Wind Standards</b>		
Building design is to minimise adverse wind effects on recreation facilities and open terraces within developments.	No adverse impact is expected given the height of the development, proposed indents and balustrades.	Satisfactory



**ITEM 2 (continued)**

Control	Comments	Compliant
<b>3.7.3 Energy Efficiency of Buildings</b>		
<p>To maximise energy efficiency and sustainable design. Buildings should optimize their passive and operational energy efficiencies, reduce pollution, include waste minimisation systems and use construction materials from renewable resources.</p> <p>New Buildings: should be designed to ensure that energy usage is minimised.</p>	<p>The minimum standards are met. Reference should be made to the submitted BASIX certificate and Energy Report.</p>	<p>Satisfactory</p>
<b>3.7.4 Vibration and Noise Mitigation</b>		
<p>In respect of proposals for new residential buildings:</p> <ul style="list-style-type: none"> <li>▪ The building plan, walls, windows, doors and roof are to be designed and detailed to reduce intrusive noise levels.</li> <li>▪ Balconies and other external building elements are located, designed and treated to minimise infiltration and reflection of noise onto the façade;</li> <li>▪ Dwellings are to be constructed in accordance with: AS 3671-1989: Acoustics – Road Traffic Noise Intrusion, Building Siting and Construction; AS 3671-1987: Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors; and Environmental Criteria for Road Traffic Noise (EPA, 1999).</li> </ul>	<p>An acoustic report has been submitted. Should the application be approved, conditions are recommended to ensure:</p> <ul style="list-style-type: none"> <li>▪ Sealing of external facing window frames and door frames.</li> <li>▪ Provision of acoustic glazing on outward facing windows.</li> <li>▪ Appropriate timeframes for delivery vehicles.</li> <li>▪ Installation of a ventilation system to each unit that will satisfy internal sound levels detailed in the submitted Acoustic Report.</li> <li>▪ Implementation of the roller shutter manufacturer's maintenance schedule and recommended servicing of guide rails.</li> <li>▪ Compliance of the plant and equipment with the noise criteria listed in the submitted Acoustic Report.</li> </ul>	<p>Subject to conditions</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
	<ul style="list-style-type: none"> <li>▪ A BCA sound compliance assessment is carried out at CC stage and the required works are implemented to ensure compliance with the airborne and impact sound isolation requirements between Residential Units set out in the BCA.</li> </ul> <p>Also refer to 'Environmental Health' comments.</p>	
<b>3.7.5 Reflectivity</b>		
<p>The excessive use of highly reflective glass is discouraged. New buildings and façades should not result in glare that causes discomfort or threatens safety of pedestrians or drivers. Visible light reflectivity from building materials used on the façades of new buildings should not exceed 18%.</p>	<p>The proposal is considered acceptable, subject to a condition in a consent to ensure an appropriate reflectivity index is provided for glazing.</p>	<p>Subject to conditions</p>
<b>3.7.6 External Lighting of Buildings</b>		
<p>Any external lighting of buildings is to be considered with regard to:</p> <ul style="list-style-type: none"> <li>▪ The integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building);</li> <li>▪ The contribution of the visual effects of external lighting to the character of the building, surrounds and skyline;</li> <li>▪ The energy efficiency of the external lighting system; and</li> <li>▪ The amenity of residents in the locality.</li> </ul>	<p>Discussed above.</p>	<p>Subject to conditions</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
<b>3.7.7 Waste Management</b>		
All applications for demolition, building and land development must be accompanied by a Waste Management Plan.	A waste management plan has been submitted and reviewed by Council's Environmental Health Officer. Refer to section below 'Environmental Health'.	Satisfactory
Residential Buildings: A waste cupboard or other appropriate space is provided within dwellings for temporary storage of recyclables, garbage and compostable material.	A condition can be included in a consent to ensure compliance.	Subject to conditions
In circumstances where communal facilities are proposed, the area or room is of sufficient size to store Council's standard bins and is easily accessible from each unit and from Council's usual collection point.	Refer to section below 'Environmental Health'.	-
The location and design of facilities does not impact on adjoining premises and the amenity of the dwellings within the development (e.g. odour, noise).	No evident impact, as the bin storage areas will be located centrally within the building in the basement.	Satisfactory
Adequate space has been provided to enable on-site composting.	A condition can be included in a consent to require an area to be set aside should a future communal area be required by residents.	Subject to conditions
Acceptable administrative arrangements for ongoing waste management are determined.	A condition can be included in a consent to ensure by-laws for ongoing waste management, particularly the responsibilities of a caretaker or other employed persons, are specified in a management plan.	Subject to conditions

**ITEM 2 (continued)**

Control	Comments	Compliant
<p>A communal on-site waste storage and recycling area or garbage and recycling room must be provided for residential development. The area should be capable of accommodating the required number of standard waste containers. Additional space for storage of bulky waste should be provided.</p>	<p>A communal on-site waste storage room will be provided for the residential component. A separate room is proposed for hard waste.</p>	<p>Satisfactory</p>
<p>Buildings containing more than four storeys shall be provided with a suitable system for the transportation of garbage from each floor level to the garbage and recycling room(s). This may be a garbage chute system. Where such facilities are utilised, space must be provided on each floor for storage of recyclables.</p>	<p>A garbage chute is proposed, as well as an adjacent area to accommodate two bins. Also refer to the section 'Environmental Health' below.</p>	<p>Satisfactory</p>
<p>Business and Retail Premises:  The system for waste management is compatible with collection services.</p>	<p>No concerns have been raised by Council's Environmental Health Officer.</p>	<p>Satisfactory</p>
<p>On-site source separation is facilitated.</p>	<p>A separate waste room is proposed for the non-residential tenancies which will consist of appropriate bin types to facilitate source separation.</p>	<p>Subject to conditions</p>
<p>An appropriately designed and well located waste storage and recycling area and/or garbage and recycling room is provided on-site.</p>	<p>A separate waste room is indicated on the drawings. Should the application be approved, a condition is recommended to ensure the room has the required facilities, finishes and floor grading.</p>	<p>Subject to conditions</p>

**ITEM 2 (continued)**

Control	Comments	Compliant
Clear access for staff and collection services is provided.	Refer to 'Environmental Health Officer' comments below. It is likely that a caretaker or other employed person will be responsible for checking and transporting the bins, where necessary.	Subject to conditions
Facilities are carefully sited, well-designed and do not impact on adjoining premises or the amenity.	Garbage rooms will be well located.	Satisfactory
There are acceptable administrative arrangements for ongoing waste management.	A condition can be included in a consent to ensure by-laws for ongoing waste management are specified in a management plan.	Subject to conditions
Ongoing management is a significant issue - details are required in the waste management plan.	The submitted waste management plan has been reviewed by Council's Environmental Health Officer, who has raised no concerns.	Subject to conditions
Special attention should be paid to food scrap generation. Specialised containment should be provided and a regular and frequent collection service arranged to ensure that no impacts result from the activity.	Should the application be approved, a condition is recommended to require a separate DA to be submitted for the specific use of each tenancy. Waste generation and management will be reviewed in more detail at that stage.	Subject to conditions
<b>7.1 Energy Smart, Water Wise</b>	The development would be required to comply with the BASIX requirements.	Subject to conditions
<b>7.2 Waste Minimisation and Management</b>	Refer to above assessment and comments provided below from Council's 'Environmental Health Officer'.	Subject to conditions
<b>9.2 Access for People with Disabilities</b>	Section 9.2 requires 10% of the total number of units to be adaptable. Seven (7) units are proposed to be adaptable. A	Subject to conditions

**ITEM 2 (continued)**

Control	Comments	Compliant
	<p>condition is recommended to require at least 7 adaptable units and one accessible car space per adaptable unit.</p> <p>Should the application be approved, conditions are recommended to ensure that certain details are confirmed and/or indicated on Construction Certificate documentation as discussed in the submitted access report. They relate to the following aspects:</p> <ul style="list-style-type: none"> <li>▪ External pathway links and building entrance, doorway entry landings and thresholds.</li> <li>▪ Door schedules and hardware.</li> <li>▪ Ramp and stairway handrails, tactile surface indicators, step nosings, and risers.</li> <li>▪ Lift internal floor areas, controls, handrails and the like.</li> <li>▪ Fittings and fixtures of accessible sanitary facilities.</li> <li>▪ Raised tactile and Braille signage for common area, public toilets and amenities.</li> <li>▪ Lift lobby widths and doorway thresholds.</li> <li>▪ Door widths and lever handles of adaptable units.</li> <li>▪ Adaptable unit kitchen cupboards, appliances and the like.</li> <li>▪ Outdoor private open space threshold ramps of adaptable units.</li> </ul>	



**ITEM 2 (continued)**

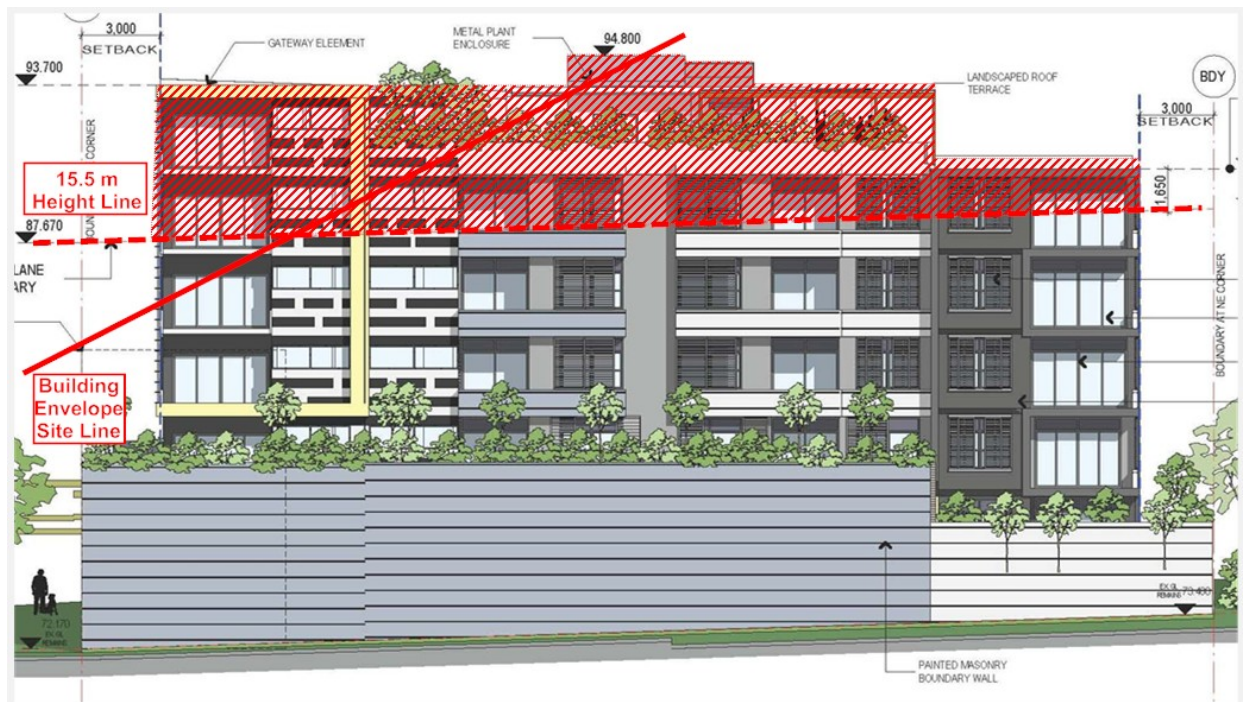
Control	Comments	Compliant
	Conditions are recommended to ensure appropriate door widths, ramping and/or flush levels with the footpath are provided for each commercial/retail tenancy entry.	
<p><b>9.3 Car Parking</b></p> <p>Residential:            0.6-1 space/1 bedroom: 7.8-13            0.9-1.2 spaces/2 bedroom: 41.4-55.2            1.4-1.6 spaces/3 bedroom: 2.8-3.2            1 visitor space/5 dwellings: 12.2</p> <p>Retail:            1/25sqm = 21.36 spaces</p>	<p><u>Total Required:</u></p> <p>The total number of residential spaces is 65 – 84</p> <p>The total number of retail is 22.</p> <p>TOTAL Required –87-106 CAR</p> <p><u>Total Proposed:</u></p> <p>The total number of residential spaces is: 94</p> <p>The total number of retail is 14.</p> <p>TOTAL Proposed – 108</p> <p>A condition should be included in a consent to require the reallocation of car spaces to respect the requirements of the RDCP. The reallocation should be:            22 retail spaces,            73 resident spaces,            13 resident visitor spaces.</p>	Subject to conditions
<p><b>9.4 Fencing</b></p> <p>A wall, fence or kerb shall be constructed along the front alignment of the property.</p> <p>Fences within the front setback shall not be of paling construction or exceed 1m in height. Boundary fences should not exceed 1.8m in height.</p>	<p>The proposed front fence along Rutledge Street has been discussed in the above section 'Urban Design Review Panel'.</p>	Subject to conditions

**ITEM 2 (continued)**

Control	Comments	Compliant
<b>9.6 Tree Preservation</b>	Refer to 'Landscape Architect' comments below.	Subject to conditions

Building Envelope Control

The proposal does not comply with the envelope control as indicated in the diagrams below.



**Diagram 3:** North Elevation:

— Building Envelope of RDCP 2010 (measured from Trelawney Street boundary)

 Area of non-compliance with maximum 15.5m RLEP 2010 Height Standard

**ITEM 2 (continued)**



**Diagram 4: East Elevation:**



Area of non-compliance with maximum 15.5m LEP Height Standard

\_\_\_\_ Building Envelope of RDCP 2010 (measured from existing Rutledge Street boundary)

RDCP 2010 provides that in certain circumstances buildings may be approved if they project above the building envelope plane where:

- *The non-compliance is consistent with the aims, principles and strategies of the Plan.*
- *In the circumstances of the site the strict application of the provision is unnecessary or unreasonable, such as corner allotments or the presence of an intervening structure.*
- *It can be demonstrated that the intention of the control is largely met.*
- *Variation of the control results in an improved design solution for the site taking into consideration the nature of the adjoining development.*

The discussion of section 'Clause 4.6' indicates the intentions of the control will not be satisfactorily met. The variances will not provide an improved design taking into consideration the nature of adjoining development.

Reference is made to the court findings for *Crown Atlantis Joint Venture v Ryde City Council*. In summary, the findings indicate that the achievement of the 'human scale' is important to the design outcome and the RDCP envelope control should not be disregarded. The relevant findings are stated below:

**ITEM 2 (continued)**

- *The intention of DCP 39 is that new development should have an urban village character. Development should be of human scale in the streetscape, being generally two to three storeys in height. Taller building elements set back from street are permissible but they should not dominate.*
- *Trelawney Street is to be developed for the enjoyment and utility of pedestrians with a high level of aesthetic amenity at street level.*
- *Trelawney Street is a retail/pedestrian priority street and at its intersection with Rutledge Street forms a gateway to the Eastwood Town Centre. The street corner portion of site is therefore a gateway site for the purposes of DCP 39 and notwithstanding the first objective above should be developed accordingly. More particularly, the corner element of the building should address both streets and be stepped up, especially in relation to structures at the street frontages.*

As stated previously, a variance to the standard is likely to be accepted for the creation of a gateway feature as required by the DCP. If appropriately designed and limited to the corner of the building, this would have minimal impact on retaining the human scale along Trelawney Street.

The architect has noted that an awning above the footpath on the opposite side of Trelawney Street would obstruct a sightline projected from the boundary at a height of 1.5m and angle of 26 degrees and hence the higher/non-compliant building portions will not be visible. This is not concurred with given that:

Submitted diagrams illustrate:

- A pedestrian would have to be standing on the site boundary of 7-9 Rutledge Street. This would be difficult as the building would extend up to this boundary and generally a pedestrian would not be walking flush against the building. If the sightline is projected from even 500mm from the footpath edge (approximately one step away), the higher building portions would be visible; and
- The submitted Trelawney Street elevation plan for the proposal at 7-9 Rutledge Street, indicates the awning will generally range from 3.2m to a maximum of just over 4.465m. Only one section may be a minimum of 3m. Therefore sightlines projected from the boundary would not be obstructed by awnings higher than 3m above footpath level.

**Section 94 Contribution Plan**

Development Contribution Plan – 2007 (2010 Amendment) allows Council to impose a monetary contribution on developments that will contribute to increased demand for services as a result of increased development density/ floor area.



## ITEM 2 (continued)

The proposed development will result in the following Section 94 contributions being payable.

<b>Contribution Type</b>	<b>Contribution Amount</b>
Community & Cultural Facilities	\$156,793.58
Open Space & Recreation Facilities	\$362,205.60
Civic & Urban Improvements	\$138,563.10
Roads & Traffic Management Facilities	\$21,134.68
Cycleways	\$11,806.94
Stormwater Management Facilities	\$39,348.87
Plan Administration	\$3,180.63
<b>The total contribution is</b>	<b>\$733,033.39</b>

### Notes:

The March Quarter rates have been applied to the development.

### **10. Likely impacts of the Development**

The likely impacts of the development have already been discussed in this report.

### **11. Suitability of the site for the development**

The site is not classified as a heritage item nor affected by subsidence; however, it is affected by 1 in 100 year overland flow path. The applicant has submitted amended architectural plans that indicate all finished floor levels of the building facing Rutledge and Trelawney Streets are 300mm above the top water level of 1 in 100 year ARI storm event. In this regard, the proposal is considered to be suitable for the site in terms of its impact on both the existing natural and built environment.

### **12. The Public Interest**

The public interest, in respect of this application, would be to ensure that the development application complies with the planning controls that affect the site. As demonstrated in this report, the application is not in the public interest.

### **13. Consultation – Internal and External**

#### Internal Referrals

##### *Environmental Health Officer:*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

**ITEM 2 (continued)***Traffic Engineer:*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Public Domain:*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Drainage Team:*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Waste:*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

**External Referrals***Roads and Maritime Services (RMS)*

RMS has not raised any concerns subject to certain details being provided and/or complied with. These can be addressed via the inclusion of conditions in a consent, should the application be approved.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

Nil.

**16. Other Options**

The development is non-compliant with the applicable height, envelope and setback controls. These non-compliances will result in adverse urban design outcomes. Accordingly, the development application is recommended for refusal.



**ITEM 2 (continued)**

Other options for Council to consider are listed below.

- 1) The determination of the development application could be deferred to enable the applicant to submit amended plans. The purpose of the amended plans would be to achieve greater compliance with the height, setback controls, envelope and other substantial non compliances with the current proposal and to achieve a better design outcome for the site.

If Council did resolve to defer the development application for the submission of amended plans, these plans would require re-notification. In addition, the applicant would get the opportunity to revisit the Voluntary Planning Agreement.

- 2) Should Council support the variations to the planning controls, Council could resolve to approve the development application subject to appropriate conditions. This option is not supported due to the issues already raised in the report. However if Council did wish to proceed with this option, it would be in Council's interest to also accept the Voluntary Planning Agreement referred to in Annexure 4.
- 3) Council could also resolve to support the development application; however, resolve to reject the VPA. This option is not supported as Council would not be receiving the additional funding as proposed in the VPA.

**17. Conclusion**

The proposed development has been assessed against the relevant planning provisions, which have included the provisions of SEPP 65, RFDC, RLEP 2010 and RDCP 2010. As a result, the assessment indicates the following findings:

- The proposed building height will be in excess to the maximum permissible standard. Variances will be great and occur along large building portions.
- The development will result in major encroachments in the building envelope control.
- An inadequate building separation will be provided to the north and west boundaries.

The proposed building height exceeds the 15.5m standard prescribed under the RLEP 2010 by a maximum of 5.85m. This non-compliance will not be appropriate in the circumstances of this case as the height will not achieve related objectives of the control and B4 mixed use zone. It will not respect the desired massing, topography and human scale initiatives. It will not be stepped to appropriately relate to the existing or anticipated height of the building to the north and topography along Trelawney Street, nor will it appropriately address the site's corner location.

**ITEM 2 (continued)**

Prior to and during the submission of the subject DA, the applicant was advised by Council officers and the UDRP that compliance needs to be achieved with the maximum height standard and that the applicant's design initiative of providing a 'gateway' entry can still be achieved with a compliant situation.

The desired future character of the Eastwood Town Centre expressed in local controls refers to retaining the 'urban village character'. This is directly related to respecting the human scale. The development does not respect this. The human scale issue is an important objective of not only the height standard of the RLEP but also of the height standard in the DRLEP and prescribed building envelope of the RDCP. The development will extend well outside of the building envelope control of the RDCP. Trelawney Street is identified as a retail/pedestrian priority street under the RDCP, which further reinforces the importance of respecting the human scale along this street. The development design has not had adequate regard to this important aspect.

The proposed development will not facilitate an appropriate building separation to the north and west as required under the RFDC. Accordingly, this will not ensure appropriate amenity between any extensions or new forms on neighbouring properties. In this regard, the built form will be forced to borrow amenity from the adjoining properties to the north and west.

The proposal represents an overdevelopment of the site. The density is dictated by the applicable setback, height and envelope controls. The development does not achieve these controls and therefore is excessive in density.

The applicant has not submitted details that verify private open spaces of at least 70% of the units will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.

Based on the above, the development is recommended for refusal.

ITEM 2 (continued)

ATTACHMENT 1

● Indicates submissions received.  
One submission was received from outside map area.





ITEM 2 (continued)

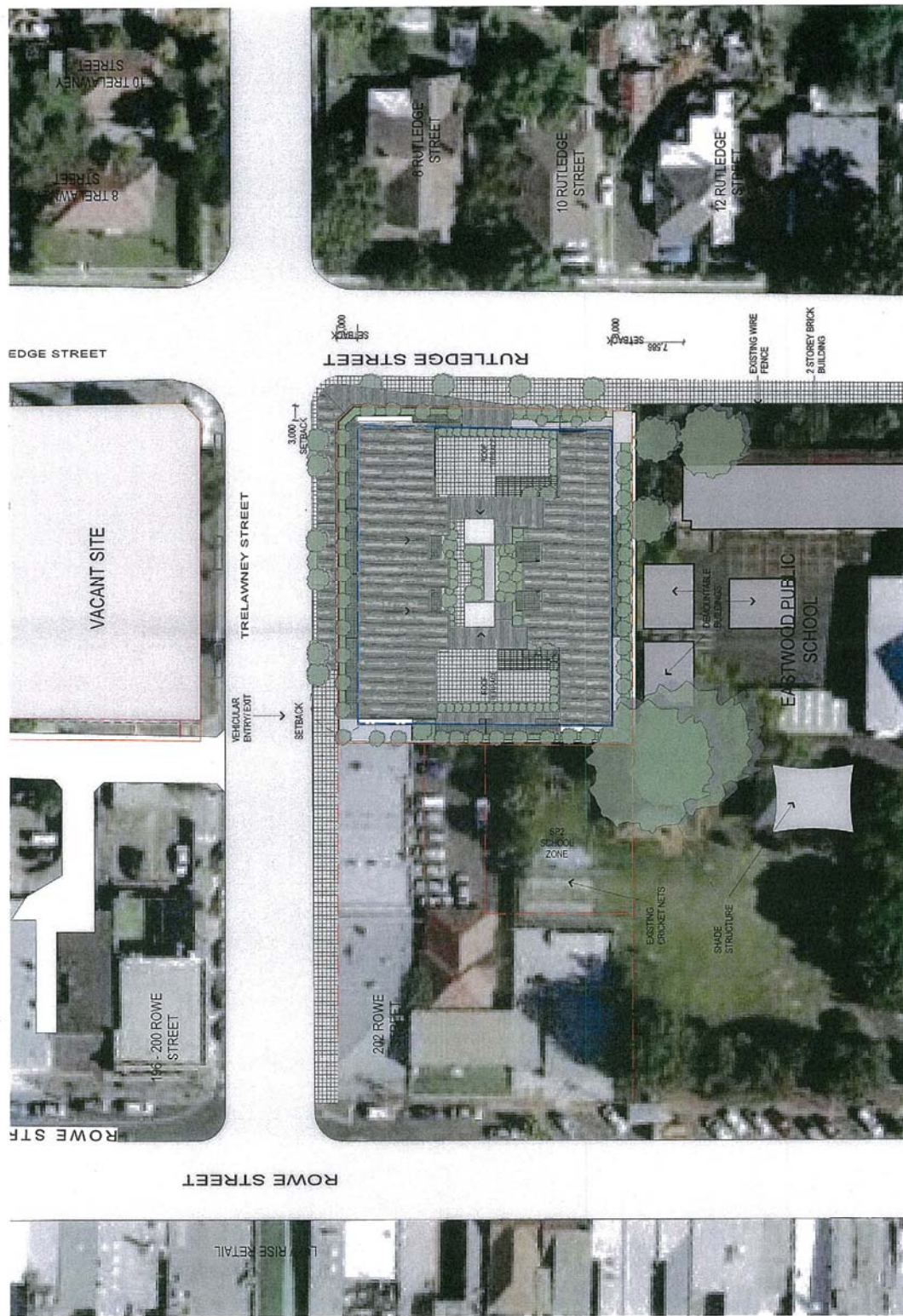
ATTACHMENT 2





**ITEM 2 (continued)**

**ATTACHMENT 2**



PROJECT: **Mixed Use Development**  
 3-5 Trelawney St  
 DEVELOPER/MANAGER/CLIENT: **N & G Projects Pty Ltd**  
 ARCHITECT: **MARMO**  
 MORRIS BRAY MARTIN OLLMANN  
 14-17 WYNDHAM ST  
 SYDNEY NSW 1510  
 02 9550 2500  
 02 9550 2500  
 PROJECT NORTH  
 SCALE: **Site Plan**  
 DRAWING NUMBER: **DA-07**  
 ISSUE: **A**  
 CHECKED: \_\_\_\_\_  
 DRAWN: \_\_\_\_\_  
 PLOT DATE: \_\_\_\_\_  
 JOB NUMBER: \_\_\_\_\_

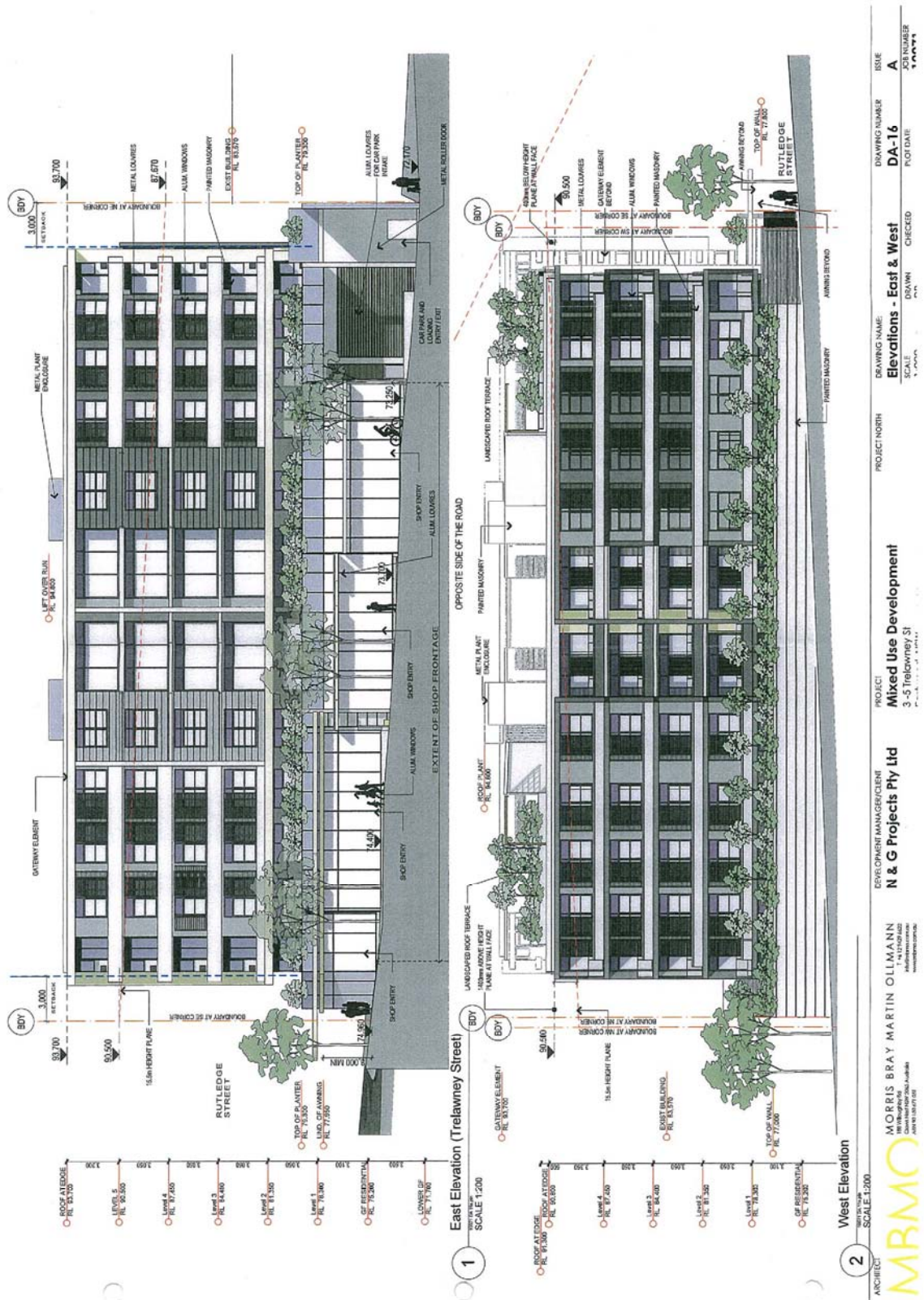






ITEM 2 (continued)

ATTACHMENT 2



**ITEM 2 (continued)**

**ATTACHMENT 4**

**1 VOLUNTARY PLANNING AGREEMENT OFFER – 3-5  
TRELAWNEY STREET, EASTWOOD.**

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**Report prepared by:** Client Manager

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

**Report dated:** 27 June 2012

**File Number:** D12/47050

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**1. Report Summary**

Council is in receipt of Local Development Application LDA2011/611, at 3-5 Trelawney Street, Eastwood for the construction of a part 5 part 6 storey mixed use building containing 61 units, commercial / retail tenancies on the ground floor and basement car parking.

As part of the proposal, the proponents are seeking to enter into a Voluntary Planning Agreement (VPA) with Council. The VPA forms a contractual agreement between Council and the Developer. The purpose of this report is for Council to determine whether it will endorse the VPA should the application be approved by Council. The VPA offers public benefit together with complying with Council's requirements in respect of Section 94 Contributions.

It is recommended that Council determine whether the proposed development is acceptable and if supported, endorse the Voluntary Planning Offer.

**RECOMMENDATION:**

- (a) That if Council resolves to approve Local Development Application 2011/0611 at 3-5 Trelawney Street, Eastwood then Council give 'in principle' support to the Voluntary Planning Agreement made by N & G Projects Pty Ltd with a reference of PJAC\_100970\_017.DOC and dated 13 June 2012.
- (b) That the above be communicated to the proponents.
- (c) That the Group Manager, Environment and Planning be delegated to finalise the Voluntary Planning Agreement with N & G Projects Pty Ltd in accordance with the submitted Voluntary Planning Agreement and the applicable legal requirements under the *Environmental Planning and Assessment Act 1979*.

**ATTACHMENTS**

- 1 Voluntary Planning Agreement – 3-5 Trelawney Street, Eastwood

**ITEM 2 (continued)**

**ATTACHMENT 4**

Report Prepared By:

**Adrian Melo**  
**Client Manager**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**



**ITEM 2 (continued)**

**ATTACHMENT 4**

**2. Site (Refer to map.)**



**3. Councillor Representations**

Nil.

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No.

**5. Background**

An offer for a VPA was submitted by the proponent at time of lodgement of the Development Application for 3-5 Trelawney St, Eastwood on 28 November 2011.

This VPA was considered by Council’s Executive Team at a meeting held 16 December 2011. This original offer was not supported by the Executive Team as, excluding matters necessary and consequential to the development application, it totalled \$60,000.00. Following the initial consideration of the VPA, a letter was sent to the applicant dated 23 December 2011 suggesting amendments to the VPA and that Council would expect the value of the VPA to equate to approximately 20% of the applicable Section 94 Contributions.

The proponent met with Council Staff on 8 March 2012, to discuss the proposed VPA. At this meeting the proponent was advised that the proposed offer was not considered acceptable and that Council’s expectation is for the development to equate to 20% of the value of applicable Section 94 contributions at a minimum. In response the proponents lodged an amended VPA and Explanatory Note with

**ITEM 2 (continued)**

**ATTACHMENT 4**

Council on 3 April 2012. This amended VPA included an increase in the monetary contribution to be paid to Council to \$150,000.00

The proponents met again with Council Officers on 4 April 2012 with the proponents of LDA2011/612 (7-9 Rutledge St, Eastwood). During the meeting the applicant acknowledged that the VPA had been amended to equate to 20% of the total s94 Contributions.

The amended VPA was considered by Council's Executive Team at its meeting held 19 April 2012 and was supported.

Following support of the offer from the Executive Team, the VPA was considered by Council's Voluntary Planning Agreement Panel on 29 May 2012. At this meeting, the VPA Panel identified substantial areas of concerns regarding the wording of the explanatory note and associated VPA. The proponent was advised of the concerns relating to the Explanatory Note on the 29 May 2012 and the concerns relating to the VPA instrument in a letter dated 1 June 2012. The final version of the explanatory note was received by Council on 30 May 2012. The proponent submitted an amended VPA on 6 June 2012 however this did not address the outstanding matters raised by Council.

The proponent was advised of this on 6 June 2012 and in response submitted an amended VPA on 13 June 2012. This amended VPA continued to fail to address all matters raised previously by Council as it continued to include a reference to the dedication of land that did not form part of the matters to be included as part of the VPA. On 14 June 2012 the proponents provided a response that stated no land dedication was included but failed to provide an amended VPA removing all references to land dedication from the legal instrument. On 18 June 2012 the proponents were advised that the VPA would need to be amended to delete these references from the VPA. No response was received from the proponent. A further request was sent on the 25 June 2012 and no response was received.

Accordingly, the VPA in its current form does not constitute a legitimate offer as the VPA includes references to matters not included as part of the VPA offer by the proponents.

**6. Report**

Council has received Local Development Application LDA2011/611, at 3-5 Trelawney Street, Eastwood. The development seeks consent for the construction of a part 5 part 6 storey mixed use building containing 61 units, commercial / retail tenancies on the ground floor and basement car parking.

A VPA is a contractual agreement between Council and a developer under which public benefit for a public purpose is delivered as part of a Development Application. The Development Application and VPA are considered jointly as they are interlinked. The Assessment Report for the proposed development is to be reviewed and the Development Application determined by Council at the same Council Meeting.

**ITEM 2 (continued)**

**ATTACHMENT 4**

**Summary of VPA Offer**

The planning agreement seeks to provide a one off monetary contribution to Council of \$150,000. The proposed agreement does not seek the suspension of Section 94 Contributions that will continue to apply to the subject development.

It must be noted that the proposed development fails to comply with the applicable planning controls as detailed within the Assessment Report. The Assessment Report recommends that Council refuse the Development Application.

The material public benefits proposed to be made to support the proposed non-compliances is a one off monetary contribution of \$150,000 to Council.

**Consultation**

The Voluntary Planning Agreement was advertised in the Ryde City View newsletter circulated within the Northern District Times between 30 May 2012 and 27 June 2012. No submissions were received during this period.

**Consideration of the Voluntary Planning Agreement**

The Section 93F of the *Environmental Planning and Assessment Act 1979* details various matters that must be addressed by a VPA.

It should be noted that the VPA satisfies all requirements of Section 93F and it is recommended that should Council seek to approve the associated Development Application, Council endorse the Voluntary Planning Agreement Offer.

A detailed consideration of Section 93F is provided below.

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<p>(1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the <b>developer</b>):</p> <p>(a) who has sought a change to an environmental planning instrument, or</p> <p>(b) who has made, or proposes to make, a development application, or</p> <p>(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</p> <p>under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or</p>	<p>The proponents are seeking to provide:</p> <ul style="list-style-type: none"> <li>– A one off monetary contribution of \$150,000</li> </ul> <p>The above is in addition to the applicable Section 94 Contributions and can be used where deemed appropriate by Council.</p> <p>The provisions of additional funds are considered to constitute material public benefit which shall be used and applied towards a public purpose.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>



**ITEM 2 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<i>applied towards a public purpose.</i>		
<i>(2) A public purpose includes (without limitation) any of the following:</i>		
<i>(a) the provision of (or the recoupment of the cost of providing) public amenities or public services,</i>	No public amenities or public services are provided.	N/A
<i>(b) the provision of (or the recoupment of the cost of providing) affordable housing,</i>	No affordable housing is provided.	N/A
<i>(c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,</i>	No transport is provided.	N/A
<i>(d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,</i>	The monetary contribution will be paid to Council to be utilised where deemed appropriate. Council's expenditures will be for public amenities, public services or other infrastructure.	Yes
<i>(e) the monitoring of the planning impacts of development,</i>	No monitoring of planning impacts is provided.	N/A
<i>(f) the conservation or enhancement of the natural environment.</i>	No conservation or enhancement of the natural environment is provided.	N/A
<i>(3) A planning agreement must provide for the following:</i>		
<i>(a) a description of the land to which the agreement applies,</i>	It is considered that the VPA adequately satisfy the requirement of this part.	Yes
<i>(b) a description of:</i> <i>(i) the change to the environmental planning instrument to which the agreement applies, or</i> <i>(ii) the development to which the agreement applies,</i>		
<i>(c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,</i>		
<i>(d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or</i>		

**ITEM 2 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<p>94EF to the development,</p> <p>(e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,</p> <p>(f) a mechanism for the resolution of disputes under the agreement,</p> <p>(g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.</p>		
<p>(3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.</p>	<p>The VPA does not exclude the operation of Section 94 on the proposed development.</p>	<p>Yes</p>
<p>(5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 94EF without the approval of:</p> <p>(a) the Minister, or</p> <p>(b) a development corporation designated by the Minister to give approvals under this subsection.</p>	<p>Section 94EF does not apply to the proposal.</p>	<p>N/A</p>
<p>(6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.</p>	<p>The VPA <u>does not</u> seek the exclusion of the application of Section 94.</p>	<p>N/A</p>
<p>(7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.</p>	<p>No additional parties are proposed.</p>	<p>N/A</p>
<p>(8) A council is not precluded from entering into a joint planning agreement with another council or</p>	<p>No joint planning agreement with another council or planning authority is proposed.</p>	<p>N/A</p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<i>other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.</i>		
(9) <i>A planning agreement cannot impose an obligation on a planning authority:</i>  (a) <i>to grant development consent, or</i>  (b) <i>to exercise any function under this Act in relation to a change to an environmental planning instrument.</i>	The planning agreement does not impose an obligation to grant development consent or change an environmental planning instrument.  Whilst the VPA forms part of the Development Application, support of the VPA does not grant approval to the Development Application.	Yes
(10) <i>A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.</i>	The works proposed under the VPA are to be subject to further consideration by Council and will be determined as part of the application.  Subject to careful consideration of the proposed works by Council and standard conditions of consent, it is unlikely that the matters to be dealt with under the application and VPA will breach to <i>Environmental Planning and Assessment Act 1979</i> , applicable environmental planning instruments or development consent applying to the subject site.	Yes

As identified above, it can be seen that the proposed Voluntary Planning Agreement satisfies the principles underlying the use of planning agreements and fulfils several categories of works that Council will consider as part of a VPA. Notwithstanding the above, further consideration of the Voluntary Planning Agreement and the public interest and benefit is detailed below.

The merits of the Voluntary Planning Agreement were discussed during several Executive Team meetings and an internal Panel chaired by Council's Group Manager, Environment and Planning. It was considered that the VPA provided public benefit and was in the public interest. A break down of the value of VPA and the Section 94 Contributions is provided below.

<b>Item</b>	<b>Value</b>
VPA - Cash Contribution	\$150, 000.00
Contribution under Council's Section 94 Contribution Plan	\$733, 033.39
<b>Total Contributions to Council</b>	<b>\$883, 033.39</b>

## **ITEM 2 (continued)**

## **ATTACHMENT 4**

It can be seen that the proposed VPA represents public benefit and represents approximately 20% of the applicable Section 94 Contributions. Normally, to ensure that the VPA is registered on the title of the land it would be necessary to impose a condition on the consent for this to occur prior to the issue of any Construction Certificate. This condition would be included if Council was of the mind to approve the Development Application.

As detailed within the Background section of this report, the current version of the VPA includes references to the dedication of land that the proponents has clearly stated will not be included within the VPA. The proponent has been given multiple opportunities to submit an amended VPA however has not done so. Given the legal nature of the VPA, the current version of the VPA that includes the references to the dedication of land is not supported. However, given that this is a minor amendment it has be recommended that if Council resolves to approve Local Development Application 2011/0611 at 3-5 Trelawney Street, Eastwood then Council give 'in principle' support to the VPA and that delegation be given to the Group Manager Environment and Planning to finalise the VPA.

### **7. Policy Implications**

There are no policy implications through adoption of the recommendation.

### **8. Critical Dates**

It is recommended that the VPA be considered jointly with the Development Application. Accordingly, the VPA must be determined at the same Council meeting as the Development Application.

### **9. Financial Impact**

If Council is of the view that the variations to the planning controls are acceptable and that the Development Application should be supported, then the VPA should also be supported as the VPA represents a public benefit.

### **10. Other Options**

There are two options in considering the VPA:

- (1)** If Council agrees with the recommendation to refuse LDA2011/0611 as detailed in the assessment report, then the VPA should also be refused.
- (2)** Council may choose to reject the VPA offer but approve the DA. This option is not supported as it would result in a loss of the additional contribution proposed.

**ITEM 2 (continued)****ATTACHMENT 4****11. Conclusion**

Through entering into a VPA for the subject development, Council will receive additional funds to be spent for the public benefit. Council must still determine whether the proposed non-compliances with the applicable planning controls and their associated amenity impacts are acceptable. The VPA has been clearly identified as relating to a planning purpose, providing public benefit and is in the public interest. However as noted within this report, the VPA contains references to the dedication of land that is not intended to form part of the VPA. Accordingly, it is recommended that if Council resolves to approve Local Development Application 2011/0611 at 3-5 Trelawney Street, Eastwood then Council give 'in principle' support to the VPA and that delegation be given to the Group Manager Environment and Planning to finalise the VPA.

ITEM 2 (continued)

ATTACHMENT 5



Extract from Ryde Local Environmental Plan 2010 Height of Buildings Map

Maximum Building Height (m)	Zone Code
0	A
9.5	J
11.5	L
12.5	M
14	N
15.5	O
18.5	P
21.5	R1
22	R2
26	T1
27.5	T2
30	U1
30.5	U2
33.5	U3
37	V
44.5	W
75	AA



- 3 7-9 RUTLEDGE STREET, EASTWOOD, LOT 23 DP 4231, LOT 24 DP 653568. Construction and strata subdivision of a mixed use building with six retail / commercial tenancies, 79 units and associated basement parking for 155 cars. LDA 2011/0612.**

**INSPECTION: 4.20pm**

**INTERVIEW: 4.45pm**

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**Report prepared by:** Willana Associates, Planning Consultants

**Report approved by:** Team Leader - Major Development Team; Manager  
Assessment; Group Manager - Environment & Planning

**Report dated:** 28/06/2012 **File Number:** grp/12/5/5/3 - BP12/773

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### 1. Report Summary

**Applicant:** Morris Bray Martin Ollmann.

**Owner:** Rutledge Properties Pty Ltd, Rutledge Street Pty Ltd

**Date lodged:** 28/11/2011

This report relates to Local Development Application No. 2011/0612 which proposes the construction and strata subdivision of a mixed-use development at 7-9 Rutledge Street, Eastwood. The development will generally consist of a building with a total of part 7 / part 12 levels, plus three levels of basement parking below with a total of 155 car spaces. The building will consist of 79 units in total. Three retail/commercial tenancies will extend along Trelawney Street (one being at the level above the footpath level), while three will extend along Rutledge Street.

The proposed development will include some works to the public domain, such as the provision of new footpath paving, street trees and an awning over the footpath. The development proposal also includes a voluntary planning agreement (VPA) that involves the payment to Council of a one off monetary contribution of \$205,315. This contribution will be in addition to the payment of all applicable Section 94 contributions required by Council, public domain improvements and construction related fees relating to hoardings, construction parking zone permits and hoarding inspections. A separate report is provided in Appendix 4 which consists of details of the VPA.

The site is located within the Eastwood Town Centre that is subject to specific local planning controls. The specific controls are mainly contained within both the Ryde Local Environmental Plan 2010 (RLEP) and Ryde Development Control Plan 2010 (RDGP). In particular, the RLEP prescribes a maximum height of 18.5m for Lot 23 DP 4231 (located at the corner) and 30.5m for Lot 24 DP 653566 (adjacent to the Eastwood Shopping Centre Development). The proposal will result in a significant non-compliance with the maximum permissible 30.5m and 18.5m heights by 11.06m and 22.84m respectively. This is not acceptable.

**ITEM 3 (continued)**

The development consists of a design which complements that proposed concurrently under Development Application Number 2011/0611 for a mixed use development at 3-5 Trelawney Street, Eastwood. The applicant's aim is to achieve a visual "gateway" into the Town Centre. Despite this, the proposal fails to comply with a number of the key controls, in particular the controls relating to height, envelope and solar access. The development will not provide appropriate urban design, solar access and cross ventilation outcomes as sought by the applicable controls.

During the notification period, a total of three objections and one letter of support were received. The issues raised in the objections relate to inadequate parking, non-compliant building height, excessive scale, loss of privacy and solar access, garbage build up, unsatisfactory shop displays, infrastructure capacity, traffic congestion, inadequate building separation and unsatisfactory vehicular access arrangements.

The subject development application (DA) is recommended for refusal.

**Reason for Referral to Planning and Environment Committee:** Nature of the proposed development and VPA.

Public Submissions: Four submissions were received that included one letter in favour of the development and three letters of objection.

Clause 4.6 RLEP 2010 objection required? Yes. A variation is proposed to the applicable building height standards imposed under Clause 4.3(2) of RLEP 2010 of 18.5m for Lot 23 DP 4231 (located at the site's street corner) and 30.5m for Lot 24 DP 653566 (located further east).

Value of works: \$19,572,000.00.

**RECOMMENDATION:**

- (a) That Local Development Application No. 2011/0612 at 7-9 Rutledge Street, Eastwood, being Lot 23 DP 4231 and Lot 24 DP 653568 be refused for the following reasons:
- a. The proposed development is inconsistent with State Environmental Planning Policy No. 65 with respect to Context, Scale, Built Form, Density and Solar Access and therefore does not represent a good design outcome particularly in the following key areas:
    - i. The development does not respect the desired future character of the area as the development clearly extends well beyond the applicable building height and building envelope controls.
    - ii. The development does not respect the desired massing and human scale initiatives. It will not be stepped to appropriately address the sites corner location.

**ITEM 3 (continued)**

- iii. The proposed layout and building depth will limit solar access and cross ventilation opportunities and not achieve compliance with the minimum requirements of the RFDC.
- b. The proposed development proposes significant non-compliances with the maximum height standards for the site prescribed under Clause 4.3 – Height of Buildings of RLEP 2010, which has not been justified.
- c. The design is such that it will not meet the objectives (a), (c), (d) and (e) for building height listed under Clause 4.3 – Height of Buildings of RLEP 2010 and objectives of the zone listed under the Land Use Table of RLEP 2010 with regard to *‘creating an attractive environment for pedestrians’* and *‘recognising unique location in design’*.
- d. The applicant has not adequately demonstrated in the proposed development application, that the proposed height variance will be satisfactory with respect to Sub-clause 4(a)(ii), that the development will be in the public interest because it will be consistent with the objectives of the height standard and the objectives of the zone of the land.
- e. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards of RLEP 2010. It will not achieve a better outcome.
- f. The proposed development does not meet the objectives (a) of Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village of RLEP 2010 with respect to *creating an attractive environment for pedestrians* given the proposed height, scale and lack of regard to the human scale initiatives for height.
- g. The proposed development does not comply with the maximum permissible height of 18.5m and 33.5m prescribed under Clause 4.3 – Height of Buildings of the DLEP 2011.
- h. The proposed development does not achieve objectives (a), (b), (c) and (d) for building height listed under Clause 4.3 – Height of Buildings of the DRLEP 2011.
- i. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards of DLEP 2011 as it will not achieve a better outcome.
- j. The proposed development seeks significant variation to the applicable RDCP 2010 controls, particularly in relation to the envisaged urban form. The degree of variation has resulted in an excessive design that is inconsistent with the object of the envelope and corner treatment controls.

**ITEM 3 (continued)**

The proposed development does not achieve a design outcome that is sought by Council's controls nor reflect the future character for the Eastwood Shopping Village.

- k. Insufficient information has been submitted to verify compliance with the RFDC requirement in that the private open spaces for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.
- l. Insufficient information has been submitted to verify that the insufficient building separation to the east will maintain compliance with the approved Eastwood Shopping Centre Development with the following solar access requirement of the RFDC:  
*'living rooms and private open spaces of at least 70% of the units in the development will achieve a minimum of 2 hours solar access between 9am and 3pm in mid winter '.*
- m. The proposed development is not considered to be in the public interest as it will set an inappropriate precedent for overdevelopment with significant departures from the Ryde LEP 2010 maximum height standards and the Ryde DCP 2010.

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

**ATTACHMENTS**

- 1 Map
- 2 A4 Plans
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER
- 4 Voluntary Planning Agreement Report
- 5 Elevations of DA refused at Court
- 6 LEP2010 map extract showing heights

Report Prepared By:

**Stuart Harding Associate Director**  
**Willana Associates, Planning Consultants**

Report Approved By:

**Sandra Bailey**  
**Team Leader - Major Development Team**

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

### ITEM 3 (continued)

#### 2. Site (Refer to image below)

- Address** : 7-9 Rutledge Street, Eastwood
- Site Area** : Site Area: 1,974m<sup>2</sup>  
Frontage: The site has a southern frontage to Rutledge Street of 37.835m and a western frontage to Trelawney Street of 47.245m (both exclusive of the 3.452m corner splay).  
Eastern Boundary: 48.6m  
Northern Boundary: 40.235m
- Topography and Vegetation** : The site comprises two lots, (Lot 23 DP 4231 and Lot 24 DP 653568) and is located at the northeast corner of Trelawney Street and Rutledge Street. The submitted survey dated 21/12/99 indicates that the site has a general fall from its Rutledge Street frontage to its northern boundary of approximately 3m. However, the slopes/RLs may not represent those which currently exist on the site as the survey is not current.
- The survey indicates the existence of three (3) church buildings that were subject to a development approval for demolition (Development Consent Number 1237/2002) issued in May 2003 and have subsequently been demolished. As a result, the site is secured by barrier fencing. Significant vegetation is limited to two (2) Camphor Laurel trees near the northeast corner. They are approximately 8m in height and 6m in spread.
- Existing Buildings** : Any buildings on the site are limited to minor structures. A concrete ramp encroaches on the site for the length of its northern boundary. It provides vehicular access to the Eastwood Shopping Centre located further east. Accordingly, the northern part of the site is subject to an easement for support and access. There are stepped, brick retaining walls along part of the sites street frontages.
- There are two (2) other vehicular crossings that service the site, other than that associated with the ramp. One is located near the northwest corner and the other is located along Rutledge Street at the southeast corner. A concrete driveway extends on the site from its



**ITEM 3 (continued)**

southeast corner. Along part of the Rutledge Street frontage and around the street corner of the site is a paved.

**Planning Controls**

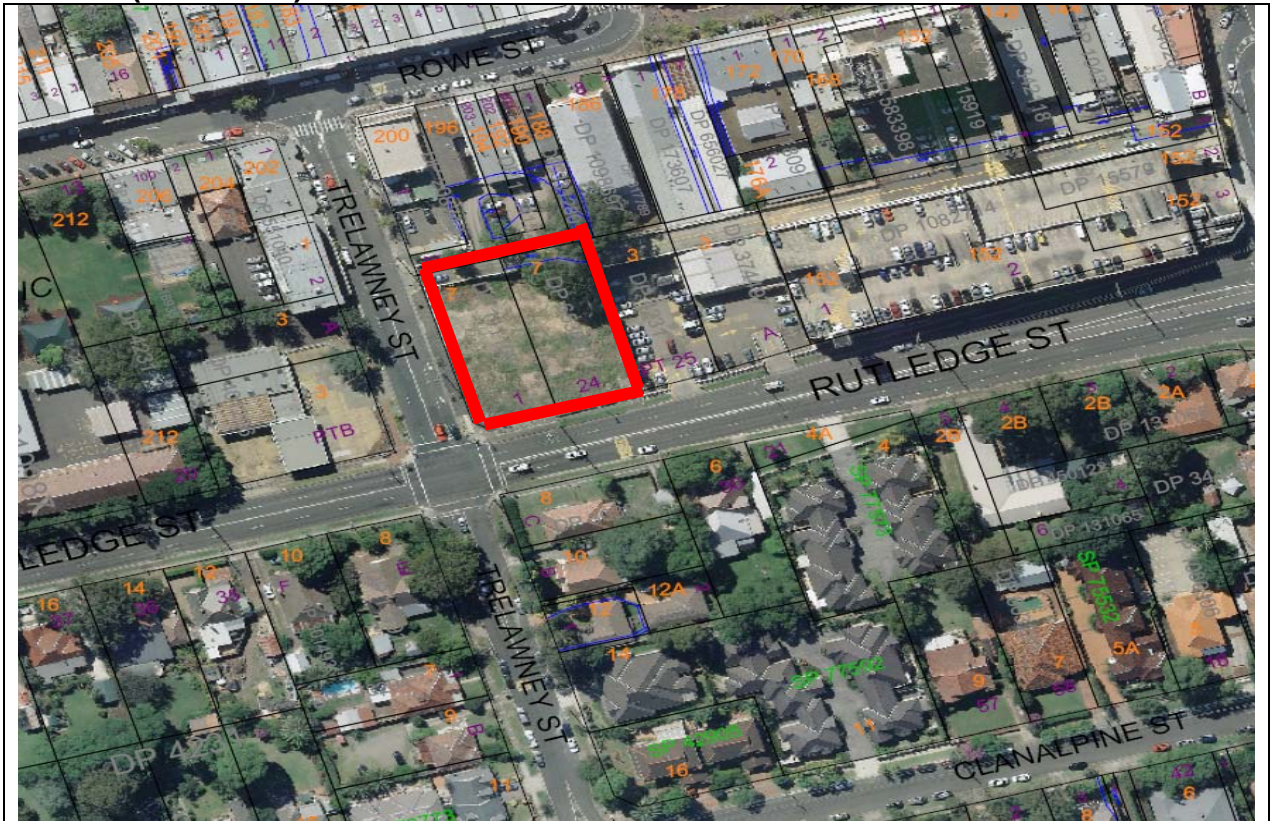
**Zoning**

: B4 Mixed use

**Other**

: Environmental Planning and Assessment Act 1979  
SEPP No. 55 - Remediation of Land  
SEPP (Building Sustainability Index: BASIX) 2004  
SEPP (Infrastructure) 2007  
SEPP No. 65 – Design Quality of Residential Flat Development  
Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005  
RLEP 2010  
RDCP 2010  
Draft RLEP 2011  
Residential Flat Design Code  
Section 94 Contributions Plan 2007

**ITEM 3 (continued)**



Subject Site: 7-9 Rutledge Street, Eastwood

Image 1| Extract 2008 City of Ryde Aerial Photo

**3. Councillor Representations**

Name of Councillor: Councillor Maggio.

Nature of Representation: Called up to Planning & Environment Committee.

Date: 3 May 2012.

Form of Representation: Email to the Councillor Helpdesk.

On behalf of applicant or Objectors: Not stated.

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 disclosures.

**ITEM 3 (continued)****5. Proposal**

The subject development application proposes:

- Erection of a mixed-use building, being part 7 / part 12 levels, plus three levels of basement parking below. The building will consist of 79 units in total, including four units at ground level, behind the retail/commercial tenancies. A total of 155 car spaces, plus a loading bay, motorbike parking and bike parking will be provided in the basement levels. Three retail/commercial tenancies will extend along the Trelawney Street frontage, with two at footpath level and one at the level above. Another three retail/commercial tenancies will extend along the Rutledge Street frontage, all at footpath level. Lift access will be within a single core, almost centrally located. It will consist of one retail lift and two residential lifts.
- Provision of a substation at the southeast corner.
- Removal of existing vegetation, including the removal of two established Camphor Laurel trees at the northeast corner.
- Soil excavation works that will extend up to all boundaries of the site, with the exception of a setback being provided at the southeast corner, where a substation is proposed and at the northern boundary as not to encroach the easement for access and support.
- Establishment of new on-site landscaping.
- Removal of two vehicular crossings, one near the northwest and the other at the southeast corner of the site. Vehicular access will extend from Trelawney Street, along the northern side of the site, into the proposed basement entry at the northeast corner and make use of the existing easement for access in this location. An easement for access and support extends adjacent to the northern boundary and over adjoining properties to the north that have a frontage to Rowe Street. A new access way has been approved as part of the consent for the Eastwood Shopping Centre development that will include the removal of the existing ramp along the northern boundary of the site and provision of at grade access. The ramp must be demolished and access way established prior to any construction works on the subject site. Accordingly, if the application is approved, it is recommended that a 'deferred commencement consent' be issued subject to the demolition of the ramp; and obtaining the consent of any other owners of the land that forms part of the easement, where necessary.
- Installation of new storm water infrastructure, including on-site detention.
- Strata subdivision.

### ITEM 3 (continued)

In addition to the above, the following public domain improvements are proposed:

- Provision of new footpath paving in Rutledge Street.
- Provision of new street trees along the Trelawney and Rutledge Street frontages.
- Erection of awnings over the Trelawney and Rutledge Street frontages.

### Building Composition

In total 16 x 1 bedroom units, 43 x 2 bedroom units and 20 x 3 bedroom units will be provided, including seven adaptable units. One enclosed access core will be provided, almost centrally located. The units will be arranged around this core. A retail lift will provide access from Basement Level 1 (being the upper basement level) to the lower ground and ground levels. Two separate residential lifts will provide access from Basement Level 3 (being the lowest level) up to the twelfth level (referred to as Level 10 on the submitted plans).

The car parking spaces and other ancillary facilities allocated for residential use will be located at Basement Levels 3 and 2, with the exception of 'resident visitor spaces' and some storage areas which will be located on Basement Level 1, and the resident waste garbage room and a store zone, which will be located at Lower Ground Floor Level. Access to the basement levels will be restricted by a security roller shutter. A garbage chute will service the units.

Loading/unloading facilities, a separate non-residential waste storage room, bicycle parking, motorbike parking and main lobby will be provided at the Lower Ground Floor Level.

The eighth level (referred to as Level 6 on the submitted plans) will be set back from the Trelawney Street building frontage and will consist of communal and private open spaces within the setback. Four levels will extend above with a similar footprint. Additional communal area will be provided on the rooftop, generally around the lift overrun, plant room and fire stair structures.

The composition of each level is described in more detail below.

Table 1: Building Composition

Level (Plan Reference)	Building A
<b>Basement Level 3</b>	55 resident car parking spaces (including 1 accessible space and 2 small car spaces)
	1 motorcycle parking space

**ITEM 3 (continued)**

<b>Level (Plan Reference)</b>	<b>Building A</b>
<b>Basement Level 2</b>	50 resident car parking spaces (including 8 accessible space and 2 small car spaces)
	1 motorcycle parking space
<b>Basement Level 1</b>	22 resident car parking spaces (including 2 small resident visitor, 16 standard sized resident visitor, and 4 residential spaces)
	19 retail spaces
<b>Lower Ground Floor Level</b>	2 resident visitor accessible spaces
	7 retail car parking spaces (including 2 accessible space, 1 small car space)
	1 Loading Dock
	OSD tank
	Motorbike and bicycle parking spaces
	Commercial waste room
	Residential waste room
	2 retail/commercial tenancies
<b>Ground Floor Level</b>	4 retail/commercial tenancies, (one facing Trelawney St and the others facing Rutledge St)
	1 x 1 bed. unit (adaptable) 3 x 2 bed. units
	1 substation and service rooms
<b>Level 1</b>	2 x 1 bed. units (including 1 adaptable) 8 x 2 bed. units
<b>Levels 2 to 5</b>	2 x 1 bed. units (including 1 adaptable) 8 x 2 bed. units
<b>Level 6</b>	1 x 1 bed. units (adaptable) 4 x 3 bed. units
<b>Level 7 to 10</b>	1 x 1 bed. units 4 x 3 bed. units



**ITEM 3 (continued)****Landscaping**

It is proposed to remove the existing trees on the subject site and provide the following on-site landscaping:

Ground Level (plan reference):

- Private open spaces within the east and north building line setbacks.
- Planter beds with tree planting along the east and northern boundaries.

Level 1 (plan reference):

- Private open spaces in the form of balconies around the building.
- A planter bed with tree planting generally extending along the Trelawney and Rutledge Street frontages.

Levels 2 – 5 (plan reference):

- Private open spaces in the form of balconies around the building.

Level 6 (plan reference):

- Private open spaces around the building.
- A communal open space within the western building line setback.
- A planter bed with tree planting generally extending along the Trelawney Street frontage and either side of the communal area.

Level 7-10 (plan reference)

- Private open spaces in the form of balconies around the building.

Level 11 (plan reference)

- Roof top communal open space extending around the plant and lift overrun with perimeter planting.

**Voluntary Planning Agreement**

The VPA generally involves the payment to Council of a one off monetary contribution of \$205,315. This contribution will be in addition to the payment of all applicable Section 94 contributions required by Council, public domain improvements and construction related fees relating to hoardings, construction parking zone permits and hoarding inspections. A separate report is provided in Appendix 4, which provides more details about the VPA.

### ITEM 3 (continued)

#### Key Figures of the Project

Number of one bedroom apartments	16
Number of two bedroom apartments	43
Number of three bedroom apartments	20
Number of retail units	6
Area of retail units	912.34m <sup>2</sup> (based on amended plans dated 8/5/2012)
Number of car spaces	155 plus one loading bay
Area of communal open space	580.09 m <sup>2</sup>
Area of deep soil planting	Nil

## 6. Background

### i. Previous Applications / Site History:

The subject site formerly contained three (3) church buildings, two along the Rutledge Street frontage (with one at the corner of Rutledge and Trelawney Streets) and another set back behind. The building at the site's corner was the St Andrews United Church Building. The other building along Rutledge Street was a church hall, whereas the building behind was an amenities church building.

Council's records suggest that the site was used as a place of public worship from approximately 1910. A development consent was issued in May 2003 (Development Consent Number 1237/2002) for the demolition of the buildings. The buildings were subsequently demolished.

On 13 July 2004, Council considered a development application proposing a 10 storey mixed use development with 62 units; 593m<sup>2</sup> retail/commercial floor space and 115 basement parking spaces at the subject site. Despite a recommendation for approval, Council resolved to refuse the application on the basis that '*it does not comply with the development control plan with respect to height and sight lines*'. A notice of determination was issued on 22 July 2004.

An appeal was lodged in the Land and Environment Court against Council's refusal. The matter was heard on 16 and 17 December 2004. As a result of the Court's findings, (listed below), the development application was refused.

*Any design for this site needs to meet a number of objectives.*

- *First, the site is in an urban village zone and the intention of DCP 39 is that new development should have an urban village character. Development should be of human scale in the streetscape, being generally two to three stories in height. Taller building elements set back from street are permissible but they should not dominate.*

**ITEM 3 (continued)**

- *Second, Trelawney Street is to be developed for the enjoyment and utility of pedestrians with a high level of aesthetic amenity at street level.*
- *Third, Trelawney Street is a retail/pedestrian priority street and at its intersection with Rutledge Street forms a gateway to the Eastwood Town Centre. The street corner portion of site is therefore a gateway site for the purposes of DCP 39 and notwithstanding the first objective above should be developed accordingly. More particularly the corner element of the building should address both streets and be stepped up especially in relation to structures at the street frontages.*
- *In my view when these objectives including the various relevant provisions of DCP 39 are considered and applied to the site they indicate a form of development unlike the proposal for which consent is sought. Whilst I agree with Dr Lamb that strict enforcement of the development controls in DCP 39 would, in relation to this site, result in an unreasonable restriction on development, this does not mean that the controls should be disregarded. Although strict compliance is not necessary they still have an important function.*
- *I am satisfied that a three-storey building fronting Trelawney Street would be acceptable but when the building height plane is applied to this height and notwithstanding the 3 m set back, a significant proportion of the building above this plane will be apparent. The bulk of the building as would present to Trelawney St. and indeed to Rowe Street would be excessive and inconsistent with the urban village, streetscape and human scale objective.*
- *Whilst I do not accept that for this site there can be no development above the building height plane I find the 3 m set back for the four levels of building above the building height plane to be inadequate. The bulk of the building as would present to Trelawney St. and indeed to Rowe Street would be excessive and inconsistent with the urban village, streetscape and human scale objective.*
- *The design of the building at the street corner - The building element as proposed would not be sufficiently dominant taking into account that the bulk of the main building behind would visually overwhelm it. The photomontage confirms this.*
- *I have therefore decided that, in terms of the variations provisions in section 3.3 of DCP 39, the proposal would not meet the intention of the control nor would it be consistent with the aims, principles and strategies. Whilst I accept that strict application of the building height plane would be unreasonable or unnecessary, the extent of the non-compliance is excessive and in the circumstances the application should not be approved.*

Refer to Attachment 5 for elevations that formed part of the refused DA.

**ii. Background to Subject DA:**

The subject DA was lodged on 28 November 2011 concurrently with LDA No. 2011/0611, for the erection of a mixed use development at 3-5 Trelawney Street, Eastwood.

**ITEM 3 (continued)**

Prior to lodgement, an initial scheme was subject to two 'predevelopment application reviews' and two reviews by Council's Urban Design Review Panel (UDRP). The reviews resulted in a number of recommendations. The recommendations made by the UDRP and resultant changes to the scheme have been outlined in the section below '*Urban Design Review Panel*'. One of the main issues raised at the reviews was that the development needed to achieve compliance with the LEP height standard.

Below is a chronology of events, (including meetings, discussions and correspondence), between the applicant or applicant representatives and Council officers.

Date	Event
<b>Pre-DA Submission</b>	
17/08/2010	A meeting was held between COR's Group Manager Environment and Planning, the owner/developer, the architect and the applicant's consultant town planner, to discuss the concept proposal for the redevelopment of the site.
25/2/2011	A prelodgement meeting and UDRP meeting were held.
15/06/2011	A letter from the owner/developer was sent to COR's General Manager seeking a 'Workshop Meeting' with the Mayor
19/07/2011	A workshop was held and verbal presentation was made to the Councillors.
6/09/2011	The owner/developer sought another workshop meeting.
04/10/2011	Workshop held.
21/11/2011	Plans and a VPA (voluntary planning agreement) were dropped off at the front Counter by the applicant for checking prior to formal lodgement.  An email was sent by Council staff advising that the dropped off documents did not contain the explanatory notes required under Clause 25E of the EP&A Regulation re the VPA.
<b>Post – DA Submission</b>	
28/11/2011	The subject DA was lodged.
05/12/2011	The DA was placed on public exhibition/notification from 5/12/2011 until 18/1/2012. The applicant was notified of the public exhibition/notification period.
08/12/2011	The VPA was referred to the Executive Team (ET).
15/12/2011	A consultant was selected to assess the DA.
23/12/2011	A letter was sent to the applicant advising that the VPA offer was not supported by ET at its meeting of 16/12/2011. Amendments were requested.
04/01/2012	A letter was sent to the Eastwood Chamber of Commerce granting an extended submission period until 15/02/2012.

**ITEM 3 (continued)**

Date	Event
12/01/2012	Councillor Information Bulletin (CIB) item advising of the VPA offer submitted by the applicant for the DA.
22/02/2012	The applicant submitted a written response to the submissions received during the DA notification/exhibition period. It generally included further justification of the scheme and amendments to address vehicular access/safety.
08/03/2012	A letter was sent to the applicant requesting additional information and design changes. The applicant was advised that the application in the form submitted could not be supported by staff. This resulted in two (2) meetings in which the matters raised in the letter were discussed.
22/03/2012	Flood information was provided to the applicant
04/04/2012	A meeting was held with the applicant re VPA
05/04/2012	A CIB item was prepared advising of the details of the VPA
12/04/2012	<p>In response to Council's letter dated 8/03/ 2012, the applicant submitted a formal written response with accompanying documentation. (The additional information and amendments requested in the letter are listed in italics below this table. Generally, no major changes were made. They were limited to:</p> <ul style="list-style-type: none"> <li>- Addition of steps along the street frontages of the site;</li> <li>- Reconfiguration of Units X03 located on the east elevation facing the approved Eastwood Shopping Centre development;</li> <li>- Reorientation of Units 109-509 and resultant amendments to adjacent Units 110-510 and Units 109-509.</li> <li>- Increase to the lower floor levels (by 300mm); and</li> <li>- Changes to basement storage and bike/motorbike parking areas.</li> </ul>
14/5/2012	<p>The applicant provided a further submission that separately addressed technical issues raised by Council's Public Domain Officer, Waste Officer, Traffic Engineer and Stormwater Engineer. Generally no major changes have been made to the development scheme. Changes have been limited to the following:</p> <ul style="list-style-type: none"> <li>- Setback of the car/truck access;</li> <li>- Minor adjustments to the lower ground bin store areas;</li> <li>- Addition of a service ramp behind the loading dock and deletion of ramps around the lift facilities;</li> <li>- Relocation of fire hydrant;</li> <li>- Reduction to the lower ground retail area from a total of 339sqm to 311.34sqm;</li> <li>- Addition and relocation of storage zones at lower ground level;</li> <li>- Addition of a hard waste area at lower ground level;</li> </ul>



**ITEM 3 (continued)**

Date	Event
	<ul style="list-style-type: none"> <li>- Addition of toilet facilities, including a separate accessible facility, at lower ground level;</li> <li>- Minor adjustments to the fire stairs and area of residential lobby;</li> <li>- Minor adjustments to the steps and entries along Trelawney Street; including the deletion of steps and provision of an internal ramp to the lower ground retail tenancy located further south; and</li> <li>- Minor increases to the lower ground retail floor levels.</li> </ul>
18/04/2012	An amended VPA was submitted. A telephone conversation was held between Council staff and Mr Lyon regarding the discrepancy in the VPA offer, as discussed in the meeting held on 4 April 12. The VPA was referred to ET
19/04/2012	A letter was sent to the applicant advising that ET did not support the amended VPA
20/04/2012	Amended plans were referred to the Roads and Maritime Services
24/04/2012	A letter was received from Mr Lyon complaining about delays in the DA processing. An amended VPA was submitted which increased the one-off cash contribution. The amended VPA was considered by ET at its meeting of 4 May 2012.
21/05/2012	Amended plans were submitted indicating minor changes to some levels adjacent to the footpath in response to the flood levels.
29/05/2012	The VPA was considered by Council's VPA Panel. Concerns were raised by the Panel in terms of the wording of the some sections of the VPA as well as the explanatory note. The applicant was advised of these concerns on 29/05/2012 and 1/06/2012. The final version of the explanatory note was received by Council on 30/05/2012 and the final version of the VPA on 8/06/2012.

**iii. Response by Applicant to Council's letter dated 8/03/2012**

The additional information and amendments requested in Council's letter dated 8/03/2012 are provided in italics below this table. A comment is provided for each in relation to the applicant's response.

- ***Amendments to the Height:*** *The proposed development does not comply with the maximum permissible height prescribed under Clause 4.3 – Height of Buildings of the Ryde Local Environmental Plan 2010 (RLEP 2010). The variation to the height control, as submitted, cannot be supported. The following comments are made in respect to the height of the development.*
  - *A reduction to the overall height of the building so the maximum RL created by the roof top plant matches that approved for the development directly adjacent to the site for the Eastwood Shopping Centre;*

**ITEM 3 (continued)**

- *The deletion/setback of that part of the building to the west that encroaches the 18.5m height standard, i.e. reconsideration of units within the non-compliant zone and above a plane projected from eye level from the opposite side of Trelawney Street (near the boundary of 3-5 Trelawney Street) to the edge of Level 4; and,*
- *Reconsideration of the location of the upper levels, lift shafts and other roof plant structures as to be located behind the plane explained in the point above, so that these elements cannot be seen from footpath level*

Comment: No amendments have been made by the applicant.

- **SEPP 65 Compliance:** *Amendments are to be made to achieve greater compliance with SEPP 65 - Design Quality for Residential Flat Buildings and the associated Residential Flat Design Code. This includes: A detailed response as to how the design has responded to the comments made in pre lodgement advice regarding SEPP65. Where design changes have not been made, and are pressed by the applicant, justification is required as to why the scheme should be supported by Council. Particular emphasis should be given to levels of amenity and the relationship of the building to the public domain and the adjoining development.*

Comment: Generally no changes have been made to the proposed height. Further justification has been provided by the applicant. The matters have been addressed in the section 'Urban Design Review Panel'.

- **Communal Open Space:** *Provision of extra communal open space to achieve compliance with the Residential Flat Design Code requirement of least 25%-30% of the site area. It is recommended that the extra space be provided on Level 6, i.e. allocation of the area to the west of the central core that is not directly connected to the units. The plans shall be marked accordingly to clearly delineate the communal open space and its area.*

Comment: The plans have been amended to provide extra communal open space on Level 6 as to achieve compliance.

- **Unit re-orientation / Solar Access:** *The possible re-orientation of at least one extra west facing unit to the north of Levels 1 to 5 (preferably Units 109, 209, 309, 409 & 509). This should include the relocation of the main living area and private open space to the northern facade. The relocated units and adjacent north facing units (110, 210, 310, 410 & 510) and west facing units (108, 208, 308, 408, and 508) shall be designed to receive at least 2 hours of sunlight to main living areas and private open spaces between 9 am and 3 pm in mid winter, where possible.*

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Comment: An optional plan has been submitted that indicates the reorientation of the living rooms of Units 109, 209, 309, 409 & 509, and resizing of adjacent Units 110, 210, 310, 410 & 510. This only increases the amount of solar access to the units if the impact of the approved Eastwood Shopping Centre is not taken into consideration.

- **Solar Access:** *The solar access requirement of the whole development needs to be considered in the light of the overshadowing impact of the approved development on the neighbouring property to the east. Accordingly, the shadow diagrams (including elevation solar access diagrams of the development) and submitted solar access table should be amended to include that impact.*

Comment: The applicant submitted a summary table indicating the impact of the approved Eastwood Shopping Centre development on the proposed development with respect to the achievement of the solar access requirement of the Residential Flat Design Code (RFDC) for living rooms only. The requirement also relates to private open spaces. These details have not been provided.

- **Solar Access Table:** *The solar access table should also be amended to separately indicate achievement of the solar access requirement in living areas as opposed to the private open spaces / balconies of each unit, as the Residential Flat Design Code indicates the achievement of at least 2 hours of solar access to living rooms and private open space. It will be generally accepted that a living room has solar access if the sun falls on modest portions of related glazed areas. It will be generally accepted that a private open space has solar access if a useable strip is in sunlight or sunlight will fall on a seated person.*

Comment: As stated above, the solar table has not been amended to separately indicate achievement of the solar access requirement to the private open spaces / balconies of each unit as opposed to living rooms. Accordingly compliance of the private open spaces with the requirement cannot be verified.

- **Solar access diagrams:** *Additional elevation solar access diagrams of the proposed development shall be provided to indicate the impact on the south elevation between 9am and 3pm during the winter solstice, as well as the impact on the west elevation during 9am to 1pm.*

*It is also requested that solar access diagrams (including diagrams of the proposed building elevations) be submitted for the equinoxes during 9am and 3pm.*

*A statement should be provided by the Architect to certify that all the solar access diagrams have been prepared to true north.*

**ITEM 3 (continued)**

Comment: The applicant has submitted additional elevation solar access diagrams indicating the impact on the south elevation and a statement certifying that the solar access diagrams have been prepared to true north.

No solar access diagrams have been submitted for the equinoxes. This information was requested to ascertain the extent of impact during the equinoxes which represents the median situation, as the submitted shadow diagrams indicate the worst case scenario.

- **Survey Plan** - *The submitted survey plan is not current and accurate. (The survey is dated 21/12/1999). A recent site inspection has revealed that the buildings indicated on the plan no longer exist. Council gave approval for the demolition of the buildings in May 2003 and demolition was likely to have occurred prior to May 2008, i.e. before the lapsing of the consent. For the purpose of measuring the building height of the development it is understood that the 'existing' ground level is generally interpreted to be the level that was existing prior to any works being undertaken on the site. If this does not include the level of the land prior to the demolition works, then an amended survey plan should be submitted to indicate spot levels and contours as currently existing. Given the requirements of Clause 55 (as follows) of the State Environmental Planning Policy (Infrastructure) 2007, details of any existing gas pipeline corridors should be provided by the surveyor.*

Comment: The applicant has advised that 'existing boundary levels to the site and existing footpath have not altered following site clearing and therefore the survey can be relied on'. The concern with the levels relates back to measuring the 'building height'. Therefore whether or not the boundary and footpath levels have been altered is less of a concern in this regard.

- **Gas Services:** *Given the requirements of Clause 55 (as follows) of the State Environmental Planning Policy (Infrastructure) 2007, details of any existing gas pipeline corridors should be provided by the surveyor.*

Comment: Details of existing gas pipelines have been submitted.

- **Scale of Shadow Diagrams** - *The shadow diagrams (in plan), south elevation and west elevation shall be submitted to scale. The shadow diagrams should be submitted at a larger scale than the indicative size of those submitted.*

Comment: Updated shadow diagrams increased to a scale of 1:1000 have been submitted.

- **Strata Subdivision** – *The subject application proposes strata subdivision. It is requested that the applicant submit three (3) paper copies and a PDF copy of draft strata subdivision plans particularly to indicate the common property, unit entitlements and proposed easements.*

**ITEM 3 (continued)**

Comment: No draft plans have been submitted. Should the application be approved, a condition is recommended to be included in a consent to require submission of a final plan of subdivision prior to the issue of any Subdivision Certificate.

- **Wind Impact Report** - *It is requested that a wind impact assessment be prepared. Whilst the Statement of Environmental Effects refers to the wind impact, it does not adequately illustrate how the complex has been designed to mitigate the wind effects, particularly in relation to the balconies at the north east and north west building corners*

Comment: The applicant has submitted details on measures that will assist in minimising the impact. These are satisfactory.

- **Heritage Item Within The Vicinity:** *Number 186 Rowe Street, Eastwood, is listed as a heritage item under Ryde Local Environmental Plan 2010 and located within the vicinity of the subject site. As per Clause 5.10 (5) it is requested that a heritage management document be prepared that assesses the extent to which the proposed development would affect the heritage significance of the heritage item.*

Comment: The heritage item is the Masonic Hall which is located to the northeast of the site however it does not adjoin the site. Approval was granted for the demolition of this Hall as part of the approval for the Eastwood Centre. No document has been submitted.

- **Crime Risk Assessment Report** - *A crime risk assessment report should be prepared by the applicant demonstrating compliance with the CPTED principles and addressing the issues of concern raised in the pre lodgement advice date 8 April 2011*

Comment: A crime risk assessment has been provided by the applicant.

- **Stormwater** - *As required by Clause 3.2(a) of 'Part 4.1- Eastwood Town Centre' of the Ryde Development Control Plan 2010 the applicant is to submit a 'stormwater inundation impact assessment' or 'stormwater management strategy'.*

Comment: Following consultation with Council's Engineer, the plans have been amended to comply with the 100 year ARI Flood Level.

- **Traffic and Parking** – *Amendments to the plans of the proposed development at either 7-9 Rutledge Street or 3-5 Trelawney Street to indicate an off-set between the proposed driveways of each development site. Submission to Council of a Road Safety Audit for both accesses from Trelawney Street. Amendments to the traffic reports for both the Rutledge Street and Trelawney Street DA's. The results of each traffic report differ in terms of intersection performance. It is requested that both sites are included in each report to give a more accurate representation of*



**ITEM 3 (continued)**

*the impacts. Amendments to the SIDRA modelling to take into consideration pedestrian counts.*

Comment: No off-set between the proposed driveways is proposed. The applicant has submitted further documentation prepared by specialist consultants, including an amended Road Safety Audit and SIDRA modelling. These have been reviewed by Council's Engineer and *Roads and Maritime Services*. Refer to the below section 'Consultations'.

- **Architectural Drawings** - *Further drawings should include clarification of the following details:*
  - *Which external glazing will be operable or fixed. A schedule shall be provided accordingly.*

Comment: No details have been provided. The applicant has advised that details will be provided at Construction Certificate (CC) stage. These details are necessary to ascertain whether or not units will have access to natural ventilation opportunities. Should the application be approved, a condition is recommended to require all habitable room windows to be operable.

- *The exact nature of the easement encroachment indicated on the lower ground floor plan.*

Comment: The lower ground floor plan has been amended to delete a shaded encroachment into the easement extending along the northern side of the site.

- *Whether or not all balustrades on the west elevation will be glazed. If they are not, then amendments to the solar access diagrams and solar access table for this elevation should be provided to indicate the impact of masonry balustrades.*

Comment: The solar access diagrams have been amended to take into account the impact of the balustrade materials (i.e. permeable or non-permeable). Should the application be approved, a condition is recommended to require balustrades to be as per the materials indicated on the solar access diagrams (glazed or masonry) and for these materials to be clearly indicated on Construction Certificate plans.

- *Further justification with respect to Clause 4.6(3)(b) of Ryde Local Environmental Plan 2010 addressing the additional impact resulting from the non-compliant height portions particularly with respect to privacy, views (including the relevant provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 as the site is within the catchment area), additional overshadowing and achieving the objectives for height. This may include shadow diagrams indicating a compliant situation and/or the impact during the equinoxes.*

**ITEM 3 (continued)**

Comment: Further justification has been provided. This has been considered with respect to 'Clause 4.6' below.

- *Clarification of the division and unit allocation of the basement storage areas.*

Comment: No details on the division and allocation have been provided.

- *Whether or not any car spaces will be caged. This should be considered for any resident spaces on the same level as non-residential spaces for security reasons. The plans shall be amended accordingly.*

Comment: The applicant has advised that the details will be provided at CC stage. If the DA is approved, a condition is recommended to ensure any caged spaces and other surrounding spaces maintain the minimum dimensions as required by AS 2890.1.

- *Whether any discussions have been had with Energy Australia with respect to the proposed substation and provision of the power supply underground.*
- *Whether any discussions have been had with other utility providers with respect to providing installations underground. Any related correspondence should be forwarded to Council to indicate that the utilities can be and will be provided underground.*

Comment: The applicant has provided correspondence from Ausgrid.

- *The location and height of the rooftop mechanical exhaust structure required for internal toilet/bathroom/laundry areas of the residential units.*

Comment: The applicant has advised that exhaust structures required for internal toilet/bathroom/laundry areas will be below parapet level and therefore screened from view. If the application is to be approved, appropriate conditions should be included in a consent to ensure this and that the same is achieved with respect to the garbage room exhaust.

- *Bicycle parking: Clarification of the number of bicycle parking spaces and type of related facilities for security within the shaded 'bicycle and motorbike parking' indicated on Drawing Number DA-09 Issue A.*

Comment: The plans have been amended to indicate the details.

- **Acoustic Impact of Development** - *It is recommended that the submitted acoustic report be amended to indicate the combined additional acoustic impact of the proposed developments at both 7-9 Rutledge Street and 3-5 Trelawney Street, Eastwood (i.e. the impact of the proposed uses, additional traffic noise*

**ITEM 3 (continued)**

*and plant / AC/ exhaust noise) on the existing residential properties on the opposite side of Rutledge Street.*

Comment: An amended report has not been submitted.

- **Voluntary Planning Agreement (VPA)** – *It is also noted that a VPA has been submitted with this development application and the VPA has been rejected by Council's Executive Team. It will be necessary to resolve the VPA matter to enable this assessment to be completed.*

Comment: An amended VPA is discussed in greater detail in Annexure 4 to this report.

**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/notified from 7 December 2011 until 18 January 2012.

One submission was received in favour of and three submissions were received objecting to the development. The issues raised in the submissions are addressed below.

- *Inadequate Parking*

Comment: The RDCP table below indicates that the minimum requirement prescribed under Section 9.3 – Car Parking will be met by the proposal. A condition is recommended to ensure the spaces are appropriately allocated.

- *The building height is substantial which could potentially invade our privacy and block direct sunlight (6 Rutledge Street)*

Comment: No adverse privacy implications would result given the separation between the existing dwelling house and proposed building. The RFDC recommends a building separation of 18m between habitable rooms and balconies from 5 to 8 storeys (25m in height) and 12m up to 4 storeys (12m in height). The building will have a separation of over 20m.

An adequate amount of solar access will be maintained to the property. In particular, a useable portion of the primary private open space will receive at least 3 hours of sunlight during 9am and 3pm on June 21.

- *I enjoy Asian foods, but do not enjoy the way many of the shops are displayed and maintained and the build up and smell of garbage.*

**ITEM 3 (continued)**

Comment: The matters are not specific to the subject DA however, conditions are recommended to be included in a consent to ensure appropriate waste storage facilities, maintenance of the facilities, and frequent waste collection services are provided.

At this stage the intended use of the retail uses is not known. In all likelihood any food shop would require a new DA as it may not fall into the category of exempt development. At this stage further attention could be given to waste issues.

- *I am concerned that the infrastructure of the small Eastwood Shopping Centre will not be able to support such a large development and services will be overstretched.*

Comment: The submission has not identified what infrastructure is of concern. Regardless, it is noted that the proposed stormwater drainage scheme has been reviewed by Council's Engineer, who has recommended conditions be included in a consent to ensure an acceptable outcome. Conditions are also recommended to ensure that the applicant liaises with the necessary service providers (for gas, water, electricity and telecommunications) and services are installed in accordance with the requirements of the provider. The RMS and Council's Traffic Engineer have reviewed the application. They have not raised any concerns with respect to the existing road infrastructure. Council's Traffic Engineer has advised that the surrounding roads will adequately cater for the development.

- *Cars and delivery vehicles entering and exiting from the proposed buildings will cause further traffic congestion.*

Comments: Council's Engineer and the RMS have reviewed the related traffic impacts of the proposal. They have not raised any concerns to the traffic impact. Council's Traffic engineer advised that increases in queue lengths and average delays are generally acceptable. Conditions have been recommended to be included in a consent, including a condition for queuing spaces at the driveway entrance.

- *Overdevelopment of the site / Excessive Size / The developments are out of scale to the surrounding buildings and are too close to the Eastwood Public School. I would appreciate Council reconsidering the size and height of the developments.*

Comment: Agreed. The development does not meet the RLEP Height and objection controls resulting in a building that has excessive height and scale.

- *The proposals will complement the Eastwood Centre Development and provide the much needed gateway into the Eastwood town centre from Trelawney Street. The sites as they exist now present a very poor image of the town.*

**ITEM 3 (continued)**

Comment: The proposal will match the architectural style of the Eastwood Shopping Centre development; however it will represent excessive height and scale which does not meet the RLEP height and objective controls, as well as respect the existing and anticipated built form of neighbouring developments. These matters are discussed further in this report. The gateway concept can still be achieved, with a development that better responds to the LEP controls and its immediate surrounds.

- *The additional residents are expected to increase spend within the town centre.*

Comment: It is acknowledged that the development will result in a positive economic impact with respect to supporting the economic viability of existing and proposed shops within the centre.

- *Inadequate setback of 6m proposed to the eastern boundary. A minimum 9m setback should be provided from the common boundary (at the interface between the west facing Units of the Eastwood Shopping Centre Development). The RFDC recommends 18m – 24m separation but the proposal provides only 15m. Adequate separations will improve privacy levels between the developments and control overshadowing*

Comment: The resultant building separation has been addressed in the below section 'Residential Flat Design Code'.

- *Lack of detail regarding overshadowing on west elevation of approved Eastwood Shopping Centre Development. To ascertain impact on the approved units elevation shadow diagrams should be prepared to demonstrate development will not reduce solar access to the west facing units.*

Comment: No details have been provided to confirm compliance with the RFDC solar access requirement for at 'least 70% of apartments in a development should receive a minimum of 2 hours direct sunlight to living rooms and private open spaces between 9am and 3pm in mid winter'.

- *It will not be appropriate for vehicles waiting to turn right into 7-9 Rutledge Street to obstruct vehicles entering the Eastwood Centre. At this point there should be the ability for incoming vehicles to pass and this will leave some 3.3m for westbound vehicles. It will not be feasible for service vehicles turning out of 7-9 Rutledge to be contained to the westbound lane. It would be preferable if the ROW were widened so that service vehicles could negotiate the single lane and turning constraints.*



**ITEM 3 (continued)**

Comment: The applicant submitted documentation which indicates the following in response to the matters raised:

- The right of way (ROW) will consist of 3 traffic lanes, with one through lane in each direction and a right turn lane for vehicles turning into the site.
- The addition of a warning light and convex mirror at the access driveway to improve visibility and circulation for vehicles in the ROW.
- Turning circles for small to medium trucks and justification of the access widths for trucks.

Council's Traffic Engineer has reviewed the documentation. Comments have been provided in the section below '*Consultation*'.

Should the application be approved, conditions are recommended to ensure the warning light and convex mirror are provided.

- *No indication as to how and when roller shutter on 7-9 Rutledge will be opened or closed/ There is no sightline splay provided on the access responding to AS 2890.1. There should be a splay and preferably a 6m setback for the roller shutter so that at least a car can wait out of conflict while the shutter opens.*

Comment: The applicant has provided written confirmation of the following:

- Roller shutters will be open during the day and closed at night.
- The shutters have been relocated approximately 10m into the site, with one located across the basement car park ramp and other across the ground floor parking area.
- Access outside normal business hours will be via remote control and intercom.
- A loop detector on the ramp will activate the roller shutter upon exit.
- Loading docks will be outside the shutters.
- On exit or for garbage trucks to access the garbage enclosure, the driver will open ground floor shutter via an access control pad within the dock.
- The access driveway has been modified to provide appropriate sight line splays in accordance with AS 2890.1 – 2004.

Council's Traffic Engineer has reviewed the submitted information. Comments have been provided in the section below '*Consultation*'.

Should the application be approved, conditions are recommended to ensure the above access features are provided.

- *Proximity of the proposed 7 Rutledge St access connection to the Eastwood Centre connection: connections will be immediately adjacent with no sightline provisions for egressing drivers; not be possible to differentiate between the accesses (i.e. for the Eastwood Shopping Centre and 7-9 Rutledge Street); potential rear end collision with drivers assuming vehicle ahead will enter the*

**ITEM 3 (continued)**

*Eastwood Centre but stops to enter 7-9 Rutledge; drivers turning right into 7-9 Rutledge will have little sighting of vehicles turning left out of Eastwood Shopping Centre. Access connection should be at least 6m from Eastwood Shopping Centre. A traffic mirror should be installed opposite the access to facilitate sighting of vehicles egressing the Eastwood Shopping Centre*

Comment: The applicant has advised the following in response:

- A convex mirror will be located on the ROW and openings have been provided on the eastern site boundary, adjacent to the driveway, to improve visibility.
- Overhead signage will be provided at the vehicular entry to clearly differentiate the subject site.
- The right of way (ROW) will consist of 3 traffic lanes, with one through lane in each direction and a right turn lane for vehicles turning into the site. This will provide 2 eastbound lanes, enabling vehicles accessing the Eastwood Shopping Centre to pass vehicles turning right into the site.

Council's Traffic Engineer has reviewed the matters. Comments have been provided in the section below '*Consultation*'. Should the application be approved, conditions are recommended to ensure the signage and convex mirror are provided.

- *There should be 2 egress lanes at the connection with Trelawney Street to that vehicles waiting to turn right do not obstruct heavier left turn movements.*

Comment: The applicant has advised that the submitted SIDRA analysis indicates that the intersection would result in average delays, with the highest being less than 15 seconds, which represents a satisfactory level of service.

It should be noted that, other than the information submitted in response to the objections, further information has been submitted to Council on 8/03/2012 and 14/05/2012 in relation to traffic impact issues. Council's Traffic Engineer and the Roads and Maritime Services (RMS) have reviewed the information. Comments have been provided in the section below '*Consultation*'.

**8. Clause 4.6 RLEP 2010 objection required?**

Is a Clause 4.6 RLEP 2010 objection required? A variation is sought under Clause 4.6 of RLEP 2010 seeking variation to the maximum height standard applicable to the site. The maximum height standard is 18.5m for the lot to the west and 30.5 for the lot to the east of the development site, as indicated on the extract of the RLEP 2010 below.

The proposed maximum building height will be 41.56m and located at the eastern side of the lift shaft. The building height is discussed further below in the section '*Clause 4.3 - Height of Buildings*'.

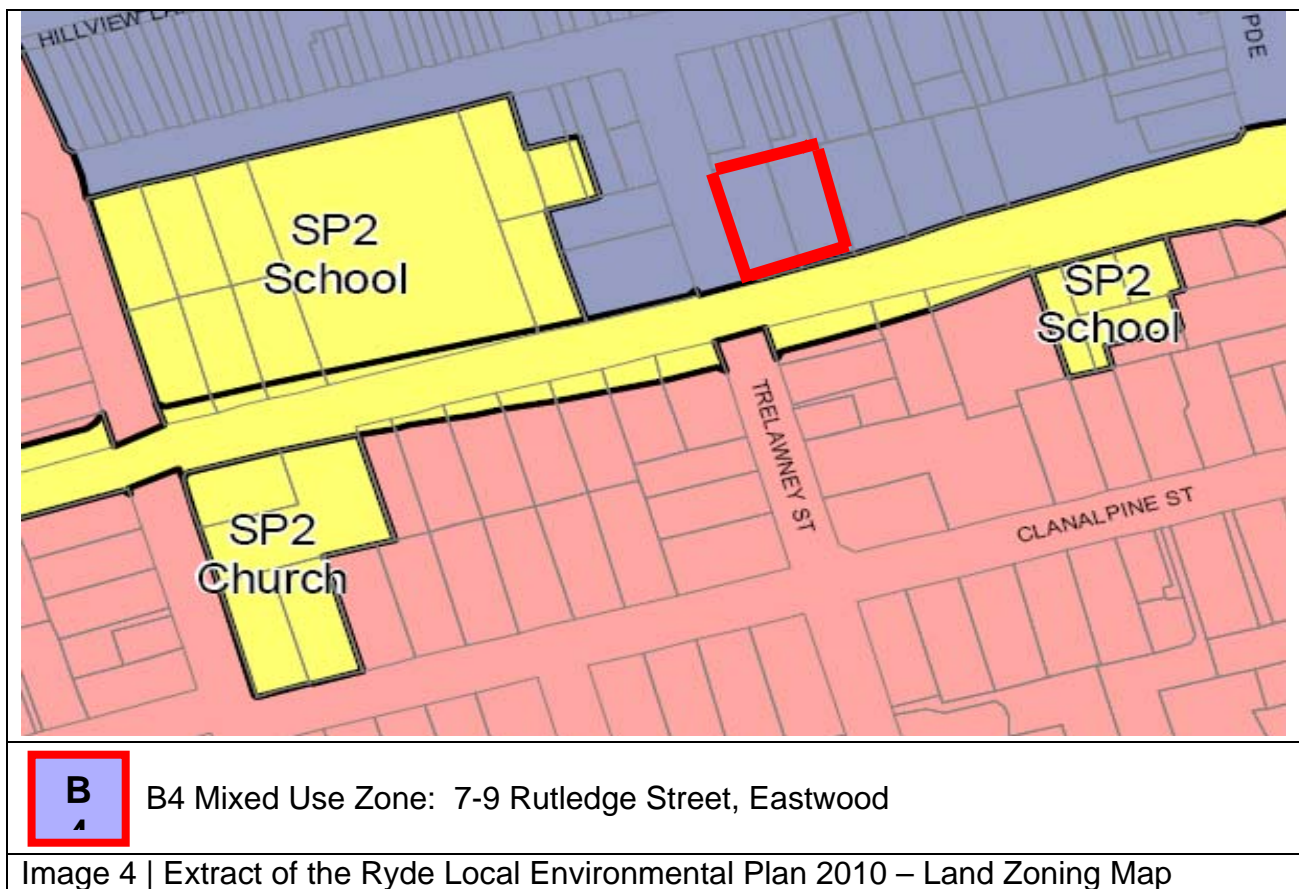
**ITEM 3 (continued)**

**9. Policy Implications**

Relevant Provisions of Environmental Planning Instruments etc:

**(a) Ryde Local Environmental Plan 2010**

**Zoning**



The site is zoned B4 Mixed Use under the Ryde Local Environmental Plan (RLEP) 2010. The proposed development is permissible with consent under this zone. It has been considered in relation to the objectives of the zone, as indicated in the table below. In summary, the development will be consistent with the objectives of the zone other than the last two objectives when considered in relation to the proposed height and corner location.

Objective	Comment	Satisfied
<i>To provide a mixture of compatible land uses.</i>	The proposal is for a mixed use development, which includes residential and retail/commercial uses, in a compatible manner, with the	Yes

**ITEM 3 (continued)**

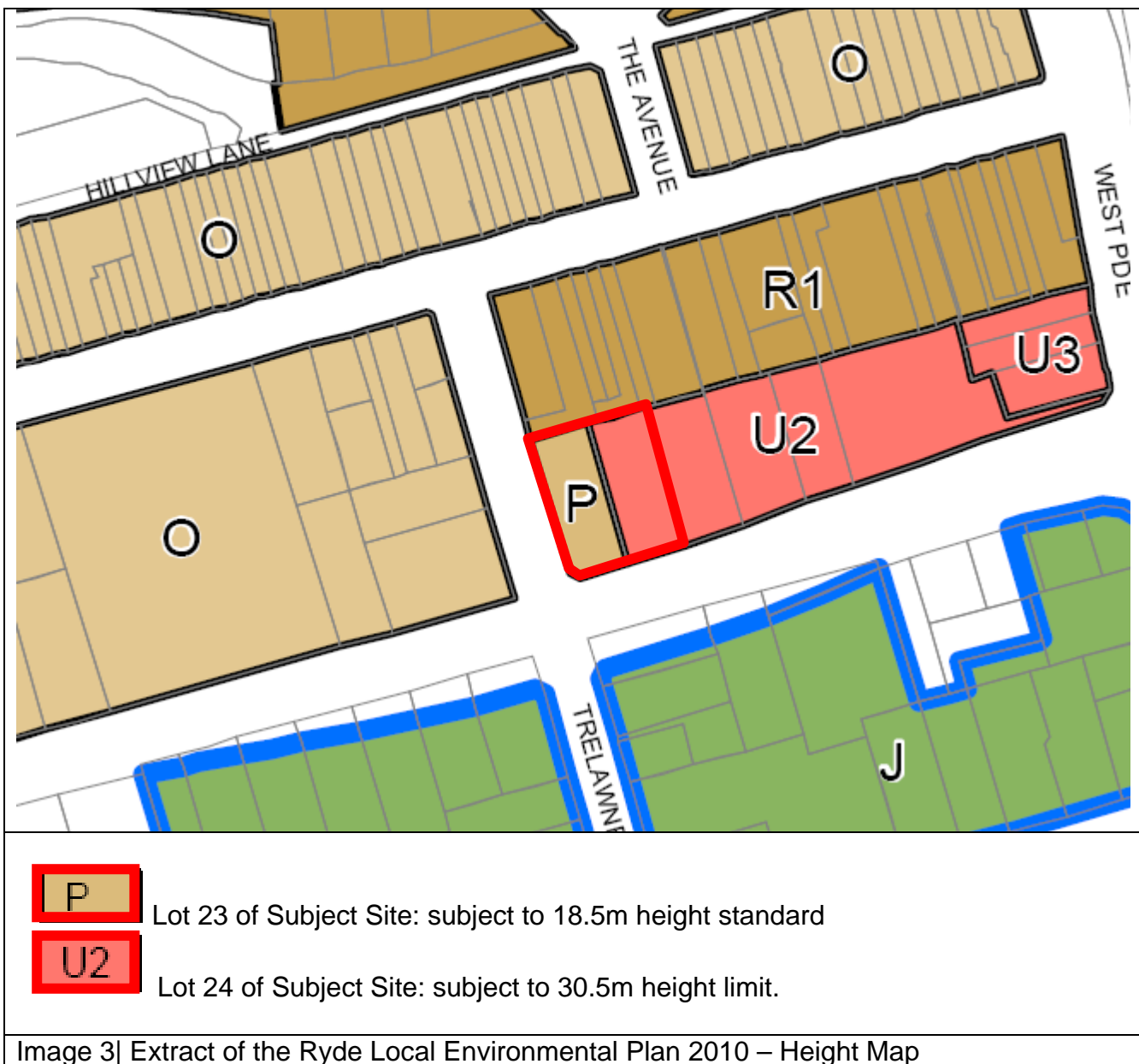
Objective	Comment	Satisfied
	retail/commercial being contained generally at street level and the residential above.	
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	The subject site has convenient access to both bus and rail facilities.	Yes
<i>To create vibrant, active and safe communities and economically sound employment centres.</i>	The proposal appears to generally adopt the Crime Prevention Through Environmental Design (CPTED) principles for safety in urban design, with respect to passive surveillance to both street frontages, and active retail uses at the street level. Conditions have been recommended by the NSW Police Force to adequately address the CPTED principles. These conditions should be included in a consent, should the application be approved. The residential use will assist in supporting commercial/retails uses in the area.	Yes
<i>To create safe and attractive environments for pedestrians.</i>	This objective refers to providing 'attractive' environments for pedestrians. As discussed above, the development will be excessive in height and bulk/scale, particularly along the Trelawney Street frontage. It will not respect the human scale, desired massing and express a strong corner form. These controls are linked to the 'urban village character'. The lack of regard to the human scale and this character indicates that the environment created will not be attractive for pedestrians.	No
<i>To recognise topography, landscape setting and unique location in design and land-use.</i>	This objective relates to recognising the location in the design outcome. As discussed above, the design will not appropriately respond to its location.	No

### ITEM 3 (continued)

#### Mandatory Requirements

##### Clause 4.3 - Height of Buildings

The maximum permissible height applicable to the subject site, as indicated on the RLEP 'Height of Buildings Map' is 18.5m for the lot further west and 30.5 for the lot further east.





**ITEM 3 (continued)**

The definition of 'building height' in the RLEP 2010 states:

*'building height (or height of building)' means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

*'ground level (existing)' means the existing level of a site at any point.*

The submitted survey plan is not current and does not indicate the 'existing' ground levels. It indicates ground levels and buildings that existed prior to demolition works, (the subject of Development Consent Number 1237/2002 issued in May 2003).

The applicant was requested to submit a current survey of the site. A current survey has not been provided. In response, the applicant has advised that 'existing boundary levels to the site and existing footpath have not altered following site clearing and therefore the survey can be relied on'. Whether or not the levels at the site boundaries and footpath levels have been altered is less of a concern in this regard. The levels of concerns are those that will be located under the proposed higher building sections, setback from the boundaries of the site. Given that demolition has been undertaken there may be a variance with the RLs indicated on the survey over the site. As such, in the absence of a current survey, the height non-compliances discussed below and referenced in other sections of this report are based on the submitted survey and therefore may not represent exact variances. They should be acknowledged as approximates.

The maximum building height will be 41.56m in the location of the eastern end of the lift shaft. This represents a height increase of 4m with respect to the approved roof line of the adjacent building of the Eastwood Shopping Centre and an overall variance to the maximum permissible height in this location (30.5m) of 11.06m. The maximum building height will be 41.34m in the location of the western end of the lift shaft. The western end of the lift shaft is located on the lot further west that is subject to an 18.5m height limit and therefore would represent a maximum height increase of 22.84m. The additional height would be visible from some viewing points along Trelawney Street as it would be located at the building edge along part of the elevation. The same would result from the adjacent plant room (about 1m lower than the lift shaft). Regardless, other than the roof top structures that exceed the height, the main built form will also exceed the maximum permissible height limits as summarised below:

Upper Levels:

- Northwest building corner: height of 38.063m measured up to the roof edge. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 19.563m.

**ITEM 3 (continued)**

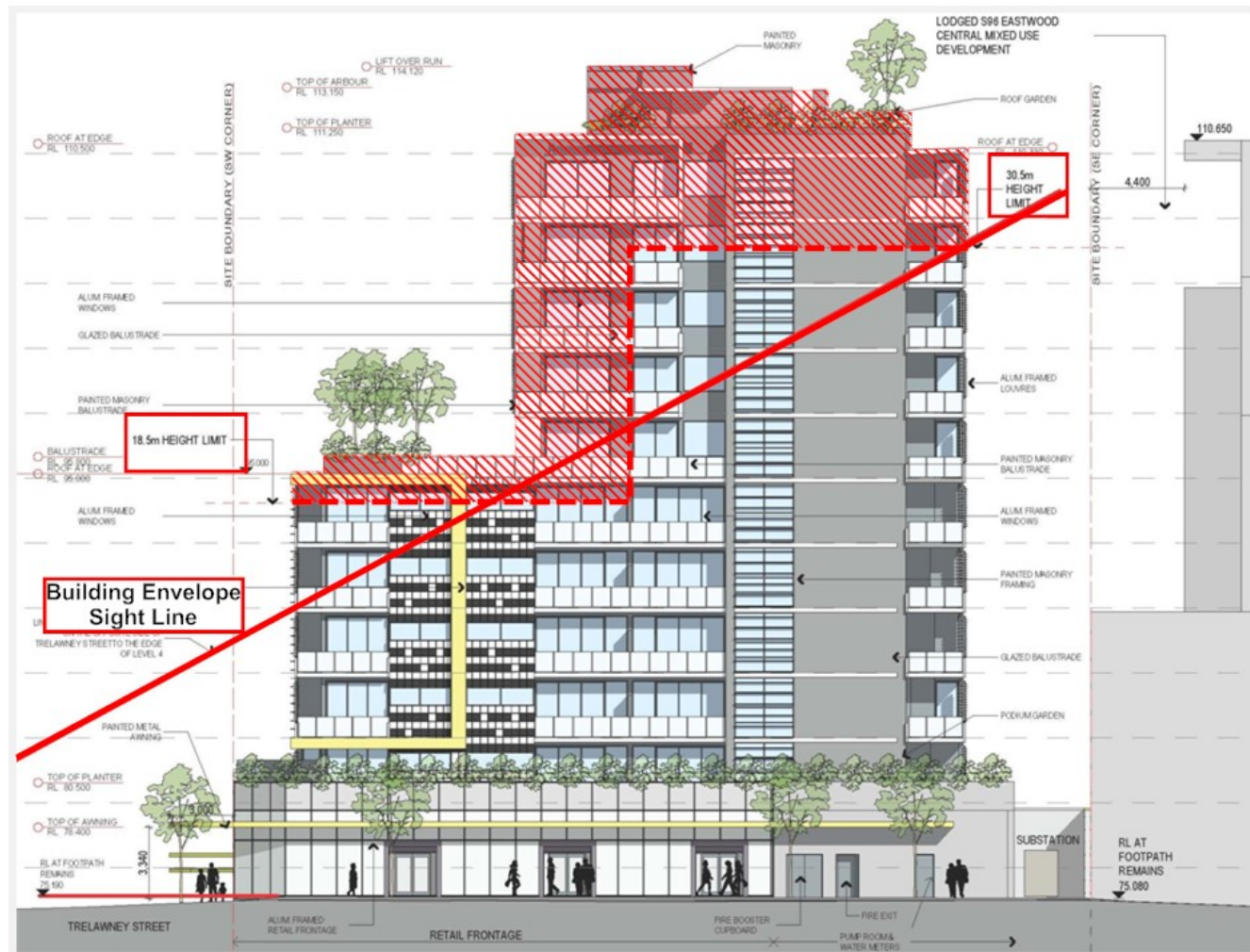
- Northeast building corner: height of 38.85m measured up to the roof edge. This building section is subject to the maximum 30.5m height standard and therefore would represent a variance of 8.35m.
- Southeast building corner: height of 37.3m measured up to the roof edge. This building section is subject to the maximum 30.5m height standard and therefore would represent a variance of 6.8m.
- Southwest building corner: height of 36.663m measured up to the roof edge. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 18.163m.

Levels 4-5 (over lot further west)


- Northwest building corner: height of 22.69 m measured up to the parapet. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 4.19m.
- Northeast building section: height of 22.69m measured up to the top of the roof planter. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 4.19m.
- Southeast building section: height of 21.49 m measured up to the top of the roof planter. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 2.99m.
- Southwest building corner: height of 19.84m measured up to the roof edge. This building section is subject to the maximum 18.5m height standard and therefore would represent a variance of 1.34m.


The above non-compliances are demonstrated on the following diagrams.

**ITEM 3 (continued)**



**Diagram 1: West Elevation -**

 Area of non-compliance with maximum 18.5m and 30.5m LEP Height Standards

 Building Envelope of RDCP 2010 (measured from existing Rutledge Street boundary)

Clause 4.6 – Exceptions to development standards

Clause 4.6 of RLEP 2010 allows exceptions to development standards. Consent must not be granted for development that contravenes a standard unless the consent authority has considered a written request from the applicant that seeks to justify contravention of the standard by demonstrating the following:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

**ITEM 3 (continued)**

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The consent authority must be satisfied that the applicant's written request has satisfied the above criteria and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. In addition, consent cannot be granted unless the concurrence of the Director – General has been obtained. These matters are discussed below.

**1. Written request provided by the applicant.**

The applicant has provided a written request seeking to justify the variation to the development standard in Section 7.1 of the Statement of Environmental Effects prepared by Ludvik & Associates and a further letter dated 12 April 2012 prepared by Morris Bray Martin Ollmann Architects.

**2. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

The applicant has argued that the variation in respect of the height control is acceptable given the following:

- a. *The 'gateway location' of the site, i.e. it is necessitated 'to create an entrance statement at the Trelawney Street and Rutledge Street intersections together with the proposal at 3-5 Trelawney Street.*
- b. *The future character and form of the Eastwood Town Centre is largely dominated by the approved redevelopment of the Eastwood Shopping Centre site at 3-5 Rutledge Street, 152-188 and 196 Rowe Street. It will provide context for other development in this part of the centre.*
- c. *The approved Eastwood Shopping Centre buildings exceeded the building height standards. Council has accepted a SEPP 1 objection against the height standard to allow a twelve (12) storey element adjacent to corner of Rutledge Street and West Parade.*
- d. *It will maintain the character and proportions of development fronting Rutledge Street.*
- e. *It will not have any significant effect on the overshadowing of surrounding development.*
- f. *It will facilitate a satisfactory built form in the context of future development in this locality.*
- g. *It will be satisfactorily located in terms of existing major public transport services and the arterial road network; and*
- h. *It reinforces Trelawney Street as a major gateway into the Town Centre for the arterial road network.*



**ITEM 3 (continued)**

- i. The proposal is consistent with the objectives of the B4 Mixed Use zone.*
- j. As the land is not visible from Sydney Harbour or the Parramatta River nor have any influence on matters required to be taken into consideration under the terms of the SREP.*

The reasons provided by the applicant, are not considered to be well based, except for reason 'g' and 'j'. The non-compliance particularly along the Trelawney Street frontage is excessive and inconsistent with the objectives of the zone and height standard. The development does not achieve a massing, human scale initiative and corner design outcome sought by Council's controls. These issues have been addressed in matter '4' below.

It should be noted that the approved Eastwood Shopping Centre development is not the key determinant of the future character of the Eastwood Town Centre. The key determinants are Council's controls, in particular how a development addresses and achieves these controls.

The DA assessment reports considered by the Planning and Environment Committee with respect to the Eastwood Shopping Centre redevelopment (inclusive of the Section 96 report) indicated a compliant building height, particularly for the building (Building A) directly adjacent to the site 7-9 Rutledge Street. As verified below, this site was subject to different controls.

The land at the corner of Rutledge Street and West Parade, that formed part of the Eastwood Shopping Centre has little correlation with the subject site in terms of the 'human scale' issue along Trelawney Street, which is identified as being a pedestrian priority street under the RDCP 2010. Council's LEP height standards seek a different massing towards West Parade in comparison to that along Trelawney Street. Whilst the DLEP increases the height limit of the lot further east to 33.5m, it still retains the 18.5m height limit for the lot further west. It is understood from the LEP 2010 Building Height map that the massing/scale that is intended to be achieved steps down in height along Rutledge Street from east to west. i.e. from 33.5m to 30.5m, then to 18.5m and then to 15.5m opposite the subject site (on the opposite corner of Trelawney and Rutledge Streets). Accordingly, in this respect the development does not reflect the desired future outcome.

Justification of the additional height based on an upgrade to the locality is not well-founded. The height control does not need to be exceeded to such an extent as to reinvigorate the area.

Insufficient information has been submitted to verify that a minimum of 2 hours solar access will be retained to the west facing units of the approved Eastwood Shopping Centre Development and whether or not the additional height results in a non-compliant situation to the approved development with respect to meeting the requirement for *'living rooms and private open spaces of at least 70 % of units in a*



**ITEM 3 (continued)**

*development to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter'.*

**3. Environmental grounds to justifying contravening the development standard.**

As demonstrated in this report, the development will not be consistent with the existing and desired future character of the area which is dictated by Council's LEP and DCP controls and relates to retaining the 'urban village' character. The built form will not be acceptable in terms of its massing, scale and height and resultant streetscape impact, as discussed in matter '4' below.

The applicant has indicated that the variation will not adversely affect any views from surrounding residential properties or influence the matters for consideration listed under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This is concurred with.

Subject to the adoption of the acoustic measures recommended in the acoustic report (except for non-operable external facing windows), the privacy implications will be satisfactory.

As outlined above, insufficient information has been submitted with respect to the solar access impact of the proposal on the approved Eastwood Shopping Centre Development. The assessment provided in the section 'RFDC' indicates the proposal will fail to meet the cross ventilation and solar access requirement to living rooms. Insufficient information has been submitted to verify compliance with the solar access requirement to private open spaces.

**4. Consistent with the zone objectives and objectives of the development standard.**

The development will not be in the public interest because it will be inconsistent with the following height and zoning objectives:

The objectives for height:

- (a) *to maintain desired character and proportions of a street within areas,*
- (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.*

The objectives for the B4 Mixed Use zone

- *To create safe and attractive environments for pedestrians.*
- *To recognise topography, landscape setting and unique location in design and land-use.*

**ITEM 3 (continued)**

The extent of the non-compliance is not considered appropriate in this case. The variances, both the vertical variances and continual horizontal, are along major building portions. Of more concern are the variances along the Trelawney Street frontage, though the variances caused along the Rutledge frontage should be limited.

The main concerns with the variance are as follows:

- The variances are not consistent with the objectives for 'building height' as well as the mixed use zone.
- The achievement of a 'gateway entrance' can be achieved without the necessity of varying the height control to such an extent.
- The development will not respect the desired future character of the area.
- The development will be excessive in density.
- The height has not been supported by the Urban Design Review Panel.
- The building projects further forward along Rutledge Street.
- The built form of the Eastwood Shopping Centre Development, directly adjacent to the site, had a compliant height and was subject to different statutory controls.

The above matters have been discussed in the assessment below.

- *The variances are not consistent with the objectives of 'building height' as well as some objectives of the zone. The development does not respect the existing and desired future character of the area.*

Objective (a) for building height is 'To maintain desired character and proportions of a street within areas'. Objective (c) is 'To enable the built form in denser areas to create spatial systems that relate to human scale and topography'.

A height limit of 18.5m applies to the corner lot and a height limit of 30.5m applies to the lot further east. A variance of approximately 1 storey to 6 storeys plus a 4m high (maximum) roof structures are proposed for the built form on the corner lot. This variation is demonstrated in the previous diagrams and is not acceptable based on the intended massing for the area and human scale.

Based on Council's LEP Height Map, the lot further west is subject to a lower height limit to appropriately relate to the maximum, lower permissible height of development at the opposite corner site 3-5 Trelawney and create an obvious, sympathetic transition in height and massing from higher development to the east and lower development to the west along Rutledge Street. If half of the lot to the west is developed, to be 6 storey above the permitted control, the legibility in transition will be lost as well as any higher corner element treatment (as discussed below).

**ITEM 3 (continued)**

Council's LEP aims to provide a development on the corner lot with a height 3m higher than that of 3-5 Trelawney Street. This will represent a sympathetic transition that is not excessive as to impact on a matching gateway approach, particularly to warrant development at 3-5 Trelawney Street to be higher.

Retaining the difference in maximum permissible height between the sites corner lot and eastern lot will create a clear emphasis and distinction at this corner, as the lot to the east is subject to a height standard that represents a 12m height increase. It is this difference in height and application of the lower 18.5m height limit over the whole rather than part of the corner lot which will create an emphasis, whilst enabling it to sympathetically match that of 3-5 Trelawney. Any corner elements that are appropriately designed, as indicated in the DCP diagram above, may be accepted to be higher than the 18.5m height standard. The proposed corner design is discussed further below.

The height limit of 30.5m applies not only to the lot further east but also to that part of the Eastwood Shopping Centre site along Rutledge Street, except for the site at the corner of West Parade and Rutledge Street. This site is subject to a height limit of 33.5m.

The development application (DA) and Section 96 application assessment reports for the Eastwood Shopping Centre indicated the building directly adjacent to the subject site provided a compliant situation. At the time of assessment of the Eastwood Shopping Centre DA, the provisions of the Ryde Planning Scheme Ordinance were applicable. Clause 51C limited the building height to '10 storeys or 30m'. The instrument did not have any related 'building height' objectives and consisted of objectives and principles for the Eastwood Urban Village that did not emphasise the 'human scale'. The Eastwood Shopping Centre adhered to the 10 storey height limit with the exception of Building C which was located to the immediate east of that site and was 12 storeys in height. A VPA also accompanied this non-compliance.

The built form on the development lot further east exceeds the height limit and the maximum RL of adjacent building of the approved Eastwood Shopping Centre. It also extends further towards Rutledge Street as to create an inconsistent street setback in comparison to that approved for the Eastwood Shopping Centre. The proposed increased massing towards Rutledge Street in comparison to that approved for the Eastwood Shopping Centre minimises the emphasis of any corner treatment and objective of '*enabling a focal point*'. This massing is also in breach of Council's envelope control prescribed in RDCP 2010, despite compliance with the 3m setback requirement of the DCP.

Based on the approved RL of the adjacent building of the Eastwood Shopping Centre it may be acceptable to allow a similar maximum RL for the main built form on the lot further east. This is on the proviso that it is clearly illustrated that the objectives for height (particularly the one relating to human scale) are met. This would require the

**ITEM 3 (continued)**

proposal to be set back from the southern side to conceal the upper/non-compliant height and match the approved Rutledge Street setback of the adjacent building of the Eastwood Shopping Centre development, as well as be stepped back from the western side. This will ensure the massing reflected by the current and draft LEP height standards and emphasis to the street corner are appropriately resolved, as discussed further below. Any higher rooftop elements must be appropriately located as not to be visible from the opposite side of Rutledge Street or Trelawney Street. Any other parts of the built form over the maximum permissible height must not be visible from the opposite side of Trelawney Street.

It should be acknowledged that compliance with the maximum height standards ensures that if development were to be viewed from the opposite side of Trelawney Street, then the higher portion would not be visible from eye level as it would be setback behind the 18.5m height component. Accordingly, the standards have been developed to ensure strict compliance would ensure the objective of 'relating to the human scale' would be met.

Approval of the proposed development, is likely to set a precedence in terms of providing a higher height and massing than that anticipated by the RLEP or even the DLEP which increases the height of the lot further east to 33.5m. This is likely to impact on how future development will proceed along Trelawney and Rowe Street. If higher development is provided on surrounding sites along Trelawney and Rowe Streets, the 'gateway' emphasis proposed, (even though not considered appropriate for reasons discussed further below), will be diminished. The DLEP, like the current LEP consists of a similar objective for 'building height' relating to the 'human scale'.

It is noted that Draft Ryde Local Environmental Plan 2011 maintains the 18.5m maximum building height standard for the corner lot and adjacent massing along Trelawney Street and other surrounding sites to the north and west. Even though it increases the maximum building height standard for the lot further east to 33.5m, the current scheme doesn't achieve compliance with this maximum by a minimum of about 3m.

- *The achievement of a 'gateway entrance' can be achieved without the necessity of varying the height control to such an extent.*

Objective (d) of building height is '*to enable focal points to be created that relate to infrastructure such as train stations or large vehicular intersections*'. Objective (e) is '*to reinforce important road frontages in specific centres*'. Objective (e) can be related back to Objective (d) with respect to the road intersection treatment.

The proposed urban design outcome creates an excessively high and long facade along the frontages. This solution does not frame the corner of the site, but effectively increases the length and size of the site, which is not an appropriate design approach for corner sites based on standard practices as expressed in Council's DCP, and achieving Objective (c) which refers to the human scale. This scale is important along

**ITEM 3 (continued)**

Trelawney Street particularly given that DCP aims to retain this street as a high pedestrian amenity street. This matter is discussed further below. If coupled with the design outcome proposed for Trelawney Street, the visual emphasis is on the frontage and large scale rather than the corners of the sites. Degradation to achieving the human scale is intensified by this approach.

Council's RDCP 2010 provides further details on acceptable design solutions to treating corner sites. As is evident this includes obvious elements limited specifically to defining the site corner rather than continually along the whole lengths of the site. An acceptable treatment is indicated in the diagram below provided in Part 4.1 of Council's DCP. Any variance to the height control could be justifiable and likely to be supported in the circumstance that the excessive height aims to achieve a focal point at the corner.



Image 5: Extract Ryde Development Control Plan 2010

The specified DCP objective for corner allotments is: *'To ensure buildings situated on corner allotments provide for visual interest and address intersection that they front'*. This supports the design principle that the emphasis of buildings should be limited to the corner of the building rather than the whole length of the corner location of the site. In addition, the following controls also support this:

*The design of buildings at gateway locations should consider the following:*

1. *The height of adjacent buildings;*
2. *Stepping the building up where the building turns the corner;*



**ITEM 3 (continued)**

The difference in building height and massing between adjacent built forms and the corner development lot is important in emphasising a corner treatment as in this case. The development has retained the height for the entire part of the building. The current massing of this building does not deliver any corner treatment as envisaged by the DCP. If the development did retain the 18.5m height control then a modest breach at the corner to reflect the corner treatment could be envisaged. This would enable the articulation of massing anticipated under the LEP and building length when coupled with the built form to the north along the Trelawney Street frontage. This adjacent site is subject to a 21.5m height limit.

As stated above, Objective (e) is '*to reinforce important road frontages in specific centres*'. Objective (e) can be related back to Objective (c) which is '*(c) to enable the built form in denser areas to create spatial systems that relate to human scale and topography*'. The Trelawney Street frontage is identified in Council's DCP 2010 to be an important pedestrian priority street. The 'future character statement' and provisions of Section 3.3 - Architectural Characteristics of the DCP reinforce that an attractive public domain and desirable setting for users needs to be aimed for. The DCP refers to the '*Eastwood Commercial Centre Planning Study and Masterplan*' (master plan) which provides guidance for development of the town centre to the year 2020. The essence of the master plan is to provide for future development that is consistent with the urban village character. In terms of the height and scale, a natural relationship between people and the built environment needs to be maintained.

The 'human scale' issue is further reinforced by a building envelope control prescribed under Section 4.1 of the RDCP 2010, as well as the judgement of *Crown Atlantis Joint Venture v Ryde City Council*. The objective for the building envelope is stated to be: '*To ensure that the existing human scale element of the streetscape is retained*'. Therefore the 'human scale' aspect needs to be respected.

The DCP prescribes a building envelope of 26 degree projected from 1.5m height measured from the property boundary on the opposite side of the street, being that of 7-9 Rutledge Street. It is acknowledged that in some instances that this height plane is inconsistent with the maximum building height prescribed under the LEP as it results a lower allowable building height. Accordingly the 18.5m and 30.5m height standards are accepted to take precedent in constituting an acceptable maximum height for achieving the human scale because consistency with objective (c) would be achieved for a compliant development. Therefore anything above that height and not within a height plane projected from an average eye level of 1.5m on the opposite side of Trelawney Street up to a building edge of 15.5m should be deleted or setback from the building edge and within the plane. In such a circumstance, they will not be visible from the opposite side of the street and therefore the human scale would be retained.

**ITEM 3 (continued)**

The applicant was requested to make changes to the building to require:

- most units along the edges of the corner lot above the 18.5m height limit, to be deleted i.e. above Level 4,
- any units behind and above a height plane projected from eye level on the opposite side from Trelawney Street to the edge of the 18.5m height to be deleted and
- minor structures to be set back within this height plane, i.e. reconsideration of the location of the upper levels, lift shafts and other roof plant structures
- A reduction to the overall height of the building so the maximum RL created by the roof top plant matches that approved for the development directly adjacent to the site for the Eastwood Shopping Centre
- the corner to be redefined.

Deletion of some of the units along the west elevation would achieve a stepped building line and facilitate the potential of double aspect units on the upper levels. This would improve sunlight penetration and natural ventilation. The applicant did not pursue any changes to address the issues at hand.

- *The development will be excessive in density.*

The development is representative of excessive floor space and density. In the absence of any specific density controls, (such as floor space ratio, population or dwelling density), the density of the development is dictated by the applicable height, envelope and setback controls. The proposal fails to meet these controls, as discussed above with respect to envelope and building height, and below with respect to setbacks. Generally the setback requirements of the Residential Flat Design Code will not be achieved between the proposed development and adjacent building of the approved Eastwood Shopping Centre development.

- *The height has not been supported by the Urban Design Review Panel.*

The applicant was advised in pre-lodgement meetings that the proposed height is not acceptable and compliance should be achieved. This has included advice by the Urban Design Review Panel as following:

*'The Panel considers that the development should remain entirely within the statutory planes to support and reinforce the overall massing strategy for the entire block within which it is located.*

Based on the above discussion the following objectives for the B4 Mixed Use zone are not satisfied:

- *To recognise topography, landscape setting and unique location in design and land-use.*
- *To create safe and attractive environments for pedestrians.*

**ITEM 3 (continued)**

In summary, the gateway design approach has not been properly applied as intended by Council's controls. An attractive pedestrian environment will not be achieved as little regard has been given to the 'human scale' issue.

**5. Concurrence of the Director General.**

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-Generals concurrence for exceptions to development standards.

**Conclusion**

The submission does not satisfy the criteria outlined in Clause 4.6. Therefore the variation is not supported.

**Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village**

Sub clause (3) requires that the consent authority must not grant consent to development on land within the Eastwood Urban Village unless it has considered whether the proposal is consistent with the following objectives:

- a. *To create a safe and attractive environment for pedestrians,*
- b. *To create a mixed use precinct with emphasis on uses that promote pedestrian activity and safety at ground level (existing),*
- c. *To create a precinct that contains opportunities and facilities for living, working, commerce, leisure, culture, community services, education and public worship,*
- d. *To increase the number of people living within walking distance of high frequency public transport services,*
- e. *To increase the use of public transport.*

The previous discussion with respect to building height has established that the development will not be consistent with Objective 2(a).

**Other Relevant Clauses from the RLEP 2010****Clause 1.4 – Definitions**

The development is defined as '*mixed use development*', and also falls under the definition of '*shop-top housing*', both of which are permissible uses under the zone of the land.

**ITEM 3 (continued)**Clause 2.6 – Subdivision-consent requirements

Clause 2.6 requires development consent for subdivision. Whilst the proposal includes strata subdivision, no draft plans have been submitted for assessment. Accordingly, should the application be approved, a condition is recommended to require the submission of final subdivision plans prior to the issue of a Subdivision Certificate.

Clause 2.7 – Demolition requires development consent

The development necessitates some minor demolition works. On site works relate to the removal of the existing driveway, hard paving and low retaining walls. Public road works relate to the removal of existing road paving and 2 vehicular crossings.

Clause 5.9 - Preservation of trees and vegetation

Refer to 'Landscape Officer' comments below. As indicated in the proposal description above, the proposal includes the removal of existing vegetation, including the removal of two (2) established Camphor Laurel trees located at the site's northeast corner.

Clause 6.2 - Earthworks

The proposed excavation works will extend up to all boundaries of the site, with the exception to the southeast corner, (where a substation is proposed) and at the northern boundary as not to encroach the easement for access and support. Refer to 'Engineer' comments below.

Clause 6.4 – Eastwood Urban Village

This clause applies to land in Eastwood as identified on Council's '*Eastwood Urban Village Map*'. It relates to addressing stormwater inundation / and potential flooding on this land.

While the subject site is not indicated on the '*Eastwood Urban Village Map*', the applicant has made amendments to the ground floor level based on flood data provided by Council's Engineer. To cater for a 1 in 100 Year ARI flood event / minimise risks, the ground level has been raised by 300mm. This has not altered the overall proposed building height.

Clause 5.10 - Development in the Vicinity of a Heritage Item

The building at 186 Rowe Street, Eastwood, is listed as a heritage item under Ryde Local Environmental Plan 2010 and located within the vicinity of the subject site. Council has approved the demolition of the building under Development Consent

**ITEM 3 (continued)**

No.2007/0936. Submission of a heritage report and consideration of the impact of the proposed development on the heritage significance of the item is not necessary in this instance. It is noted that Draft Ryde Local Environmental Plan 2011 does not include 186 Rowe Street, Eastwood as a heritage item.

**(b) Relevant SEPPs****SEPP No. 55- Remediation of Land**

The provisions of *SEPP 55 – Remediation of Land* (SEPP 55) apply to the subject DA. Clause 7 of SEPP 55, states that a consent authority must not consent to any development on land unless it has considered whether the land is contaminated. If the land is contaminated, the consent authority must be satisfied the land will be suitable in its contaminated state, or will be suitable after remediation, for the purpose for which development is proposed. If the land requires remediation, it must be satisfied that the land will be remediated before the land is used for that purpose.

The subject site previously consisted of church buildings which were subsequently demolished following a consent for demolition issued in May 2003. Since demolition the site has remained vacant and secured. Council records indicate the site had been used for religious purposes from 1910. They do not provide any evidence that the site had been subject to any activities that have the potential to cause contamination, such as those listed in the SEPP Planning Guidelines 'Managing Land Contamination'.

Council's Environmental Health Officer has reviewed the DA and recommended conditions of consent, should the application be approved.

**SEPP BASIX**

Clause 3 of the *Environmental Planning and Assessment Regulation 2000* defines a '*BASIX affected building*' as a building that contains one or more dwellings, but does not include a hotel or motel. Clause 2A of Schedule 1 of *Environmental Planning and Assessment Regulation 2000* requires the submission of a BASIX Certificate/s (issued no earlier than 3 months before the date on which the application is made) with a DA for a BASIX affected development.

The proposed development is a '*BASIX affected building*'. Accordingly, the subject DA is accompanied by a BASIX Certificate (No. 387292M issued on 26 October 2011) that indicates the development will achieve the minimum ratings for energy, thermal comfort and water.

Should the subject DA be approved, conditions are recommended to require compliance with the BASIX commitments detailed in the certificate.



**ITEM 3 (continued)****SEPP (Infrastructure) 2007**Clause 55 - Development adjacent to corridor

Clause 55 (1) states that *'before determining an application for development adjacent to a gas pipeline corridor, the consent authority must:*

- (a) be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development or modification to which the application relates have been identified, and*
- (b) take those risks into consideration.*

The applicant has provided details on the location and type of gas infrastructure on and around the site. Should the application be approved, a condition is recommended to require compliance with the following to minimise any risks:

- The location of gas pipelines are to be confirmed by carefully pot-holing by hand excavation prior to proceeding with mechanical excavation in the vicinity of gas pipelines. If the gas main is not located, the local depot should be contacted on 131 909.
- All excavation (including pot-holing by hand) should be performed in accordance with 'Work Near Underground Assets Guidelines' published in 2007 by the Work Cover Authority.

Clause 101 - Development with frontage to classified road

Clause 101 refers to development with frontage to a classified road. It states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

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

Clause 101 applies to the subject DA as 'Rutledge Street is identified as a classified road. With respect to matter (a) vehicular access will not be provided by Rutledge Street, or any other classified road.

**ITEM 3 (continued)**

Both Council's Traffic Engineer and the Roads and Maritime Services have reviewed the proposed development. No major concerns have been raised with respect to the safety, efficiency and ongoing operation of Rutledge Street. Conditions have been recommended should the application be approved.

The submitted acoustic assessments indicate that the traffic volumes of the adjacent streets, will result in intrusive internal noise levels that will exceed the acceptable standards for dwellings and therefore measures need to be provided to minimise the impact. The measures include the installation of acoustic glazing to outward facing windows, closed external facing windows, and sealing of windows and door frames. Should the application be approved, conditions should be included to require acoustic glazing and sealing of window frames and door frames only. The external facing windows should be operable as not to limit natural ventilation opportunities.

**Clause 104 - Traffic-generating development**

This clause applies to the proposed development as it constitutes traffic generating development given:

- It is a type of development specified in Column 1 and of a size/capacity specified in Column 3 of the Table to Schedule 3 of the SEPP; and
- The site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection the size or capacity specified opposite.

Clause 104 generally requires the consent authority to give written notice to the Roads and Maritime Services (RMS) prior to determining the DA and consider any submission made by in response to that notice.

The DA was notified as required and in response, the RMS requested additional information. The applicant submitted this information. The RMS has reviewed the additional information and has raised no major concerns subject to certain details being provided and/or complied with. These can be addressed via the inclusion of conditions in a consent, should the application be approved.

Clause 104 also requires the consent authority give consideration of the following prior to determining the DA:

- (ii) the accessibility of the site concerned, including:
  - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
  - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
- (iii) any potential traffic safety, road congestion or parking implications of the development.

### ITEM 3 (continued)

The above matters have been considered, where relevant. Reference should be made to the comments provided by Council's Traffic Engineer and DCP assessment in relation to adequacy of the proposed parking.

### SEPP No. 65 - Design quality of Residential Flat Development

This policy aims to improve the design quality of residential flat buildings in NSW. It encourages that the design quality of residential flat developments is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

There are 10 design quality principles identified within the SEPP 65. The following table provides an assessment of the development against the 10 design principles.

Planning Principle	Comment	Complies
<p><b>Principle 1: Context</b></p> <p>Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.</p> <p>Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.</p>	<p>It is evidenced by the discussion above, the development will not reflect the desired future character as required by local planning provisions. In particular, the height, massing and scale will not respect the objectives prescribed by the LEP, DCP, and master plan relating to the 'human scale' and 'urban village character'.</p>	No
<p><b>Principle 2: Scale</b></p> <p>Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.</p> <p>Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and</p>	<p>As discussed previously, the resultant scale will not be appropriate with respect the desired future character anticipated by Council's LEP, DCP and master plan.</p>	No

**ITEM 3 (continued)**

Planning Principle	Comment	Complies
<p>height needs to achieve the scale identified for the desired future character of the area.</p>		
<p><b>Principle 3: Built form</b></p> <p>Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The building bulk has not been appropriately manipulated to adequately address the gateway aspect and the general massing anticipated by the maximum allowable height prescribed under the RLEP. The built form does not express a strong corner form.</p> <p>Building mass will not deliver a reasonable standard of amenity. The layout and depth will not maximise opportunities to facilitate cross ventilation and solar access as required by the SEPP 65 – <i>Residential Flat Design Code (RFDC)</i></p>	No
<p><b>Principle 4: Density</b></p> <p>Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).</p> <p>Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.</p>	<p>There is no applicable floor space ratio or other density controls, (such as dwelling or population density), that are applicable to the site. The density is therefore governed by the height, setback and envelope controls applicable to the site. As discussed above and below, the development does not achieve compliance with these controls and therefore represents a greater density.</p>	No
<p><b>Principle 5: Resource, energy and water efficiency</b></p>	<p>The applicant has submitted a BASIX Certificate which indicates that the residential component</p>	No

**ITEM 3 (continued)**

Planning Principle	Comment	Complies
<p>Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.</p> <p>Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.</p>	<p>will meet the energy and water use targets set by the BASIX SEPP.</p> <p>A waste management plan has been submitted and reviewed by Council's Environmental Health Officer. The plan is considered acceptable subject to conditions in the event the DA is approved.</p> <p>As stated above, the overall layout and massing will not maximise solar access opportunities and meet the related requirements of the RFDC. Also refer to below section Residential Flat Design Code.</p>	
<p>Principle 6: Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</p> <p>Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.</p> <p>Landscape design should optimise usability, privacy and social</p>	<p>The landscaping will assist in improving the aesthetics of the building as well as improving the on-site amenity. The landscaping along the building elevations will ensure that the appearance of the development is softened as viewed from the surrounding streets.</p> <p>The proposed communal open spaces should both include furniture such as seating, shading structures and a BBQ area to encourage their usability. Should the application be approved, a condition can be included in a consent to ensure this.</p> <p>The development will be void of any deep soil planting. The RFDC recommends appropriate stormwater treatment measures in circumstances where deep soil planting is not provided. Council's Engineer has recommended</p>	<p>Subject to conditions</p>



**ITEM 3 (continued)**

Planning Principle	Comment	Complies
<p>opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.</p>	<p>conditions to ensure an effective and appropriate stormwater drainage system is provided. Conditions should also be included in a consent to require appropriate soil depths for substantial tree growth, as indicated in the RFDC.</p>	
<p>Principle 7: Amenity</p> <p>Good design provides amenity through the physical, spatial and environmental quality of a development.</p> <p>Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.</p>	<p>Should the application be approved, conditions should be included in a consent to require compliance with the minimum storage area requirements.</p> <p>The building separation requirement is not met to the east boundary. Insufficient information has been submitted to ensure adequate amenity to the adjacent units of the approved Eastwood Shopping centre development in terms of solar access. This matter is discussed further in the section below <i>'Urban Design Review Panel – Boundary Setbacks'</i> and <i>'Residential Flat Design Code'</i>.</p> <p>As discussed below, the acoustic assessment submitted with the DA indicates that certain measures will need to be adopted to ensure that the units meet the required standards for internal amenity. The measures include double glazing, and sealing of door frames and externally facing windows. The sealing of externally facing windows is not appropriate as it will limit natural ventilation opportunities. The amenity of private open spaces has not been considered in the acoustic assessment, particularly the impact of traffic noise on the use of ground level private open</p>	<p>No</p>

**ITEM 3 (continued)**

Planning Principle	Comment	Complies
	<p>spaces facing Rutledge Street. The objective for acoustic privacy contained in the RFDC refers to ensuring a high level of amenity both within units and private open spaces. Should the application be approved, conditions should be included to require an acoustic assessment and adoption of recommended measures.</p> <p>The overall layout and massing will not maximise solar access opportunities and ventilation as to meet the related requirements of the RFDC. Refer to below section Residential Flat Design Code.</p>	
<p><b>Principle 8: Safety and security</b></p> <p>Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.</p>	<p>The Police Department have reviewed the application and have made recommendations to improve the development with respect to achieving better consistency with the CPTED principles. Should the application be approved, conditions should be included in a consent accordingly.</p>	<p>Subject to conditions</p>
<p><b>Principle 9: Social dimensions and housing affordability</b></p> <p>Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access</p>	<p>The development will include single aspect and corner apartment layouts, as well as adaptable housing. The following housing mix is proposed:</p> <ul style="list-style-type: none"> <li>- 16 x 1 bedroom apartments;</li> <li>- 43 x 2 bedroom apartments;</li> </ul>	<p>Yes</p>

**ITEM 3 (continued)**

Planning Principle	Comment	Complies
<p>to social facilities.            New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.            New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.</p>	<p>- 20 x 3 bedroom apartments.             This mix will result in an affordable range of housing which should attract singles, couples and family occupants into an area which is highly accessible to public transport and local shopping. In this regard, as a guide the Housing NSW Centre for Affordable Housing suggests 1 and 2 bedroom apartments contribute towards achieving housing affordability.</p>	
<p>Principle 10: Aesthetics             Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.</p>	<p>The development will consist of a variety of materials and finishes to assist in the articulation and visual interest of the building, as well as facilitate the differentiation between the uses and different building sections.</p>	<p>Yes</p>

**Residential Flat Design Code**

The SEPP also requires the Council to take into consideration the requirements of the *Residential Flat Design Code*. The development generally complies with the requirements provided in this document relating to unit sizes for housing affordability, stormwater management, waste management, bicycle parking, housing choice, driveways, roof designs, and energy efficiency appliances. The non-compliances are indicated and discussed in the table below.

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Building Height	Test heights against the number of storeys and the minimum ceiling heights	<p>LEP Standards:            The eastern lot has a height limit of 30.5m and the western lot (PT 23 DP 4231) has a height limit of 18.5m.</p> <p>These controls result in a maximum number of storeys of 7.6 storeys and 3.7 storeys respectively based on the floor-to-ceiling heights, minus 300mm floor/ceiling slabs and minus the height of rooftop plant (4m in height).</p> <p>The proposed building contains a mix of part 6/ part 7 storeys and 12 storeys.</p> <p>The maximum proposed height will be 41.56m (in the location of the lift overrun portion further east where the existing RL is 72.56 and max proposed RL is 114.120). This represents a variance of 11.06m as this part of the site is subject to a 30.5m height limit. Where the height limit is 18.5m (further west) the building will result in an overall variance of 22.84m.</p>	No
Building Depth	Apartment building depth: 10-18m.	<p>The proposed building has a range of building depths:</p> <ul style="list-style-type: none"> <li>- For Ground Level: 16m (residential portion only)</li> <li>- For levels 1-5 the maximum depth is 31.5m and the minimum depth is 26m.</li> </ul>	No

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		- For levels 6-10 the maximum depth is 20m and the minimum depth is 15m.	
Building Separation	Up to 4 storeys (12m height): <ul style="list-style-type: none"> <li>▪ 12m between habitable rooms and balconies</li> <li>▪ 9m between habitable rooms/balconies &amp; non-habitable rooms</li> <li>▪ 6m between non-habitable rooms</li> </ul> From 5 to 8 storeys (25m height): <ul style="list-style-type: none"> <li>▪ 18m between habitable rooms and balconies</li> <li>▪ 13m between habitable rooms/balconies &amp; non-habitable rooms</li> <li>▪ 9m between non-habitable rooms</li> </ul> From 9 storeys and above (over 25m height): <ul style="list-style-type: none"> <li>▪ 24m between habitable rooms and balconies</li> <li>▪ 18m between habitable rooms/balconies &amp; non-habitable</li> </ul>	External separation:  Western Side: Between proposed development at 3-5 Trelawney St: 26m (based on elevation plan provided for 7-9 Rutledge).  Northern Side: Ground Floor Level: 6.5m Level 1: 3m – 7.4m Levels 2-5: 5.6m – 7.4m Level 6: 6m – 7.2m Level 7-10: 6.3m – 7.4m  The Urban Design Review Panel recommended a minimum of 6m be provided from the northern boundary. The majority of the built form achieves this. Only a minor balcony section on Levels 1 to 5 encroaches this by 0.4m. This is a minor encroachment.  Eastern Side: The approval for the Eastwood Shopping Centre will include the erection of residential units which will consist of main living areas and private open spaces facing the east elevation of the proposed development. The proposed building will have a 6m separation from the approved development for the Ground Level to Level 3, then a	Insufficient information



**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	<p>rooms</p> <ul style="list-style-type: none"> <li>▪ 12m between non-habitable rooms</li> </ul>	<p>separation of 15m (9m provided by the approved development) from Levels 4 to 10. For the first four levels of the proposed development, the building separation is acceptable given that it will face the blank wall of the approved car park levels of the Eastwood Shopping Centre development. The building separation for Levels 4 to 7 will not comply with the minimum separation requirement of 18m by 3m. The building separation for Levels 8 to 10 will not comply with the minimum separation requirement of 24m.</p> <p>The proposal will not satisfy the following objectives of the control:</p> <ul style="list-style-type: none"> <li>- <i>To provide visual and acoustic privacy for existing and new residents.</i></li> <li>- <i>To allow for the provision of open space with appropriate size and proportion for recreational activities for building occupants.</i></li> <li>- <i>To control overshadowing of adjacent properties and private or shared open space</i></li> </ul> <p>No concerns are raised to the separation given the visual and acoustic implications will be catered for via the proposed screening. The only concern is maintaining solar access to west facing units of the approved Eastwood Shopping Centre Development. Insufficient</p>	

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>information has been submitted to verify compliance will be maintained with the RFDC requirement for at least 70% of the approved units will have at least 2 hours solar access between 9am and 3pm on 21 June.</p>	
<p>Street, Side and Rear Setbacks</p>	<p>In general, no part of a building or above ground structure may encroach into a setback zone.</p> <p>Exceptions are:</p> <ul style="list-style-type: none"> <li>▪ underground parking structures no more than 1.2m above ground, where this is consistent with the desired streetscape (see Ground Floor Apartments)</li> <li>▪ awnings</li> <li>▪ balconies and bay windows.</li> </ul>	<p>The development does not meet the 6m setback requirement of the RFDC from the northern boundary. However this is a minor variance and the easement extends further north which will ensure that built structures on adjoining properties to the north will be setback at least 7m away from the southern side of the easement. (Refer to building separation above with reference to the proposed northern and eastern side setbacks).</p> <p>The setback of the residential Levels 4-10 extend closer to Rutledge Street frontage than the approved residential levels of the Eastwood Shopping Centre development. This will create an inconsistent street setback and add to the bulk and scale of the development and building depth. As discussed previously, this will impact on the corner emphasis and human scale</p>	<p>No</p>
<p>Floor Space Ratio</p>	<p>FSR in denser Urban Areas: 80% of Building Envelope. (Footprint</p>	<p>There is no FSR control applicable to the development.</p>	<p>N/A</p>

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	area x no. storeys x 80%)		
Deep Soil Zones	Minimum of 25% of the open space area	The basement is proposed to extend from boundary to boundary (with the exception of the easement and southeast corner). Accordingly appropriate soil depths must be provided to ensure mature planting can be supported and an appropriate stormwater filtration system must be provided. Also refer to below section 'Urban Design Review Panel'.	Subject to conditions
Stormwater Management	Reduce the volume impact of stormwater on infrastructure by retaining it on site.	The proposal has been subject to review by Council's Engineer. No concerns have been raised. Conditions have been recommended.	Subject to conditions
Safety	Reinforce the development boundary to strengthen the distinction between public and private space.	Subject to conditions as outlined in the SEPP 65 table above.	Subject to conditions
Privacy	Locate and orient new development to maximise visual privacy between buildings on site and adjacent buildings. Design building layouts to minimise direct overlooking of rooms and POS adjacent to	The building will not achieve the minimum building separation requirement to the east elevation. The provision of the required additional setbacks for Levels 4 to 7 (i.e. an additional 3m) and Levels 8 to 10 above (i.e. an additional 9m) will improve privacy implications between developments, however adequate amenity will be provided given the	Subject to conditions

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	<p>apartments.</p> <p>Use detailed site and building design elements to increase privacy without compromising access to light and air.</p>	<p>proposed screening on the east elevation.</p> <p>The submitted acoustic report indicates that certain measures need to be adopted to mitigate surrounding traffic noise and provide an acceptable internal living environment to the units. The measures include the provision of sealed door frames and windows on external elevations. Conditions should be included in a consent accordingly. A condition should specify that external facing windows should be operable.</p>	
<p>Pedestrian Access</p>	<p>Follow the accessibility standards of AS 1428.</p> <p>Promote equity by ensuring the main building entrance is accessible for all from the street and from car parking areas</p>	<p>Amended plans have been submitted to indicate steps and a ramp into the retail/commercial tenancies along the Trelawney Street frontage of the site, and a step into each retail/commercial entry along the Rutledge Street frontage. They also indicate a separate internal ramp to each tenancy facing Trelawney Street. A condition is recommended to ensure the ramps along Trelawney Street have the appropriate width and grades to facilitate wheelchair access and the entries along Rutledge Street are graded and all entries wide enough to cater for wheelchair access. This will meet the relevant requirements for wheelchair access for commercial / retail tenancies.</p>	<p>Subject to conditions</p>

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Apartment Layout	Design layouts, which respond to the natural & built environment by maximising opportunities to facilitate natural ventilation & to capitalise on natural daylight, for example by providing corner apartments; cross-over or cross-through apartments; split-level or maisonette apartments; shallow, single-aspect apartments.	The applicant has not submitted information identifying the fixed and operable windows. Despite the recommendation of the acoustic report to provide closed windows, opportunities for natural ventilation need to be maximised given the enclosed central core building layout. Accordingly, if the application is approved a condition is recommended to require externally facing windows to be operable windows and only frames to be sealed.	Subject to conditions
	Single-aspect apartments = 8 m max. in depth from a window.	<p>The following apartments do not achieve compliance: Units 110-510, G01-501, G03-1003, G04-504, 107-507, 108-508. This is a total of 11 units.</p> <p>The non-compliances are accepted in this case given:</p> <ul style="list-style-type: none"> <li>- The percentage to the overall scheme is minimal.</li> <li>- The variances to the unit lengths are minimal.</li> <li>- The variances will provide more functional space.</li> <li>- The variances will result from sections in a unit rather than the whole of a unit.</li> </ul> <p>(NB: This has taken into account the recommended re-orientation</p>	Satisfactory



**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		of units which has resulted in some units changing from double to single aspect or single to double aspect).	
	The back of a kitchen = 8m max. from a window.	Most units achieve this requirement. The part of the back of some kitchens will provide a variance of around 0.5m. This is minimal and kitchens can be designed to ensure cooking areas are not located more than 8m from a window.	Satisfactory
Internal and External Areas	1 Bed cross through: 50/8m <sup>2</sup> 1 Bed single aspect: 63.4/10m <sup>2</sup> 2 Bed corner: 80/11m <sup>2</sup> 2 Bed cross through: 89/21m <sup>2</sup> 3 Bed: 124 / 24m <sup>2</sup>	The following units do not achieve compliance:  103-1003 – private open space becomes non-compliant if the option plan is adopted. (Refer to ‘Solar Access’ discussion below this table). 605: 108 / 14.56 (3bed) 604: 101/21.84 (3 bed) 602: 101/21.84 (3 bed) 601: 105/ (3 bed) 705: 1005: 108.45 / 42.88 (3 bed) 704-1004: 100.58/22.36 (3 bed) 702-1002: 102.99/ (3 bed) 701-1001: 105/19.76 (3 bed)  The non-compliances to the 3 bedroom units are accepted in this case given: - The private open spaces will provide adequate amenity. - Large communal areas will be provided. - Variances for the private open spaces of 1 bedroom units are minimal.	Satisfactory subject to the option plan not being adopted.

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<ul style="list-style-type: none"> <li>- Variances to unit areas are minimal.</li> <li>- Smaller unit areas and private open spaces will encourage affordable housing.</li> <li>- Functional spaces will be provided.</li> <li>- The units can easily be converted to 2 bedroom units and therefore meet the related internal area requirements. Variances to the private open spaces will be minimal in this case.</li> </ul>	
Ceiling Heights	<p>Minimum Floor to Ceiling Heights (F-to-C):            Mixed use buildings: 3.3m for ground floor retail or commercial and 1st floor residential, retail or commercial.</p> <p>RFB's or residential floors in mixed use buildings: 2.7m for all habitable rooms, 2.4m for all non-habitable rooms, however 2.25m is permitted.</p>	<p>Retail tenancies will have a minimum F-to-C height of at least 3m. This is satisfactory as the floor levels have been increased to cater for flood level concerns raised by Council's Engineers.</p> <p>Residential units will have a F-to-C height of 2.7m.</p>	Satisfactory
Ground Level Units	Ensure adequate privacy and safety of ground floor units located in urban areas.	The proposed landscaping, fencing and surrounding built form will provide an adequate buffer in terms of privacy for the ground floor units.	Yes

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Ground level units	Private Open Space at Ground Level: 25m <sup>2</sup> & min. Dimension 4m. Refer to 'Balconies' for above ground POS.	All ground level units achieve the minimum area and dimensions.	Yes
Communal Open Space	Communal Open Space: 25-30% of site area (493.5 – 592.2m <sup>2</sup> )	27% (580.09m <sup>2</sup> ).	Yes
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>▪ studio apartments 6m<sup>3</sup></li> <li>▪ one-bedroom apartments 6m<sup>3</sup></li> <li>▪ two-bedroom apartments 8m<sup>3</sup></li> <li>▪ three plus bedroom apartments 10m<sup>3</sup></li> </ul>	Some 2 bedroom units will not be provided with the minimum requirement. The variance will be approximately 0.2-0.4m <sup>3</sup> Should the application be approved, a condition is recommended to require each unit to be provided with the following minimum storage areas and such areas to be indicated on the plans, including the division of storage zones:  Per 1 bedroom Unit: 6m <sup>3</sup> Per 2 Bedroom Unit: 8m <sup>3</sup> Per 3 Bedroom Unit: 10m <sup>3</sup>	Subject to conditions
Daylight Access – skylight and sunlight	Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units and increase their window area	The number of single aspect units with a southerly, south westerly or south easterly orientation is at least 11 (14%). The units are G01, 107 – 507 and 104-504.  Units 107 – 507 will receive the minimum 2 hour solar access requirement, so no concerns are raised to these units. Units 104-	No

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>504 will receive about 1 hour solar access, which is not satisfactory.</p> <p>NB: Units 105-505 and 106-506 will receive no solar access, even though these units can be classified as dual aspect given they have a window facing in the opposite direction. (The subject requirement only relates to single aspect).</p>	
	<p>Design for shading and glare control, particularly in summer.</p>	<p>A condition can be included in a consent to avoid reflective films; use a glass reflectance below 20%; and consider reduced tint glass.</p>	<p>Subject to conditions</p>
	<p>Living rooms and private open spaces for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.</p>	<p>54%. Refer to discussion below table. The minimum requirement will not be achieved.</p>	<p>No</p>
<p>Natural Ventilation</p>	<p>60% of units should be naturally cross ventilated.</p> <p>Select doors and operable windows to maximise natural ventilation opportunities established by the apartment layout.</p>	<p>39% (11). The general layout of the units around a central core limits opportunities for cross ventilation.</p>	<p>No</p>

**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Energy Efficiency	Reduce reliance on artificial lighting by: <ul style="list-style-type: none"> <li>▪ providing a mix of lighting fixtures, including dimmable lighting, to provide for a range of activities in different rooms</li> <li>▪ designing to allow for different possibilities for lighting the room, for example, low background lighting supplemented by task or effect lighting for use as required</li> <li>▪ using separate switches for special purpose lighting</li> <li>▪ using high efficiency lighting</li> <li>▪ using motion detectors for common areas, lighting</li> <li>▪ doorways and entrances, outdoor security lighting.</li> </ul>	Conditions can be included in a consent to ensure the implementation of the commitments indicated on the BASIX certificate, as well as require: <ul style="list-style-type: none"> <li>▪ lighting adjacent to windows be switched separately to those not adjacent to windows;</li> <li>▪ dimmable lighting in living areas; and</li> <li>▪ security lighting for units doorways/entrances.</li> </ul>	Subject to conditions



**ITEM 3 (continued)**

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
Water Conservation	To reduce mains consumption of potable water. To reduce the quantity of urban stormwater runoff.	The application can comply with the BASIX commitments in relation to water conservation.	Subject to condition.

**Solar Access**

The development does not achieve the requirement for *'living rooms for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter'*. An optional plan has been submitted that indicates the reorientation of the living rooms of Units 109, 209, 309, 409 & 509, and resizing of adjacent Units 110, 210, 310, 410 & 510. This reorientation will increase solar access within the living rooms of the units if the impact of the Eastwood Shopping Centre is not taken into account but will not result in closer compliance with the 70% requirement. The architect has advised that the internal planning will not be as desirable. Since the internal planning will not result in any major obstacles, the re-orientation is supported. Submitted documents indicate a similar reorientation of east facing units at the opposite corner. Should the application be approved, a condition should be included to require the adoption of the reorientation and associated resizing of adjacent units.

The applicant has submitted a summary table indicating the impact of the approved Eastwood Shopping Centre development on the proposed development with respect to the achievement of the solar access requirement of the Residential Flat Design Code (RFDC) for living rooms only. The requirement is for a minimum of 70% of units should achieve at least *3 hours of sunlight to main living areas and private open spaces between 9 am and 3 pm in mid winter*. The RFDC suggests for dense urban areas 2 hours may be acceptable. Given the LEP controls that apply to the Eastwood Village encourage a distinct increase in density and the neighbouring Eastwood Shopping Centre Development site has been approved with a significant density and high built forms, the achievement of at least 2 hours is accepted.

Taking into consideration the resultant impact of the approved Eastwood Shopping Centre development on the proposed development, the achievement of a minimum of 2 hours solar access to main living areas will be reduced from 65% to 54%. This results in a further non-compliance to the minimum requirement of 70% and major variance of 16%. A summary table provided by the applicant indicates that if the units recommended for re-orientation to the north are reoriented and the resultant impact

**ITEM 3 (continued)**

of the approved Eastwood Shopping Centre development are taking into consideration, then there will be an increase from 54% to 61% of units that achieve the minimum 2 hour requirement. However the corresponding solar access table indicates that units 104-504 (which are located to the southeast) will have an increase in solar access to achieve compliance not the re-orientated units. This appears to be an error and therefore the 61% is not relied upon.

Regardless, the applicant lists the following reasons as to why this variance is acceptable:

- *A key urban design objective is to ensure that the built form addresses the corner and the intersection of Rutledge and Trelawney Street. Maintaining consistent built form along the southern elevation on Rutledge Street creates 2 units on levels 1 – 5 that orientate to the south.*
- *Units on the south elevation have been designed to orientate their living spaces to the East and West and the habitable living space has been extended to the building setback to maximise solar access into these units.*
- *Balconies of units on the East and West elevation have been located on the northern aspect of these units to maximise solar access into Private Open Space.*
- *When the reorientation of units X02 and X09 is considered in the solar access calculation, the strict compliance figure does not change, however these units do receive 3 additional hours of solar access into the living spaces and private open space.*
- *Inclusion of the Eastwood Shopping Centre should not be considered as the proposed development impacts on the subject site with a side boundary setback of 4.4m and is not in compliance with SEPP65 minimum building separation.*

As discussed above, the corner treatment is not appropriate. The achievement of a consistent built form to the south is acknowledged however there are other non-compliant units other than those located on the south elevation. Further to this, units along the south elevation will result in an inconsistent front building line with respect to that approved for the Eastwood Shopping Centre development, not respect the desired massing as stipulated by Council's LEP height controls, not appropriately respond to the required corner treatment and disrespect the 'human scale', particularly as desired along Trelawney. In general, the development is representative of a poor outcome as it would not achieve the 70% of solar access to living areas for the absolute minimum requirement of 2 hours. (NB: Details on the achievement of a minimum of 2 hours have not been specified for the private open spaces of units). It is for these reasons that the variance is not accepted.

The applicant advised that the impact of the approved Eastwood Shopping Centre Development should not be considered. This is not concurred with. It is noted that if the subject application were to be approved, it would need to be subject to a deferred commencement consent condition based on the implementation of the consent for the approved Eastwood Shopping Centre Development to demolish the existing ramp

**ITEM 3 (continued)**

and establish the approved vehicular access. Accordingly, the impact of the Eastwood Shopping Centre is important in this case.

The applicant has recommended reconfiguring units G03, 103, 203, 303, 403, 503, 603, 703, 803, 903 and 1003 to enable an increase in solar access. This would result in closer compliance with the minimum 70% requirement of the RFDC if the impact of the Eastwood Shopping Centre development is not considered (i.e. 68% if the initial 54% is applied). The reconfiguration is via the reduction of the balcony area to a 1m depth by the outward extension of the living room. This reduction will result in a non-compliant dimension as required under the RFDC. This is not supported as the balcony would be undersized, particularly directly adjacent to the main living area, and compliance will still not be achieved taking into account the impact of the Eastwood Shopping Centre Development. As discussed above, taking into account the impact of the Eastwood Shopping Centre Development is important in this case.

**Urban Design Review Panel Comments**

On 25 February 2011 Council's Urban Design Review Panel (Panel) considered a similar scheme to the proposed development. This was prior to lodgement of the subject DA. Comments made by the Panel have been included in italics below. A response in respect to this comment has also been provided below, including any changes made by the applicant to address concerns raised by the Panel or further justification of the scheme provided by the applicant.

Building Height:

*The panel considers that the development should remain entirely within the statutory height planes to support and reinforce the overall massing strategy for the entire block within which it is located.*

Comment: The applicant has mainly justified the building height on the following grounds:

- It will enable the development to directly relate to the scale of the Eastwood Shopping Centre development and provide an opportunity to design a significant gateway.
- The Eastwood Shopping Centre has not remained within the statutory height planes and massing strategy imposed by the LEP and DCP.

The issues raised by the applicant relating to the gateway presentation, impact on bulk/scale, impact on public amenity and meeting the objectives of Council's LEP controls have been discussed previously. The justifications are not well founded.

Street Setback

*The 3m street setback above the retail podium should be complied with. Specifically, the building on the corner should be setback 3m from Rutledge Street.*

**ITEM 3 (continued)**

*To ensure adequate apartment amenity, the residential component must be setback from the northern boundary a minimum of 6m.*

*On the eastern boundary only, the Panel considers blank walls on the boundary acceptable, subject to the detailed resolution of the design and materials of the walls.*

Comment: The pre-DA scheme has been amended to mostly achieve compliance with the 3m setback. The applicant has advised that there is a minor variation on the corner of Rutledge and Trelawney Streets as a result of balconies and the corner design feature. The 3m requirement will be encroached on Levels 2-6 by a depth of 0.6m along a 4.2m length of the Rutledge Street frontage and 0.3m along the entire length of the Trelawney Street frontage. The corner framing will provide the variance along Trelawney Street frontage and some of the variance along the Rutledge Street frontage. The variance is minor and in itself would not be an issue. However the development does not provide an acceptable corner treatment to the site.

The pre-DA plans have been amended to remove any bank walls and provide a setback from the eastern boundary. This setback has been discussed above.

Mass and Apartment Layout

*The current massing above the retail podium of 2 residential slabs running north – south raises a number of concerns:*

- *The western slab presents a thin edge to Rutledge Street, weakening definition of this important corner.*
- *The separation between the two slabs is inadequate*
- *The excessive number of units facing west which are not cross ventilated.*

*The Panel strongly recommends that other massing configurations be investigated in which there are a greater number of north facing units, a continuous building façade to Rutledge Street, a streetwall to Trelawney Street only for the retail podium and improved solar access and cross ventilation generally.*

Comment: The pre-DA plans have been amended to consolidate the 2 residential slabs, provide a continuous corner treatment and provide a gateway element.

The applicant has advised that 63 of the 79 units will be cross ventilated. The applicant has included units which consist of projecting main living rooms with windows on either side of the projection. Whilst this may benefit the main living room, this solution will not achieve the cross ventilation of whole unit depth. As indicated in the table above, 39% of the units will be cross ventilated. These units will generally be corner units that have window openings on each aspect. The general layout of the units around a central core limits opportunities for cross ventilation. The development does not meet the 60% requirement of the RFDC.

**ITEM 3 (continued)**Street Frontages

*The Panel believes active street frontages are essential at this location. The retail space fronting both Trelawney and Rutledge Streets must be primarily accessible from and located at street level.*

*The possibility of stepping the building down along Trelawney Street should be investigated, subject to the amount of retail space provided, its configuration and relationship to adjoining streets.*

Comment: The pre-DA scheme has been amended to re-orientate retail spaces to address both Trelawney and Rutledge Streets. An internal arcade concept has been removed in favour of direct access to retail tenancies from the street.

The building has not been stepped down Trelawney Street as suggested by the Urban Design Review Panel. The applicant has advised *'the consistent building form running from the gateway intersection along Trelawney Street has been designed as a continuation of the gateway experience and provides an avenue into the town centre. This higher building form also bring the site into alignment with the height controls to the north and will produce a consistent, continuous avenue from the gateway leading down into Rowe Street and the heart of the Eastwood Town Centre'*. The issues of massing, height and corner treatment have been discussed above.

Eastern Residential Lobby

*Access to the eastern residential lobby is considered unsafe due to poor sightlines from the street and the location of the entrance doors. The entry configuration generally does not provide an appropriate address to the tower.*

Comment: The residential entry has been reconfigured to address Trelawney Street.

Internal Apartment Amenity

*For the western slab, the Panel considers that cross-ventilation across the walkway/corridor and through apartments via high-level openings is not acceptable in terms of acoustic privacy.*

*For amenity reasons, the Panel does not consider that it is acceptable that habitable rooms should open onto the light well/recess on the eastern boundary.*

*Some units in the east slab are considered too deep and narrow, with kitchens more than 8m from windows.*



**ITEM 3 (continued)**

Comment: The pre-DA scheme has been amended to consolidate the eastern and western slabs and remove the corridor. As indicated in the compliance table above, the minimum depth requirement of the RFDC is not met by the development.

Communal Open Space and Rooftops

*Communal Open Space should be provided to meet the RFDC requirements. The Panel supports rooftop communal open space. Private roof-top spaces on Level 8 that are not directly connected to the units they are associated with are not supported.*

Comment: The plans have been amended to achieve compliance with the minimum communal open space requirement of the RFDC. The private roof top spaces of Level 6 have been amended to reallocate the private spaces not directly connected to the units they are associated with, as communal open space.

Architectural Character

*The architectural expression of the development is considered appropriate for its context*

Comment: Noted.

**(c) Relevant REPs****Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject Site is located within the catchment area identified under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. Division 2 lists matters that Council must consider before granting consent to an application within the area. The proposed development will be satisfactory with respect to the relevant matters, as discussed below.

Biodiversity, Ecology and Environment Protection:

The scale and setback of the development and proposed drainage and sediment and erosion control measures will limit any of the following:

- Potential threat to any terrestrial and aquatic species, ecological communities, populations or their habitats;
- Adverse impacts to any natural intertidal foreshore areas, natural landforms, native vegetation and riparian land;
- Pollution or siltation of the waterway; and
- Changes to drainage patterns.

### ITEM 3 (continued)

#### Interrelationship of Waterway and Foreshore Uses:

There will be minimal interrelationship between the proposed development and the use of the foreshore and waterway, as well as any access thereto, given the setback of the site from the waterway and foreshore.

#### Foreshore and Waterways Scenic Quality:

There will be no imposing impact to the scenic quality. The Site is setback from the foreshore and waterway and surrounding built form will screen views of the development.

#### Maintenance, protection and enhancement of views:

No unreasonable obstruction of views or vistas is expected. The Site is setback from the foreshore and waterway, amongst other built forms.

#### Part 5 – Heritage Provisions

Clause 57 refers to Aboriginal heritage. There is little evidence to suggest that the Site is a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or an archaeological site of a relic that has Aboriginal heritage significance. The site is not listed as a heritage site.

Clause 58 refers to non-Aboriginal heritage. The subject Site is not identified as being an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance.

Clause 59 requires Council to assess the impact of development on the significance of any heritage items within the vicinity. There are no heritage items identified under the deemed SEPP within the vicinity of the Site.

### (d) Any draft LEPs

#### **Draft Ryde Local Environmental Plan 2011**

Any additional provisions of the '*Draft Ryde Local Environmental Plan 2011*', with respect to RLEP 2010, are addressed in the table below.

Control	Comment	Complies
<i>Clause 2.3 – Zone Objectives and land use table</i>  Zone B4 Mixed Use Objectives of zone <ul style="list-style-type: none"> <li>▪ <i>To provide a mixture of compatible land uses.</i></li> </ul>	The proposed mixed use development is permissible with consent and consistent with the objectives of the zone.	Yes

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Control	Comment	Complies
<ul style="list-style-type: none"> <li>▪ <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></li> </ul>		
<p>Clause 4.3 – Height of Buildings</p> <p>The lot further west: 18.5m The lot further east: 33.5m</p> <p><i>(a) to maintain desired character and proportions of a street within areas, (a) to minimise overshadowing and ensure a desired level of solar access to all properties, (b) to encourage a built form that relates to human scale and topography, (c) to concentrate building heights around railway station, to provide focal points that clearly highlight the role of railway stations, transport nodes, or large vehicular intersections. (d) to reinforce the important road frontages along road corridors.</i></p>	<p>The proposed maximum permissible height of the lot further east is increased to 33.5m under the DLEP. The proposed development will still exceed this height by 8.06m.</p> <p>The objectives indicated are similar to those of RLEP 2010. There has been some minor rewording but the consistency of the development discussed with reference to RLEP 2010 remains the same.</p>	No
<p>Clause 6.7 - Environmental Sustainability</p> <p>All buildings a minimum of 1 500m<sup>2</sup> in gross floor area constructed on land zoned business or industrial are required to have issued at least a 4 Star Green Star certified rating from the Green Building Council of Australia where the Green Building Council rating tool can be applied.</p>	<p>The BASIX provisions override this control. The subject DA is accompanied by BASIX Certificate that indicates the development will achieve the minimum targets.</p>	-
<p>Clause 6.8 – Storm water Quality</p>	<p>Council's Engineer has advised the stormwater drainage scheme is acceptable subject to conditions.</p>	Subject to conditions.

**ITEM 3 (continued)**
**(e) Any DCP (e.g. dwelling house, villa)**

The relevant provisions of Council's DCP are addressed in the table below.

Control	Comments	Compliant
<b>Ryde Development Control Plan 2010 Part 4.1 Eastwood Town Centre</b>		
<b>2.1.1 Planning Principles for Eastwood</b>		
<p>Regional Role:</p> <p>Development should contribute to the status of Eastwood as an important business, employment and residential location.</p> <p>Development is to promote a compact working and living environment to maximise the efficient use of resources and infrastructure provision.</p>	<p>The proposal is for a mixed use development. It will: provide two active, retail/commercial street frontages; and promote a compact working and living environment.</p>	<p>Satisfactory</p>
<p>Integrated Planning and Development:</p> <p>Planning and development is to ensure that social, economic, environmental and urban design issues are considered together and with proper regard for their mutual and cumulative impacts.</p> <p>All planning, design and development activities must take account of and effectively respond to the linkages and interfaces between public space and private land.</p>	<p>The only concern is the cumulative impact with respect to the excess height, scale and massing and disregard to achieving the 'human scale' initiatives for the locality.</p>	<p>No</p>
<p>Public Domain</p> <p>Development is to define and contribute to the public domain so as to create a high quality physical setting for buildings, which is safe and accessible and can be</p>	<p>Should the subject application be approved, a condition is recommended to ensure that the public domain is upgraded to reflect the 'Eastwood Public Domain Manual'.</p>	<p>Subject to conditions.</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
<p>enjoyed by shoppers, residents and workers.</p> <p>Development of the public domain is to enhance the integration between individual precincts and their surrounding areas.</p> <p>Public space areas will be set aside for public use and enjoyment. Development that enhances the enjoyment of these public spaces, such as kiosks, restaurants, recreation facilities, will be encouraged.</p> <p>Car parking facilities should be set back away from the public spaces and should not prejudice pedestrian and cycle use of the public space.</p> <p>Public streets and spaces will be created generally in accordance with the Master Plan for Eastwood.</p>		
<p><b>Urban Form</b></p> <p>Urban form is to reflect its location in relation to transport nodes, existing residential and commercial precincts, be architecturally rich and diverse, define and enhance the public domain and allow for mixed uses. Building form within specific blocks is to be articulated both in height and mass to provide interest, resolve urban design and environmental issues and satisfy other principles in this plan. Buildings are to be of high quality and adaptable to a variety of uses over time, to ensure their long life.</p> <p>d. Buildings are to support and be integrated into the public domain network to achieve</p>	<p>The development doesn't reflect the location in terms of respecting Trelawney Street as a street of high pedestrian amenity and the corner location of the site. The development will not enhance the public domain in terms of being sympathetic to the human scale. It lacks appropriate massing, as discussed above.</p>	<p>No</p>



**ITEM 3 (continued)**

Control	Comments	Compliant
coherence and purpose. e. The integrity of heritage items and significant landscape elements is to be protected and enhanced.		
<b>Land Use Mix</b>  Development is to provide a variety of housing types and employment-based activities and contribute to the character of the Village. Development is to contribute to an integrated mixed use development pattern (both vertical and horizontal) containing a wide range of housing, employment and recreation opportunities. Development is to facilitate the increase and diversity of employment opportunities, which are to be compatible with achieving a high quality, mixed shopping, living and working environment.	The proposed land use mix is appropriate.	Satisfactory
<b>Transport and Access</b>  a. Development is to promote the reduction of motor vehicle dependency and actively encourage the use of public transport, walking and cycling. b. Accessible environment for people with disabilities and mobility difficulties is to be created to ensure access equity. c. The intensity of development is to be in accordance with the capacity of existing and proposed public transport and road systems. d. Parking provision is to	Development promotes the reduction of motor vehicle dependency and encourages the use of public transport, walking and cycling.  Subject to conditions, an accessible environment for people with disabilities and mobility difficulties will be created.  The intensity of development is to be in accordance with the capacity of existing and proposed public transport and road systems.	Subject to conditions

**ITEM 3 (continued)**

Control	Comments	Compliant
acknowledge accessibility by foot, bicycle and public transport.		
<p>Environmental Performance</p> <p>Development is to create a safe and comfortable environment for shoppers, residents and workers in both the private and public space, by “best practice” design to ensure buildings and spaces achieve maximum environmental performance and minimum resources use.</p> <p>Development is to be designed having regard to:</p> <p>a. Wind effect; reflectivity; noise attenuation; solar access and energy conservation; water conservation and re-use; stormwater management; use of recycled materials; and waste reduction.</p> <p>b. The development of public spaces must contribute to greater bio-diversity, habitat protection and enhancement, and air and water quality.</p>	<p>The development doesn't reflect “best practice” design to ensure buildings and spaces achieve maximum environmental performance and minimum resources use. However the submitted BASIX certificate indicates that the development will achieve the minimum energy and water targets.</p> <p>The following matters have been discussed below: reflectivity; noise attenuation; solar access and energy conservation; water conservation and re-use; stormwater management; and waste management.</p> <p>It is advised that the wind impacts of the proposed development have been mitigated through the following:</p> <ul style="list-style-type: none"> <li>- <i>At Street level significant street tree planting will dissipate the effects of Southerly breezes down Trelawney Street.</i></li> <li>- <i>Wind impacts will affect the Eastern elevation due to Sydney's North Easterly prevailing winds, and therefore the balcony spaces facing this elevation will be fitted with Louvre screens that can be located and adjusted to mitigate the effect of the prevailing wind.</i></li> <li>- <i>In our experience the heavily articulated façade through the</i></li> </ul>	Satisfactory

**ITEM 3 (continued)**

Control	Comments	Compliant
	<p><i>use of balconies blades and screens together with street level planting and large street canopies will all mitigate any potential for adverse wind impacts.</i></p> <p><i>- The approved Eastwood Shopping centre Development will also mitigate some of this north easterly wind impacts.</i></p> <p>These design solutions are considered satisfactory to effectively mitigate the impact.</p>	
<b>3.0 Development Policies</b>		
<b>3.1 Mixed Use Development</b>		
Car parking should be provided at either street level or basement level(s).	All the parking is provided in basement levels.	Satisfactory
Retail and other more active public uses, such as restaurants/cafes and libraries should be located at or around street level.	A retail/commercial level is proposed at the street level.	Satisfactory
The level immediately above street level could accommodate public and commercial uses which may not have the same regularity or intensity of pedestrian traffic as retail uses.	A retail/commercial area is proposed above street level.	Satisfactory
Upper levels of development could be used for either commercial or residential.	Other than the retail/commercial area provided above street level. Upper levels will be residential.	Satisfactory
Buildings should be designed to overlook public and communal streets and other public areas to provide casual surveillance.	The building incorporates adequate casual surveillance opportunities.	Satisfactory

**ITEM 3 (continued)**

Control	Comments	Compliant
Private living spaces and communal or public spaces should be clearly identified and defined.	Public and private areas are well defined.	Satisfactory
<p>Sufficient lighting is to be provided to all pedestrian ways, building entries, driveways and car parks to ensure a high level of safety and security for residents.</p> <p>Pedestrian and communal areas to be well lit and designed to minimize opportunities for concealment.</p>	The SEE states ' <i>a lighting and security access system are to be installed to achieve a satisfactory level of safety and security</i> '. Additional detail of the lighting will be required as a condition of consent. Any such lighting should have an intensity and be faced as not to cause a nuisance to surrounding properties and traffic.	Subject to condition
Pedestrian entry to the residential component of mixed use developments should be separated from entry to other land uses in the building/s.	A separate residential lobby has been provided.	Satisfactory
<b>3.2 Stormwater Management</b>		
<p>A stormwater inundation impact assessment or stormwater inundation management strategy is to be submitted for all developments.</p> <p>Floor levels within any new development should be a minimum of 300mm above the calculated flood level for the 100 year ARI event.</p> <p>Developments should comply with Part 8.2 Stormwater Management of this DCP.</p>	Refer to 'Engineer Comments' below. Conditions are recommended to be included in a consent. NB: The plans have been amended to cater for the flood levels.	Subject to conditions
<b>3.3 Architectural Characteristics</b>		
<b>3.3.1 Height</b>		
Buildings must comply with the maximum height limit shown on the Height of Buildings Map under	Refer to LEP assessment above.	No

**ITEM 3 (continued)**

Control	Comments	Compliant
Ryde Local Environmental Plan 2010.		
Except as specified above, development is to be within the envelope of the “sun altitude height plane” being the plane projected at an angle of 26° over a building site measured from the property boundary on the opposite side of the road	Refer to discussion and diagrams at the end of this table.	No
<b>3.3.2 Setbacks</b>		
New buildings are to have street frontages built predominantly to the street alignment for the first 2 storeys.	The lower ground level and ground level are proposed to be generally built along both street frontages.	Satisfactory
Buildings may be constructed to the side and rear boundaries for the first 2 storeys.	The building will be set back from the northern boundary, primarily as not to encroach on the existing easement, as well as provide some common and private open space at ground level. The building will be setback from the eastern side boundary at ground level to provide some common and private open spaces.	Satisfactory
Buildings (including balconies) are to be setback a minimum of 3 metres from all boundaries above the first 2 storeys.	The building maintains a minimum 3m setback above the first two floors, with the exception of minor encroachments at Levels 2 to 6. These encroachments will be a result from minor balcony extensions and the corner design framing feature. The 3m requirement will be encroached by a depth of 0.6m along a 4.2m length of the Rutledge Street frontage and 0.3m along the	Satisfactory



**ITEM 3 (continued)**

Control	Comments	Compliant
	<p>entire length of the Trelawney Street frontage. No concerns are raised to the encroachments, as they are minor.</p> <p>NB: Despite general compliance with the minimum 3m setback requirement of the DCP along Rutledge Street, the massing is in breach of Council's envelope control prescribed in RDCP 2010 and would not match the approved setback of the Eastwood Shopping Centre Development which represents a better response.</p>	
<b>3.3.3 Urban Design/Exterior Finishes</b>		
Building exteriors are to be designed to avoid extensive expanses of blank glass or solid wall.	The design avoids large areas of blank walls or glass.	Satisfactory
Balconies and terraces should be provided, particularly where buildings overlook public spaces.	Ample balconies will be provided.	Satisfactory
All new buildings and renovations should incorporate a colour scheme using the colour palette.	The colour palette is acceptable.	Satisfactory
The siting and configuration of buildings should take into account the impact on surrounding development and public spaces in terms of amenity, shadowing and visual privacy.	No concerns are raised to the visual and acoustic implications. The only concern is that insufficient information has been submitted to verify compliance will be maintained with the RFDC requirement for living rooms and private open spaces of at least 70% of the units of the approved Eastwood	Insufficient information.

**ITEM 3 (continued)**

Control	Comments	Compliant
	Shopping Centre Development will have at least 2 hours solar access between 9am and 3pm on 21 June.	
<b>3.3.4 Corner Allotments</b>		
<p>The design of buildings should consider the following:</p> <ul style="list-style-type: none"> <li>i. The height of adjacent buildings;</li> <li>ii. Stepping the building up where the building turns the corner;</li> <li>iii. The incorporation of distinctive features to enhance the streetscape, i.e. clocks, flag poles, towers, etc;</li> <li>iv. Giving the corner a splayed, concave, convex or square recess treatment such that it signifies the intersection; and</li> <li>v. Design incorporating the removal of clutter such as power poles and advertising signage from around intersections.</li> </ul>	Matters i, ii, and iii have been discussed in 'Clause 4.6' above. Should the application be approved, a condition is recommended to require the submission of a DA for a signage scheme as to avoid visual clutter.	No
<b>3.4 Access &amp; Parking</b>		
<b>3.4.2 Contributions</b>		
Cash contributions are to be paid for the number of parking spaces not provided on site.	No cash contribution is applicable in this case.	NA
<b>3.4.3 Location of Vehicle Access and Footpath Crossings</b>		
<p>The design and location of vehicle access to developments should minimise:</p> <ul style="list-style-type: none"> <li>▪ Conflicts between pedestrian and vehicles on footpaths, particularly along pedestrian</li> </ul>	The vehicle entrance to the site will be via Trelawney Street. Council's Traffic Engineer and Roads and Maritime Services have reviewed the application and have raised no objections to	Satisfactory

**ITEM 3 (continued)**

Control	Comments	Compliant
<p>priority streets; and</p> <ul style="list-style-type: none"> <li>▪ Visual intrusion and disruption of streetscape continuity.</li> </ul> <p>New vehicle access points are restricted in retail/pedestrian priority streets. Where practicable, vehicle access is to be from lanes and minor streets rather than major pedestrian streets or major arterial roads such as Rutledge Street, First Avenue, or Blaxland Road.</p>	<p>the development application.</p>	
<b>3.5 Pedestrian Access &amp; Amenity</b>		
<b>3.5.1 Street Frontage Activities</b>		
<p>Buildings with frontages to retail/pedestrian priority streets are to contribute to the liveliness and vitality of those streets by providing one or more of the following at ground level:</p> <ul style="list-style-type: none"> <li>▪ Retailing, food/drink outlets, customer counter services or other activities which provide pedestrian interest;</li> <li>▪ Enclosed shop-fronts with window displays of goods and services within, and/or artworks;</li> <li>▪ Open shopfronts to food outlets and/or interiors with tables and chairs for diners;</li> <li>▪ Indoor queuing space for activities that may involve queuing (including automatic teller machines) so that footpaths remain free for pedestrian movement. Recesses in the street alignment for these activities are appropriate; and</li> </ul>	<p>The proposed retail/commercial tenancies provide opportunities to facilitate the liveliness and vitality of the Trelawney Street frontage by providing glazed shop fronts, direct access to the footpath and a high standard of finish.</p>	<p>Satisfactory</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
<ul style="list-style-type: none"> <li>▪ A high standard of finish for shop fronts.</li> </ul>		
<p>Buildings with frontages to other streets and lanes are to contribute to the liveliness and vitality of those streets by:</p> <ul style="list-style-type: none"> <li>▪ Providing visual interest;</li> <li>▪ Providing well designed and attractive entrances, lobbies and commercial uses at ground level; and</li> <li>▪ Incorporating, where practicable, either open or enclosed shopfronts with window displays of merchandise or services within, and/or artworks.</li> </ul>	<p>Retail/commercial tenancies with glazed shopfronts will extend along the Rutledge Street frontage as to contribute to the vitality and liveliness of the street.</p>	<p>Satisfactory</p>
<p>Ground floor uses are to be at the same level as the footpath. Split level arcades or open retail forecourts at a different level to the footpath are inappropriate because they separate the activities within them from the street.</p>	<p>The plans have been amended to address concerns raised by Council's Engineer with respect to the flood levels. As a result the following has been added:</p> <ul style="list-style-type: none"> <li>-Steps and a ramp along the Trelawney Street frontage of the retail/commercial tenancy further north;</li> <li>-A step into each retail/commercial entry along the Rutledge Street frontage; and</li> <li>-Steps and ramp way into the main lobby entry</li> </ul> <p>A condition is recommended to ensure the ramps along Trelawney Street have the appropriate width and grades to facilitate wheelchair access and the entries along Rutledge Street are graded and wide enough to cater for wheelchair access.</p>	<p>Subject to condition.</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
The ground floor of all development is to be flush with the street footpath for the predominant level of the street frontage and at the main entry to the building.	Refer to above.	Subject to condition
All street frontage windows at ground level are to have clear glazing.	Should the application be approved, a condition can be included in a consent to ensure retail/commercial tenancies consist of clear glazing.	Subject to condition
Security grilles are to be fitted only within the shopfront. Such grilles are to be transparent.	A condition can be included in a consent to advise that no consent has been granted for any grilles.	Subject to condition
Recesses for roller doors and fire escapes are to be wide and shallow to provide for personal security. Narrow, deep recesses are to be avoided.	A condition should be included in a consent to ensure that, appropriate lighting is provided in the recess along the Rutledge Street frontage, or the recess be removed by extending the access way and an inward opening door be provided adjacent to the boundary.	Subject to condition
<b>3.5.4 Landscaping &amp; Trees</b>		
Development proposals, incorporating landscaped elements, are to be accompanied by a landscape plan.	A landscape plan has been submitted and reviewed by Council's Landscape Officer. Refer to Landscape Architect comments below. Should the application be approved, a condition is recommended to require the landscape plan of Level 6 to be amended to reflect the amended Level 6 plan which indicates communal open space (drawing number DA-13 Issue B dated 13/04/2012).	Satisfactory



**ITEM 3 (continued)**

Control	Comments	Compliant
Where appropriate, developments should incorporate landscaping in the form of planter boxes incorporated into the upper levels of building to soften building form.	The proposal incorporates planter boxes on Levels 1 and 6 to soften the built form.	Satisfactory
Ground level entry areas to upper level dwellings should be well lit and not obstructed by planting in a way that reduces the actual or perceived personal safety and security of residents or pedestrians.	Should the application be approved, a condition is recommended to ensure the external entry into the ground level lobby, internal ramp way and lift entries are well lit.	Subject to condition
Street trees shall be provided in accordance with the Master Plan for the Centre and shall be provided at the developer's cost in conjunction with any new building work involving additional floor space.	Should the application be approved, a condition can be included in a consent to require street trees to be provided at the developer's cost.	Subject to condition
Street trees at the time of planting shall have a minimum container size of 200 litres, and a minimum height of 3.5m, subject to species availability.	Council's Urban landscape Architect has advised of specific requirements in relation to this matter. A condition can be included in a consent to specify Council's requirement.	Subject to condition
Tree sites in the footpath area shall be 1.2m by 1.2m, filled with approved gravel and located 200mm from the back of the kerb line.	A condition can be included in a consent to ensure this.	Subject to condition
A tree grate of a type that meets Council's specifications shall protect all trees.	A condition can be included in a consent to ensure this.	Subject to condition
Where a proposal involves redevelopment of a site with a frontage of at least 40m to a public road, the developer shall arrange for electricity and	The applicant has provided correspondence from Ausgrid which confirms the requirement for a substation. It does not clearly confirm that the existing	Subject to condition

**ITEM 3 (continued)**

Control	Comments	Compliant
telecommunications utilities to be undergrounded along the entire length of all street frontages. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g. Energy Australia).	above ground power lines in Rutledge Street cannot be placed underground. However this restriction applied to the approval of the Eastwood Shopping Centre with respect to the 66kv power lines along Rutledge Street. Council's Engineers have not required undergrounding in Rutledge Street. Should the application be approved, a condition is recommended to specify that all services and power lines in Trelawney be located underground.	
Where utility installations are undergrounded in conjunction with new development Council will waive 50% of the total contribution towards public space acquisition and embellishment normally payable under Council's relevant Section 94 Contributions Plan.	As discussed previously, electricity lines along Rutledge Street may not be able to be placed underground. Accordingly no reduction would apply.	Satisfactory
<b>3.5.5 Awnings and Colonnades</b>		
Buildings with frontage to any street must incorporate an awning or colonnade along that boundary.	An awning is proposed along Trelawney Street and Rutledge Street.	Satisfactory
The height of a colonnade, awning or covered way shall not be less than 3 metres or greater than 4.5 metres.	The minimum awning height indicated on the drawings is 3m and the maximum is 4.47m.	Satisfactory
The width of a colonnade, awning or covered way shall not be less than 3 metres.	A condition is recommended to ensure the minimum width is complied with, except where tree cut-outs are proposed.	Satisfactory
Any new awnings should: <ul style="list-style-type: none"> <li>▪ Be continuous for the entire length of the site frontage;</li> </ul>	The awning along Rutledge Street ends just before the sites southeast corner. This is	Subject to condition

**ITEM 3 (continued)**

Control	Comments	Compliant
<ul style="list-style-type: none"> <li>▪ Be set back from the face of the kerb by 0.6m;</li> <li>▪ Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate a street tree in accordance with the master plan or any public domain improvement plan;</li> <li>▪ Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;</li> <li>▪ Have a height clearance above the footpath level of at least 3m or a height consistent with adjacent awnings; and</li> <li>▪ Maintain sufficient clearances from any overhead electricity or telecommunications installations.</li> </ul>	<p>appropriate as:</p> <ul style="list-style-type: none"> <li>- Minimal pedestrian activity is expected here given that the pump room and substation will be located at the sites corner.</li> <li>- No encroachments are permitted over the substation, as advised by Ausgrid.</li> <li>- The awning cannot be extended to the approved awning of the Eastwood Shopping centre given the setback of the approved awning from the common boundary, and the location of an approved substation and loading dock entry adjacent to the site.</li> </ul> <p>Should the application be approved a condition should be included to require 1m x 1m cut-outs, a 600mm setback from the face of the kerb and weather sealing to the facade of the building, where appropriate.</p>	
<p>Ground level shop fronts may incorporate see-through security grills or translucent barriers to ensure that maximum light is transmitted to footpath areas. Blank roller-shutter type doors will not be permitted.</p>	<p>A condition can be included in a consent to ensure this.</p>	<p>Subject to condition</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
<b>3.7 Environmental Management</b>		
<b>3.7.1 Sunlight</b>		
Major public spaces should receive a minimum of 50% sunlight on the ground plane for at least 2 hours between 10am and 2pm on June 21.	There are no major public spaces that will be affected by the proposal.	Satisfactory
All new buildings should have an area of roof, with appropriate orientation and pitch that is suitable for the installation of solar collectors and photovoltaic cells for energy conservation.	The proposal complies with BASIX requirement in terms of energy consumption and thermal performance.	Satisfactory
<p>In new residential developments, windows to north-facing living areas should receive at least 3 hours of sunlight between 9am and 5pm on June 21 over a portion of their surface.</p> <p>North-facing windows to living areas of neighbouring dwellings should not have sunlight reduced to less than the above 3 hours.</p>	<p>The north facing living room windows of all units, except three, will meet the minimum 3 hour solar access requirement. The north facing living room windows of units G01, G02 and 109 will receive less than 3 hours sunlight, however they will receive a minimum of two hours which is accepted in this case. North-facing windows to living areas of neighbouring dwellings will not have sunlight reduced to less than the 3 hours, where existing.</p>	Satisfactory
<b>3.7.2 Wind Standards</b>		
Building design is to minimise adverse wind effects on recreation facilities and open terraces within developments.	The wind impact has been addressed previously.	Satisfactory
<b>3.7.3 Energy Efficiency of Buildings</b>		
To maximise energy efficiency and sustainable design. Buildings should optimize their passive and	The minimum standards are met. Reference should be made to the submitted BASIX	Satisfactory

**ITEM 3 (continued)**

Control	Comments	Compliant
operational energy efficiencies, reduce pollution, include waste minimisation systems and use construction materials from renewable resources.  New Buildings: should be designed to ensure that energy usage is minimised.	certificate and Energy Report.	
<b>3.7.4 Vibration and Noise Mitigation</b>		
In respect of proposals for new residential buildings: <ul style="list-style-type: none"> <li>▪ the building plan, walls, windows, doors and roof are to be designed and detailed to reduce intrusive noise levels.</li> <li>▪ balconies and other external building elements are located, designed and treated to minimise infiltration and reflection of noise onto the façade;</li> <li>▪ dwellings are to be constructed in accordance with: AS 3671-1989: Acoustics – Road Traffic Noise Intrusion, Building Siting and Construction; AS 3671-1987: Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors; and Environmental Criteria for Road Traffic Noise (EPA, 1999).</li> </ul>	An acoustic report has been submitted. Should the application be approved, conditions are recommended to ensure: <ul style="list-style-type: none"> <li>▪ Sealing of external facing window frames and door frames.</li> <li>▪ Provision of acoustic glazing on outward facing windows.</li> <li>▪ Appropriate timeframes for delivery vehicles.</li> <li>▪ Installation of a ventilation system to each unit that will satisfy internal sound levels detailed in the submitted acoustic report.</li> <li>▪ Implementation of the roller shutter manufacturer's maintenance schedule and recommended servicing of guide rails.</li> <li>▪ Compliance of the plant and equipment noise with the criteria listed in the submitted acoustic report.</li> <li>▪ A BCA sound compliance assessment is carried out at CC stage and the required works are implemented to</li> </ul>	Subject to condition



**ITEM 3 (continued)**

Control	Comments	Compliant
	<p>ensure compliance with the airborne and impact sound isolation requirements between residential units set out in the BCA.</p>	
<b>3.7.5 Reflectivity</b>		
<p>The excessive use of highly reflective glass is discouraged. New buildings and façades should not result in glare that causes discomfort or threatens safety of pedestrians or drivers. Visible light reflectivity from building materials used on the façades of new buildings should not exceed 18%.</p>	<p>The proposal is considered acceptable, subject to a condition in a consent to ensure an appropriate reflectivity index is provided for external glazing.</p>	<p>Subject to condition</p>
<b>3.7.6 External Lighting of Buildings</b>		
<p>Any external lighting of buildings is to be considered with regard to:</p> <ul style="list-style-type: none"> <li>▪ The integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building);</li> <li>▪ The contribution of the visual effects of external lighting to the character of the building, surrounds and skyline;</li> <li>▪ The energy efficiency of the external lighting system; and</li> <li>▪ The amenity of residents in the locality.</li> </ul>	<p>Discussed above.</p>	<p>Subject to condition</p>
<b>3.7.7 Waste Management</b>		
<p>All applications for demolition, building and land development must be accompanied by a Waste Management Plan.</p>	<p>A waste management plan has been submitted and reviewed by Council's Environmental Health Officer. No issues have been</p>	<p>Satisfactory</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
	raised in respect of this matter.	
A waste cupboard or other appropriate space is provided within dwellings for temporary storage of recyclables, garbage and compostable material.	A condition can be included in a consent to ensure compliance.	Subject to condition
In circumstances where communal facilities are proposed, the area or room is of sufficient size to store Council's standard bins and is easily accessible from each unit and from Council's usual collection point.	The development complies with this requirement.	-
The location and design of facilities does not impact on adjoining premises and the amenity of the dwellings within the development (e.g. odour, noise).	No evident impact, as the bin storage areas will be located centrally within the building in the common area / basement.	Satisfactory
Adequate space has been provided to enable on-site composting.	Adequate waste disposal arrangements have been proposed on the site including handling of recycling materials. Management of composting may become an issue given the mixed use development and therefore is not required in this instance.	Satisfactory.
Acceptable administrative arrangements for ongoing waste management are determined.	The waste disposal arrangement has been reviewed by Council staff, and is generally considered satisfactory. The operational arrangement will be put in place upon completion of the development if approved.	Satisfactory
Communal on-site waste storage and recycling area or garbage and recycling room must be provided for residential development. The	A communal on-site waste storage room will be provided for the residential component. A separate room is proposed for	Subject to conditions

**ITEM 3 (continued)**

Control	Comments	Compliant
<p>area should be capable of accommodating the required number of standard waste containers. Additional space for storage of bulky waste should be provided.</p>	<p>the storage of bulky waste.</p>	
<p>Buildings containing more than four storeys shall be provided with a suitable system for the transportation of garbage from each floor level to the garbage and recycling room(s). This may be a garbage chute system. Where such facilities are utilised, space must be provided on each floor for storage of recyclables.</p>	<p>A garbage chute is proposed, as well as an adjacent area to accommodate one bin.</p>	<p>Satisfactory</p>
<p>Business and Retail Premises:  The system for waste management is compatible with collection services.</p>	<p>No concerns have been raised by Council's Environmental Health Officer. Conditions are recommended to be included in a consent, should the application be approved.</p>	<p>Satisfactory</p>
<p>On-site source separation is facilitated.</p>	<p>A separate waste room is proposed for the non-residential tenancies which will consist of appropriate bin types to facilitate source separation.</p>	<p>Subject to condition</p>
<p>An appropriately designed and well located waste storage and recycling area and/or garbage and recycling room is provided on-site.</p>	<p>A separate waste room is indicated on the drawings. Should the application be approved, a condition is recommended to ensure the room has the required facilities, finishes and floor grading.</p>	<p>Subject to condition</p>
<p>Clear access for staff and collection services is provided.</p>	<p>It is likely that a caretaker or other employed person will be responsible for checking and transporting the bins, where necessary.</p>	<p>Subject to condition</p>

**ITEM 3 (continued)**

Control	Comments	Compliant
Facilities are carefully sited, well-designed and do not impact on adjoining premises or the amenity.	Garbage rooms will be well located.	Satisfactory
There are acceptable administrative arrangements for ongoing waste management.	A condition can be included in a consent to ensure by-laws for ongoing waste management, particularly responsibilities of a caretaker or other employed persons, are specified in a management plan. Conditions of consent can be used to require adequate waste handling arrangements on the site.	Subject to condition
Ongoing management is a significant issue - details are required in the waste management plan.	The submitted waste management plan has been reviewed by Council's Environmental Health Officer, who has raised no concerns.	Subject to conditions
Special attention should be paid to food scrap generation. Specialised containment should be provided and a regular and frequent collection service arranged to ensure that no impacts result from the activity.	At this stage the use of the retail space is not known. Waste generation and management will be reviewed in more detail at a future stage.	Subject to condition
<b>7.1 Energy Smart, Water Wise</b>	A BASIX Certificate has been submitted in respect of the development.	Satisfactory
<b>7.2 Waste Minimisation and Management</b>	The development complies with the requirements of this plan.	Satisfactory
<b>9.2 Access for People with Disabilities</b>	Section 9.2 requires 10% of the total number of units to be adaptable. At least eight (8) adaptable units are provided and at least one adaptable car space is provided for each adaptable unit.	Subject to condition

**ITEM 3 (continued)**

Control	Comments	Compliant
	<p>Should the application be approved, conditions are recommended to ensure that certain details are confirmed and/or indicated on Construction Certificate documentation as discussed in the submitted access report. They relate to the following aspects:</p> <ul style="list-style-type: none"> <li>▪ External pathway links and building entrance doorway entry landings and thresholds.</li> <li>▪ Entrance door schedules and hardware.</li> <li>▪ Ramp and stairway handrails, tactile surface indicators, step nosings, and risers.</li> <li>▪ Ramping / raising the internal fitout and finished floor level of northern retail entry.</li> <li>▪ Lift internal floor areas, controls, handrails and the like.</li> <li>▪ Fittings and fixtures of accessible sanitary facilities.</li> <li>▪ Raised tactile and Braille signage for common area, public toilets and amenities.</li> <li>▪ Lift lobby widths and doorway thresholds.</li> <li>▪ Door widths and level handles of adaptable units.</li> <li>▪ Installation of kitchen cupboards, appliances and the like for adaptable units.</li> <li>▪ Outdoor private open space threshold ramps of adaptable units.</li> </ul> <p>A discussed above, a condition</p>	



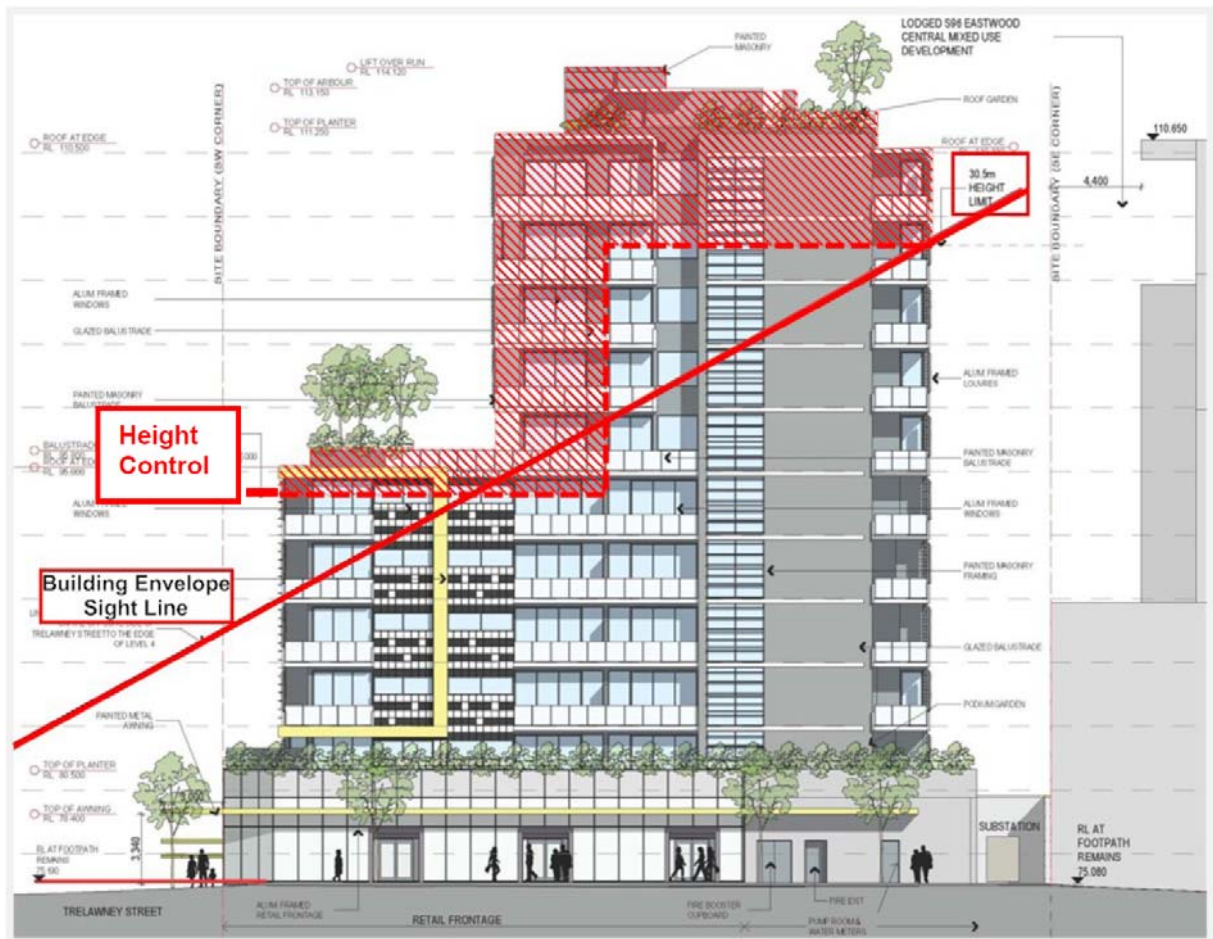
**ITEM 3 (continued)**

Control	Comments	Compliant
	is recommended to ensure disabled access is provided directly from the footpath into each retail tenancy.	
<p><b>9.3 Car Parking</b></p> <p>Residential: 0.6-1 space/1 bedroom: 9.6-16 0.9-1.2 spaces/2 bedroom: 38.7-51.6 1.4-1.6 spaces/3 bedroom: 28-32 1 visitor space/5 dwellings: 15.8</p> <p>Retail: 1/25sqm = 36.5spaces</p>	<p><u>Total Required:</u> The total number of residential spaces is 92– 108</p> <p>The total number of retail is 37. TOTAL Required –129-145 CAR</p> <p><u>Total Proposed:</u> The total number of residential spaces is: 129</p> <p>The total number of retail is 26.</p> <p>TOTAL Proposed – 155 A condition should be included in a consent to require the reallocation of car spaces to respect the requirements of the RDCP. The reallocation should be at least: -37 retail spaces, -79 resident spaces -16 resident visitor spaces</p>	Subject to condition


Building Envelope Control

The proposal does not comply with the envelope control as indicated in the diagrams below.

**ITEM 3 (continued)**

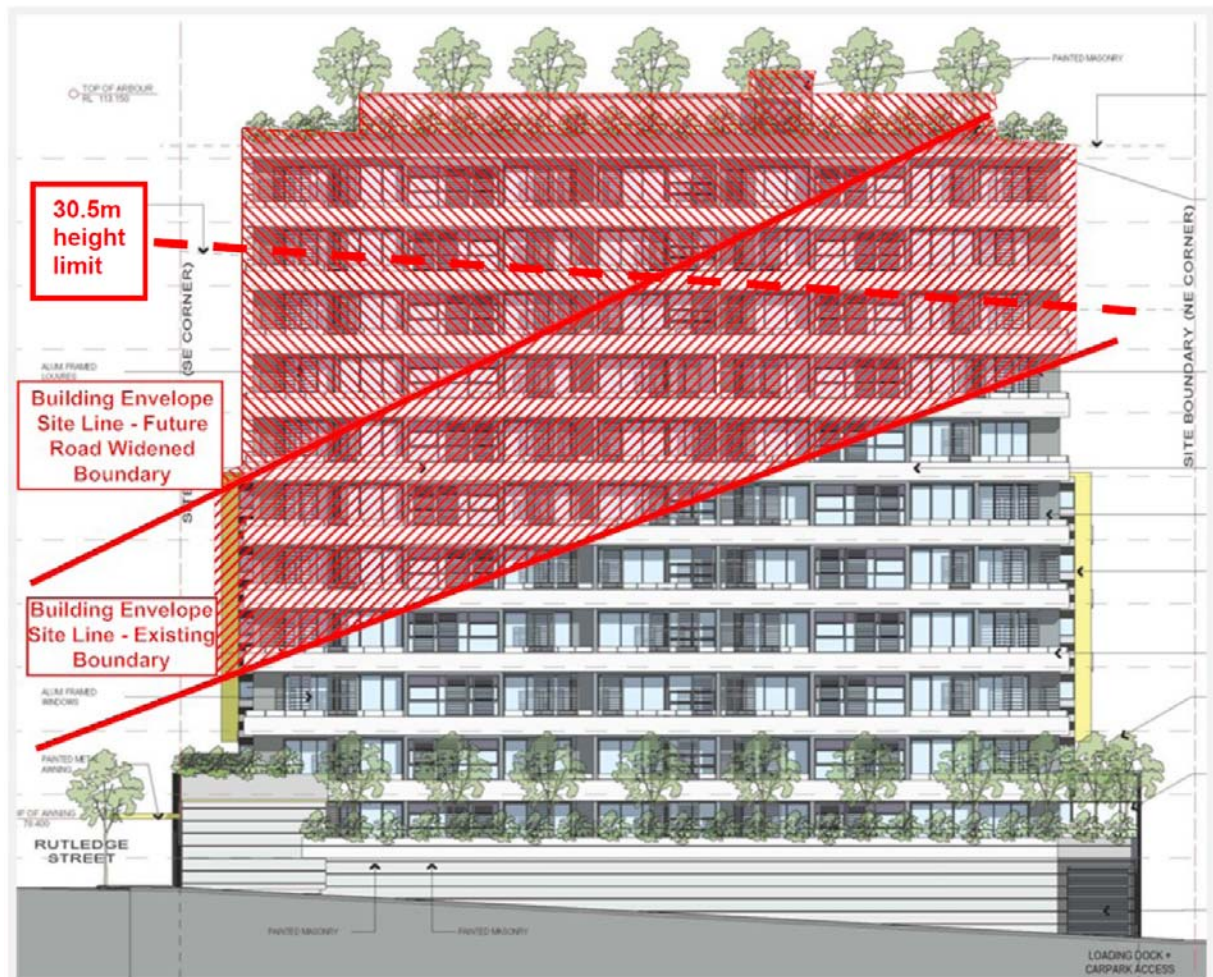


**Diagram 2: North Elevation -**



 Area of non-compliance with maximum 18.5m and 30.5m LEP Height Standards

 Building Envelope of RDCP 2010

**ITEM 3 (continued)**



**Diagram 3:** East Elevation -

-  Area of non-compliance with Building Envelope of RDCP 2010 projected from **proposed** widening of Rutledge Street.
-  Area of non-compliance with Building Envelope of RDCP 2010 projected from **existing** Rutledge Street boundary.

RDP 2010 provides that in certain circumstances buildings may be approved if they project above the building envelope plane. The circumstances include:

- *the non compliance is consistent with the aims, principles and strategies of the Plan;*
- *in the circumstances of the site the strict application of the provision is unnecessary or unreasonable, such as corner allotments or the presence of an intervening structure;*



**ITEM 3 (continued)**

- *it can be demonstrated that the intention of the control is largely met; or*
- *variation of the control results in an improved design solution for the site taking into consideration the nature of the adjoining development.*

The circumstances in which strict application of the building envelope is considered unnecessary or unreasonable have been identified above. These circumstances will ensure that the intention of the control will be largely met. As demonstrated in this report section, the intentions of the control will not be satisfactorily met by the extent of the proposed variance and this variance will not necessarily provide an improved design taking into consideration the nature of adjoining development.

Reference is made to the court findings for *Crown Atlantis Joint Venture v Ryde City Council*. In summary, the findings indicate that the achievement of the 'human scale' is important to the design outcome, particularly the proposed height, and should not be disregarded. The relevant findings are stated below:

1. *The intention of DCP 39 is that new development should have an urban village character. Development should be of human scale in the streetscape, being generally two to three stories in height. Taller building elements set back from street are permissible but they should not dominate.*
2. *Trelawney Street is to be developed for the enjoyment and utility of pedestrians with a high level of aesthetic amenity at street level.*
3. *Trelawney Street is a retail/pedestrian priority street and at its intersection with Rutledge Street forms a gateway to the Eastwood Town Centre. The street corner portion of the site is therefore a gateway site for the purposes of DCP 39 and notwithstanding the first objective above should be developed accordingly. More particularly the corner element of the building should address both streets and be stepped up especially in relation to structures at the street frontages.*

The third point verifies that the street corner portion of the site, not the whole length of the site, is that part that should form a gateway feature and should be developed accordingly. As stated above, a variance to the standard is likely to be accepted for the creation of a gateway feature as required by the DCP and implicated by Objectives (d) and (e) for the 'Height of Buildings' listed under Clause 4.3 of the RLEP. If appropriately designed and limited to the corner of the building, this would have minimal impact on retaining the human scale along Trelawney Street, reflecting the topography and providing a sympathetic transition to neighbouring properties to the north, if the remainder of the building is stepped down as discussed above.

With respect to the human scale aspect, the architect has noted that a 3m high awning above the footpath, on the opposite side of Trelawney Street, would obstruct a sightline projected from the boundary at a height of 1.5m and angle of 26 degrees and hence the higher/non compliant building portions. This is not concurred with. A pedestrian would have to be standing on the site boundary of 3-5 Trelawney Street.

### ITEM 3 (continued)

This would be difficult as the building is likely to extend up to this boundary and generally a pedestrian would not be walking flush against the boundary. If the sightline is projected from at least 500mm from the footpath edge (approximately one step away), the higher building portions would be visible. The submitted Trelawney Street elevation plan for the proposal at 3-5 Trelawney Street, indicates the awning will generally range from 3m to a maximum of 4.47m and therefore sightlines projected from the boundary would not be obstructed by the awnings higher than 3m above footpath level.

### Section 94 Contributions Plan 2007

Development Contributions Plans – 2007 (2010). Amendment allows Council to impose a monetary contribution on developments that will contribute to increased demand for services as a result of increased development density/ floor area.

The proposed development will result in the following Section 94 contributions being payable.

<b>Contribution Type</b>	<b>Contribution Amount</b>
Community & Cultural Facilities	\$219,381.43
Open Space & Recreation Facilities	\$499,430.36
Civic & Urban Improvements	\$196,125.45
Roads & Traffic Management Facilities	\$30,569.12
Cycleways	\$16,712.09
Stormwater Management Facilities	\$56,229.26
Plan Administration	\$4,500.98
<b>The total contribution is</b>	<b>\$1,022,948.69</b>

### 10. Likely impacts of the Development

The likely impacts of the development have been addressed in previous sections of this report.

### 11. Suitability of the site for the development

The site is not classified as a heritage item nor affected by subsidence however, the site subject site is affected by 1 in 100 year overland flow path. The applicant has submitted amended architectural plans that indicate all finished floor levels of the building facing Rutledge and Trelawney Streets are 300mm above the top water level of 1 in 100 year ARI storm event. In this regard, the proposal is considered to be suitable for the site in terms of its impact on both the existing natural and built environment.

**ITEM 3 (continued)****12. The Public Interest**

The public interest, in respect of this application, would be to ensure that the development application complies with the planning controls that affect the site. As demonstrated in this report, the application is not in the public interest.

**13. Consultation – Internal and External**Internal Referrals*Environmental Health Officer:*

No objections have been raised to the development subject to conditions. In the event that the DA is approved, the conditions should be included in the consent.

*Drainage*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Traffic*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Public Domain*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

*Waste*

No objections have been raised to the development. Conditions are recommended. In the event that the DA is approved, the conditions should be included in the consent.

External Referrals*Roads and Maritime Services (RMS)*

RMS has not raised any concerns subject to certain details being provided and/or complied with. These can be addressed via the inclusion of conditions in a consent, should the application be approved.

**14. Critical Dates**

There are no critical dates or deadlines to be met.



**ITEM 3 (continued)****15. Financial Impact**

Nil

**16. Other Options**

The development is non-compliant with the applicable height, envelope and setback controls. These non-compliances will result in adverse urban design outcomes. Accordingly the development application is recommended for refusal.

Other options for the Council to consider are listed below:

- 1) The determination of the development application could be deferred to enable the applicant to submit amended plans. The purpose of the amended plans would be to achieve greater compliance with the height, setback controls, envelope and other substantial non compliances with the current proposal and to achieve a better design outcome for the site.

If Council did resolve to defer the development application for the submission of amended plans, these plans would require re-notification. In addition, the applicant would get the opportunity to revisit the Voluntary Planning Agreement.

- 2) Should Council support the variations to the planning controls, Council could resolve to approve the development application subject to appropriate conditions. This option is not supported due to the issues already raised in the report. However if Council did wish to proceed with this option, it would be in Council's interest to also accept the Voluntary Planning Agreement referred to in Annexure 4.
- 3) Council could also resolve to support the development application however resolve to reject the VPA. This option is not supported as Council would not be receiving the additional funding as proposed in the VPA.

**Conclusion**

The proposed development has been assessed against the relevant planning provisions, which have included the provisions of SEPP 65, RFDC, RLEP 2010 and RDCP 2010. As a result, the assessment fails to comply with a number of the key controls, in particular the controls relating to height, envelope, depth, cross ventilation and solar access. The development will not provide appropriate urban design.

The proposed building height exceeds standards prescribed under the RLEP 2010 by a maximum of 22.84m where the 18.5m standard applies and 11.06m where the 30.5m standard applies. This will not be appropriate in the circumstances of this case as the height will not achieve related objectives of the control and B4 mixed use

**ITEM 3 (continued)**

zone. It will not respect the desired massing and human scale initiatives. It will not be stepped to appropriately address the site's corner location.

Prior and during the submission of the subject DA, the applicant was advised by Council Officers and the UDRP that compliance needs to be achieved with the maximum height standard and that the applicant's design initiative of providing a 'gateway' entry can still be achieved with a compliant situation.

The desired future character of the Eastwood Town Centre expressed in local controls refers to retaining the 'urban village character'. This is directly related to respecting the human scale. The development does not respect this. The human scale issue is an important objective of not only the height standard of the RLEP but also of the height standard in the DRLEP and prescribed building envelope of the RDCP. The development will extend well outside of the building envelope control of the RDCP. Trelawney Street is identified as a retail/pedestrian priority street under the RDCP, which further reinforces the importance of respecting the human scale along this street. The development design has not had adequate regard to this important aspect.

The proposed development will not meet the absolute minimum RFDC requirement for living rooms and private open spaces of at least 70% of the units in the development achieving a minimum of 2 hours solar access between 9am and 3pm in mid winter. It proposes a major variation of 16%, with only 54% of units in the development achieving the requirement.

The proposed development will not facilitate the required building separation to the east (between the approved Eastwood Shopping Centre Development) as required under the RFDC. Insufficient information has been submitted to ascertain whether or not the proposed separation will be satisfactory with respect to solar access, i.e. the approved development will still achieve compliance with the RFDC requirement for living rooms and private open spaces of at least 70% of the units in the development achieving a minimum of 2 hours solar access between 9am and 3pm in mid winter .

In addition the applicant has not submitted details that verify the private open spaces of at least 70% of the proposed units will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.

The proposal represents an overdevelopment of the site. The density is dictated by the applicable setback, height and envelope controls. The development does not achieve these controls and therefore is excessive in density.

Based on the above, the development is recommended for refusal.

ITEM 3 (continued)

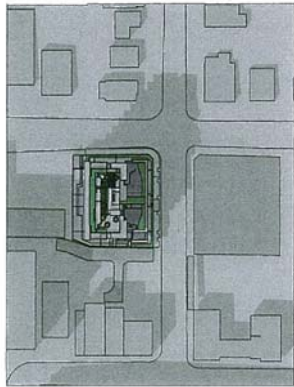
ATTACHMENT 1

● Indicates submissions received.  
One submission was received from outside map area.

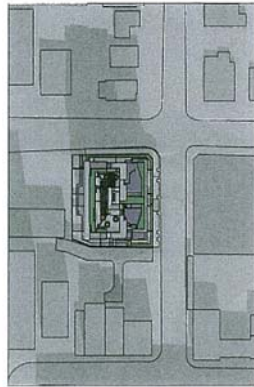


ITEM 3 (continued)

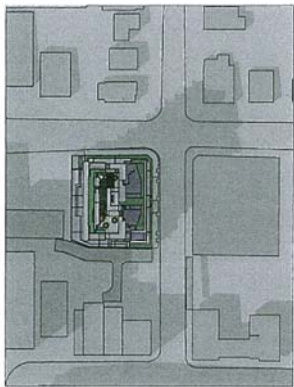
ATTACHMENT 2



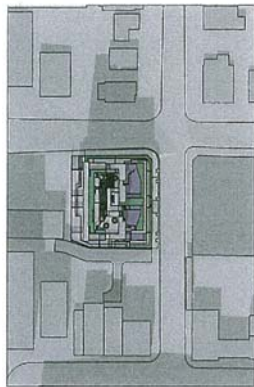
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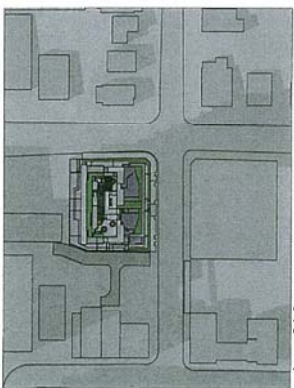
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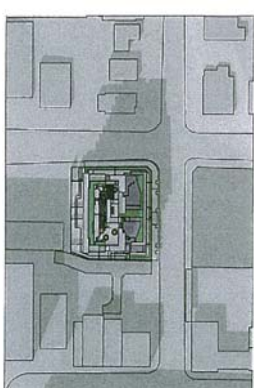
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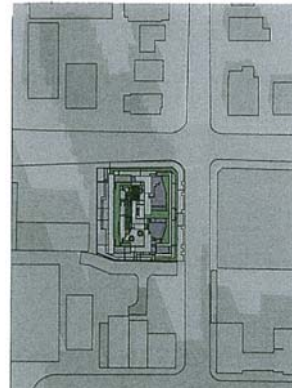
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June 21 9am  
SCALE 1:2000



June 21 12PM  
SCALE 1:2000



June 21 3PM  
SCALE 1:2000

ARCHITECT <b>MBMO</b> MORRIS BRAY MARTIN OLLMANN 14/15-17/18 Market Street, Sydney New South Wales 2000 Australia www.mbmomo.com.au 1800 634 634 1000 DA 187549	DEVELOPMENT MANAGER/CLIENT <b>Ruffedge Property PTY LTD</b> 7 Ruffledge St Eastwood, NSW	PROJECT NORTH	DRAWING NAME: <b>SHADOW DIAGRAMS</b>	JOB NUMBER <b>10039</b>	DRAWING NUMBER <b>DA-23</b>	ISSUE <b>A</b>
	SCALE NA	DRAWN RB	CHECKED RB	DATE 25/10/2011	FILE NAME 1000P DA 187549	

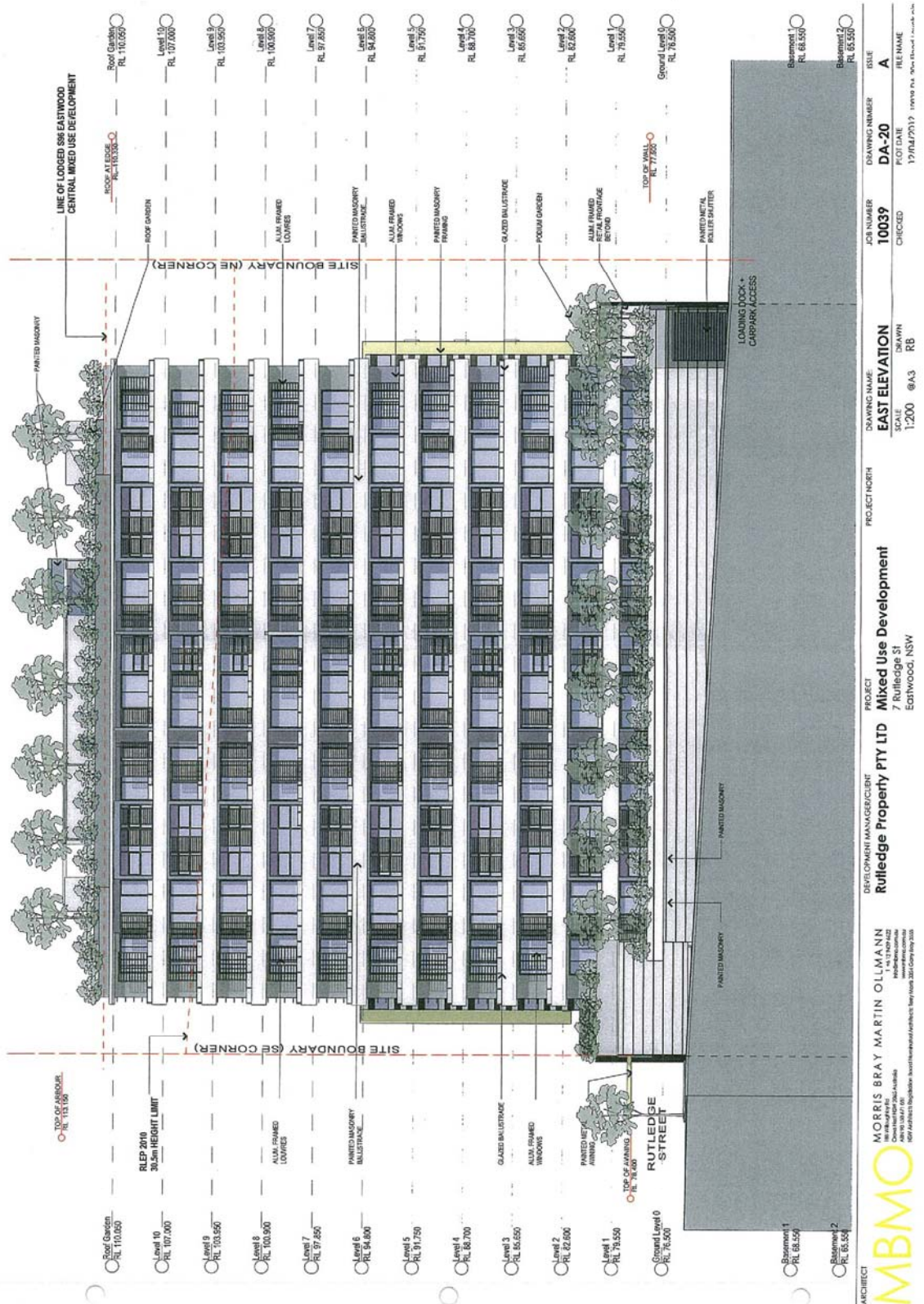






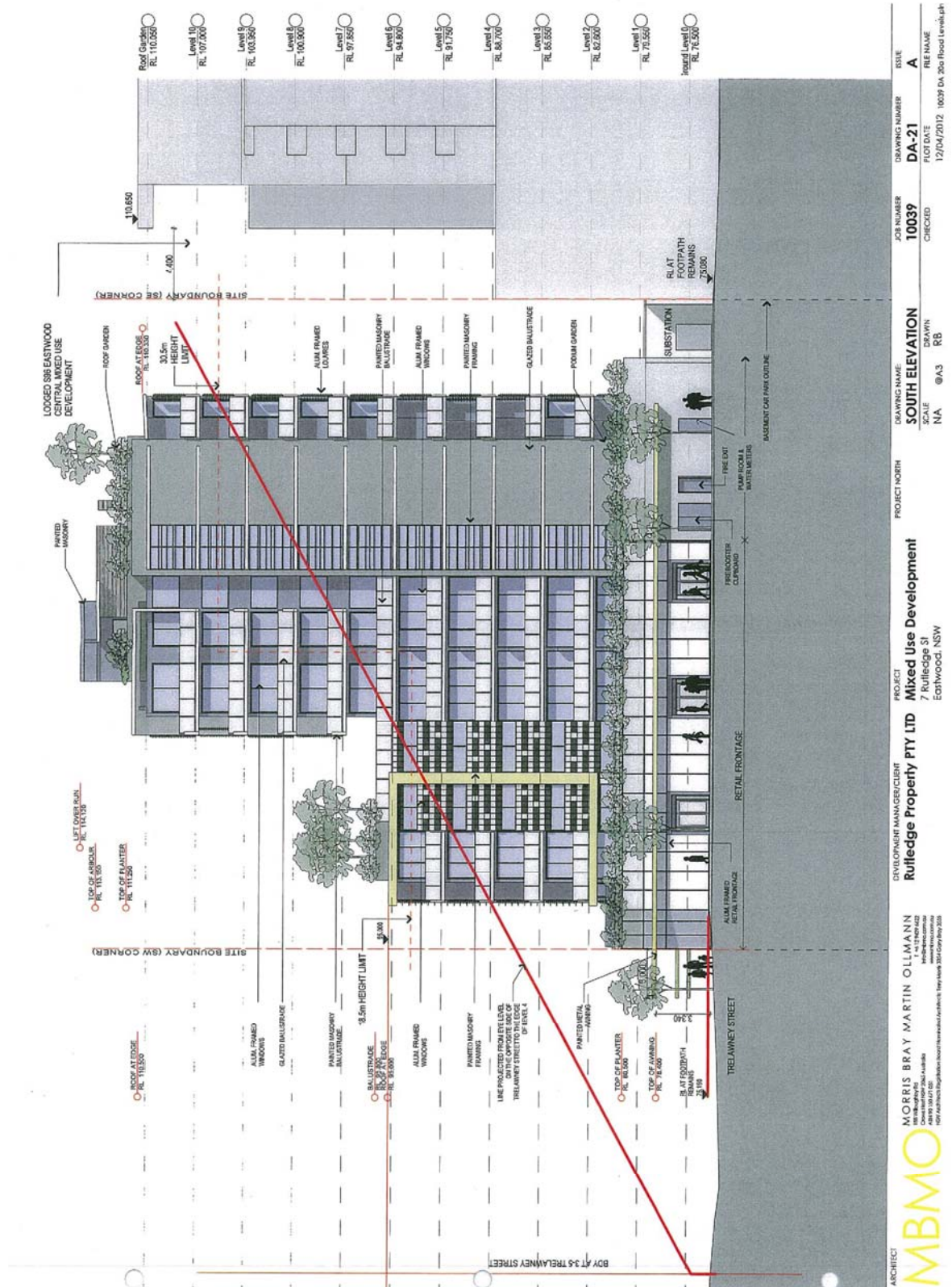
ITEM 3 (continued)

ATTACHMENT 2



ITEM 3 (continued)

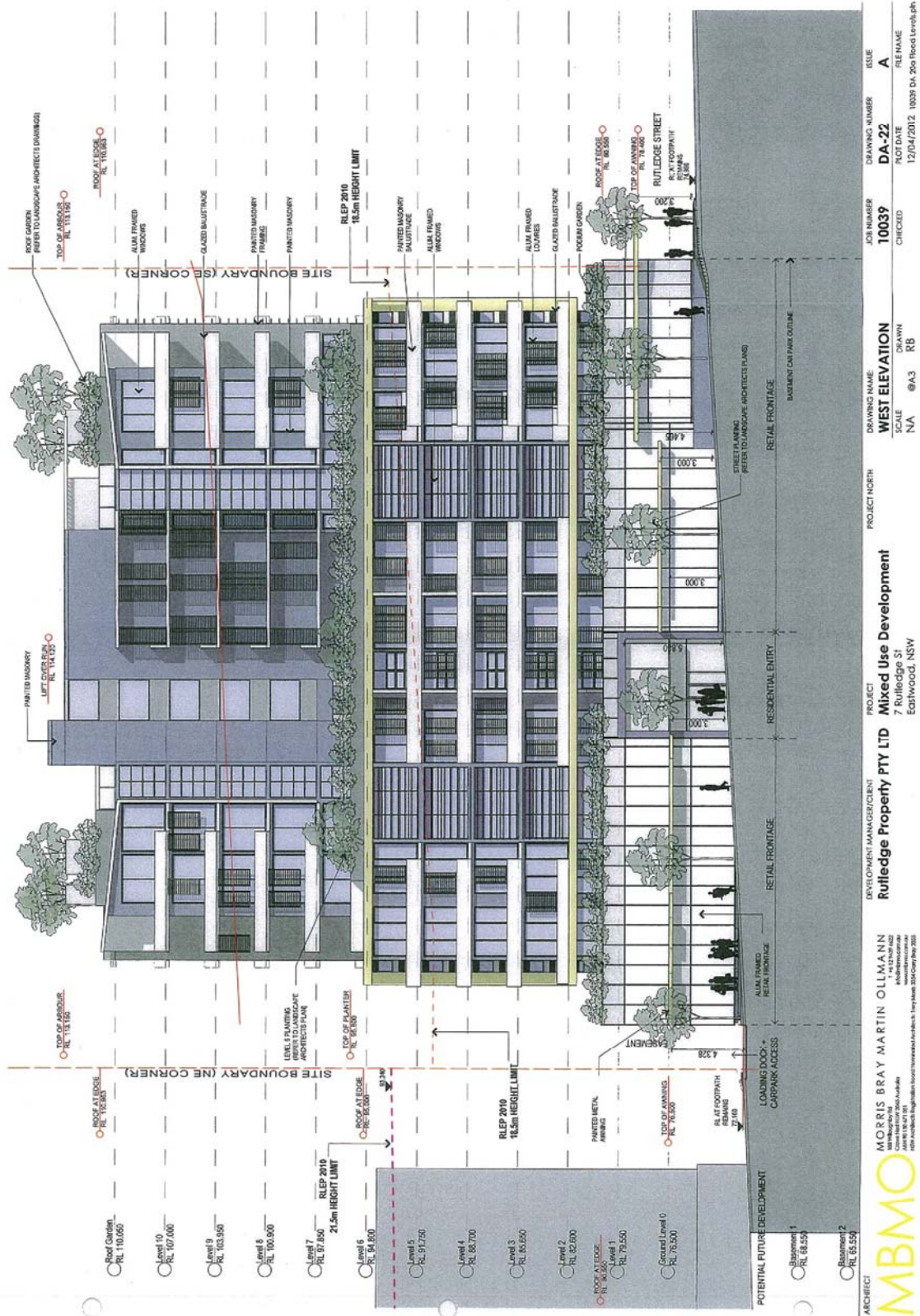
ATTACHMENT 2





ITEM 3 (continued)

ATTACHMENT 2



**ITEM 3 (continued)**

**ATTACHMENT 4**

**1 VOLUNTARY PLANNING AGREEMENT OFFER – 7-9 RUTLEDGE STREET, EASTWOOD.**

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**Report prepared by:** Client Manager

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

**Report dated:** 19 June 2012

**File Number:** D12/42893

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**1. Report Summary**

Council is in receipt of Local Development Application LDA2011/612, at 7-9 Rutledge Street, Eastwood for the construction of a part 7 part 12 storey mixed use building containing 79 units, commercial / retail tenancies on the ground floor and basement parking.

As part of the proposal, the proponents are seeking to enter into a Voluntary Planning Agreement (VPA) with Council. The VPA forms a contractual agreement between Council and the Developer. The purpose of this report is for Council to determine whether it will endorse the VPA should the application be approved by Council. The VPA offers public benefit together with complying with Council's requirements in respect of Section 94 Contributions.

It is recommended that Council determine whether the proposed development is acceptable and if supported, endorse the Voluntary Planning Offer.

**RECOMMENDATION:**

- (a) That if Council resolves to approve Local Development Application 2011/0612 at 7-9 Rutledge Street, Eastwood then Council should endorse the Voluntary Planning Agreement made by Rutledge Street Pty Ltd dated 8 June 2012.
- (b) That the above be communicated to the proponents.

**ATTACHMENTS**

- 1 Voluntary Planning Agreement – 7-9 Rutledge St, Eastwood

Report Prepared By:

**Adrian Melo**  
**Client Manager**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**



**ITEM 3 (continued)**

**ATTACHMENT 4**

**2. Site (Refer to map.)**



**3. Councillor Representations**

Nil.

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No.

**5. Background**

An offer for a VPA was submitted by the proponent at time of lodgement of the Development Application for 7-9 Rutledge St, Eastwood on the 28 November 2011. This VPA was considered by Council’s Executive Team at a meeting held 16 December 2011. This original offer was not supported by the Executive Team as, excluding matters necessary and consequential to the development application, it totalled \$75,000.00.

Following the initial consideration of the VPAs by Executive Team, a letter was sent to the applicant dated 23 December 2011 suggesting amendments to the VPA and that Council would expect the value of the VPA to equate to approximately 20% of the applicable Section 94 Contributions. Following the letter, Council Officers met with the proponents on the 4 April 2012. During the meeting the applicant was advised of Council’s expectations regarding Voluntary Planning Agreements. At this meeting the applicant agreed to amend the VPA offer to equal 20% of the total s94 Contributions.



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

### **ATTACHMENT 4**

The applicant submitted an amended VPA proposing a one off cash contribution of \$100,000.00 equating to 9.7% of applicable s94 Contributions. This was considered by Council's Executive Team at its meeting held 19 April 2012 and was not supported. The applicants were informed of this in a letter dated 19 April 2012.

On 24 April 2012, the proponents submitted an amended VPA offer proposing that the one-off cash contribution for the development be raised to \$205,315.00. This equated to approximately 20% of applicable s94 Contributions and was considered acceptable by the Executive Team on 4 May 2012.

Following support of the offer from the Executive Team, the VPA was considered by Council's Voluntary Planning Agreement Panel on 29 May 2012. At this meeting, the VPA Panel identified substantial areas of concerns regarding the wording of the explanatory note and associated VPA. The proponent was advised of the concerns relating to the Explanatory Note on the 29 May 2012 and the concerns relating to the VPA instrument in a letter dated 1 June 2012. The final version of the explanatory note was received by Council on 30 May 2012 and the final version of the VPA was received by Council 8 June 2012.

## **6. Report**

Council has received Local Development Application LDA2011/612, at 7-9 Rutledge Street, Eastwood. The development comprises the construction of a part 7 part 12 storey mixed use building containing 79 units, commercial / retail tenancies on the ground floor and basement parking.

A VPA is a contractual agreement between Council and a developer under which public benefit for a public purpose is delivered as part of a Development Application. The Development Application and VPA are considered jointly as they are interlinked. The Assessment Report for the proposed development is to be reviewed and the Development Application determined by Council at the same Council Meeting.

### **Summary of VPA Offer**

The planning agreement seeks to provide a one off monetary contribution to Council of \$205,315. The proposed agreement does not seek the suspension of Section 94 Contributions that will continue to apply to the subject development.

It must be noted that the proposed development fails to comply with the applicable planning controls as detailed within the Assessment Report. The Assessment Report recommends that Council refuse the Development Application.

The material public benefits proposed to be made to support the proposed non-compliances is a one off monetary contribution of \$205,315 to Council.

### **Consultation**

The Voluntary Planning Agreement was advertised in the Ryde City View newsletter circulated within the Northern District Times between 30 May 2012 and 27 June 2012. No submissions were received during this period.

**ITEM 3 (continued)**

**ATTACHMENT 4**

**Consideration of the Voluntary Planning Agreement**

The Section 93F of the *Environmental Planning and Assessment Act 1979* details various matters that must be addressed by a VPA.

It should be noted that the VPA satisfies all requirements of Section 93F and it is recommended that should Council seek to approve the associated Development Application, Council endorse the Voluntary Planning Agreement Offer.

A detailed consideration of Section 93F is provided below.

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<p>(1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the <b>developer</b>):</p> <p>(a) who has sought a change to an environmental planning instrument, or</p> <p>(b) who has made, or proposes to make, a development application, or</p> <p>(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</p> <p>under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.</p>	<p>The proponents are seeking to provide:</p> <ul style="list-style-type: none"> <li>– A one off monetary contribution of \$205,315</li> </ul> <p>The above is in addition to the applicable Section 94 Contributions and can be used where deemed appropriate by Council.</p> <p>The provisions of additional funds are considered to constitute material public benefit which shall be used and applied towards a public purpose.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>(2) A public purpose includes (without limitation) any of the following:</p> <p>(a) the provision of (or the recoupment of the cost of providing) public amenities or public services,</p> <p>(b) the provision of (or the recoupment of the cost of providing) affordable housing,</p> <p>(c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,</p>	<p>No public amenities or public services are provided.</p> <p>No affordable housing is provided.</p> <p>No transport is provided.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>

**ITEM 3 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<i>(d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,</i>	The monetary contribution will be paid to Council to be utilised where deemed appropriate. Council's expenditures will be for public amenities, public services or other infrastructure.	Yes
<i>(e) the monitoring of the planning impacts of development,</i>	No monitoring of planning impacts is provided.	N/A
<i>(f) the conservation or enhancement of the natural environment.</i>	No conservation or enhancement of the natural environment is provided.	N/A
<i>(3) A planning agreement must provide for the following:</i>		
<i>(a) a description of the land to which the agreement applies,</i>	It is considered that the VPA adequately satisfy the requirement of this part.	Yes
<i>(b) a description of:</i> <i>(i) the change to the environmental planning instrument to which the agreement applies, or</i> <i>(ii) the development to which the agreement applies,</i>		
<i>(c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,</i>		
<i>(d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,</i>		
<i>(e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,</i>		
<i>(f) a mechanism for the resolution of disputes under the agreement,</i>		
<i>(g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.</i>		

**ITEM 3 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<i>(3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.</i>	The VPA does not exclude the operation of Section 94 on the proposed development.	Yes
<i>(5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 94EF without the approval of:  (a) the Minister, or  (b) a development corporation designated by the Minister to give approvals under this subsection.</i>	Section 94EF does not apply to the proposal.	N/A
<i>(6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.</i>	The VPA <u>does not</u> seek the exclusion of the application of Section 94.	N/A
<i>(7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.</i>	No additional parties are proposed.	N/A
<i>(8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.</i>	No joint planning agreement with another council or planning authority is proposed.	N/A
<i>(9) A planning agreement cannot impose an obligation on a planning authority:  (a) to grant development consent, or  (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.</i>	The planning agreement does not impose an obligation to grant development consent or change an environmental planning instrument.  Whilst the VPA forms part of the Development Application, support of the VPA does not grant approval to the Development Application.	Yes
<i>(10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section</i>	The works proposed under the VPA are to be subject to further consideration by Council and will be determined as part of the application.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 4**

<b>Environmental Planning and Assessment Act 1979 Clause 93F</b>		
<b>Clause 93F</b>	<b>Proposal</b>	<b>Complies?</b>
<i>or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.</i>	Subject to careful consideration of the proposed works by Council and standard conditions of consent, it is unlikely that the matters to be dealt with under the application and VPA will breach to <i>Environmental Planning and Assessment Act 1979</i> , applicable environmental planning instruments or development consent applying to the subject site.	

As identified above, it can be seen that the proposed Voluntary Planning Agreement satisfies the principles underlying the use of planning agreements and fulfils several categories of works that Council will consider as part of a VPA. Notwithstanding the above, further consideration of the Voluntary Planning Agreement and the public interest and benefit is detailed below.

The merits of the Voluntary Planning Agreement were discussed during several Executive Team meetings and an internal Panel chaired by Council’s Group Manager, Environment and Planning. It was considered that the VPA provided public benefit and was in the public interest. A break down of the value of VPA and the Section 94 Contributions is provided below.

<b>Item</b>	<b>Value</b>
VPA - Cash Contribution	\$205, 315.00
Contribution under Council’s Section 94 Contribution Plan	\$1, 022, 948.69
<b>Total Contributions to Council</b>	<b>\$1, 228, 263.69</b>

It can be seen that the proposed VPA represents public benefit. Normally, to ensure that the VPA is registered on the title of the land it would be necessary to impose a condition on the consent for this to occur prior to the issue of any Construction Certificate. This condition would be included if Council was of a mind to approve the Development Application.

**7. Policy Implications**

There are no policy implications through adoption of the recommendation.

**8. Critical Dates**

It is recommended that the VPA be considered jointly with the Development Application. Accordingly, the VPA must be determined at the same Council meeting as the Development Application.



**ITEM 3 (continued)**

**ATTACHMENT 4**

**9. Financial Impact**

If Council is of the view that the variations to the planning controls are acceptable and that the Development Application should be supported, then the VPA should also be supported as the VPA represents a public benefit.

**10. Other Options**

There are two options in considering the VPA:

- (1) If Council agrees with the recommendation to refuse LDA2011/0612 as detailed in the assessment report, then the VPA should also be refused.
- (2) Council may choose to reject the VPA offer but approve the DA. This option is not supported as it would result in a loss of the additional contribution proposed.

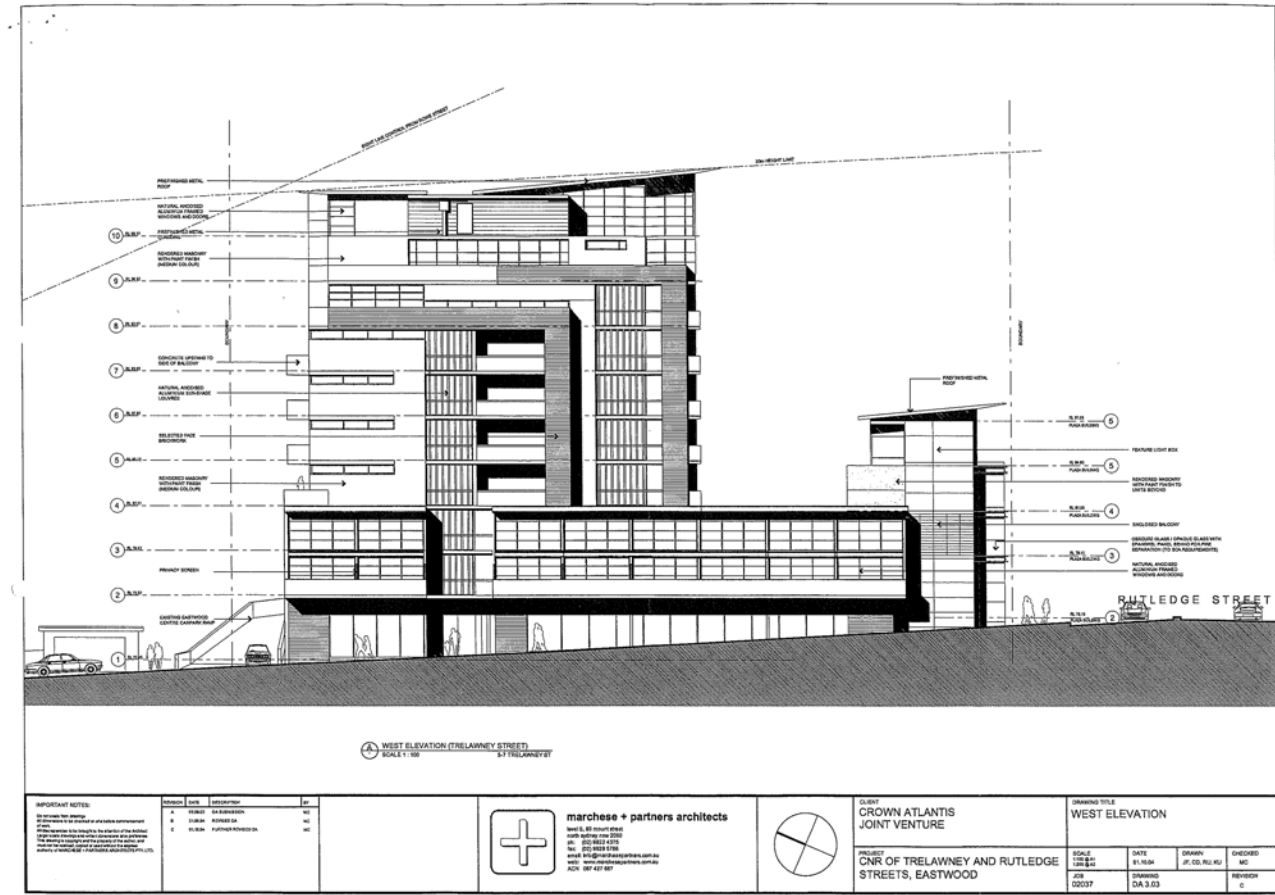
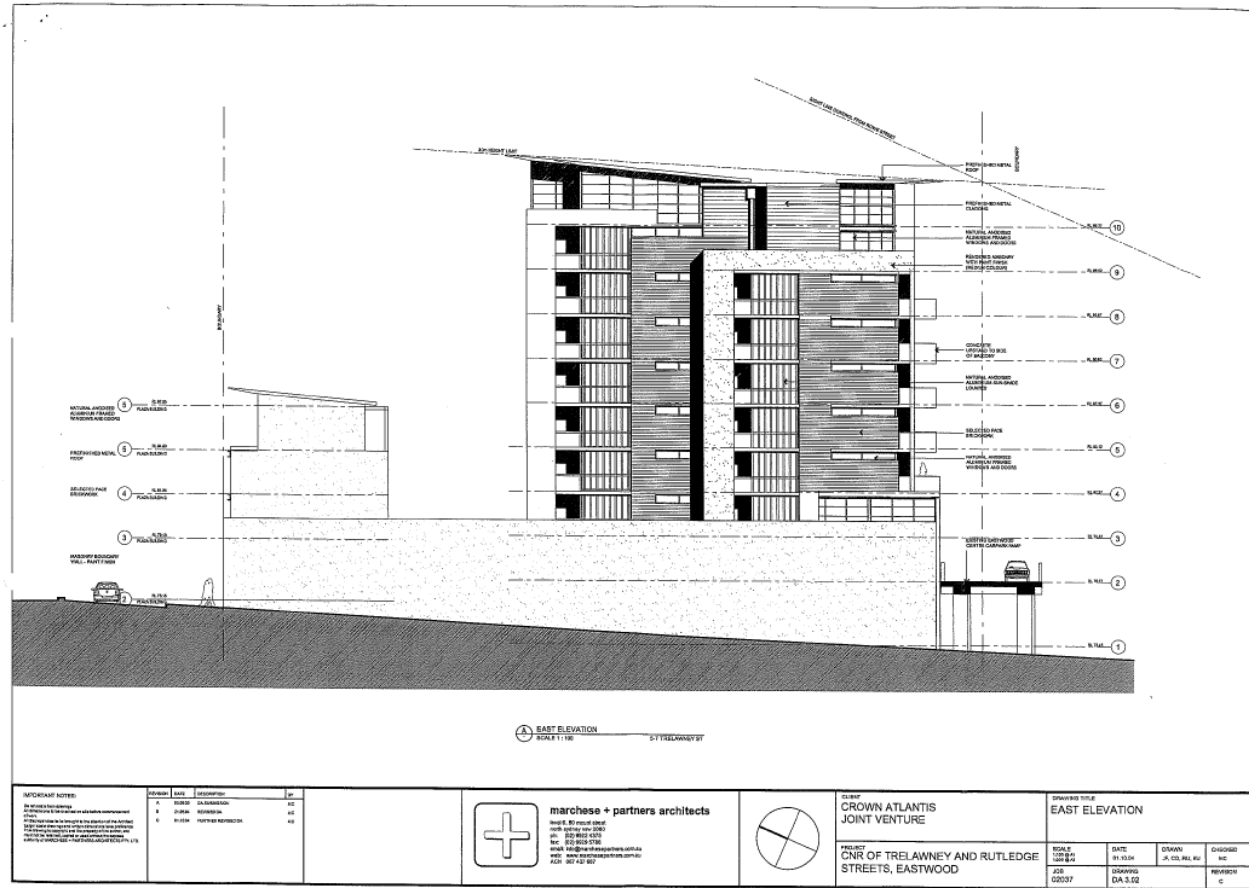
**11. Conclusion**

Through entering into a VPA for the subject development, Council will receive additional funds to be spent for the public benefit. Council must still determine whether the proposed non-compliances with the applicable planning controls and their associated amenity impacts are acceptable. The VPA has been clearly identified as relating to a planning purpose, providing public benefit and is in the public interest.

ITEM 3 (continued)

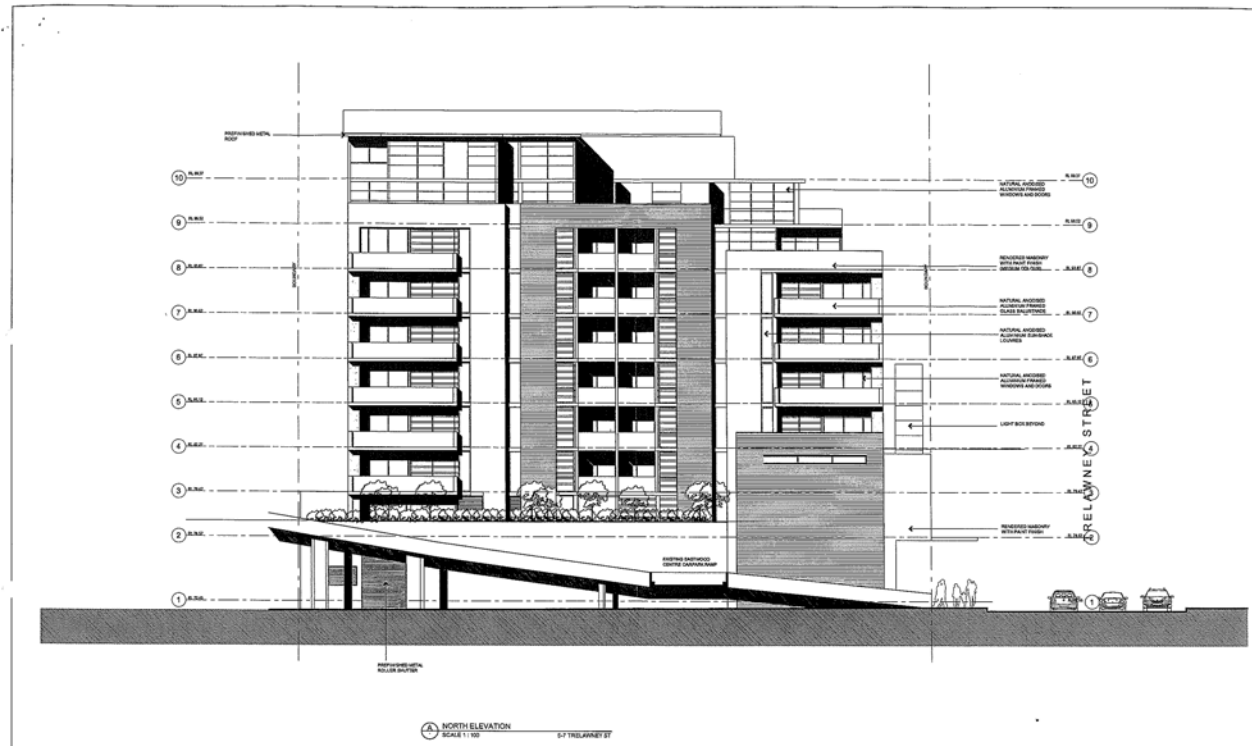
ATTACHMENT 5

PLAN SHOWING PROPOSAL REFUSED BY LAND AND ENVIRONMENT COURT IN 2004

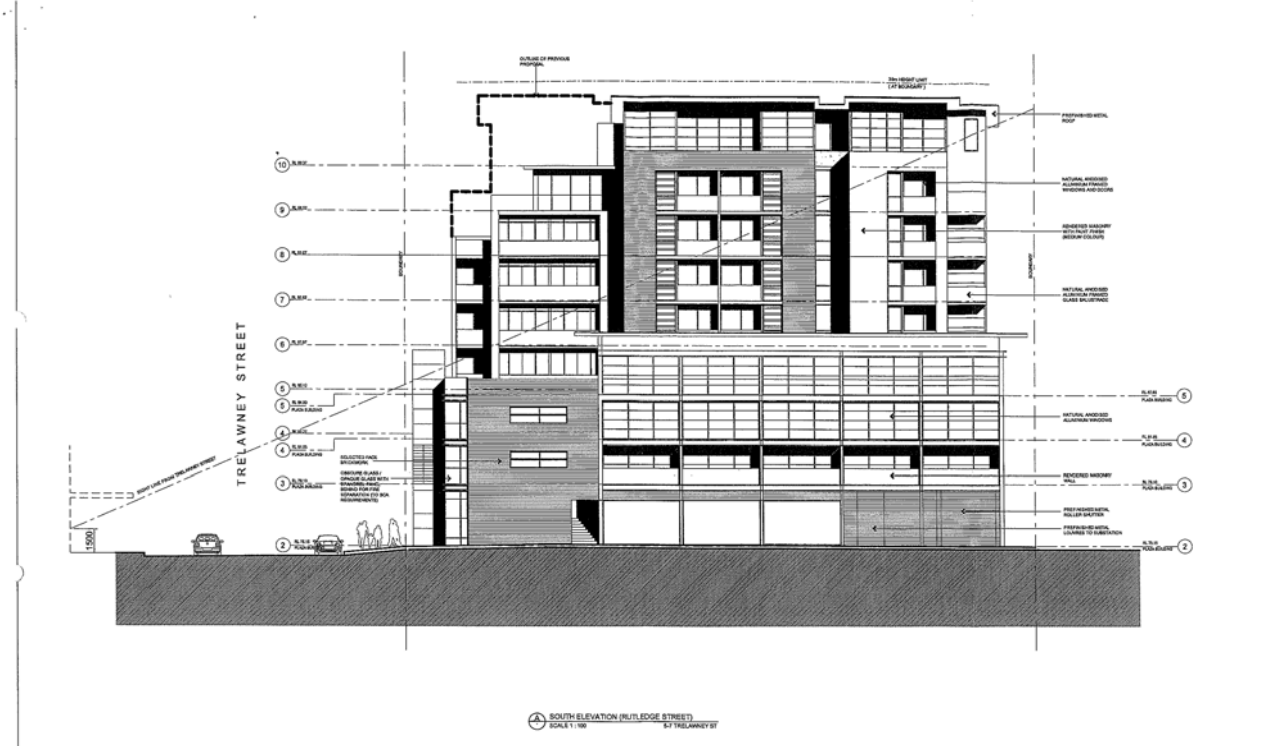


ITEM 3 (continued)

ATTACHMENT 5



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	No.	Date	Description	By																		
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<p><b>SCALE</b> 1:100</p> <p><b>DATE</b> 01/10/12</p> <p><b>JOB</b> 0037</p> <p><b>DATE</b> DA.3.00</p>	<p><b>DRAWN</b> JP, CS, RL, AU</p>	<p><b>CHECKED</b> MC</p>	<p><b>REVISION</b> C</p>																			



<p><b>REVISIONS</b></p> <table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> <th>Description</th> <th>By</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>01/10/12</td> <td>ISSUED FOR PERMIT</td> <td>MC</td> </tr> <tr> <td>2</td> <td>01/10/12</td> <td>ISSUED FOR PERMIT</td> <td>MC</td> </tr> <tr> <td>3</td> <td>01/10/12</td> <td>ISSUED FOR PERMIT</td> <td>MC</td> </tr> </tbody> </table>	No.	Date	Description	By	1	01/10/12	ISSUED FOR PERMIT	MC	2	01/10/12	ISSUED FOR PERMIT	MC	3	01/10/12	ISSUED FOR PERMIT	MC	<p><b>CLIENT</b> CROWN ATLANTIS JOINT VENTURE</p>	<p><b>PROJECT</b> CNR OF TRELAWNEY AND RUTLEDGE STREETS, EASTWOOD</p>	<p><b>DRAWING TITLE</b> SOUTH ELEVATION</p>			
	No.	Date	Description	By																		
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3	01/10/12	ISSUED FOR PERMIT	MC																			
<p><b>SCALE</b> 1:100</p> <p><b>DATE</b> 01/10/12</p> <p><b>JOB</b> 0037</p> <p><b>DATE</b> DA.3.01</p>	<p><b>DRAWN</b> JP, CS, RL, AU</p>	<p><b>CHECKED</b> MC</p>	<p><b>REVISION</b> C</p>																			

ITEM 3 (continued)

ATTACHMENT 6



Extract from Ryde Local Environmental Plan 2010 Height of Buildings Map

Maximum Building Height (m)	Zone Code
0	A
9.5	J
11.5	L
12.5	M
14	N
15.5	O
18.5	P
21.5	R1
22	R2
26	T1
27.5	T2
30	U1
30.5	U2
33.5	U3
37	V
44.5	W
75	AA



**4 28 GERARD STREET, GLADESVILLE. LOT 40 DP 10598. Local Development Application for the erection of a 2 storey dual occupancy (attached). LDA2011/328.**

**INTERVIEW: 4.50pm**

**Report prepared by:** Team Leader - Assessment

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

**Report dated:** 29/06/2012

**Previous Items:** 2 - 28 GERARD STREET, GLADESVILLE. LOT 40 DP 10598. Local Development Application for the erection of a 2 storey dual occupancy (attached). LDA2011/0328. - Planning and Environment Committee - 3 April 2012

**File Number:** grp/12/5/5/3 - BP12/780

## 1. Report Summary

**Applicant:** Mayfair Design Consultants P/L.

**Owner:** S Ho, S Y C Chan, D C C Lau, L Lim.

**Date lodged:** 24 June 2011

This report has been prepared to enable Council's further consideration of a development application (DA) for a 2 storey dual occupancy development at the subject property.

At the Council's Ordinary Meeting of 10 April 2012, it was resolved to defer consideration of this DA to allow the Group Manager Environment & Planning to undertake mediation between the applicant and the neighbours to address issues of concern regarding overshadowing of the properties at No 26 and No 30 Gerard Street.

The mediation meeting was held on 1 May 2012 at the Ryde Planning & Business Centre to discuss the issues of concern. Subsequently, on 17 May 2012, amended plans were received which incorporate the following design changes:

- Lowering the height of the roof over the single storey entries by 300mm; and
- Changing the roof configuration (over the single storey entries) from a gable roof to a hipped roof.

These amended plans were re-notified to the neighbours between 21 May and 5 June 2012, and no submissions were received.



**ITEM 4 (continued)**

Although the design of the proposal as originally submitted was compliant with Council's Development Control Plan (DCP) controls for overshadowing of neighbouring properties, the amendments suggested by the applicants during the mediation process have resulted in further improvement regarding solar access to the neighbours. Approval is recommended subject to the conditions in Attachment 1. These were the conditions attached to the original report to Planning & Environment Committee – but updated to include the latest amended plans to be the approved plans for this development, and Section 94 contributions adjusted to the latest update of CPI.

**Reason for Referral to Planning and Environment Committee:** At the request of Councillor Petch, Councillor O'Donnell, Councillor Maggio and Councillor Tagg.

**Public Submissions:**

Original Plans: Three submissions were received objecting to the development.

Amended Plans: No submissions received.

SEPP 1 (or clause 4.6 RLEP 2010) objection required? Not required.

Value of works? \$900,000.

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. 2011/0328 at 28 Gerard Street, Gladesville, being Lot 40, DP 10598 be approved subject to the **ATTACHED** conditions (Attachment 1).

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

**ATTACHMENTS**

- 1 Proposed Conditions
- 2 Map
- 3 Notes from Mediation Session
- 4 A4 Plans
- 5 A3 Plans - subject to copyright provisions - **CIRCULATED UNDER SEPARATE COVER**

**ITEM 4 (continued)**

Report Prepared By:

**Chris Young**  
**Team Leader - Assessment**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

## ITEM 4 (continued)

### 2. Background

The previous report to Planning & Environment Committee 3 April 2012 contains an assessment of the proposal as originally submitted, and details of the background to the development application up until that point in time.

At that meeting, the Committee resolved that this matter be referred to full Council for determination.

At Council's Ordinary Meeting of 10 April 2012, Council resolved:

*that this development application be deferred to allow the Group Manager – Environment & Planning to undertake mediation between the applicant and the neighbours to address issues of concern regarding overshadowing of the properties at No 26 and No 30 Gerard Street.*

Following this resolution, a mediation meeting was held on 1 May 2012 at the Ryde Planning & Business Centre. The notes of the Mediation Meeting, including details of the persons attending and the summary of discussions, are held at Attachment 2 to this report. It should be noted that the adjoining owners of No 26 Gerard Street who made a submission to the original plans (Mr and Mrs Mackay) were absent from the meeting as they were unable to be contacted either by telephone or mail when the meeting was being arranged.

### 3. Proposal – Amended Plans

At the mediation meeting, the applicant had suggested the following changes to improve solar access available for the neighbours (see plans below):

- Lowering the height of the roof over the single storey entries by 300mm; and
- Changing the roof configuration (over the single storey entries) from a gable roof to a hipped roof.

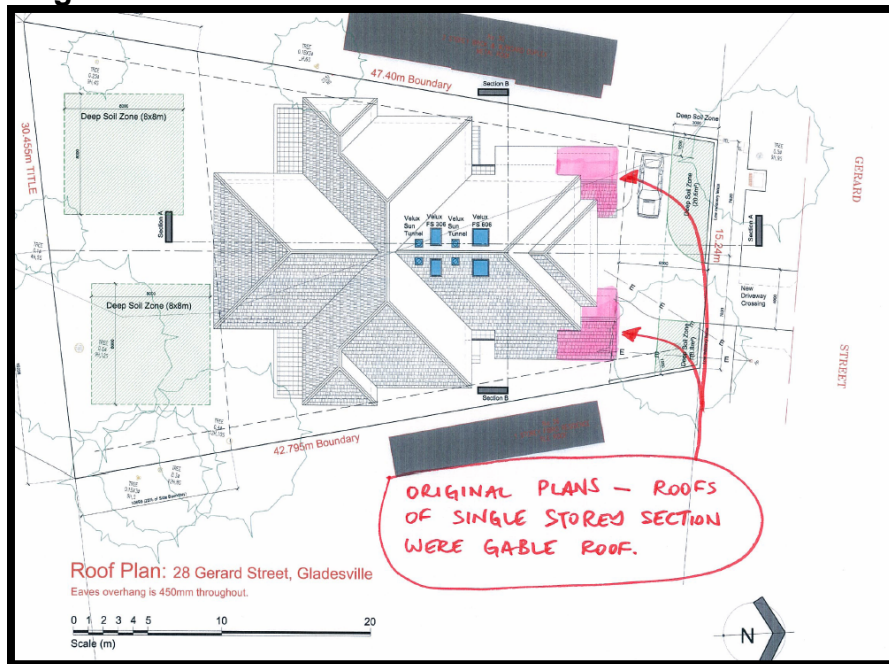
Further design changes were suggested – which was to narrow the width of the ground floor front entry hallways (ie the parts of the building shown pink in the plans below) by eliminating the coat cupboard and hallway cupboard. At the mediation meeting, the applicant was asked to investigate these design changes to see if they would result in further improvement to the solar access available to the neighbours.

In this regard, the applicants have advised that the design changes were investigated, but they would not translate to any significant improvement in solar access for the neighbours, and it would be undesirable for the owners/occupants of the development in terms of internal amenity and external presentation. The applicant noted the concerns by stating that these design changes would mean the front entries would have “the appearance of a back door”.

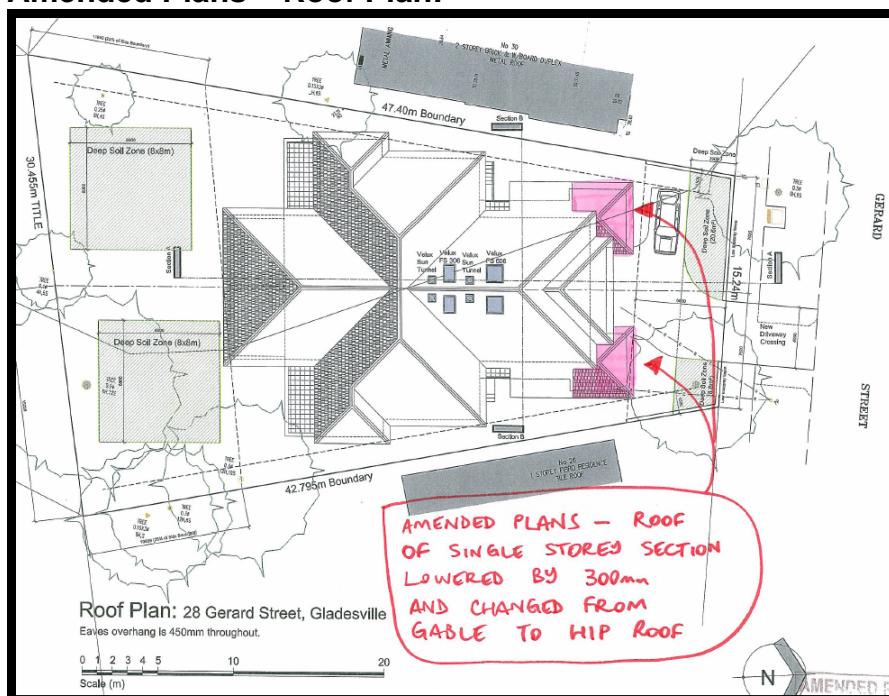
**ITEM 4 (continued)**

Amended plans were received from the applicants on 17 May 2012, which include the changes to the roof configuration as discussed above. These are shown in the following drawings:

**Original Plans – Roof Plan:**

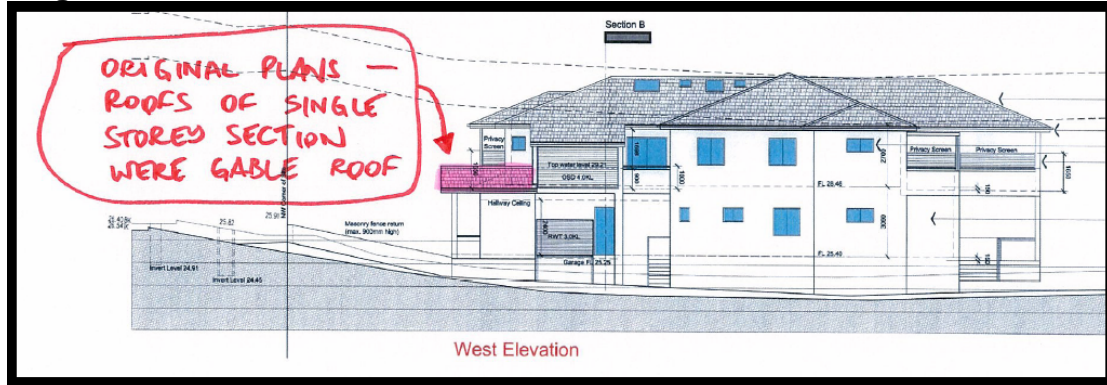


**Amended Plans – Roof Plan:**

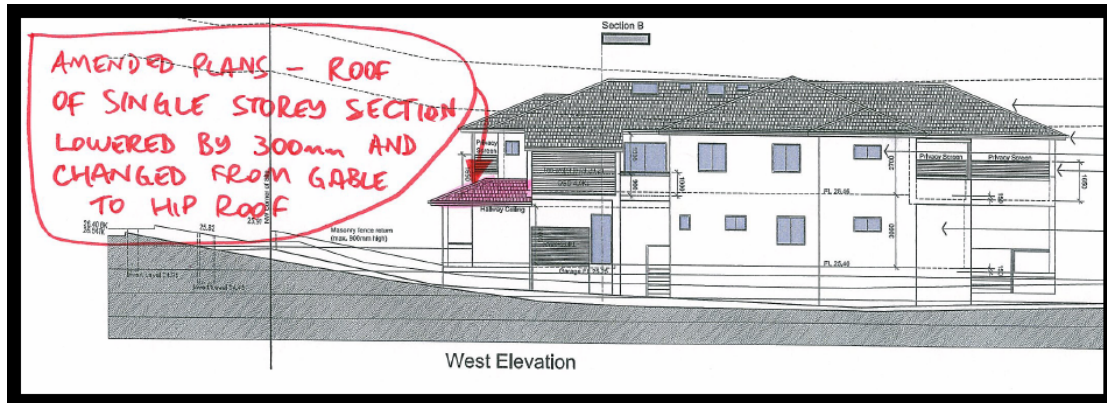


**ITEM 4 (continued)**

**Original Plans – West Elevation:**



**Amended Plans – West Elevation:**



**4. Submissions**

The amended plans were notified to adjoining owners and previous objectors, in accordance with Development Control Plan 2010 – Part 2.1, Notification of Development Applications, for a period between 21 May and 5 June 2012. In response to this process, no submissions were received.

It should be noted that following the mediation meeting and in addition to the normal neighbour notification plans (A4 size), the adjoining owners to the west (No 30 Gerard Street) were also provided with a set of larger sized (A3) plans, elevations and shadow diagrams showing the impacts on their property.



**ITEM 4 (continued)**
**5. Policy Implications**
**Relevant Provisions of Environmental Planning Instruments etc:**
**(a) Ryde Local Environmental Plan 2010**
Zoning

Under Ryde LEP 2010, the property is zoned R2 Low Density Residential. The proposal is permissible with consent within this zoning.

Mandatory Requirements

Other than the minor change in height for the single storey entry portion (for each dual occupancy dwelling unit), the height and FSR remains the same as for the original proposal – see mandatory requirements table below:

Ryde LEP 2010	Proposal	Compliance
<b>4.3(2) Height</b>		
9.5m	9.45m	Yes
<b>4.4(2) &amp; 4.4A(1) FSR</b>		
0.5:1	Ground floor: 287.4m <sup>2</sup> Second floor: 237.8m <sup>2</sup> Less 36m <sup>2</sup> (2 x single garage allowance for parking) Total (Gross Floor Area): 489.2m <sup>2</sup> FSR: 0.48:1	Yes

**(b) Relevant SEPPs**
**State Environmental Planning Policy (BASIX) 2009**

As noted in the original assessment report, a compliant BASIX certificate has been submitted with the DA, and the amended plans are relatively minor in nature so that an amended BASIX certificate is not required. A standard condition requiring compliance with this BASIX certificate has been included in the recommended conditions of consent (see Condition 3).

**(c) Any draft LEPs**
Draft Local Environmental Plan 2011

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the

**ITEM 4 (continued)**

zoning of the property is R2 Low Density Residential. The proposed development is permissible with consent within this zoning under the Draft LEP, and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zoning.

**(d) The provisions of any Development Control Plan applying to the land**

DCP 2010

The previous report to Planning & Environment Committee (3 April 2012) contained an assessment of the proposal, which indicated that the original development fully complied with the requirements of DCP 2010, except for matters regarding fill within building footprint and construction of side fencing.

The amendments submitted by the applicant following the mediation meeting are relatively minor in nature and do not result in any change to the development's height, footprint or siting (eg boundary setbacks etc), and so a full assessment is not required for the amended plans.

The amended plans do result in a slight improvement in terms of solar access for the neighbours, as discussed in the following section:

**Solar Access/Overshadowing**

This was the key issue of concern to be discussed in the mediation that was required following Council's resolution of 10 April 2012 regarding this DA.

The clause in Council's DCP 2010 regarding overshadowing of neighbouring properties appears below:

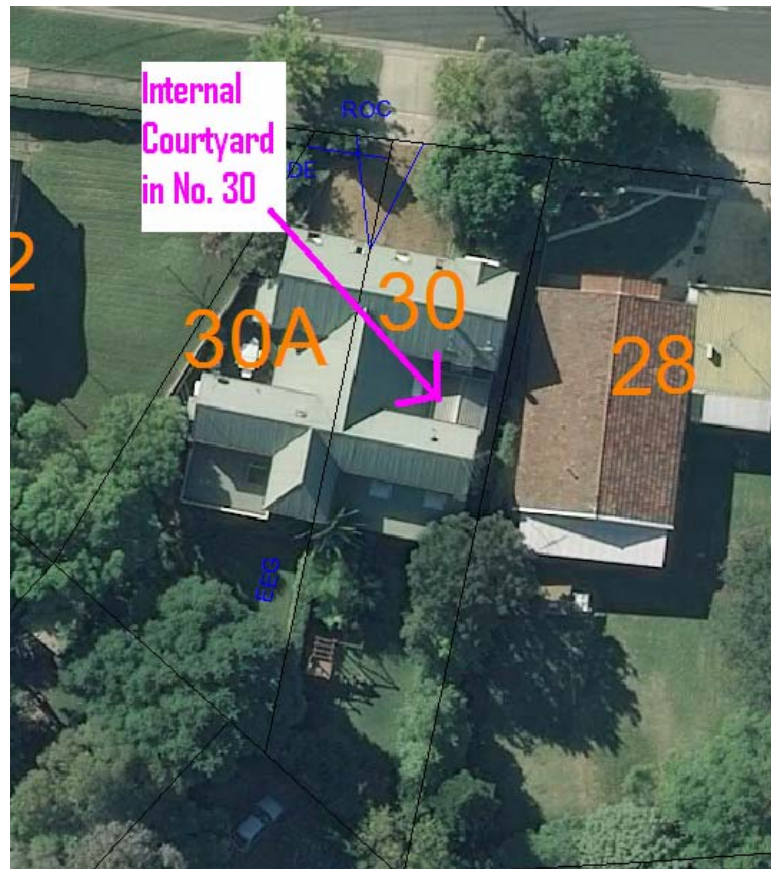
*e. For neighbouring properties ensure:*

*i. sunlight to at least 50% of the principal area of ground level private open space of adjacent properties is not reduced to less than two hours between 9am and 3pm on June 21, and*

*ii. windows to north-facing living areas of neighbouring dwellings receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface, where this can be reasonably maintained given the orientation topography of the subject and neighbouring sites.*

Although the original development plans complied with these requirements of DCP 2010, the purpose of the mediation meeting was to seek further improvement to the solar access for neighbours, in particular to the neighbour at No 30, whose dwelling contains an "internal courtyard" on the eastern side facing the subject site (see photo below):

**ITEM 4 (continued)**

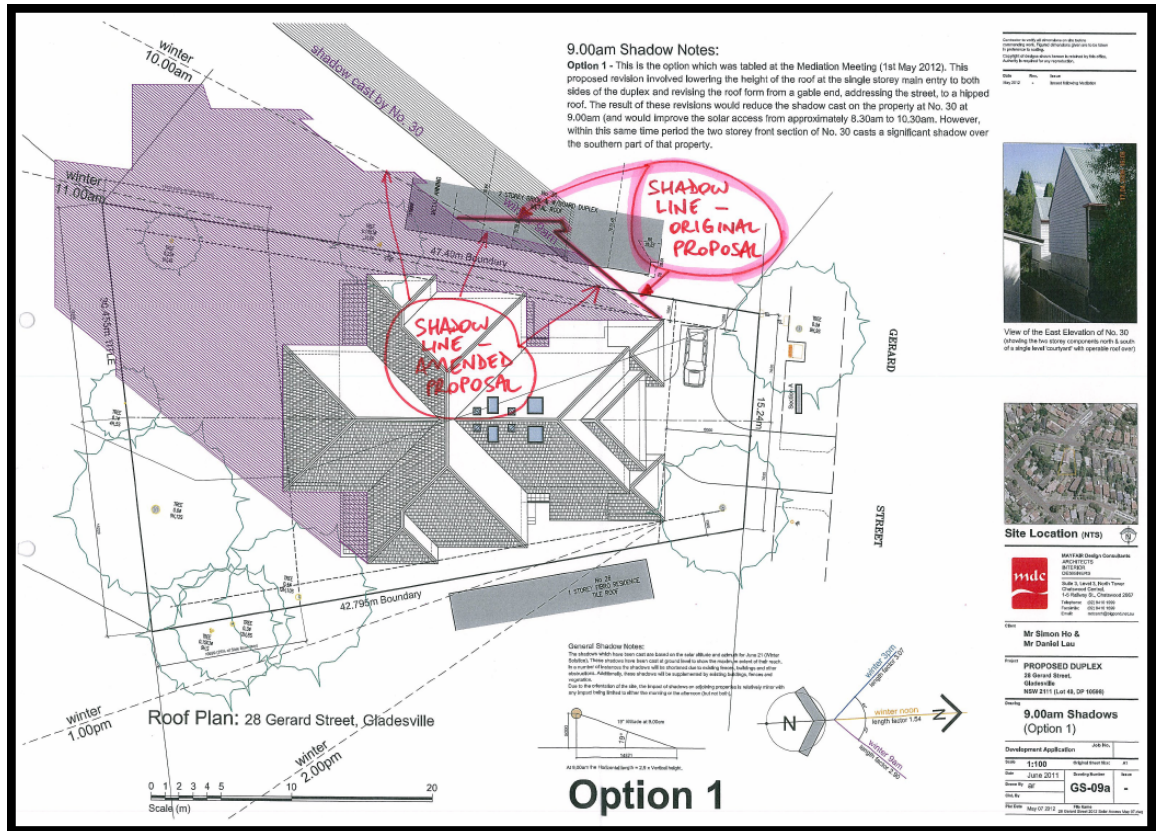


The plan amendments result in a slight improvement to the solar access available for No 30 Gerard Street at 9am, in particular to the internal courtyard facing the subject site. The shadow diagram (9am) for the amended plan, together with the shadow line for the original proposal for comparison, is shown in the diagram below.

The original proposal complied with the DCP requirements for overshadowing of neighbouring properties, given the orientation of the land which would result in the adjoining site at No 30 being unaffected by shadows from this development from 12noon onwards. Also, although the internal courtyard has emerged as a significant issue for the adjoining property in terms of solar access, this courtyard is not the “principal area of private open space” as mentioned in the DCP requirements – that area is the rear yard on the southern side of the adjoining dwelling.

The design amendments provided by the applicant as agreed during the mediation meeting process has resulted in improved solar access to the neighbour’s internal courtyard at 9am.

**ITEM 4 (continued)**



Given that these design changes have been made to the front entry of both dual occupancy units in this development, it is also expected that there will be similar improvements in terms of afternoon solar access to the neighbour to the east (No 26 Gerard).

The design of the development preserves as much as possible the solar access available to the neighbouring properties to the east and west. Also the applicant has co-operated with the neighbours and Council officers in making further design amendments to improve solar access, in keeping with the agreed outcomes of the mediation session for this development.

Section 94 Contributions Plan 2007

The original assessment report quoted Section 94 contribution amounts payable for this development, using the contribution rates current for the most recent quarter at the time of writing that report being December 2011.

The amended plans do not change the number of bedrooms or additional dwelling units, however the Section 94 contributions need to be re-calculated using the CPI figures for the most recent quarter available at the time of writing this report (the March 2012 quarter).



**ITEM 4 (continued)**

Using the figures for the most recent quarter, the proposed development will result in the following contributions under Council's Section 94 Contributions Plan:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community and Cultural Facilities	\$3,991.39
Open Space and Recreation Facilities	\$9,825.97
Civic and Urban Improvements	\$3,341.90
Roads and Traffic Management Facilities	\$455.76
Cycleways	\$284.75
Stormwater Management Facilities	\$904.74
Plan administration	\$76.78
<b>TOTAL</b>	<b>\$18,881.29</b>

Recommended Condition 17 relates to the payment of the above contributions.

**Conclusion**

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979. It is generally considered that the proposed development is suitable for approval subject to conditions.

The further design changes made by the applicant to the roofs of the front entries, as discussed at the mediation meeting regarding improvements to solar access to the neighbours, have resulted in a slight increase in sunlight available to the internal courtyard of the westerly neighbour (No 30 Gerard). Also, given the orientation of the land, that shadows from the proposed development cease to affect this neighbour between 9am and 12noon (ie there will be no shadows from 12noon onwards). Given that these design changes have been made to the front entry of both dual occupancy units in this development, it is also expected that there will be similar improvements in terms of afternoon solar access to the neighbour to the east (No 26 Gerard).

The design of the development preserves as much as possible the solar access available to the neighbouring properties to the east and west. Also the applicant has co-operated with the neighbours and Council officers in making further design amendments to improve solar access, in keeping with the agreed outcomes of the mediation session for this development. Accordingly this DA is presented back to the Planning & Environment Committee for consideration and determination. Approval is recommended subject to the conditions in Attachment 1.



**ITEM 4 (continued)**

**ATTACHMENT 1**

**DRAFT CONDITIONS OF CONSENT – 28 GERARD ST GLADESVILLE.  
AMENDED PLANS 17 MAY 2012**

**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:

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Survey/Site Plan	April 2012	GS-00 Issue A
Ground Floor Plan	April 2012	GS-03 Issue A
First Floor Plan	April 2012	GS-04 Issue A
Roof Plan	April 2012	GS-06 Issue A
Elevations and Driveway Section	April 2012	GS-07 Issue A
Sections	April 2012	GS-08 Issue A
Stormwater Concept Plans prepared by Kazarovski & Partners Pty Ltd	6/11/2011 and 19/11/2011	C-1795-01
Landscaping Plan prepared by Mayfair Design Consultants	June 2011	GS-L1

**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 381093, dated 15 June 2011.
4. If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.

**Protection of Adjoining and Public Land**

5. Hours of work  
Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and

**ITEM 4 (continued)**

**ATTACHMENT 1**

4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.

6. Hoardings:

- (a) A hoarding or fence must be erected between the work site and any adjoining public place.
- (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

- 7. 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.
- 8. The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
- 9. The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
- 10. The submission of documentary evidence (permit/approval) of compliance with the requirements of the Shell Corporation with respect to all works being carried out in proximity of the Shell Crude Pipeline – including use of heavy machinery, excavations, and backfilling.

**Works on Public Road**

- 11. The applicant is to apply to Council, pay the required fee, and have issued site specific alignment levels by Council prior to the issue of the **Construction Certificate**.

**General Engineering Conditions**

- 12. **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.
- 13. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
- 14. **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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**15. Road Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No drainage work shall be carried out on the footpath without this permit being paid and a copy kept on the site.

**Imported Fill**

16. All imported fill must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.

**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 prior to the issue of any Construction Certificate:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community and Cultural Facilities	\$3,991.39
Open Space and Recreation Facilities	\$9,825.97
Civic and Urban Improvements	\$3,341.90
Roads and Traffic Management Facilities	\$455.76
Cycleways	\$284.75
Stormwater Management Facilities	\$904.74
Plan administration	\$76.78
<b>TOTAL</b>	<b>\$18,881.29</b>

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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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.

**Structural certification**

19. The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements.
20. 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 (category: dwelling houses with delivery of bricks or concrete or machine excavation)
21. The following fees must be paid to Council in accordance with Council's Management Plan:
- (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
22. 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**.
23. The proposed privacy screens on either end of the rear facing first floor balconies, shall be increased in height to 1.8m. Full details shall be included in the Construction Certificate application.

**Fencing**

24. (a) 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**.
- (b) An additional 1.8m high privacy type fence shall be erected adjacent to the side boundary fence and opposite the end of the vehicle turning bay. The privacy fence shall be located as to preclude car headlight intrusion into the adjoining property.

**ITEM 4 (continued)**

**ATTACHMENT 1**

The privacy screen is to be detailed on the submitted **Construction Certificate** drawings.

**Lighting of Common Areas (driveways etc)**

25. 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.

**Engineering Conditions to be complied with Prior To Construction Certificate**

26. **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.

27. **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.

28. **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.**

29. **Driveway Location.** The driveway shall be located minimum of 300mm away from the lintel of the existing stormwater pit on the street.

30. **Permeable Paving.** The vehicle turning area at front shall be constructed using permeable pavers or similar.

31. **On-Site Stormwater Detention.** Stormwater runoff from all impervious areas shall be collected and piped by gravity flow to a suitable on-site detention system in accordance with City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. The minimum capacity of the piped drainage system shall be equivalent to the collected runoff from a 20 year average recurrence interval storm event. Overland flow paths are to be provided to convey runoff when the capacity of the piped drainage system is exceeded up to the 100 year average recurrence interval and direct this to the on-site detention system. Runoff which enters the site from upstream



**ITEM 4 (continued)**

**ATTACHMENT 1**

properties should not be redirected in a manner which adversely affects adjoining properties.

32. **On-site Stormwater Disposal.** Stormwater runoff from the impervious areas as indicated shall be collected and piped by gravity flow to an absorption trench system to Council's requirements. The absorption trench storage volume shall be designed in accordance with City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. Earthworks are to be detailed to demonstrate that the ground downstream of the trenches will be permeable to allow seepage from the trenches. A level spreader shall be placed downstream of the trenches to prevent erosion and an adverse impact on downstream properties.
33. **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.
34. **Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan (ESCP)* 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 Landcom. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- (a) Existing and final contours
- (b) The location of all earthworks, including roads, areas of cut and fill
- (c) Location of all impervious areas
- (d) Location and design criteria of erosion and sediment control structures,
- (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) Procedures for maintenance of erosion and sediment controls
- (l) Details for any staging of works
- (m) Details and procedures for dust control.

**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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**Prescribed Conditions**

**35. 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.

36. 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.

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

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

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

**38. Excavation adjacent to adjoining land**

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

**ITEM 4 (continued)**

**ATTACHMENT 1**

- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (d) 'Dial 1100 Before You Dig'
  - (i) Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavating or erecting structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).
  - (ii) If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the Development Consent (or a new development application) may be necessary.

**Safety Fencing**

39. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

**Engineering Conditions to be complied with Prior to Commencement of Construction**

40. **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.
41. **Compliance Certificate.** A Compliance Certificate should be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and City of Ryde, Development Control Plan 2010: - Part 8.1; Construction Activities
42. **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.

**ITEM 4 (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.

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

**Noise and vibration**

44. 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.
45. The L<sub>10</sub> 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**

46. 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.
47. No sediment, dust, soil or similar material shall leave the site during construction work.
48. 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.
49. All materials associated with construction must be retained within the site.

**50. Site Facilities**

The following facilities must be provided on the site:

- (a) toilet facilities in accordance with 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.

**51. Site maintenance**

The applicant must ensure that:

- (a) approved sediment and erosion control measures are installed and maintained during the construction period;

**ITEM 4 (continued)**

**ATTACHMENT 1**

- (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.

52. 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**

53. 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.
54. Trees that are shown on the approved plans as being retained must be protected against damage during construction.
55. Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.
56. A Consultant Arborist must be appointed to oversee all works, including demolition and construction, in relation to the trees identified for retention on the site.
57. Council is to be notified, in writing, of the name, contact details and qualifications of the Consultant Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.
58. A root protection zone is to be established around the root zone of the neighbouring Hackberry (*Celtis sp*), growing on No. 26 Gerard St (where the root zone occurs on the development site), and the Jacaranda (*Jacaranda mimosifolia*) at the rear of No. 28. The root protection zone shall be a minimum of 4m as measured from the trunk of the tree, and equivalent to temporary chainwire panels. A project arborist is to supervise the installation of root protection zones, and is to provide construction management advice in relation to minimising impacts upon the neighbouring Ash (*Fraxinus sp*) growing at No. 30. Details are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a **Construction Certificate**.
59. The Claret Ash on the landscape plan within the front setback is to be substituted with a native indigenous tree equivalent to: Blueberry Ash (*Elaeocarpus reticulatus*), Smooth-bark Apple (*Angophora costata*); or, Turpentine (*Syncarpia glomulifera*) Details are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a **Construction Certificate**.



**ITEM 4 (continued)**

**ATTACHMENT 1**

60. Street trees that are to be retained, whilst not requiring exclusion fencing, will be recognised to have Tree Protection Zones established around them. All restrictions applicable to areas within fenced Tree Protection Zones will apply to street trees. Existing driveways and footpaths that fall within any unfenced Street Tree Protection Zone, may be utilized for the specific purposed for which it was designed.

**Drop-edge Beams**

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

**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**

62. The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 381093, dated 15 June 2011.

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

64. 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**

65. 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](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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**

66. 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.

**Engineering Conditions to be complied with prior to Occupation Certificate**

67. **Disused Gutter Crossing.** All disused gutter and footpath crossings in Gerard Street shall be removed and the kerb and footpath reinstated to the satisfaction of Council.

68. **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.

69. **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 with all invert levels of pipes, tank levels, sizes 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.

70. **Drainage Construction.** The stormwater drainage on the site is to be constructed in accordance with plan the Construction Certificate version of Job No C-1795-01 issue 6 dated 19/11/11 prepared by Kazarovski & Partners Pty Ltd

71. **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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

- 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
- Confirmation from Council that connection to the Council's pipe system has been carried out to the satisfaction of Council.
- 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 vehicular crossing has been removed and the kerb and gutter have been constructed in accordance with Council's *Environmental Standards Development Criteria -1999 section 4*

72. **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.

73. **Positive Covenant, Charged.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the charged drainage 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 Charged Drainage Systems and to the satisfaction of Council.

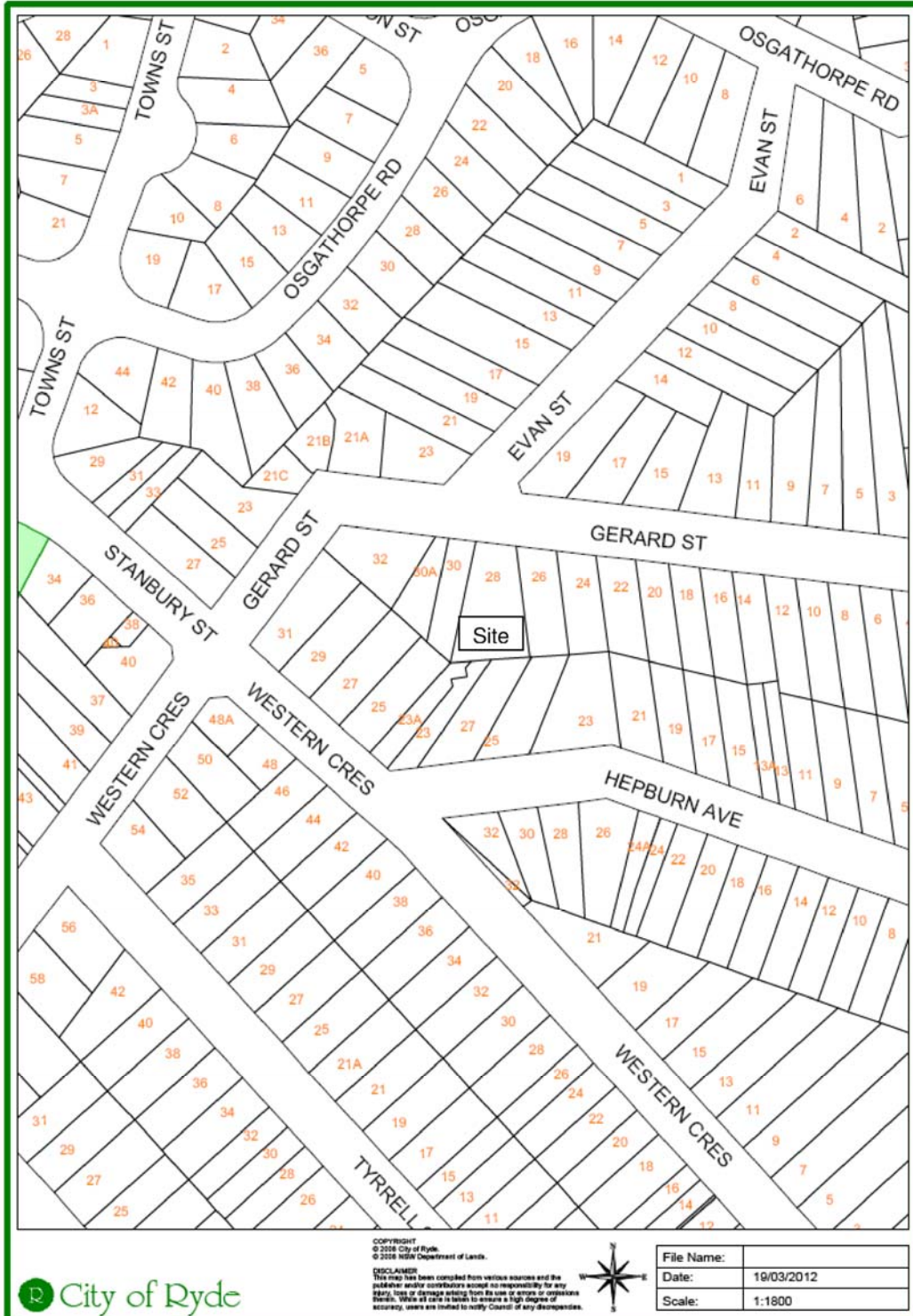
74. **Positive Covenant, Dispersal.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater dispersal system. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of On- site Dispersal Systems and to the satisfaction of Council.

**End of consent**

**ITEM 4 (continued)**

**ATTACHMENT 2**

No submissions received to amended plans.



**ITEM 4 (continued)**

**ATTACHMENT 3**

**Notes from Mediation Meeting**

**28 Gerard Street, Gladesville. Proposed 2 Storey Duplex. (LDA2011/328)**

**Wednesday 1 May 2012, 2.30pm.**

**Ground Floor Meeting Room, Ryde Planning and Business Centre**

**In attendance:**

<u>Council Officers:</u>	Dominic Johnson: Group Manager Environment & Planning (Chair); Chris Young: Team Leader – Assessment;
<u>Applicant:</u>	Mr Alistair Robb and Mr Andrew Lau (project architects).
<u>Neighbours:</u>	No 30 Gerard St - Mr Stephen Latham (owner) and Mr John Fowler
<u>Absent:</u>	No 26 Gerard St – adjoining owners Mr and Mrs Mackay unable to be contacted by phone or mail and did not attend mediation meeting.

**SUMMARY OF DISCUSSIONS:**

Dominic Johnson (DJ)	Opened the meeting and introduced those attending from Council. Explained the “rules” to be followed in the meeting including providing opportunities for both parties to speak and explain their point of view, mutual respect for each other’s position, and an expectation that all parties will work together to reach a solution.
DJ	Quoted the Council resolution which requires mediation to address issues of concern regarding overshadowing of the properties at No 26 and 30 Gerard St. It was noted that the owners of No 26 could not be contacted despite numerous attempts (phone and mail), but the mediation would proceed and issues regarding overshadowing of both No 26 and No 30 would be discussed.  Also noted that any amended plans submitted by the applicants will be re-notified to the neighbours, and further submissions can be made. A further report will then be prepared for Council’s Planning & Environment Committee (PEC). It was noted (in terms of timeframe for this further report) that Council goes into recess in early July, which could impact on when this matter goes back before PEC.
Stephen Latham/John Fowler (SL/JF)	Raised a potential issue also requiring discussion – impacts on ash tree (located near the boundary of No 28 and No 30 Gerard).
DJ	Noted that the mediation is only to discuss issues regarding overshadowing as per Council’s resolution – but we are happy to hear what the issue is regarding the tree.



**ITEM 4 (continued)**

**ATTACHMENT 3**

SL/JF	Stated that the issue is that draft condition 59 (from the report to the PEC on 3 April 2012) should be amended so that any pruning of this tree is undertaken in consultation with the owners of No 30.
DJ	This is a minor matter so the condition could be amended accordingly.
DJ	<p>Turned to the issue of overshadowing with the aid of the applicant's shadow diagrams. These show that the development's overshadowing impacts on No 30 would be mostly in the morning, and that by approximately 10am-11am the proposal would no longer cause any overshadowing of No 30. It was noted that these shadow diagrams do not show the location of the internal "courtyard" at No 30.</p> <p>(No 26 would begin to be overshadowed in the afternoon, approximately 1pm-2pm).</p>
JF	Noted that the impacts relate to the design of the development, which is a large 2 storey dual occupancy development. The impacts are greater in this instance as the adjoining site also has a dual occupancy development previously subdivided.
DJ	Noted that the overshadowing on both neighbouring properties is minimal and compliant with the DCP, but there will be an impact. Is there an ability to change the design to improve the situation regarding solar access for the neighbours?
Alistair Robb (AR)	Noted the constraints of the site, in particular the affectation in terms of overland flow which requires minimum floor levels higher than at present. Also the proposal is 2 storeys compared to the existing (single storey) so it is naturally higher.
AR	<p>Advised that in preparation for this mediation meeting, they have looked at possible improvements (amended plans were prepared and brought to the mediation meeting, but not formally submitted):</p> <ul style="list-style-type: none"> <li>• Lowering the overall height of the roof by some 300mm – which would reduce the length of the shadow by almost 1 metre (because in mid-winter, the length of shadows cast from an object is 3x it's height).</li> <li>• Changing the roof form of the (single storey) entry structures from a gable-end roof to a hip roof.</li> </ul> <p>Noted that by making these changes alone would significantly improve solar access in the morning for No 30 (eg a 50% improvement at 9am), also noting that the shadows from this development are gone from No 30 by mid-morning, and the front portion of the proposed development which causes the shadows onto the internal courtyard is single storey.</p>
JF	Advised that he feels the overshadowing impact would be much the same. The development does not pay due attention to the design and shape of the adjoining building at No 30. The shape of the building contains considerable articulation and is a "smart" building in terms of solar access.
DJ	Acknowledged the applicant's suggestions as good solutions. As another solution, the applicants were asked if deletion of the front hallway is an option (ie moving the entry door back to the line of the rear wall of the garage, and deleting the roof and side wall).

**ITEM 4 (continued)**

**ATTACHMENT 3**

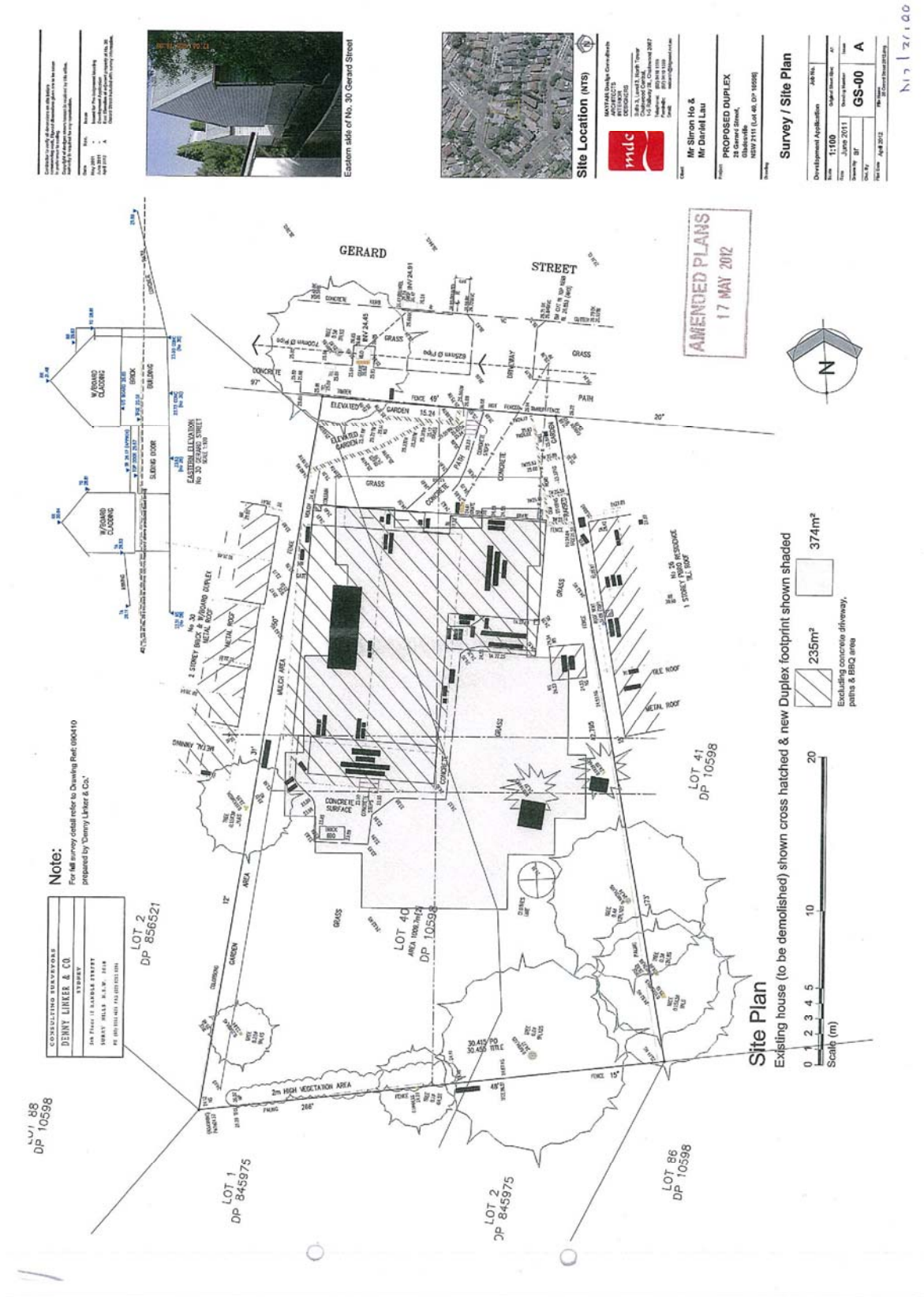
AR	Did not think this would be viable – would cause other problems in terms of deletion/re-location of the rainwater tanks, which would be problematic in terms of drainage/overland flow (ie significant re-design of the drainage plans would be needed).
JF	Noted that the proposal is substantial in terms of floorspace.
DJ	Noted that the suggested changes appear to be good solutions and would improve solar access for the neighbours (though we would need to see amended plans and shadow diagrams to confirm). Asked the neighbours if they would be willing to accept these changes to the proposal?
JF	Not at this stage. Advised that they are not sure all design possibilities have been explored, there should be a substantial reduction in floor space. The proposal reads as 2 x 6 bedroom dwellings.
DJ	Noted that these changes would be outside the scope of the resolution, which is to discuss overshadowing of the adjoining properties.
SL	Asked if the hallway entrance could be made narrower to reduce it's size and footprint, and therefore it's overshadowing impact?
AR	<p>Suggested that it could be possible to do this.</p> <p>Mr Robb offered to submit amended plans incorporating 2 options:</p> <ol style="list-style-type: none"> <li>1. Lowering the roof height by 300mm and changing the roof form from gable to hip (as noted above); and</li> <li>2. Lowering the roof height by 300mm and changing the roof form from gable to hip (as noted above) <b>PLUS</b> reducing the width of the entrance.</li> </ol>
DJ	<p>Advised that amended plans (including floor plans, elevations and amended shadow diagrams) of both options should be submitted, and these would be re-notified to neighbours as mentioned at the start of the mediation meeting.</p> <p>Closed the meeting at 3.40pm, thanked everyone for their attendance and positive contribution in the discussions.</p>





ITEM 4 (continued)

ATTACHMENT 4



**5 78 HERMITAGE ROAD, WEST RYDE. Lot 8 DP 24562. Local Development Application for Change of use to manufacturing and warehousing of pool/spa products and advertising signs. LDA2011/0022.**

***INTERVIEW: 4.55pm***

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**Report prepared by:** Senior Town Planner

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

**Report dated:** 22/06/2012

**Previous Items:** 2 - 78 HERMITAGE ROAD, WEST RYDE. LOT 8 DP 24562. Local Development Application for change of use to manufacturing, warehousing and retail sale of pool products, provision of a neighbourhood shop and the erection of 6 advertising signs. LDA2011/0022. - Planning and Environment Committee - 16 August 2011

**File Number:** grp/12/5/5/3 - BP12/749

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### **Report Summary**

This report is prepared to enable Council's further consideration of a change of use – manufacturing, warehousing and retail sale of pool products and the erection of associated signage at 78 Hermitage Road, West Ryde.

A report was considered at Planning & Environment Committee on 16 August 2011, then referred to Council on 23 August 2011. At the Council Meeting it was resolved that the application be deferred to allow the applicant to submit further information to address the reasons for refusal recommended in the report to the Planning & Environment Committee. The main reason for the recommendation for refusal was that the proposed use was prohibited within the IN2 Light Industrial zoning (being predominantly retail) which would result in the proposal being inconsistent with the character of the locality, not in the public interest and would adversely affect the amenity of the adjoining properties.

Amended plans were received from the applicant on 20 January 2012. These plans provided 2.1m high partition walls which separated the coffee shop, storage area and equipment assembly area thereby reducing the floor area accessible to the general public for retail sales. The number of signs has also been reduced from six to four signs.



**ITEM 5 (continued)**

The amended plans have addressed the reasons for refusal by reducing the accessible floor area to the public area, from approximately 230m<sup>2</sup> to 43m<sup>2</sup> plus 37.8m<sup>2</sup> for technical advice/reception area. The predominant use of the development is for renovations, repairs, servicing and storage of pools/spas and associated equipment.

The number of signs proposed to be erected has also been reduced from six signs with a total area of 25.9m<sup>2</sup> to four signs with total area of 12.8m<sup>2</sup>.

However, the amended plans created a separate “coffee/neighbourhood” shop, measuring 5.8m x 10.3m. The coffee shop is defined as a “food and drink premises” which is a type of retail premises and is prohibited within the zone. The applicant was advised of this and consequently submitted further amended plans dated 2 May 2012, which deleted the coffee/neighbourhood shop. This area is now to be used as spa storage and workshop. The amended proposal can now satisfy the IN2 Light Industrial zoning of the site.

The amended plans were notified to adjoining properties, including those who previously made a submission (one objecting to the proposal and one in support of the proposal) for a two week period, closing on 28 February 2012. The amended plans dated 2 May 2012 were renotified between 8 May 2012 and 30 May 2012. One submission was received in respect of the amended plans.

Copies of the amended plans received on 2 May 2012 are **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors.

**RECOMMENDATION:**

- (a) That Local Development Application No 2011/22 at 78 Hermitage Road, West Ryde, being Lot 8 DP 24562, be approved subject to the conditions of consent in Attachment 1.
- (b) That the person who made a submission be advised of Council’s decision.

**ATTACHMENTS**

- 1 Proposed Conditions
- 2 Previous report to Planning & Environment Committee
- 3 Map
- 4 A4 Plans
- 5 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

**ITEM 5 (continued)**

Report Prepared By:

**Sandra McCarry**  
**Senior Town Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

**ITEM 5 (continued)****Report****Background**

At its meeting on 16 August 2011, the Planning & Environment Committee considered a report regarding the change of use at 78 Hermitage Road, for manufacturing, warehousing and retail sale of pool products, provision of a neighbourhood shop and the erection of six advertising signs. The Planning & Environment Committee recommended:

- (a) *That this application be deferred for the applicant to submit further information to Council in support of their application addressing the reasons for refusal presented in the report to the Planning and Environment Committee on 16 August 2011, including the reduction of signage on the site and the storage of chemicals in compliance with WorkCover requirements.*
- (b) *That upon receipt of this information, a further report be presented to the Planning and Environment Committee within a three month period.*
- (c) *That Council officers immediately work with the applicant to ensure the safe storage of chemicals on the site.*

This recommendation was adopted at Council's Ordinary meeting on 23 August 2011.

The previous report to Planning & Environment Committee on 16 August 2011 is **ATTACHED** (Attachment 2).

The applicant provided amended plans on 20 January 2012, with the following amendments:

- Area partitioned to contained separate areas comprising of:
  - Staff room (13.2m<sup>2</sup>)
  - Display/storage areas (43m<sup>2</sup>)
  - Technical advice/water testing and reception area (37.8m<sup>2</sup>)
  - Storage area (40m<sup>2</sup>)
  - Coffee shop/neighbourhood shop (63.3m<sup>2</sup>)
  - Equipment assembly area (55.8m<sup>2</sup>)
  - Workshop (33m<sup>2</sup>)
  - Staff amenities with office over (12.6m<sup>2</sup>)
- The number of signs proposed to be erected was reduced from six signs with total area of 25.9m<sup>2</sup> to four signs with total area of 12.8m<sup>2</sup>.

**ITEM 5 (continued)**

- Confirmation from WorkCover that the work cover notices issued by WorkCover have been completed to WorkCover's satisfaction.

The amended plans resulted in the provision of a coffee shop/neighbourhood shop (63.3m<sup>2</sup>) with a separate entrance and partitioned off from the rest of the building. This coffee shop could be used separately to the rest of the building and accordingly is defined as "retail", which is a prohibited use within the IN2 zones. The applicant was advised of this and again amendments were made to comply with the zoning requirement.

Amended plans, 5901, D01C, D02, D03A, D04B, D05A were received on 2 May 2012 which deleted the coffee shop/neighbourhood shop component with the area to be used for the storage of pool equipment. A new roller door is proposed to be installed along the front elevation (Hermitage Road). No new driveway or crossing is proposed for this roller door.

The report that went to Planning and Environment Committee on 16 August 2011 recommended refusal for the following reasons:

1. *The proposed development is prohibited within the IN2 Light Industrial zoning of the subject site under the Ryde Local Environmental Plan 2010 and accordingly Council has no legal power to consent thereto.*
2. *The proposed development is inconsistent with the character of the locality.*
3. *The proposed development is not in the public interest.*
4. *The proposed development is likely to adversely affect the amenity of the adjoining properties through the introduction of a retail activity, with commensurate higher levels of motor vehicle movements, than that associated with an industrial activity.*

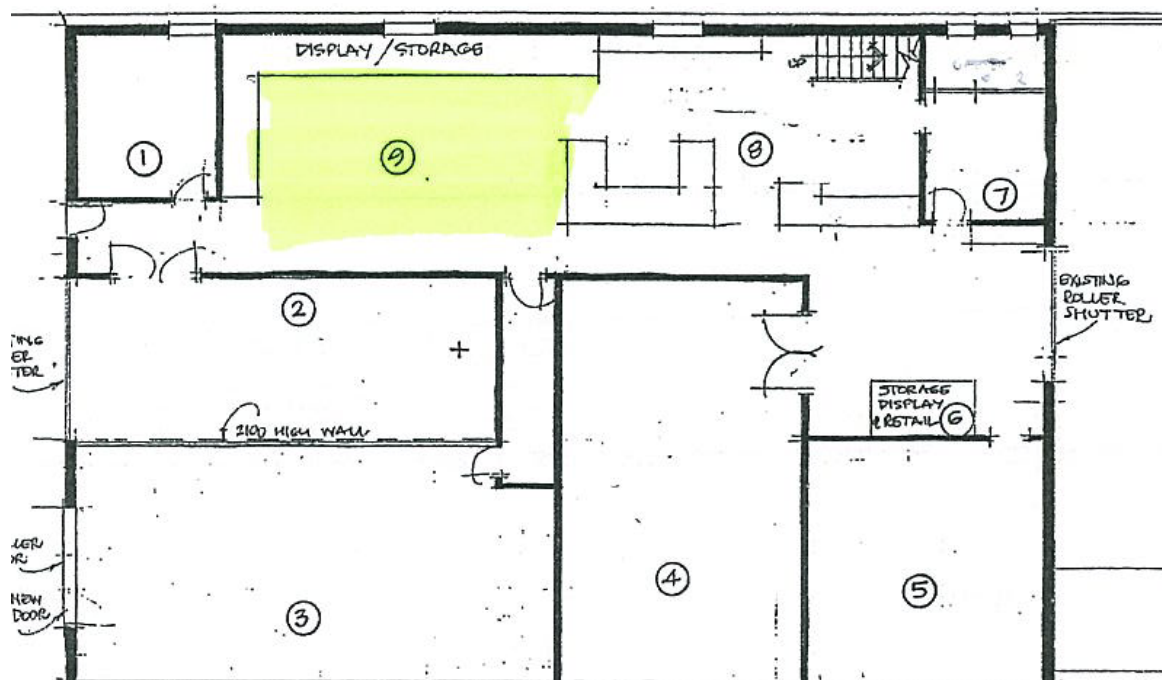
The amended design has addressed the above reasons as follows:

1. The amended design now physically delineates the premises into different work areas, which comprise of:
  - Several areas for the assembling of pool and spa equipment (including cleaning, washing and repairing) allocated as equipment assembly and workshop areas
  - Storage of pool, spas equipment and products
  - Office (administration, technical advice and water testing)
  - Display/storage area and
  - Staff amenities.

**ITEM 5 (continued)**

The area available for the display and retail sales has been reduced in size, from being the dominant land use to an area of approximately 43m<sup>2</sup>. The accompanying statement provided with the amended plans, states that the retail sales of the business amounts to three percent of the business.

The floor plan below illustrates that retail sale from the premises is not the major component of the business and is ancillary to the dominant use, which is the assembly, repair, servicing and storage of pool and spa equipment.



Layout of the premises - the highlighted area is the display area where goods are available for purchase (retail sales) and is not a major component of the business.

**KEY:**

Area No	Area Use
1	Staff room
2	Spa storage area & Workshop
3	Storage area of pool equipment
4	Equipment assembly area
5	Workshop
6	Storage display & Retail area
7	Amenities
8	Technical advice water testing area & Reception
9	Display/storage



**ITEM 5 (continued)**

RLEP 2010 defines “light industry” as:

**light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry.

**Note.** Light industries are a type of **industry**—see the definition of that term in this Dictionary.

**industrial activity** means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

The main activity carried out on the site is the assembling, repair and servicing of pools, spas and associated equipment and is not considered to interfere with the amenity of the neighbourhood. The proposed use would fall under the definition of light industry, which is permissible, with Council’s consent.

2. The proposal is a light industrial use which is permissible within the zoning. The use is not considered to have an adverse impact on the amenity of the area therefore the proposed development is not considered to be inconsistent with the character of the locality.
3. With the amendments to comply with the zoning requirements, the proposal is now permissible within the zone and is not considered to adversely impact on the amenity of the area and is now in the public interest.
4. For industries, Council’s Development Control Plan 2010 – Part 9.3 Car Parking requires parking to be provided at a rate of 1.3 – 1.5 spaces/100m<sup>2</sup> gross floor area (GFA). The gross floor area of the premises is 363m<sup>2</sup>. Based on the above, the proposal would require five to six car spaces to be provided for the use. A car parking area with off street parking for nine vehicles is provided at the rear with access off Nook Avenue. The proposal complies with Council’s parking requirements and is considered satisfactory in terms of car parking and motor vehicle movements.

**ITEM 5 (continued)**

The reasons for recommending refusal have now been addressed, as required by Part (a) of Council's resolution.

Part (b) of the resolution required a report to be presented to the Planning and Environment Committee within three months of receipt of the information (23<sup>rd</sup> August 2011). However due to delays with the applicant submitting amended plans and the issue of the coffee shop, Council's Officers have not been able to achieve the timeframe specified in Part (b). This delay has been due to the additional issues raised as a result of the first set of amended plans.

Part (c) of the resolution has also been satisfied. Council's Health Officer and WorkCover Authority inspected the premises on 30 August 2011. Improvement Notices were issued by WorkCover Authority in relation to the handling and storage of chemicals on the site. A follow up inspection was carried out on 12 October 2011 and WorkCover Authority has advised that the Improvement Notices have been completed to their satisfaction.

**Submissions:**

Adjoining properties owners and objectors were notified of the amended plans on 13 February 2012 until 28 February 2012 and then again on 8 May 2012 until 30 May 2012 for the second set of amendments. One submission was received which raised the following issues:

*As I have indicated previously, Razco Pools are using the premises for a retail outlet which is currently prohibited under the existing classification, IN2 Light Industrial. With the removal of the "workshop" it then removes any capability of the property to be used for manufacturing. It then becomes a straight retail outlet, which is not permitted.*

**Comment:**

The amended plans submitted 2 May 2012 removed the coffee/neighbourhood shop component with the area to be used for storage of pool equipment. The workshops component is not being removed with the premises still having workshop and equipment assembly areas. The total floor area of the premises is approximately 384m<sup>2</sup>, of which 192m<sup>2</sup> will be allocated for workshop/assembly areas, 43m<sup>2</sup> for retail display, 25.8m<sup>2</sup> for staff amenities and 37.8m<sup>2</sup> for technical service (reception, water testing and advice area) with the rest of the area as passageways.

The retail component equates to 11% of the floor areas and the applicant's accountant has advised that the amount of retail sales is only 3% of the total income of the business, therefore retail sales is not a major component.

**ITEM 5 (continued)**

*I have noticed that Razco Pools has closed off the area directly behind the roller shutter door in Hermitage Road and has sublet this area to an upholsterer. I believe there are no amenities for this sublet area and I believe it could be a substantial fire risk as there looks to be no manner of ingress or egress except for the roller door.*

Comment:

The area behind the existing roller door on the amended plans is allocated for use as a spa storage and workshop area.

Perusal of Council's records indicates that there is no approval for change of use to an upholsterer. The Manager Environmental Health & Building has been advised of this and the applicant has been directed to cease the separate use of this area for upholstering.

*The site plan provided for the DA indicates that there is a large 20m high existing tree located in the rear yard adjacent to the parking area.*

*This tree has recently been removed and I believe without Council's consent. It seems the occupier of this site believes he can do whatever he likes and rules and regulations are to be ignored. I again reiterate that I strongly object to his occupation of the site when it clearly does not conform to the regulations.*

Comment:

Consent has been issued for the removal of a tree located in the back yard. Council on 25 February 2011 issued permission to remove one *Eucalyptus sp.* (Gum) tree located at the rear of the subject property. The consent to remove the tree was valid until 25 February 2012 and a replacement tree (*Angophora costata* - Smooth Barked Apple) is required to be planted in its place. A recent inspection of the site indicates that a replacement tree has not been provided therefore **Condition 17** has been imposed requiring a replacement tree to be planted. Council's Tree Management Officer has also been requested to ensure that a replacement tree is provided.

**Assessment:****SECTION 79C HEADS OF CONSIDERATION****(a) The provisions of****(i) Any environmental planning instrument:****State and Sydney Regional Environmental Planning Policies**

**ITEM 5 (continued)**
State Environmental Planning Policy 64 – Signage:
**The aims and objectives of SEPP 64 are stated in Part 1 Clause 3(1) as follows:**

- (a) to ensure that signage (including advertising):
  - (i) is compatible with the desired amenity and visual character of an area, and
  - (ii) provides effective communication in suitable locations, and
  - (iii) is of high quality design and finish, and
- (b) to regulate signage (but not content) under Part 4 of the Act, and
- (c) to provide time-limited consents for the display of certain advertisements.

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

*that the signage is consistent with the objectives of this Policy as set out in Clause 3(1)(a), and;*  
*that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

The signage is compatible with the objectives of SEPP 64. Schedule 1 of SEPP 64 considers such matters as the character of the area, special areas, views and vistas, streetscape setting or landscape, site and building, associated devices and logos with advertisements and advertising structures, illumination, and safety. The proposed sign is assessed under the criteria contained in Schedule 1 and the aims of SEPP 64.

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
<b>1 Character of the area</b>	
•Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes - Industrial zone
•Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor advertising in the locality and the proposed signage does not include advertising, just business identification. The signage are uniform in design and colour and does not conflict with other signage
<b>2 Special areas</b>	
•Does the proposal detract from the	The site is not within any conservation

**ITEM 5 (continued)**

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	areas or open space
3 Views and vistas	
•Does the proposal obscure or compromise important views?	The site is not located within any existing nominated vista. By virtue of the nominated size, location and orientation the sign will not obscure or compromise any potential vista.
•Does the proposal dominate the skyline and reduce the quality of vistas?	The signs will not dominate the skyline nor does it reduce the quality of Hermitage Road. The signs will replace some existing signs and reduce the amount of signage on site.
•Does the proposal respect the viewing rights of other advertisers?	The signs will not compromise the viewing rights of other advertisers.
4 Streetscape, setting or landscape	
•Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Imposition of conditions to reduce: Sign 2 in size so that it is no greater than 5m <sup>2</sup> , (reduce by 0.5m <sup>2</sup> ) & delete Sign 3, in accordance with Council's requirements. With the imposition of these conditions, the scale and proportion will be appropriate for the streetscape.
•Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signs will consolidate signage for the use of the premises, replacing some signs in the same location.
•Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Yes – will tidy up the building by reducing clutter and simplify signage on the site.
•Does the proposal screen unsightliness?	There is no particular "unsightliness" on the site and the signs will provide identification rather than screening unsightliness.
•Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No – located entirely beneath the top of the building.
•Does the proposal require ongoing vegetation management?	No



**ITEM 5 (continued)**

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
<b>5 Site and building</b>	
• Is the proposal compatible with the scale, proportion & other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes
• Does the proposal respect important features of the site or building, or both?	With the imposition to reduce the size of Sign 2, the signage will be an integral part of the building, therefore compatible and respectful of the overall architectural integrity of the building.
• Does the proposal show innovation and imagination in its relationship to the site or building, or both	The proposed signs are simple flush wall signs that do not detract from the building.
<b>6 Associated devices &amp; logos with advertisements &amp; advertising structures</b>	
• Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/a
<b>7 Illumination</b>	
• Would illumination result in unacceptable glare?	Sign 3 will be internally illuminated however as it is a duplication of signs, <b>Condition 1(a)</b> has been imposed to remove the sign.
• Would illumination affect safety for pedestrians, vehicles or aircraft?	N/a
• Would illumination detract from the amenity of any residence or other form of accommodation?	N/a
• Can the intensity of the illumination be adjusted, if necessary?	N/a
• Is the illumination subject to a curfew?	N/a
<b>8 Safety</b>	
• Would the proposal reduce the safety for any public road?	The signage will not affect road safety.
• Would the proposal reduce the safety for pedestrians or bicyclists?	The signage will not affect pedestrian or cyclist safety

**ITEM 5 (continued)**

**SCHEDULE 1 – ASSESSMENT CRITERIA**

•Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

The proposed signage will not obscure any sightlines from public areas.

Accordingly, the sign is considered to be satisfactory, having regard to the aims and objectives of SEPP 64 Advertising and Signage.

**State Environmental Planning Policy No 33 – Hazardous and Offensive Development**

The proposal involves the storage of pool chemicals. Industries handling pool chemicals have the potential to be hazardous as the mixing of incompatible chemicals may result in fire and the release of toxic gases.

Clause 8- Consideration of Departmental guidelines of the SEPP states:

*In determining whether a development is:*

- (a) *a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or*
- (b) *an offensive storage establishment, offensive industry or other potentially offensive industry,*

*consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.*

Appendix 3 of The Department of Planning – Hazardous and Offensive Development Application Guidelines Applying SEPP 33 list “pool chemicals” as industries that may be potentially hazardous.

The guidelines contain a checklist and risk screening procedure to assist to determine whether a development falls within the definition of potentially hazardous industry. The screening procedure is based on the quantity of dangerous goods involved in the proposal.

A schedule of the chemicals, quantity to be stored and the threshold described in the guidelines are provided below:

**ITEM 5 (continued)**

Screening Threshold for dry pool chlorine (containers <30kg) = 2.5 tonne (2,500kg)

Name	Quantity	Total
Cal-Chlor 700	300kg	
Pool Chlorine	197kg	
Power Tabs	32kg	
Smart Stick	194.4kg	
		723.4kg

Screening Threshold for dry pool chlorine (containers >30kg) = 1 tonne (1,000kg)

Pool Chlorine	5 x 40kg =200kg	200kg
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Screening Threshold for other class 5.1 = 5 tonne (5000kg)

Dry Acid	127.7kg	127.5kg
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Screening Threshold for class 8 packaging group = 50 tonne (50,000kg)

Liquid Chlorine	48 x 15L = 720L	
Liquid Acid	10 x 15L = 150L 24 x 5L = 120L	
		990kg

The quantities of dangerous goods kept on the premises are significantly below the screening thresholds. Accordingly, the industry is not considered to be a potentially hazardous industry and SEPP 33 does not apply.

Council's Environmental Health Officer's concurs that the quantity of chemicals stored are below the thresholds and that the proposed development is not a Potentially Hazardous Industry as described by SEPP 33. **Conditions 14 & 15** have been imposed to ensure that the storage of chemicals/dangerous goods are in accordance with the requirements of the Work Health and Safety Act 2011 and the quantity stored do not exceed the screening thresholds as prescribed in Table 3 of the Hazardous and Offensive Development Application Guidelines: Applying SEPP 33.

**Deemed SEPP 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.

**ITEM 5 (continued)**

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 it is not a heritage item 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.

**Ryde LEP 2010:**
Zoning:

Under the provisions of the RLEP the subject site is zoned IN2 Light Industrial.

The proposed use would fall within the definition of “light industry” which is permitted, with consent, within the IN2 zone (see discussion above).

**(ii) Any proposed instrument (Draft LEP etc)**

None applicable

**(iii) Any development control plan**
Ryde DCP 2010:
Part 9.1 – Advertising Signs.

It is proposed to erect the following signs:

Sign/type	Frontage	Dimensions	Area	Wording
1 – Flush wall	Hermitage Road	0.8m x 0.8m	0.64m <sup>2</sup>	Directional – “P at rear”
2 – Flush wall	Hermitage Road	2.3m x 2.4m	5.5m <sup>2</sup>	Razco Pools & Landscape. Poolcare Australia Open 7 days 98093911
3 – Flush Wall	The Nook Ave	0.8m x 3.5m	2.8m <sup>2</sup>	Razco Pool
4 – Flush Wall	The Nook Ave	1.1m x 3.5m	3.85m <sup>2</sup>	Pool & spa care Pool & Spa Ware mobile service

**ITEM 5 (continued)**

Clause 3.4 - Industrial & Special Use Zone

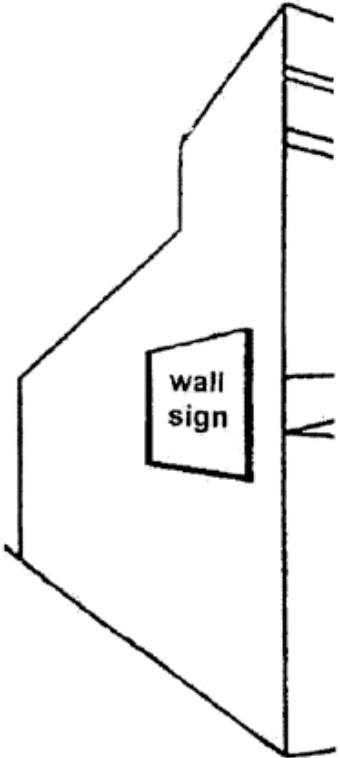
Extent of Signage:

The DCP states that the total area of signs on a site cannot exceed 1m<sup>2</sup> of signage per 1 metre of building frontage for the first 10 metres, then 0.3m<sup>2</sup> of signage for every metre of building frontage after that.

The DCP also notes that in cases of corner sites, the length of the longest street frontage is to be used. The subject site has a building frontage of 23.5m to The Nook Avenue. This is the longest street frontage, therefore the total amount of signage permitted to be installed is 14.05m<sup>2</sup>.  
(10m<sup>2</sup> + (13.5x0.3) = 14.05m<sup>2</sup>)

The total area of signage is 6.1m<sup>2</sup> (Hermitage Road) plus 6.6m<sup>2</sup> (The Nook Ave), a total area of = 12.7m<sup>2</sup>, which is below the maximum allowed.

Clause 4 Definition and requirements for different types of advertising signs.

<p><b>Flush Wall Sign</b></p> 	<p>A sign attached or painted on the wall of a building and projecting horizontally no more than 300mm from the wall.</p> <p>Controls</p> <ol style="list-style-type: none"> <li>Only one sign per building elevation;</li> <li>Where it is illuminated shall not be less than 2.6 metres above the ground;</li> <li>shall not exceed a maximum area of 5m<sup>2</sup></li> <li>shall not extend laterally beyond the wall of the building to which it is attached;</li> <li>shall not project above the top of the wall to which it is attached;</li> <li>shall not be located on a building wall if there is an existing building or business identification sign;</li> <li>shall not extend over a window or other opening or architectural feature;</li> </ol>	<p>No – two per elevations. Yes – more than 2.6m above ground.</p> <p>No– Sign 2 exceed 5m<sup>2</sup> Yes – does not extend laterally beyond the wall.</p> <p>Does not project above the top.</p> <p>N/a</p> <p>Does not extend over window or any architectural feature.</p>
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**ITEM 5 (continued)**

	<p>h. shall not project horizontally more than 300mm from the wall; and</p> <p>i. Consideration must be given to design and aesthetics, so as to harmonise with the nature of the streetscape and townscape.</p> <p>Flush wall sign advertising on end walls adjoining residential properties are prohibited. However, Council may permit advertising on end walls adjoining a public place.</p>	<p>Does not project more than 300mm from the wall.</p> <p>Design and aesthetics in keeping with the streetscape.</p>
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In respect of reduced signage the applicant has submitted the following photomontage drawings detailing a reduced number of signs:



Hermitage Road frontage

**ITEM 5 (continued)**



The Nook Avenue

Whilst the number of signs have been reduced, there are still non-compliances in terms of size and number of flush wall signs allowed per elevation. DCP 2010 states only one flush wall, maximum size 5m<sup>2</sup>, allowed per elevation.

Along Hermitage Road, two flush wall signs are proposed – Sign one is a directional sign, directing patrons to the parking area and Sign two - a business identification sign. It is considered as Sign one is a small direction sign, which is necessary to direct patrons to the parking area and is not a duplication of business identification, the proposed variation to number of flush wall signs along Hermitage Road is worthy of support. With regards to the size of Sign two, being 0.5m<sup>2</sup> over the maximum allowed, a condition can be imposed requiring the size of the sign to be reduced to a maximum area of 5m<sup>2</sup>. **Condition 4** has been imposed requiring this. If Council is willing to support the sign as shown in the photo above (Sign No. 2) then Condition 4 could be deleted.

Along The Nook Avenue, two flush wall signs are also proposed. Sign 3 is an illuminated flush wall sign with the name of the business. Sign 4 is another flush wall sign directly below Sign 3 advertising the type of services conducted by the business. The combined area of the two signs exceeds 5m<sup>2</sup>. It is considered that as the name of the business is already identified by Sign 1, located just around the corner, Sign 3 is

**ITEM 5 (continued)**

a duplication of signage and should be removed. **Condition 1(a)** has been imposed requiring this.

Part 9.3 – Car Parking.

The previous use in the subject building was that of a motor vehicle repair business.

The proposed industrial use has the same generation rate for off-street car parking spaces as did the previous use. On this basis the proposed retention of nine (9) off-street car parking spaces at the rear of the industrial building is considered to be reasonable.

**The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The subject property has a frontage of 16.3m to Hermitage Road and currently there is a front entrance door and a 4m wide roller door along the front elevation. It is proposed to provide another roller door along the front elevation, located south of the existing roller door with a separation of approximately 1.7m between the two roller doors. The roller door is to provide *access from Hermitage Road and is to permit easy access to load and unload pool equipment to this area from a forklift that will come from the rear of the building*. It is not proposed to provide any new layback or driveway for this roller door.

Given the location of the site - within an industrial zone and with no residential development nearby and that Council's Heritage Officer has raised no objections to the proposal, the provision of a new roller door along the front elevation is not considered to adversely impact the streetscape and can be supported by Council.



**ITEM 5 (continued)****16. Other Options**

If Council is willing to support the signage as proposed then Condition 1(a), which is for the removal of Sign 3 and Condition 4 which is to reduce the size of Sign 2, could be deleted.

**17. Consultation – Internal and External**Internal Referrals

**Development Engineer (18 March 2011):** Council's Development Engineer has commented as follows:

*The proposal does not create any additional stormwater runoff impacts, however as the site is mapped as being affected by overland flow from a large upstream catchment it would be appropriate to require a flood impact assessment and a site emergency response plan be prepared for the site. This will be a condition of consent as follows:*

*Prior to issue of a Construction Certificate a Flood Impact Assessment Report and a Site Emergency Response Plan in accordance with the principles outlined in the Eastwood & Terry's Creek Floodplain Risk Management Study and Plan shall be prepared by a suitably qualified engineer. The report shall address but should not be limited to the safe evacuation of people and methods of minimising the damage to the equipments during a flood including personnel responsible for implementing the Site Emergency Response Plan etc.*

*The report shall be submitted to the Principal Certifying Authority for approval and prior to issue of any Occupation Certificate an engineer shall certify that all requirements of the Flood Impact Assessment Report and a Site Emergency Response Plan have been complied with.*

**Condition 18** has been imposed requiring the above.

**Building Surveyor (29 March 2011):** Has raised no objection to the application subject to conditions of consent.

**Environmental Health Officer (31 May 2012):** Council's Environmental Health Officer has reviewed the amended plans and subject to conditions of consent has raised no objections to the proposal.

**Heritage Officer (1 June 2012):** Council's Heritage Officer has reviewed the amended plans and has advised that the proposal will not affect the heritage significance of the heritage item opposite.



**ITEM 5 (continued)**External Referrals

Nil.

**18. Conclusion**

The matters identified by Council at its meeting on 23 August 2012 have now been satisfactorily addressed.

The layout of the premises has been modified so as to clearly constitute an industrial use involving swimming pool construction, repair and service business. There still remains a small retail element but this is an ancillary to the main use. The amended development is now a permitted development in the zone.

The proposed amount of signage has significantly been reduced and is now considered to constitute a level consistent with the industrial location. Conditions are recommended to reduce the size of Sign 2 and delete Sign 3, which will ensure that the proposal will comply with the DCP requirements. Retention of the existing nine off-street car parking spaces is reasonable.

The applicant has satisfactorily attended to all the requirements of WorkCover and Conditions 14 and 15 are recommended to ensure storage of chemicals complies with State Government requirements.

The development application is now recommended for approval.



**ITEM 5 (continued)**

**ATTACHMENT 1**

**CONDITIONS LDA2011/22**

**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:

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Architectural drawings prepared by Peter Hall Architects Pty Ltd	Dec 2010. Amended plans 2 May 2012	5901 D01C
Architectural drawings prepared by Peter Hall Architects Pty Ltd	Dec 2010. Amended plans 2 May 2012	5901 D02
Architectural drawings prepared by Peter Hall Architects Pty Ltd	March 2012. Amended plans 2 May 2012	5901 D03A 5901 D04B 5901 D05A

Prior to the issue of a **Construction Certificate**, the following amendments shall be made (as marked in red on the approved plans):

- (a) To reduce duplication of signage on site and to comply with the number of signs allowed on any one elevation, Sign 3 reading Razco Pools is not approved and to be removed.

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

2. **Building Code of Australia:** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **Signage - not approved unless shown on plans:** This consent does not authorise the erection of any signs or advertising structures not indicated on the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is "exempt development".
4. **Signage:** Sign 2 located on the Hermitage Street elevation is not to exceed 5m<sup>2</sup> in area.

**ITEM 5 (continued)**

**ATTACHMENT 1**

5. **Hours of work:** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Public space:** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
7. **Compliance with Australian Standards:** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.
8. **Drainage of workshop floors** – If necessary for the collection of wastewater, the floor of any workshop must be graded to grated drains or collection sumps located within the workshop area and connected to a wastewater treatment and disposal system approved by Sydney Water Corporation.
9. **Stormwater to be directed away from workshop** - All uncontaminated stormwater from the roof and external paved areas of the site must be directed away from the workshop areas and discharged to Council's stormwater drainage system.
10. **Ventilation of rooms** – Every habitable room, sanitary compartment or other room occupied by a person for any purpose must be provided with adequate natural ventilation or an approved system of mechanical ventilation.
11. **Plumbing and drainage** – All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation.
12. **Noise and vibration from plant and equipment** – Unless otherwise provided in this consent, the operation of any plant or equipment installed on the premises must not cause:
  - (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factory corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA 2000).

**ITEM 5 (continued)**

**ATTACHMENT 1**

- (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard A/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
- (c) The transmission of vibration to any place of different occupancy.

**13. Bunding of above ground storage tanks** - Any above ground liquid storage tanks, drums or containers must be stored in a covered and bunded area to prevent the escape of spills or leaks. The bunds must have a capacity of at least 110% of the largest container stored inside the bund.

**Storage of Dangerous Goods and Chemicals:**

**14. Storage of dangerous goods** - The storage of dangerous goods must comply with the requirements of the *Work Health and safety Act 2011 and Work Health and Safety Regulation 2011*.

**15. Quantity of chemical stored** – The quantity of chemicals stored on the premises is not to exceed the screening threshold as prescribed in Table 3 of the Hazardous and Offensive Development Application Guidelines, State Environmental Planning Policy 33.

**Fire Safety Matters**

**16. Fire Safety** - Changes in building use

- (a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

NOTE: The obligation under this clause to comply with Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

- (b) This clause does not apply to the extent to which an exemption is in force under clause 187 and 188 in the Environmental Planning and Assessment Regulations 2000.
- (c) In this case clause, “Category 1 fire safety provision” has the same meaning as it has in Clause 3 in the Environmental Planning and Assessment Regulations 2000 subject to any terms of any condition or requirement referred to in Clause 187(6) or 188(4).

**ITEM 5 (continued)**

**ATTACHMENT 1**

- 17. Replacement Tree:** One *Angophora costata* (Smooth Barked Apple) tree is to be planted in the rear yard as a replacement tree for the removal of the *Eucalyptus sp.* (Gum). The tree is required to be planted as soon as practicable. Once the tree has been planted Council's Tree Management Officer is to be contacted to arrange for inspection.

**PRIOR TO CONSTRUCTION CERTIFICATE**

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

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

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

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

- 18. Flood Impact Assessment:** Prior to issue of a Construction Certificate a Flood Impact Assessment Report and a Site Emergency Response Plan in accordance with the principles outlined in the Eastwood & Terry's Creek Floodplain Risk Management Study Plan shall be prepared by a suitably engineer. The report shall address but should not be limited to the safe evacuation of people and methods of minimising the damage to the equipments during a flood including personnel responsible for implementing the Site Emergency Response Plan. The report is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

- 19. Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (other building with no delivery of bricks or concrete or machine excavation).

- 20. Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:

- (a) Infrastructure Restoration and Administration Fee
- (b) Enforcement Levy

**ITEM 5 (continued)**

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21. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
22. **Work Plan** - A site works plan must be prepared and submitted with the **Construction Certificate** for every demolition, earthworks or building works indicating methods of sediment and pollution control in accordance with Council's DCP 2006, Part 8.1 – Construction Activities.
23. **Sediment Control** - Sediment control works are to be installed and maintained in accordance with Council's Development Control Plan 42 for Construction Activities.
24. **Sydney Water – quick check.** The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre, prior to the release of the **Construction Certificate**, to determine whether the development will affect any Sydney Water assets, sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building, Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water assets - see Building, Development and Plumbing then Building and Renovating.

Or telephone 13 20 92.

**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.

**25. Site Sign**

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.



**ITEM 5 (continued)**

**ATTACHMENT 1**

Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**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.

26. **Critical Stage Inspections** -The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
27. **Waste** -Concrete wastes must be collected, stored and treated in accordance with the *Concrete Wastes* guide published by the Environment Protection Authority.
28. **Waste** - Only unpolluted water is to be discharged to Council's stormwater drainage system.
29. **Noise** -The L<sub>10</sub> 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.
30. **Construction Hours** - All demolition and all construction and associated work is to be restricted to between the hours of 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No work is to be carried out on Sunday or public holidays.
31. **Public Land** -No spoil, stockpiles, building or demolition material is to be placed on any public road, footpath, park or Council owned land.

**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.

**ITEM 5 (continued)**

**ATTACHMENT 1**

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.

32. **Occupation Certificate** - 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.

33. **Flood Impact Assessment:** Prior to the issue of any Occupation Certificate an engineer shall certify that all requirements of the Flood Impact Assessment Report and a Site Emergency Response Plan have been complied with.

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

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

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

35. **Connection to sewer** - The premises must be connected to the sewerage system by gravity flow and documentary evidence of compliance must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

**OPERATIONAL CONDITIONS**

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

**ITEM 5 (continued)**

**ATTACHMENT 1**

- 35. Hours of Operation:** The hours of operation are to be restricted to:
- 7.00am to 6.00pm (Monday-Friday).
  - 7.00am to 5.00pm (Saturday)
  - 7.00am to 5.00pm (Sundays and public holidays)
- 36. Offensive Noise:** The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
- 37. Signage:** All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.
- Any translated message must be accurate and complete.
- No amendment to the size of a sign will be permitted to allow for both the English and translated language to be displayed.
- 38. Assembly and servicing to be carried out in workshop** - All assembly and servicing must be carried out within the confines of the designated workshop areas.
- 39. Storage and disposal of wastes** - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
- 40. Waste containers** - An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
- 41. Disposal of liquid wastes** - All liquid wastes generated on the premises must be treated and discharged to the sewerage system in accordance with the requirements of Sydney Water Corporation or be transported to a liquid waste facility for recycling or disposal.
- 42. Trade waste permit** - The applicant must contact the Wastewater Source Control Branch of Sydney Water Corporation on Tel. 13 11 10 to determine whether a Trade Waste Permit is required before discharging any trade wastewater to the sewerage system.
- 43. Maintenance of waste storage areas** - All waste storage areas must be maintained in a clean and tidy condition at all times.

**Noise Pollution:**

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

**ITEM 5 (continued)**

**ATTACHMENT 1**

**Water Pollution:**

45. **Clean water only to stormwater system** - Only clean unpolluted water is permitted to enter Council's stormwater drainage system.
46. **Cleaning wastes and spills** - All cleaning wastes and spills must be collected and disposed of in an environmentally acceptable manner.
47. **Clean-up materials to be kept on premises** - An adequate supply of suitable clean up materials must be kept on the premises for cleaning up accidental spills.

**Duty to Notify Pollution Incidents:**

48. **Duty to notify pollution incidents** - Pollution incidents causing or threatening harm to the environment must be reported to Council as soon as practicable on Tel. 9952 8222.

**ITEM 5 (continued)**

**ATTACHMENT 2**

- 2 78 HERMITAGE ROAD, WEST RYDE. LOT 8 DP 24562. Local Development Application for change of use to manufacturing, warehousing and retail sale of pool products, provision of a neighbourhood shop and the erection of 6 advertising signs. LDA2011/0022.**

**INSPECTION: 4.20PM  
INTERVIEW: 4.35PM**

**Report prepared by:** Consultant Planner

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

**Report dated:** 1/08/2011

**File Number:** GRP/11/6/3/4 - BP11/523

**1. Report Summary**

**Applicant: Razco Pools P/L.  
Owner: Tahloona P/L.  
Date lodged: 19 January 2011.**

This report considers a proposal to use the northern unit in the existing single storey industrial building for:

- Assembling of pool equipment (pumps, filters and the like);
- Cleaning, washing and repairing of pool pumps etc;
- Storage and display for sale of pool products also for use in construction of pools;
- Administration office; and
- Provision of neighbourhood shop within building selling cold drinks, coffee/tea, sandwiches and cakes.

The proposal also involves:

- Erection of six signs (2 illuminated); and
- Storage of business trucks at rear of building.

The subject site is zoned IN2 Light Industrial under the Ryde Local Environmental Plan 2010, and the proposal is considered not to be a permissible form of development within that zone.

Advice has been received from Council's General Counsel supporting this statutory planning point of view.

During the notification period, Council received two submissions, one objecting to the proposal, and the other supporting the proposal.

The application is recommended for refusal on statutory planning grounds.

**Reason for Referral to Planning and Environment Committee:** Nature of the development and called up by Councillor Yedelian OAM.

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

Public Submissions: One (1) submission was received in favour of the development.  
One (1) submission was received objecting to the development.

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

Value of works? \$10,000.

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. 2011/22 at 78 Hermitage Road, West Ryde being Lot 8, DP 24562, be refused for the following reasons:
1. The proposed development is prohibited within the IN2 Light Industrial zoning of the subject site under the Ryde Local Environmental Plan 2010 and accordingly Council has no legal power to consent thereto.
  2. The proposed development is inconsistent with the character of the locality.
  3. The proposed development is not in the public interest.
  4. The proposed development is likely to adversely affect the amenity of the adjoining properties through the introduction of a retail activity, with commensurate higher levels of motor vehicle movements, than that associated with an industrial activity.
- (b) That the persons who made submissions be advised of Council's decision.
- (c) That Council serve Orders under Section 121B of the Environmental Planning and Assessment Act 1979 on both the owner of the premises and the occupier, to effect cessation of the current unauthorised use of the premises.

**ATTACHMENTS**

- 1 Map
- 2 Plans
- 3 A3 Plans - CIRCULATED UNDER SEPARATE COVER

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

Report Prepared By:

**Bob Tillott**  
**Consultant Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager Environment & Planning**

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**2. Site** (Refer to attached map.)

**Address** : 78 Hermitage Road, West Ryde  
Lot 8, DP 24562  
**Site Area** : 1824.4m<sup>2</sup>  
Frontage 31.86 metres  
Depth 50.92 metres

The subject site is shown in the following aerial photograph:



**Topography and Vegetation** : There is no vegetation on the site. There is a small site slope from the eastern boundary to Hermitage Road.

**Existing Buildings** : A single storey industrial building occupies the western two thirds of the site. This building is divided into two separate occupancies. The southern unit is used for the repairing of motor vehicles. The northern unit is the area of the subject application. There are a small number of outbuildings in the rear yard area.

**Planning Controls Zoning** : IN2 Light Industrial under the Ryde Local Environmental Plan 2010.

**Other** : Ryde Development Control Plan 2010.  
Environmental Planning & Assessment Act 1979.

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**3. Councillor Representations**

Name of Councillor: Councillor Yedelian OAM.

Nature of the representation: Not stated.

Date: 28 June 2011.

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

On behalf of applicant or objectors? Not stated.

Any other persons (e.g. consultants) involved in or part of the representation: Not stated.

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No.

**5. Proposal**

The proposal is to use the existing single storey industrial building for:

- Assembling of pool equipment (pumps, filters and the like);
- Cleaning, washing and repairing of pool pumps etc;
- Storage and display for sale of pool products also for use in construction of pools;
- Administration office; and
- Provision of neighbourhood shop within building selling cold drinks, coffee/tea, sandwiches and cakes.

The proposal also involves:

- Erection of six signs (2 illuminated); and
- Storage of business trucks at rear of building.

The proposed hours of operation are:  
 7.00am to 5.00pm Mondays to Fridays.  
 9.00am to 5.00pm Saturdays.  
 10.00am to 4.00pm Sundays.

The proposed signs are detailed as follows:

(A) Hermitage Road frontage

Sign No & content	Height (m)	Width (m)	Area m <sup>2</sup>	Illuminated
1. Directional sign to car parking area	0.8	0.8	0.64	No
2. Company name and operational details	2.3	2.4	5.52	No

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

Sign No & content	Height (m)	Width (m)	Area m <sup>2</sup>	Illuminated
3. Advertising sign	1.4	3.2	4.48	No
4. Company name and advertising	1.4	6.2	8.68	Yes. Floodlight

(B) The Nook frontage

Sign No & content	Height (m)	Width (m)	Area m <sup>2</sup>	Illuminated
5. Company name	0.8	3.5	2.8	Yes. Internally illuminated
6. Advertising sign	1.1	3.5	3.85	No

**6. Background**

On 17 November 2010 Council issued a Notice of Proposed Order relevant to the unauthorized use of the premises for the sale of pool equipment.

There are no available records that clearly identify the history of planning approvals for the building known as 78 Hermitage Road. Available information indicates that the building has for a considerable period of time been used for motor vehicle repairs.

Inspection of the building shows that an internal dividing wall has been erected, effectively cutting the building in half. The southern portion of the building remains used for the carrying out of motor vehicle repairs. The northern half of the building is the area of the subject application.

The subject application was lodged on 19 January 2011.

Following an inspection of the premises it was ascertained that the current use of the premises was not sufficiently detailed in the submitted documentation. On 31 March 2011 the applicant was requested to provide more details as to the nature of the use of the premises.

On 27 April 2011 the applicant's planning consultant provided a detailed break-up of the use of the premises, including advice from the applicant's accountant as to the percentage of the applicant's income that was generated by specific components of the business.

Due to the complexity of the provided advice, including the information from the accountant, the advice of Council's General Counsel was sought. On 12 July 2011 the General Counsel provided the requested advice.

**7. Submissions**

The proposal was advertised in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. The application was advertised on 16 February 2011. Notification of the proposal was from 4 February until 3 March 2011.

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

During this period one submission was received objecting to the proposal. Further, one submission in favour of the proposal was also received.

The submission objecting to the proposal raised the following issues:

*1. Failure of Razco Pools to act on notices served by Council to cease the unauthorized use of the premises.*

**Comment:** Whilst notices were served on Razco Pools relevant to the unauthorized use of the premises, subsequently they have submitted the current application, and hence further action in respect of the notices is held over until the current application is determined.

*2. Unauthorized landscaping of part of the footpath outside of the subject site.*

**Comment:** At the time of submission of this application, part of the footpath area in front of the building had been landscaped. This landscaping has subsequently been removed.

*3. The proposed development is prohibited within the statutory zoning of the site.*

**Comment:** Assessment of the application, including consideration of advice provided by General Counsel, has concluded that the proposed development is a prohibited form of development within the IN2 Light Industrial zone under the Ryde Local Environmental Plan 2010. Accordingly, refusal of the application on statutory planning grounds is recommended.

**8. Clause 4.6 RLEP 2010 objection required?**

No.

**9. Policy Implications**

**Relevant Provisions of Environmental Planning Instruments etc:**

**(a) Ryde Local Environmental Plan 2010**

**Zoning**

The subject site is zoned IN2 Light Industrial under the Ryde Local Environmental Plan 2010.

The proposed development is classified as “retail premises”, “industry”, “neighbourhood shop” and “signage” under provisions of the Ryde Local Environmental Plan 2010. The dominant land use within the proposed development is that of “retail premises” and the other identified land uses are a sub-set of the retail activity. The “retail premises” land use is a prohibited form of development within the

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

IN2 Light Industrial zone, accordingly Council has no power to consent to the application.

It is not possible for Council to approve a "retrospective" Development Application involving building works, however, this issue does not impede Council in respect of this application given that the proposal involves only a change of use and erection of signage.

The proposed development has already commenced, and as such it is possible to inspect the site and gain a fuller understanding of the proposal. The premises have been setup as, in the main, being a retail shop. Part of the premises display goods that can be used in the construction of an in-ground swimming pool, such as filters, landscaping and the like, however, the floor area devoted to these products is relatively minimal. The dominant use of the floor area is for the display of swimming pool products. Whilst Razco staff engaged in the construction of swimming pools off-site, they can use the retail display area to obtain goods for their specific job, the degree of presentation and finish of the retail area can lead to no other conclusion that the dominant intended use of the area is the retail sale of pool equipment and allied products.

In view of the conclusion that the proposed development was prohibited within the IN2 Light Industrial zone, the applicant was given the opportunity to respond. By letter dated 27 April 2011 the applicant's planning consultant, GM Planning Services stated:

*I write in response to Council's letter dated 31 March 2011 that advises there are few statutory planning matters that need to be clarified. The issues relate to what is the primary use of the site and whether this use is permissible in the zone and to the signage already installed on the building.*

Use of Premises

*In relation to the use of the site, my client has contacted his accountant to obtain a breakdown of revenue generation by the business conducted from the site. Advice from my client's accountant indicates that the breakdown of the revenue is as follow and a copy of the advice is provided as Appendix A:*

- New pool and spa construction 11%*
- Swimming Pool renovations & repairs 36%*
- Equipment sales, services and installations 24%*
- Pool cleaning service 17%*
- Fencing & solar heaters 9%*
- Pool shop retail 3%*

*My client's accountant has also indicated that the majority of Razco Pools activities take place at the clients' sites and premises and that the retail component of the business comprises only 3% of the total revenue generated by the business.*

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

*The materials used in the above identified business activities are stored on the site within the main building and the outbuildings located at the rear of the main building. The Business Operation Profile provided at Attachment B of the Statement of Environmental Effects (copy attached as Appendix B) indicates that as part of the new pool and spa construction, swimming pool renovations and repairs and equipment installations that clients come to the site and chose the finishes and equipment to be installed as part of these activities. My client has moved away from the typical warehouse storage arrangement where most of the products are stored out of sight of the client behind a dividing wall. The products to be used are stored on open shelves with greater visibility that gives the appearance of a retail operation. However, as shown in the accountant's information the actual pool shop retail is only 3% of the business operation where the client walks into the building to purchase just a product/s and is not visiting the site to chose materials etc to be used as part of a pool renovation or installation of new pool.*

*It should also be noted that the company vehicles used daily to undertake up to 97% of the business off site are stored overnight in the car parking area. The employee upon arriving at the premises, picks up the work sheet detailing the jobs to be undertaken for that day, then takes the necessary product/s and materials from the shelves to be used that day. This situation is typical of any industry/business in the surrounding industrial area. The only difference is my client has the products and material on shelves that are visible to the clients not hidden away in a storage area.*

*The property is zoned IN2 Light Industrial. So how do the above activities that consent is being sought to allow to be conducted from the premises, comply with the uses listed under item 3 of the Light Industrial Land Use Table.*

*The uses listed are:*

*Business identification signs; Car parking; Child care centres; Community facilities; Depots; Industrial retail outlets; Light industries; Neighbourhood shops; Public administration buildings; Pubs; Recreation areas; Research stations; Roads; Service stations; Sex services premises; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities; Water recycling facilities.*

*The accountant's advice indicates that repairs within the swimming pool renovations and equipment services and then installation equate to potential 60% of the business.*

*My client advises that, repairs to pool pumps and other pool equipment or installation of new pool pumps and filters after assemble or repair of this equipment at 78 Hermitage Road often is most of the work associated with the swimming pool renovation or equipment repairs. As indicated at Page 7 of the SEE the work meets the definition of industry due to the assembly process undertaken onsite. Also a major component of the business is storage of the products and material to be used as part of the business conducted off site.*

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

*Both the industrial use (i.e. assembly of the products on site prior to installation) and storage of the materials and products equates to 97% of the business. Actual retail of products from the site where a client walks in to purchase just product is only 3% of the business activity conducted from the site.*

*The main activity of the site is light industry as defined: light industry means an industry, not being a hazardous or offensive industry or involving use of a hazardous or offensive storage establishment, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise*

*It is considered that the above information clearly demonstrates that the actual use of the premises is for 'light industry' use (i.e. assembly of the products on site prior to installation) as defined under the Ryde LEP 2010 and is permissible. This occurs as the processes involved in the business are neither a hazardous or offensive process nor the machinery used does not interfere with the amenity of the neighbourhood.*

*On the matter of storage the products, the products stored are neither of a hazardous or offensive nature or the transportation utilised creates an issue with the amenity of the area. Having regard to these facts, the major use of the site is not for direct retail sales to the public and supported by the information provided by my client's accountant.*

*Accordingly, it is suggested that development consent can be issued for the use of the premises by Razco Pools Pty Ltd as sought under the application lodged with The City of Ryde Council.*

Signs

*In relation to the signs already attached to the building, my client proposes to remove the unauthorized and already erected signs as required by Council. The removal of the signs will allow Council to consider what signs could be approved and attached to the building as part of the approval to use the building for the manufacturing and warehousing of pool products and neighbourhood shop.*

Conclusion

*It is considered the above information demonstrates that the light industrial use involving storage that consent is being sought for complies with the 'light industrial' use listed within item 3 of the IN2 Light Industrial zoning. Accordingly use of the premises by Razco Pools is approvable after consideration my client's accountant's advice and the additional information provided above.*

*Also the issue of the signs has been addressed as required.*

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

Council's General Counsel has considered the application together with the above additional information, and advises as follows:

*While the relatively modest revenue generated by the pool shop retail sales at 3% is relevant, the overriding consideration is the proposed predominant use of the premises. In this regard I note that an inspection of the premises revealed that the floor is principally (75%) set up as a retail pool shop. The application masks no reference to the area of the "retail" use being significantly reduced. On this basis it is reasonable to assume that the proposed use of the premises will continue in the current unauthorised manner.*

*Normally, a consent authority is to have no regard to current unauthorised use if the DA proposes to address the unauthorised use. In this case the DA does not identify any correction.*

*In these circumstances Council, as consent authority is required to have regard to what is known in determining the application and apportion significant weight accordingly. Here the site shows a retail type layout and predominately retail use of the area. Again, I emphasise that there is no proposal to address this.*

*For all of the above reasons, I consider neither the application nor the subsequent submission demonstrate that the proposed use falls within the definition of "light industry". The current and proposed use is prohibited in the IN2 Light Industrial Zone under the Ryde LEP. The application should be refused.*

In accordance with the recommendation of the General Counsel, the application is to be recommended for refusal as the proposal constitutes a prohibited form of development in the IN2 Light Industrial zone, and accordingly Council has no legal power to consent thereto.

**(b) Relevant SEPPs**

There are no relevant state environmental plans applicable to the proposed development.

**(c) Relevant REPs**

There are no relevant regional environmental plans applicable to the proposed development.

**(d) Any draft LEPs**

There are no draft local environmental plans applicable to the proposed development.



**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

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

Ryde Development Control Plan 2010 is relevant to the proposed development.

The relevant part is Part 9.1 Signage.

The following table identifies the DCP classification of the signs:

Sign No.	DCP Classification	Area of sign	Compliant Yes/No
1	Directional	0.64m <sup>2</sup>	No (Max permitted 0.3m <sup>2</sup> )
2	Flush Wall Sign	5.52m <sup>2</sup>	No (Max permitted 5.0m <sup>2</sup> )
3	Flush Wall Sign	4.48m <sup>2</sup>	Yes
4	Business Sign	8.68m <sup>2</sup>	No (Max permitted 5.0m <sup>2</sup> )
5	Business Sign	2.8m <sup>2</sup>	No
6	Flush Wall Sign	3.85m <sup>2</sup>	Yes

It is considered that there is an excessive amount of signage proposed.

Whilst the proposal cannot be approved due to being a prohibited development, the following comments relevant to DCP 2010 are provided to ensure completeness of the assessment.

Given the building occupies a corner site, it is considered reasonable to retain a Business Identification Sign on both the Hermitage Road and The Nook Avenue frontages. The business identification signs are Signs 4 and 5. Further, the small directional sign (No. 1) is reasonable as it simply identifies the location of the car parking area.

If the proposed development could, on statutory planning grounds, be approved, then it would reasonably require business identification, as part of the business requires persons to attend the premises to select pool and associated equipment for their new pool. Given that customers could potentially not be familiar with the industrial neighbourhood, sign No. 4, even though with an area of 8.68m<sup>2</sup>, it is larger than the DCP maximum area of 0.75m<sup>2</sup>, it does provide assistance in business identification. Due to the varied streetscape and location within an industrial precinct it is considered sign No. 4 would be reasonable.

Similarly, sign No. 5 on The Nook Avenue frontage affords a reasonable level of business identification.

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

The DCP contains general objectives for signage in industrial areas. The principal control is that the total area of signs cannot exceed one square metre of building frontage for the first 10 metres of frontage and then 0.3 square metres of signage for each metre of building frontage after that. In this case the subject building has a frontage of 17.0m. The DCP objective limits the total area of signs to 12.1m<sup>2</sup>. If consent was to be recommended, appropriate conditions relevant to the proposed signage could be provided.

**10. Likely impacts of the Development**

**(a) Built Environment**

As has previously been detailed, the proposed development is considered to be a prohibited land use with the statutory zoning of the area. The submission received objecting to the proposal highlights local problems generated by the volume of motor vehicles that park in proximity to the site and convey customers to the pool shop. With limited off-street car parking facilities for most industrial buildings in the locality being an on-going problem, the likely increase in the demand for kerb side car parking associated with the retail activities of the proposed development is likely to adversely impact upon the local built environment. However, with Council having no legal power to consent to the subject application, there will be no continuation of the present car parking issues flowing from the unauthorized use of the premises by Razco Pools.

The proposed hours of operation replicate very much that of a retail environment and it would be highly unlikely to experience a small industrial activity, similar to that operating in the West Ryde industrial areas, to operate seven days a week, and within the hours detailed in the proposed development. Clearly, the proposal is operating on a retail basis, thus strengthening the conclusion that the dominant element of the proposed development is that of a retail activity.

**(b) Natural Environment**

There are no features of the natural environment on the subject site.

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

The proposed development is considered to be a prohibited form of development in the IN2 Light Industrial zone affecting the subject site, and as such the proposal is not a suitable form of development for the subject site.

**12. The Public Interest**

Consent to the subject application is considered not to be in the public interest.

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**13. Consultation – Internal and External**

Internal Referrals

**Development Engineer (18 March 2011):** Council's Development Engineer has commented as follows:

*The proposal does not create any additional stormwater runoff impacts, however as the site is mapped as being affected by overland flow from a large upstream catchment it would be appropriate to require a flood impact assessment and a site emergency response plan be prepared for the site. This will be a condition of consent as follows:*

*Prior to issue of a Construction certificate a Flood Impact Assessment Report and a Site Emergency Response Plan in accordance with the principles outlined in the Eastwood & Terry's Creek Floodplain Risk Management Study and Plan shall be prepared by a suitably engineer. The report shall address but should not be limited to the safe evacuation of people and methods of minimising the damage to the equipments during a flood including personnel responsible for implementing the Site Emergency Response Plan etc.*

*The report shall be submitted to the Principal Certifying Authority for approval and prior to issue of any Occupation Certificate an engineer shall certify that all requirements of the Flood Impact Assessment Report and a Site Emergency Response Plan have been complied with.*

**Building Surveyor (29 March 2011):** Has raised no objection to the application subject to conditions of consent.

**Environmental Health Officer (21 March 2011):** Has raised no objection to the application subject to conditions of consent.

**Heritage Officer (15 February 2011):** Has raised no objection to the application subject to conditions of consent.

External Referrals

Nil.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Other Options**

Due to consent to the proposed development not being permissible on statutory planning grounds, no other options are relevant.

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**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**16. Conclusion**

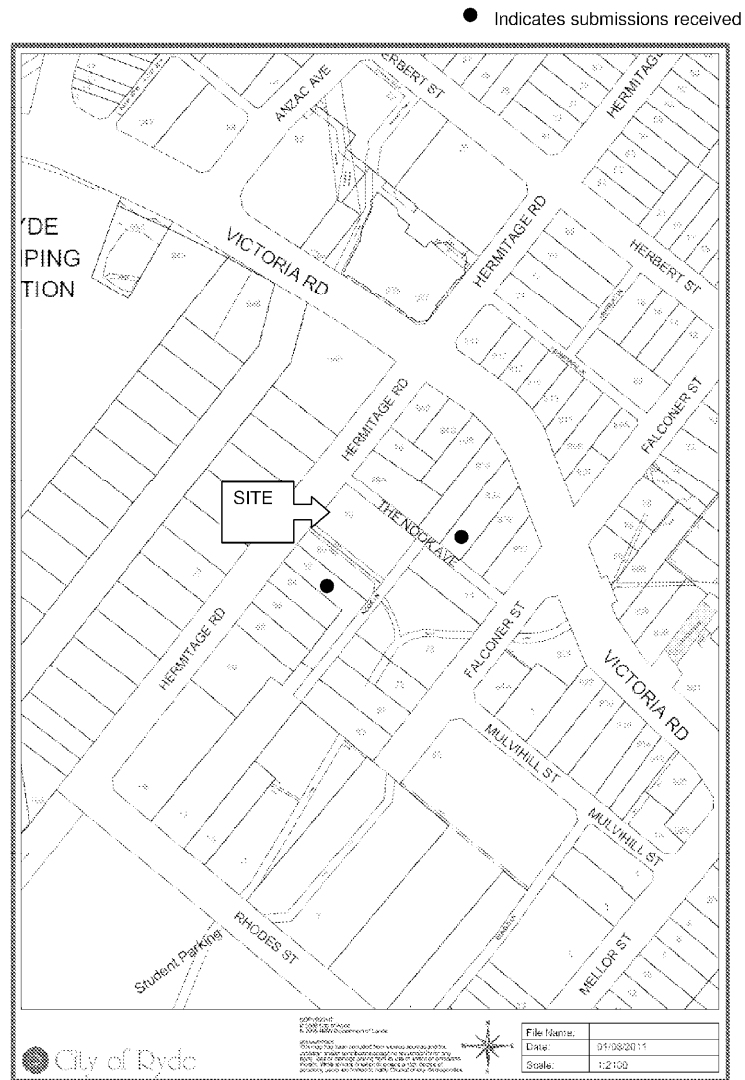
The proposed development is considered to be inappropriate for the site and is a prohibited form of development in the statutory zoning of the site. Accordingly, the application has been recommended for refusal.

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**ATTACHMENT 1**



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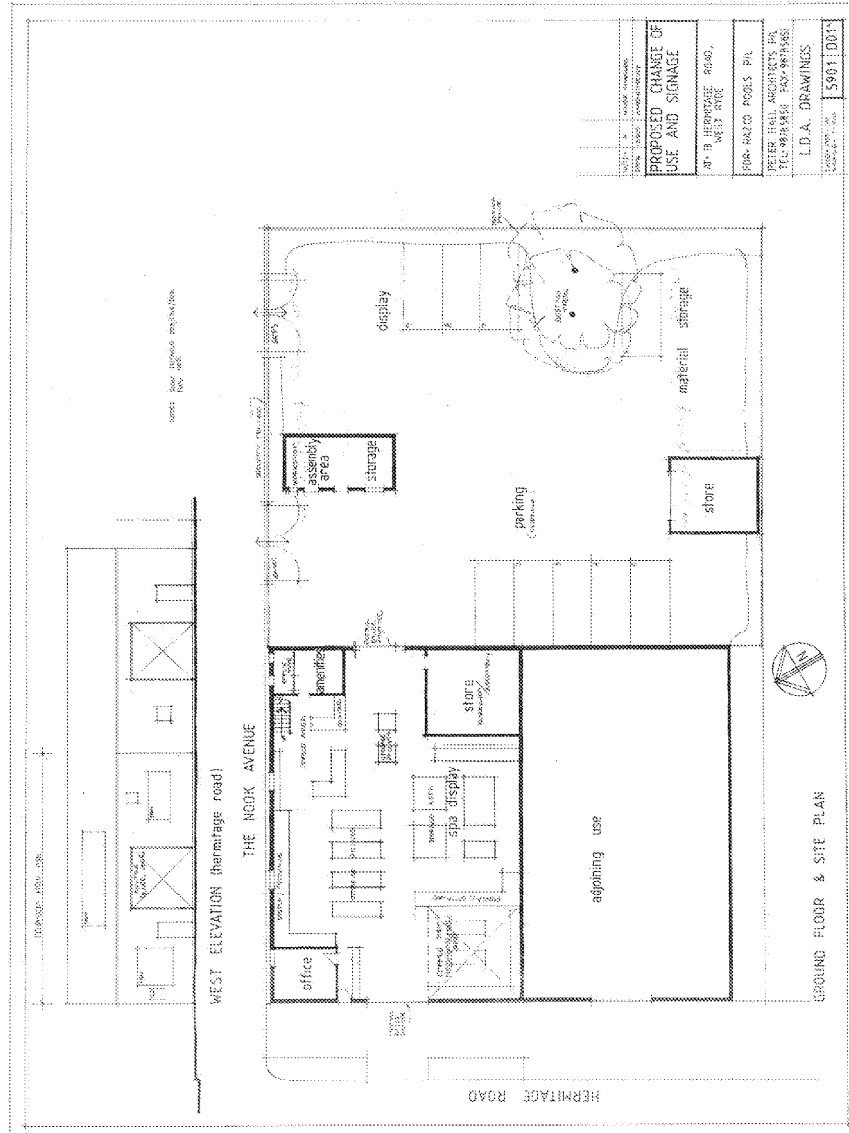


**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**ATTACHMENT 2**



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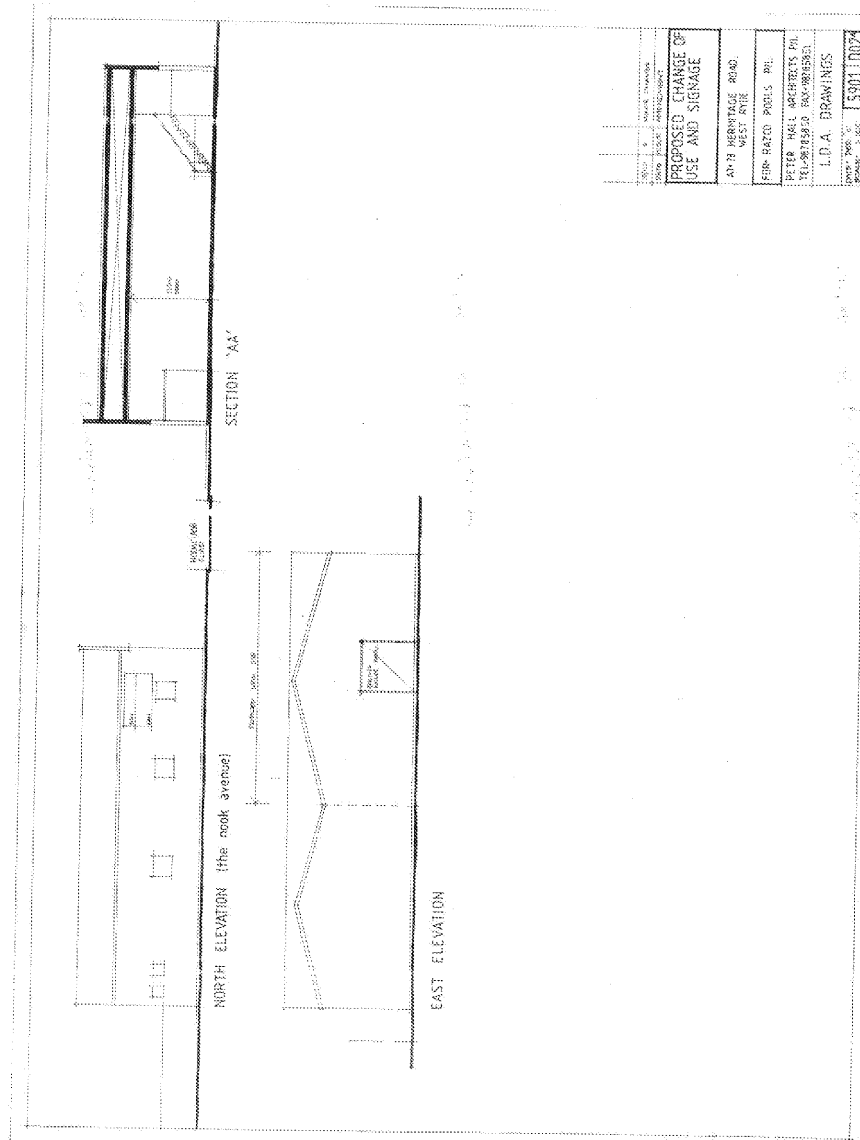
Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

**ITEM 5 (continued)**

**ATTACHMENT 2**

**ITEM 2 (continued)**

**ATTACHMENT 2**



Agenda of the Planning and Environment Committee Report No. 10/11, dated Tuesday 16 August 2011.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 3

 Indicates submissions received



ITEM 5 (continued)

ATTACHMENT 4

Signage Table			
Building Signage Area			
Frontage	Length	Height	Total Signage Allowable
Hermitage Frontage	16.4m	5.0m	See below
The Nook Frontage	23.4m	5.3m	14.02m <sup>2</sup>
Signage Information Table			
Sign No. and Content	Sign Height-m	Sign Width-m	Sign Area-m <sup>2</sup>
Hermitage Frontage			
1-Directional sign to car parking area	0.8	0.8	0.64
2-Company name, days of operation and phone no.	2.3	2.4	5.52
The Nook			
3-Company name	0.8	3.5	2.8
4-Advice on services offered by business	1.1	3.5	3.85
Total Sign Area			12.81
Signage area available-m <sup>2</sup> Not longer than frontage so will use The Nook frontage to determine maximum signage for site allowable. 10m + (0.3 x 13.4=4.02) =14.02m <sup>2</sup>			

APPROVED BY  
2 MAR 2012

6-3-2012	A	REDUCED PROPOSED SIGNAGE
DATE	ISSUE	AMENDMENT
PROPOSED CHANGE OF USE AND SIGNAGE		
AT 78 HERMITAGE ROAD, WEST RYDE		
FOR RAZCO POOLS P/L		
PETER HALL ARCHITECTS P/L TEL 98785850 FAX 98785851		
L.D.A. DRAWINGS		
DATE: MARCH 2012 SCALE: 1:100	5901	D02 A

ITEM 5 (continued)

ATTACHMENT 4

PROPOSED NEW USE

4000

EXISTING ROLLER DOORS

ROLLER SHUTTERS  
NEW DOOR

1  
2

WEST ELEVATION (hermitage road)

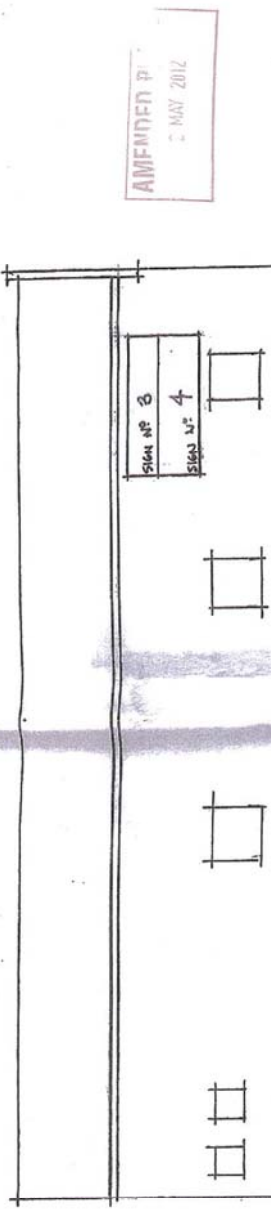
AMENDED PLANS  
02 MAY 2012

30.4.11	B	NEW ELEVATION / ROLLER DOOR
DATE	ISSUE	AMENDMENT
<b>PROPOSED CHANGE OF USE AND SIGNAGE</b>		
AT 78 HERMITAGE ROAD, WEST RYDE		
FOR RAZCO POOLS P/L		
PETER HALL ARCHITECTS P/L TEL 98785850 FAX 98785851		
L.D.A. DRAWINGS		
DATE: 30 APRIL 2012	5901	D04 B
SCALE: 1:100		



ITEM 5 (continued)

ATTACHMENT 4



NORTH ELEVATION (the nook avenue)

6-5-2012	A	ISSUE	AMENDMENT	REVISED PROPOSED SIGNAGE
<b>PROPOSED CHANGE OF USE AND SIGNAGE</b>				
AT 78 HERMITAGE ROAD, WEST RYDE				
FOR RAZCO POOLS P/L				
PETER HALL ARCHITECTS P/L TEL-98785850 FAX-98785851				
L.D.A. DRAWINGS				
DATE: MARCH 2012			SCALE: 1:100	
			<b>5901 D05</b>	

