

ITEM 5 (continued)

ATTACHMENT 1

3-5 Trelawney Street - LDA2011/0611
Proposed 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.** 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 except as amended by conditions of this Consent:

Plan Numbers:	Document Description	Date	Issue
DA-01	Colour Scheme – Photomontage	-	B
DA-04	Demolition Plan	6/10/2011	A
DA-07	Site Plan	21/10/2011	A
DA-08	Basement	12/04/2012	A
DA-09	Lower Ground Floor (as amended by levels shown on DA-47 Issue B)	10/05/2012	C
DA-10	Ground Floor	18/12/2012	D
DA-11	Level 1	18/12/2012	C
DA-12	Levels 2 to 4 (floor layout)	20/12/2012	D
DA-13	Level 5	18/12/2012	B
DA-14	Roof Plan	18/12/2012	B
DA-15	Elevations North & South	18/12/2012	B
DA-16	Elevations – East & West	18/12/2012	B
DA-17	Section A	18/12/2012	B
DA-18	Section B	20/12/2012	C
DA-26	Open Space & Deep Soil	7/11/2011	A
DA-28	Materials Finishes Board	21/10/2011	A
DA-38	Storage Areas & as amended by condition below	12/04/2012	N/A
DA-47	Flood & Floor Levels and Access	17/05/2012	B
11_023 L00	Landscape Plan (by Habitation)	11/07/2011	B
11_023 L01	Landscape Plan - Ground level	02/11/2011	C
11_023 L02	Landscape Plan – Level One	02/11/2011	C
11_023 L03	Landscape Plan – Level Five	06/09/2011	C
385935M_02	BASIX Certificate	18/12/2012	--
	Waste Management Plan	--	--
Access Report	Prepared by Mark Relf	20 October 2011	-
Doc No.11183 Job No. 2172/4	Acoustic Report by West & Associates Pty Ltd	21 September 2011	A

ITEM 5 (continued)

ATTACHMENT 1

Prior to the issue of a Construction Certificate, the following amendments shall be made (or as marked in red on the approved plans where applicable):

- (a) **Adaptable Units:** Unit numbers G01, 111, 112, 212, 312 and 412 are to be designed as adaptable units. Each of these units is to be allocated an *accessible* parking bay.
- (b) **Awning:** The height of the street awning shall not be less than 3 metres or greater than 4.5 metres measured from the finished pavement level of the footpath. Such awning must:
 - i) Be set back from the face of the kerb by 0.6m;
 - ii) Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate street trees in relation to proposed public domain improvement works;
 - iii) Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;
 - iv) Have a height clearance as stated above or consistent with adjacent awnings;
 - v) Maintain sufficient clearances from any overhead electricity or telecommunications installations; and
 - vi) The street awning should continue the full length of the street and must not be glazed.
- (c) **Accessible Ramps:** *Accessible* ramps must be provided at the entrance to all retail tenancies from the Trelawney Street frontage. The ramp must be wholly within the site and not encroach on Council's footpath.

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

2. **Voluntary Planning Agreement:** The Voluntary Planning Agreement between City of Ryde and N & G Projects Pty Ltd that is subject of this Development Consent must be registered on the title of Lots A & B in DP401296 prior to the issue of any **Construction Certificate**.
3. **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.
4. **Excavation Works.** 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.

ITEM 5 (continued)

ATTACHMENT 1

5. **Advertising Signs:** This consent does not authorise the erection of any signs or advertising structures not indicated on the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is “exempt development”.
6. **Security Grill:** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.
7. **Public Domain Works:** The applicant or the owner shall at their own expense carry out the following public domain improvement works on the road reserve fronting the subject site prior to the issue of any Occupation Certificate:
 - (a) **Footpath Paving:** Public Footpaths in Trelawney Street and Rutledge Street are to be paved with clay pavers in accordance with the Public Domain Technical Manual Section 3 – Eastwood. The clay paving must comply with the Eastwood section of Council's Public Domain Technical Manual. Details must be submitted for Council's approval prior to issue of any Construction Certificate.
 - (b) **Under grounding of overhead powerlines:** Overhead mains in Trelawney Street shall be placed underground, and Multifunction Poles with new street lighting provided along the Trelawney Street frontage. An Electrical Design for dismantling the existing network and installing the new network shall be prepared and submitted to Council and Ausgrid for approval prior to commencement of work. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g.AUSGRID/ Energy Australia) and cost borne by the applicant.
 - (c) **Multifunction Light Poles:** The multifunction light poles along Trelawney Street frontage shall be erected within the road reserve adjacent to the premises at locations approved by Council. All costs are to be borne by the applicant.
 - (d) **Street Trees Rutledge Street:** The street trees in Rutledge Street are to be *Angophora floribunda* (Rough Barked Apple) planted at approximately 7m intervals.
 - (e) **Street Trees on Trelawney Street:** The street trees in Trelawney Street road reserve are to be *Acer negundo* planted at approximately 7m intervals.

Full engineering details, including plans, sections, finished levels and schedule of materials and finishes complying with the Public Domain Technical Manual must be submitted to Council and approval obtained prior to the issue of any **Construction Certificate**.

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

ITEM 5 (continued)

ATTACHMENT 1

9. **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.
10. **Public place kept lit:** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
11. **Construction within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structures shall encroach onto the adjoining properties including any other public, private or land owned by the Roads and Maritime Services. Gates must be installed so they do not open onto any footpath.
12. **No obstruction to the public way.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
13. **Works on public road.** 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.
14. **Works in public road.** 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.
15. **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.
16. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
17. **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.

ITEM 5 (continued)

ATTACHMENT 1

18. **Road Opening Permit.** The applicant shall apply for a road-opening permit where works are proposed to be constructed within the public road reserve, e.g. where connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No work shall be carried out on the road reserve without this permit being paid and a copy kept on the site.
19. **Waste Disposal** To facilitate waste disposal from the site, the site Building Manager shall co-ordinates with the Council and the Waste Collection Contractor to ensure that the loading dock area is accessible at the relevant times.
20. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by the proponent (to Council's satisfaction which requires approval via the Ryde Local Traffic Committee prior to the issue of any Occupation Certificate. An internal signposting and line marking plan shall be provided for Council's approval.
21. **Vehicle Entry:** All vehicles must enter and leave the property in a forward direction from the basement car park.
22. **Construction Traffic Management:** The Applicant must submit a Construction Traffic Management Plan to Council prior to the issue of Construction Certificate.
23. **Queuing Space:** A minimum of 3 queuing spaces should be provided for more than 100 cars at a car park with control point at entrances as per AS2890.1 – 2004 Clause 3.4. Details are to be submitted on the Construction Certificate plans to ensure compliance.
24. **No Stopping Signs:** Full time "No Stopping" restrictions are to be maintained on Rutledge Street and Trelawney Street frontages of the development site.
25. **Design and Geotech Reports:** The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment. The developer is to meet the full cost of the assessment by the RMS. The Report would need to address the following key issues:

- (a) The impact of excavation/ rock anchors on the stability of Rutledge Street and detailing how the carriageway would be monitored for settlement.
- (b) The impact of the excavation on the structural stability of Rutledge Street.

The report and any enquiries should be forwarded to:
Project Engineer, External Works
Sydney Asset Management
Roads and maritime Services
P O Box 973 Parramatta CBD 2124

Telephone: 8848 2114
Fax: 8849 2766

ITEM 5 (continued)

ATTACHMENT 1

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

26. **Existing Driveways:** The redundant driveways along Rutledge Street shall be removed and replaced with kerb and gutter to match existing.

The design and construction of the gutter crossing on Rutledge Street shall be in accordance with RMS's requirement. Details of these requirements should be obtained from RMS's Project Services Manager, Traffic Projects Section, Parramatta (Telephone 8849 2496).

Detailed design plans of the proposed gutter crossing are to be submitted to RMS for approval prior to the commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant/ developer prior to the release of the approved road design plans by the RMS.

27. **Hydraulic Calculations:** Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset management
Roads and maritime Services
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before RMS's approval is issued. With regards to the Civil Works requirement please contact the RMS's Project Engineer on phone 8849 2114 or fax 8849 2766.

28. **Additional Sightlines:** Vegetation and proposed landscaping/ fencing must not hinder sight lines to and from the proposed access driveways to pedestrians and cyclists.
29. **Layout of parking and circulation:** The layout of the proposed car parking areas associated with the subject development (including driveways, grades, sight distance requirements, and parking bay dimensions) should be in accordance with AS2890.1 – 2004, AS2890- 2002 for heavy vehicles and to Council satisfaction.
30. **Turning areas to be kept clear:** The proposed turning areas within the subject site are to be kept clear of any obstacles, including parked cars, at all times.
31. **Work Zone:** All construction vehicles and activities are to be contained wholly within the site. As no work zone permits will be permitted by RMS on Rutledge Street.

ITEM 5 (continued)

ATTACHMENT 1

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.

32. **Demolition work.** All demolition work must be carried out in accordance with Australian Standard AS 2601-1991 *The Demolition of Structures*.
33. **Notification of works to Council.** The applicant must notify Council of the following particulars in writing at least seven (7) days before demolition work commences:
 - (a) the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - (b) the date the work is due to commence and the expected completion date.
34. **Notification of works to adjoining property owners.** At least seven (7) days before demolition work commences the applicant must notify the occupiers of all neighbouring premises of the date the work is due to commence by placing a written notice in the letter box of each premises.
35. **Asbestos materials.** All work involving asbestos products and materials, including asbestos-cement sheeting (ie. fibro), must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
36. **Hours of work.** All demolition and construction work must be restricted to between the hours of 7.00am and 7.00pm Mondays to Fridays and 8.00am and 4.00pm on Saturdays. No work is to be carried out on Sundays or public holidays.
37. **Noise.** Noise must be minimised by the selection of appropriate methods and equipment and the use of screening or barriers where practical.
38. **Noise monitoring.** Noise monitoring must be carried out by a qualified acoustics consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the work.
39. **Removal of wastes.** All demolition and construction wastes must be stored in an environmentally acceptable manner and be removed from the site at such intervals as may be necessary to ensure that no nuisance or danger to health, safety or the environment is created.
40. **Recycling wastes.** All wastes nominated for recycling or re-use must be segregated from other wastes and be transported to a place or facility where they will be recycled or re-used.

ITEM 5 (continued)

ATTACHMENT 1

41. **Contaminated soil.** All potentially contaminated soil excavated from the site must be stockpiled in a secure area and be assessed and classified in accordance with the *Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes* (EPA, 1999) before being transported from the site.
42. **Transportation of wastes.** All demolition and construction wastes must be transported in an environmentally safe manner to a facility or place that can lawfully be used as a waste facility for those wastes. Copies of the disposal dockets must be kept by the applicant for at least 3 years and be submitted to Council on request.
43. **Asbestos wastes.** All asbestos wastes, including used asbestos-cement sheeting (ie. fibro), must be disposed of at a landfill facility licensed by the New South Wales Environment Protection Authority to receive asbestos waste.

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.

44. **Section 94 and VPA Payments:**

- A) **Section 94 Contribution.** 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**:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$149,644.14
Open Space & Recreation Facilities	\$343,928.92
Civic & Urban Improvements	\$132,783.77
Roads & Traffic Management Facilities	\$20,409.83
Cycleways	\$11,314.55
Stormwater Management Facilities	\$37,835.49
Plan Administration	\$3,047.78
The total contribution is	\$698,964.49

ITEM 5 (continued)

ATTACHMENT 1

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

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

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

B) Contribution payable under the Voluntary Planning Agreement: Prior to the issue of any Construction Certificate for the development the contribution as part of the Voluntary Planning Agreement referred to in Condition 2 is to be paid in full to Council.

45. **Damage security.** 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: other buildings with delivery of bricks or concrete or machine excavation).
46. **Payment of 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
47. **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**.
48. **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.
49. **Disabled Access & Adaptable Units:** Disabled access is to be provided within the development in accordance with the recommendations contained in the Access Review Report prepared by Mark Relf (Accessibility Solutions (NSW) Pty Ltd) dated 20th October 2011. Details indicating compliance with the AS1428 & AS4299, Building Code of Australia and the recommendations contained in the above Report

ITEM 5 (continued)

ATTACHMENT 1

are to be submitted to the Principal Certifying Authority (PCA) prior to the Construction Certificate being issued.

50. **Dilapidation Survey.** A dilapidation survey is to be undertaken that addresses all properties (including any public place) that may be affected by the construction work. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*).
51. **Reflectivity.** Roofing and other external materials must be of low glare and reflectivity. Details of the approved finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority.
52. **Bicycle parking.** The developer must provide sufficient designated areas and facilities for bicycle and motor bike parking in accordance with the following:
- (a) Provide bicycle parking rail sufficient to hold at least three (3) bicycles located within the footpath on Trelawney Street frontage in front of Retail Tenancy No. 1. The rails are to be positioned outside of the general path of travel adjacent to the tree pit. Sufficient clearance from the kerb must also be provided. Details are to be shown within the Public Domain/ Landscaping Plan prior to the issue of any Construction Certificate.
 - (b) Provide secure bicycle parking racks and manoeuvring area for at least eight (8) bicycles within the lower ground level (car parking level).
 - (c) Provide bicycle parking rail sufficient to hold at least two (2) bicycles, to be located on the site within the landscaped area (at grade with respect to Rutledge Street) adjacent to the residential lobby on the Ground Floor level.
 - (d) All bicycle parking area must be highly visible, adequately lit and easily accessible by residents and customers.
 - (e) Bicycle parking and access must be designed so as to ensure potential conflicts with vehicles are minimised.
 - (f) Provision for motorbike parking equivalent to an area of two (2) car spaces must be provided on the site as shown on the basement plans.

Bicycle parking must be designed in accordance with AS2890.3 Parking Facilities- Bicycle Parking Facilities and the NSW bicycle guidelines. Details are to be submitted on the **Construction Certificate**.

53. **Lighting.** 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 are to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
54. **BASIX Commitments.** The development must comply with all commitments listed in BASIX Certificate numbered 385935M, dated 12 October 2011. The fittings, fixtures and materials installed in association with the retail tenancy (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.

ITEM 5 (continued)

ATTACHMENT 1

55. **Car parking.** Accessible parking spaces must be provided for retail use, residential use and for visitors to the site. A total of 107 car parking spaces are to be provided on the site including at least 66 residential parking spaces, at least 22 retail parking spaces and at least 12 visitor parking spaces including *accessible* spaces, evenly distributed over all designated parking levels. Details are to be submitted on the Construction Certificate plans.
56. **Access to resident parking.** Access to residential parking should be restricted to residents and their visitors only. Details demonstrating compliance are to be submitted on the Construction Certificate plans.
57. **Services & Substation:** All service infrastructure/utilities including electrical substations, fire hydrants, gas meters and the like shall be located within the building envelope. Where this is not possible and subject to Council approval such infrastructure shall be located on the subject site and appropriately screened from view. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
58. **Garbage Room Exhaust:** The garbage room exhaust must be designed so that it is suitably screened from view. Satisfactory screening device must be used and integrated with the architectural feature of the building. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
59. **Tree Removal:** Adjoining owners consent must be obtained prior to the removal of the tree located on the adjoining site.
60. **Underground Gas Pipeline:** 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.
61. **Soil Depths:** Minimum soil depth of 800mm must be provided in all planter beds provided throughout the development
62. **Operable Windows:** Windows to the units must be operable where necessary to allow adequate cross ventilation and improved amenity.
63. **Delete tree adjacent to fire door:** The tree planting in front of the fire door is to be deleted so that the area is kept clear.
64. **Seating:** Adequate seating, shading structures and BBQ facility must be provided within the communal open space area. Details to be provided in the plans submitted for Construction Certificate.
65. **Storage Facility:** All residential units must be provided with sufficient secure storage facility (other than the kitchen cupboard areas at a rate of storage facilities at the following rates:

ITEM 5 (continued)

ATTACHMENT 1

- studio apartments 6m³
- one-bedroom apartments 6m³
- two-bedroom apartments 8m³
- three bedroom apartments 10m³

Storage facility must be lockable and allocated to individual units. The allocated storage facility must be shown on the strata plans.

66. **Remediation of land:** The land must be remediated to the extent necessary for the proposed use and a copy of the site validation report must be submitted to Council for consideration. The site validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997) and demonstrate that the site is suitable for the proposed use.

No Construction Certificate is to be issued for any building work on the land until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use, without the need for further remediation.

67. **Remediation Work:** All remediation work must be carried out in accordance with:

- (a) *State Environmental Planning Policy No. 55 - Remediation of Land*;
- (b) any relevant guidelines published under the *Contaminated Land Management Act 1997*; and
- (c) any council policy or development control plan relating to the remediation of land.

68. **Site Audit:** If requested by Council, a site audit statement and a site audit summary report from an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council verifying the information contained in the site validation report.

69. **Grease Trap:** A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.

70. **Grease Trap Room:** The grease trap room must be constructed in accordance with the following requirements:

- (a) The floor, walls and ceiling must be constructed of solid materials finished to a smooth even impervious surface free of any cracks, holes or other openings that may allow the escape of odours.
- (b) The room must be fitted with an air-tight (eg. coolroom type) door.
- (c) The room must be provided with an approved system of mechanical exhaust ventilation.
- (d) The room must be provided with intrinsically safe artificial lighting.

ITEM 5 (continued)

ATTACHMENT 1

(e) A hose tap with a backflow prevention device must be provided in or adjacent to the room to facilitate cleaning.

71. **Grease Trap Pump:** A fixed pump out line must be provided in accordance with the requirements of Sydney Water Corporation to facilitate servicing of the grease trap.

72. **Garbage and Recycling Room:** A garbage and recycling room must be provided in an approved location in the basement carpark of the residential flat building. The garbage and recycling rooms must be constructed in accordance with the following requirements:

(a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;

(b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;

(c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;

(d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;

(e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;

(f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;

(g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive metal legs at least 150mm high;

(h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;

(i) The room must be provided with adequate artificial lighting; and

(j) a hose with a trigger nozzle must be provided in or adjacent to the room to facilitate cleaning.

Details to be submitted on the Construction Certificate plans which ensure compliance with this requirement.

73. **Storage of Discarded Items:** A separate room or caged area with an area equivalent to at least a single car parking space must be provided in the Lower Ground Floor of the residential flat building for the storage of bulky discarded items such as furniture and white goods. Details are to be submitted on the plan submitted for Construction Certificate.

ITEM 5 (continued)

ATTACHMENT 1

74. **Kitchen Exhaust:** Adequate provision must be made for the installation of kitchen exhaust systems to the proposed retail premises.
75. **Mechanical Ventilation:** Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**. Such details must include:
 - (a) Plans (coloured to distinguish between new and existing work) and specifications of the mechanical ventilation systems;
 - (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
 - (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications
76. **Air Handling:** All air-handling and water systems regulated under the *Public Health Act 1991* must be installed, operated and maintained in accordance with the requirements of the *Public Health (Microbial Control) Regulation 2000*.
77. **Water Cooling System:** All water-cooling and warm-water systems regulated under the *Public Health Act 1991* must be registered with Council within one (1) month of installation.
78. **Road Noise:** The residential flat building(s) must be designed and constructed so that road traffic noise levels inside the building(s) comply with the satisfactory design sound levels recommended in Australian/New Zealand Standard AS/NZS 2107: 2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*, when the windows and doors are closed.
79. **Noise Attenuation Measures:** The recommendations contained under Section 6 of the Acoustic Report prepared by West & Associates Pty Ltd (Document No. 11183 Issue A dated 21 September 2011) must be incorporated in the Construction Certificate drawing prior to its approval.
80. **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, car parking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.
81. **Road Anchors:** Where road anchors are proposed to support the proposed development excavation, detailed structural plans indicating the number of anchors are proposed are to be submitted to Council and road anchor fees are to be paid to Council in accordance with Council's Management Plan.

ITEM 5 (continued)

ATTACHMENT 1

82. **Hoarding Fees.** Where hoarding are proposed, fees in accordance with Council's Management Plan are to be paid to Council prior to the issue of the Construction Certificate for the erection of a protective hoarding along the street frontage of the property. The fee is based on Council, schedule of fees and charges and is for a period of 6 months. If the time of use of Council's footpath varies from this an adjustment of the fee will be made on completion of the works.
83. **Dilapidation Report.** To determine the extent of restoration works that may be required, the applicant shall submit to Council a pre and post construction dilapidation report on the status of existing public infrastructures in the vicinity of the proposed development. The report is to include photographic records, description and location of any existing observable defects of the following infrastructure and others where applicable:
- (a) Road Pavment
 - (b) Kerb and gutter.
 - (c) Constructed footpath.
 - (d) Drainage pits.
 - (e) Traffic signs.
 - (f) Any other relevant infrastructure.

These reports shall be submitted to Council development engineer, prior to the issue of the Construction and Occupation Certificate. The report shall be used by Council as Roads Authority under the Roads Act to assess whether restoration works are required prior to the issue of the Occupation Certificate. All restoration works deemed necessary by Council's development engineer are to be completed to Council satisfaction prior to the issue of Occupation Certificate

84. **Excavation.** To ensure the proposed site excavation will not impact on the adjoining property structures foundations and services.

The applicant shall submit to the Principal Certifying Authority for approval a geotechnical report prepared and certified by a chartered practicing geotechnical/structural engineer addressing, but not be limited to the following items:-

- a) *The likely impacts of the proposed excavations will have on structures and services of adjoining properties & Roadway*
- b) *Detail what measures are to be taken to protect the structures and services of adjoining properties from structural damage and undermining during construction*
- c) *A copy of the report including geotechnical/structural engineer certification should be submitted to Council.*

The above matters shall be completed prior to the issue of the construction certificate.

ITEM 5 (continued)

ATTACHMENT 1

All recommendations of the Geotechnical Engineer are to be carried out during the course of the excavation. The applicant must give at least seven (7) days notice to the owner and occupiers of the adjoining allotments before excavation works commence.

85. **Driveway Grades.** The maximum grade of all internal driveways and vehicular ramps etc shall comply with relevant section of AS 2890.1 & AS2890.2 where applicable. Detailed engineering plans including engineering certification indicating compliance with this condition are to be submitted with the Construction Certificate application.
86. **Car Parking.** All internal driveways, vehicle turning areas, grades, parking space dimensions, headroom clearance etc shall be designed to comply with relevant sections of Australian Standards AS 2890 where applicable and shall incorporate but not be limited to the following additional requirement.
- a. Internal signposting and line marking plan shall be provided to in accordance with relevant Australian Standard for the PCA approval.
 - b. All loading and unloading must take place within the confines of the loading dock for at least a medium rigid vehicle MRV.

Detailed engineering plans including engineering certification confirming compliance with this condition is to be submitted with the Construction Certificate application.

87. **Traffic Management.** Traffic management plans must be prepared and procedures must be in place and practised during the construction period to ensure safety and minimise construction traffic conflict on adjoining pedestrian and vehicular traffic movement. These procedures and systems must be in accordance with AS 1742.3 1985 and the RTA's Manual – "Traffic Control at Work Sites" where applicable.

Accordingly, a detailed plan of traffic management prepared by a traffic engineer including certification indicating compliance are to be submitted with the Construction Certificate application.

88. **Stormwater Runoff.** Stormwater runoff from site shall be collected and piped to Council's underground drainage system via an On-site detention (OSD) system designed in accordance with the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. The design shall incorporate but not be limited to *the following*:
- a. All gutters, down pipes and pipeline conveying runoff to the OSD tank(s) are required to be designed for a 1 in 100 year storm.
 - b. The design shall ensure back water flow will not occur or influence the functioning of the outlet pipe from the OSD tank for all storm events and durations, including preventing the ingress of overland flows into the OSD tank.

ITEM 5 (continued)

ATTACHMENT 1

- c. Discharge from the site shall be limited to a single point discharge at maximum of 30l/s to the street kerb and gutter. Should this is exceeded, the discharge shall be to the nearest Council's underground drainage system, in which case extension of Council's existing drainage system may be required to facilitate this solution. Where extension of Council's existing stormwater line is required detailed engineering plans shall be submitted to and approved by Council with payment of all applicable fees in accordance with Council's management plan, prior to written approval being given by Council.

Accordingly, detailed amended engineering plans including certification from a chartered civil engineer with NPER registration with Engineers Australia indicating compliance with this condition are to be submitted for approval with the Construction Certificate application.

89. **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.

90. 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,

ITEM 5 (continued)

ATTACHMENT 1

- (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.
91. **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.
92. **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.
93. **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. 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.

94. **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*.
95. **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 5 (continued)

ATTACHMENT 1

96. **Noise and Vibration.** 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.
97. **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.
98. **Sediment, soil and dust.** No sediment, dust, soil or similar material shall leave the site during construction work.
99. **CCTV Surveillance** cameras must be installed in and around the property to maximise surveillance opportunities. CCTV should be used throughout the retail complex and communal areas such as lobbies, lifts etc, and paying particular attention to the internal area of the shopping centre especially entry and exit points. CCIV should also be used around the loading dock area and car park entry and exit points. CCIV should be placed on the external area of the building capturing the area outside the retail stores along Trelawney Street and also capturing the area along Rutledge Street. Digital technology should be used to record images from the cameras. Installed surveillance equipment needs to be able to zoom in on a person without loss of focus. Management must ensure that the requirements of the Surveillance and Privacy Act are adhered to.
100. **Landscape maintenance plan must be prepared for the site.** Landscaping close to the building should be regularly maintained to ensure branches cannot act as a natural ladder to gain access to higher parts of the building and trimmed to ensure concealment opportunities are eliminated.
101. **Lighting** shall be provided to all common areas including the car parking levels as well as the stairs and access to and including the public outdoor courtyard, communal gardens and the bin storage rooms. Such lighting to be automatically controlled by time clocks, and where appropriate, sensors to provide an energy efficient and controlled environment for residents.
102. **Signage.** Signage must be provided at entry/exit points and throughout the development to assist users and warn intruders that they will be prosecuted.
Warning: these premises are under constant surveillance.
Warning: trespassers will be prosecuted.
103. **Security Signs:** Signs should be erected in the car parks and near entry and exit points which details security measures and reminds people to lock their vehicles and remove valuables from their vehicles.
104. **Graffiti:** All surfaces on the street frontages that are not glass should use graffiti resistant paints and/or other surfaces that discourage graffiti.

ITEM 5 (continued)

ATTACHMENT 1

105. **Intercom Facility:** The entry to the car park should have a ticket/boom gate system. Intercom facilities should be incorporated into these entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
106. **Access control to residential lifts:** Access should be restricted to residents only to the lifts and stairs leading to the apartments.
107. **Installation of Locksets:**
- (a) The main entry/exit points for this development should be fitted with single cylinder locksets (Australia and New Zealand Standards - Locksets), which comply with the Building Code of Australia.
 - (b) An auxiliary lock set should also be incorporated into the design of each of the entry/exit points to enable emergency services to access the development particularly in emergency situations.
 - (c) Fire exit doors to the development should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the development.
 - (d) The main entry/exit doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.
 - (e) The balcony doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.
 - (f) The windows to individual units should also be fitted with key operated locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.

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.

108. **Basix commitments.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate referred to in this Development Consent.

ITEM 5 (continued)

ATTACHMENT 1

109. **Public domain.** All landscaping & public domain improvement works required to be carried out under condition 7 are to be completed.
110. **Consolidation.** All land titles within the site must be consolidated into one allotment. Documentary evidence of such consolidation shall be submitted prior to the issue of any Occupation Certificate under the Environmental Planning and Assessment Act 1979.
111. **Disabled access.** Access for disabled people shall be provided in the building or portion of the building in accordance with the applicable standards and the requirements set out in AS 1428.1. Documentary evidence is to be and certification obtained from a suitable qualified person confirming that the development meets these requirements is to be provided prior to the issue of any Occupation Certificate.
112. **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.

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

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

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

ITEM 5 (continued)

ATTACHMENT 1

115. **Design Verification:** Prior to an Occupation Certificate being issued to authorise a person to commence occupation or use of a residential flat building, the Principal Certifying Authority (PCA) is to be provided with design verification from a qualified designer. The statement must include verification from the qualified designer that the residential flat development achieves the design quality of the development as shown on plans and specifications in respect of any Construction Certificate issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. This condition is imposed in accordance with Clause 154A of the Environmental Planning and Assessment Regulation 2000.
116. **Post construction dilapidation report.** The submission of a post-construction dilapidation report which clearly details the final condition of all property, infrastructure, natural and man-made features that were recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining and private properties.
117. **Disused Gutter Crossing.** All disused gutter and footpath crossings where occur shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
118. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by and submitted to Council's for the Local Traffic Committee approval prior to the issue of OC.
119. **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*.
 - 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 constructed internal car park and associated drainage complies with AS 2890, 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 the connection of the site drainage system to the trunk drainage system where applicable complies with Section 4.7 of *AS 3500.3 - 1990* (National Plumbing and Drainage Code).

ITEM 5 (continued)

ATTACHMENT 1

- 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.

120. **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 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.
121. **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.
122. **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.

PRIOR TO SUBDIVISION CERTIFICATE

The following conditions in this Part of the consent apply to the Subdivision component of the development.

All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

123. **Final plan of subdivision.** The submission of a final plan of subdivision plus 3 copies suitable for endorsement by the Authorised Officer of Council.

ITEM 5 (continued)

ATTACHMENT 1

124. **Final plan of subdivision – title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land.
125. **Section 88B Instrument.** The submission of an Instrument under Section 88B of the Conveyancing Act 1919 plus 3 copies, creating Easements, Positive Covenants and Restrictions on Use. This Instrument shall nominate the City of Ryde as the authority empowered to release, vary or modify the terms of the Instrument.
126. **Occupation Certificate.** A final occupation certificate in relation to this development must be in force. A copy of the Occupation Certificate is to be submitted with the application for final subdivision certificate.
127. **Section 73 Certificate.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted with the application for final subdivision certificate.
128. **Utility provider – compliance documents.** The submission of documentary evidence of compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc).

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.

129. **Garbage Collection:** Where necessary, staff or contractors must be employed to take the waste containers from garbage and recycling room to the container emptying point for servicing and to return the containers to the garbage room after servicing.
130. **Gym to be used by residents only:** The use of the Gym within the building shall only be used by the residents living within the site.
131. **Indemnity:** Where it is necessary for waste collection vehicles to enter the property to service the waste containers, the property owner must indemnify Council and its contractor in writing against claims for damage to the driveways and manoeuvring areas.
132. **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*.

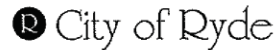
ITEM 5 (continued)

ATTACHMENT 1

133. **Noise from Plant & Machinery:** The operation of any plant or machinery installed on the premises must not cause:
- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at the most affected noise sensitive location in the vicinity. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
 - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
 - (c) The transmission of vibration to any place of different occupancy.
134. **Hours of operation.** The use of the retail part of the development is restricted to the following hours of operation: 7.00am and 9pm Monday to Saturday and 8.00am to 8pm on Sunday.

ITEM 5 (continued)

ATTACHMENT 2



Lifestyle and opportunity
@ your doorstep

Planning and Environment Committee Page 26

- 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

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

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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:

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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**

Agenda of the Planning and Environment Committee Report No. 9/12, dated
Tuesday 17 July 2012.

Agenda of the Planning and Environment Committee Report No. 9/13, dated
Tuesday 4 June 2013.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

2. Site (Refer to attached map)

Address : 3-5 Trelawney Street, Eastwood

Site Area : Site Area: 2131m²
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
Basement Level	67 resident car parking spaces (including 6 accessible spaces and 2 small car spaces)
	2 motorcycle parking spaces

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Level	Building A
	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)
Lower Ground Floor Level	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
Ground Floor Level	2 Retail Tenancies
	1 x 1 bed. unit (adaptable) 4 x 2 bed. units
Levels 1 to 4	3 x 1 bed. unit (2 adaptable) 10 x 2 bed. units
Level 5	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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 ²
Number of car spaces	108, plus one loading bay
Area of communal open space	263m ²
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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
Pre-DA Submission	
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.
Post – DA Submission	
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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"> - Reduction in the number of retail tenancies from 7 to 6. - Provision of additional basement storage area. - Addition of steps along the Trelawney Street frontage of the site. - Addition of bicycle parking on the footpath and within the lower ground level. - Increase to the lower floor levels to address the flood issue raised by Council's Engineer but no change to the overall building height.
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"> - Minor adjustments to the lower ground bin store areas. - Addition of a hard waste area and collection area at lower ground level. - 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). - Increase to the area of Retail 1 from 169sqm to 171sqm.
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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 from 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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

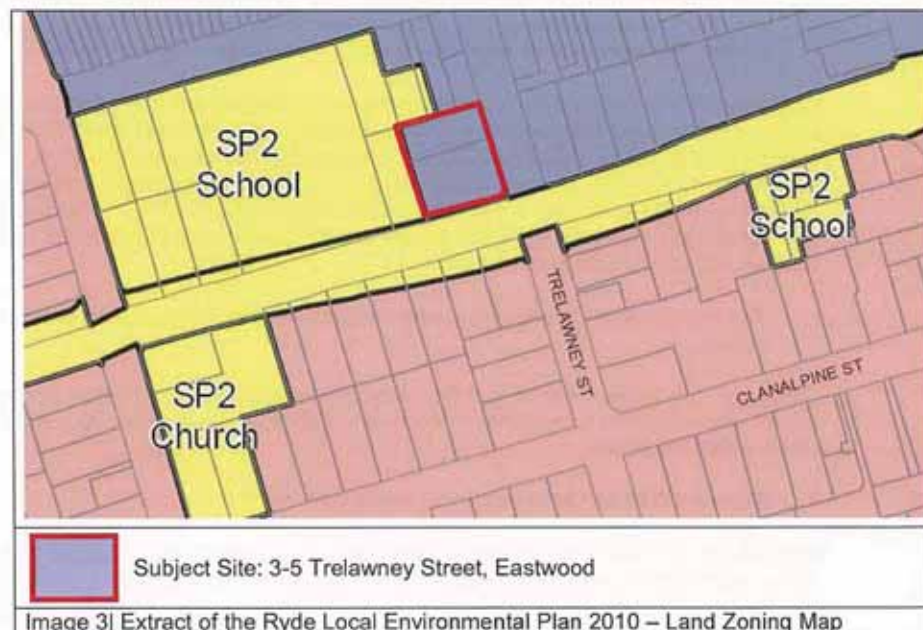
The proposed maximum building height will be 21.15m if the RL's provided on the submitted survey are relied upon. The maximum will be located at the northeast building corner in the location of proposed Unit No. 504. This represents a difference of 5.65m to the maximum permissible height of 15.5m. Whilst 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 5 (continued)

ATTACHMENT 2

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.

Zone Objectives	Comment	Complies
<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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

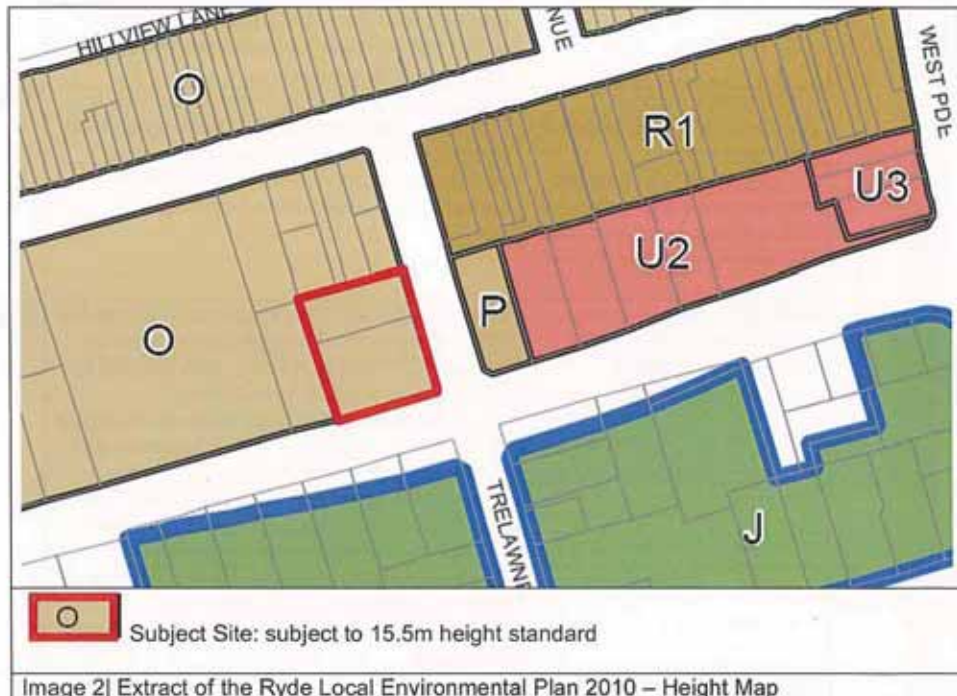
ITEM 2 (continued)

Zone Objectives	Comment	Complies
To recognise topography, landscape setting and unique location in design and land-use.	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.



ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

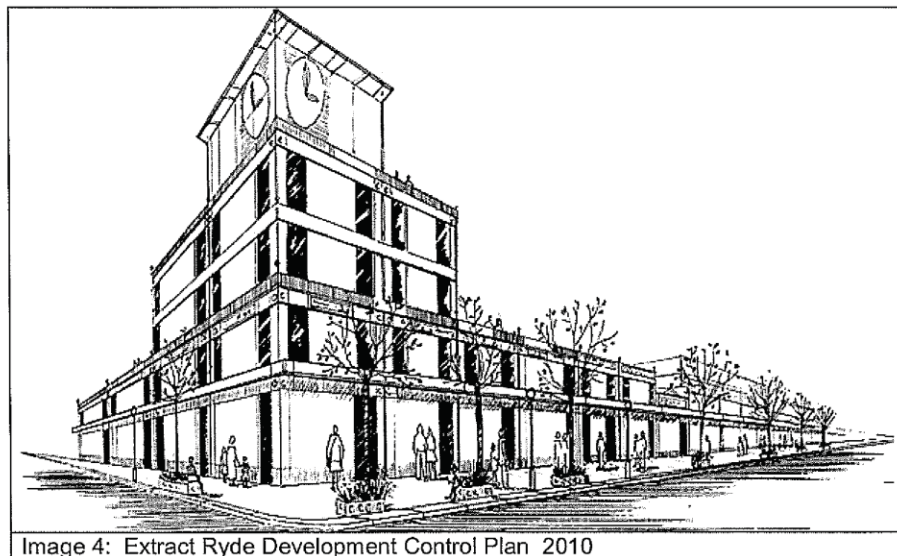


Image 4: Extract Ryde Development Control Plan 2010

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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
<p>Principle 1: Context</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 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.</p>	<p>No</p>

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Planning Principle	Comment	Complies
<p>Principle 2: Scale</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>	No.
<p>Principle 3: Built form</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>	No
<p>Principle 4: Density</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>	No

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Planning Principle	Comment	Complies
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.	does not achieve compliance with these controls and therefore represents a greater density.	
<p>Principle 5: Resource, energy and water efficiency</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>	Subject to conditions
<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>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>	Subject to conditions

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 'Urban Design Review Panel: Communal Open Space and Rooftops'.</p>	
<p>Principle 7: Amenity</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>	No

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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>	

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Planning Principle	Comment	Complies
<p>Principle 8: Safety and security</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>Principle 9: Social dimensions and housing affordability</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"> • 13 x 1 bedroom apartments; • 46 x 2 bedroom apartments; • 2 x 3 bedroom apartments. <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>

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.	
<p>Principle 10: Aesthetics</p> <p>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>	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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	<p>Up to 4 storeys (12m height):</p> <ul style="list-style-type: none"> ▪ 12m between habitable rooms and balconies ▪ 9m between habitable rooms/balconies & non-habitable rooms ▪ 6m between non-habitable rooms <p>From 5 to 8 storeys (25m height):</p> <ul style="list-style-type: none"> ▪ 18m between habitable rooms and balconies ▪ 13m between habitable rooms/balconies & non-habitable rooms ▪ 9m between non-habitable rooms 	<p>External separation:</p> <ul style="list-style-type: none"> ▪ Between proposed development at 7-9 Rutledge Street: 26m ▪ Between school building: 4.6m - 10m ▪ Between building to the north: 4m <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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
	Single-aspect apartments = 8 m max. in depth from a window.	<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"> -Indents have been provided adjacent to main living areas to ensure compliance. -The variances are minimal. -The non-compliant portion contains areas other than main living areas. -Light access is less important in bedrooms and non-habitable areas, where the non-compliance occurs. -The variances will provide more functional space. <p>The variances to Units 105-405, 106-406 are accepted given the following:</p> <ul style="list-style-type: none"> -The variances are minimal. -The units will have adequate access to sunlight and ventilation. -The variances will provide more functional space. 	Satisfactory
	The back of a kitchen = 8m max. from a window.	Generally the apartments achieve this, although Units 105, 106, 205, 206, 305, 306, 405, and 406 fail this control. The kitchens of	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		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.	
Internal and External Areas	1 Bed cross through: 50/8m ² 1 Bed single aspect: 63.4/10m ² 2 Bed corner: 80/11m ² 2 Bed cross through: 89/21m ² 3 Bed: 124 / 24m ²	The following units do not achieve compliance: G03: 87 />22 (2 bed cross) G04: 87 />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) The variances to private open spaces are more significant in circumstances where 2 bedroom cross through and 3 bedroom apartments are proposed as a	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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"> - The absolute minimum of 8-11sqm is generally met for the private open spaces - Variances for the private open spaces of 1 bedroom units are minimal. - Variances to unit areas are minimal. - Smaller unit areas and private open spaces will encourage affordable housing. - Ample communal area will be provided. 	
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 ² & 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"> ▪ studio apartments 6m³ ▪ one-bedroom apartments 6m³ ▪ two-bedroom apartments 8m³ ▪ three plus bedroom apartments 10m³ 	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		<p>require another 2m³ 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: 6m³ 2 Bedroom Unit: 8m³ 3 Bedroom Unit: 10m³</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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Subject Matter & Objectives	Primary Development Control and Guidelines	Comments	Complies
		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.	
	Design for shading and glare control, particularly in summer.	A condition can be included in a consent to avoid reflective films; require use a glass reflectance below 20%; and consider reduced tint glass.	Subject to conditions
	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.	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.	Satisfactory Insufficient details
Natural Ventilation	60% of units should be naturally cross ventilated. Select doors and operable windows to maximise natural ventilation opportunities established by the apartment layout.	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.	Subject to conditions

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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	<p>Reduce reliance on artificial lighting by:</p> <ul style="list-style-type: none"> ▪ providing a mix of lighting fixtures, including dimmable lighting, to provide for a range of activities in different rooms ▪ 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 ▪ using separate switches for special purpose lighting ▪ using high efficiency lighting ▪ using motion detectors for common areas, lighting ▪ doorways and entrances, outdoor security 	<p>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:</p> <ul style="list-style-type: none"> ▪ lighting adjacent to windows be switched separately to those not adjacent to windows; ▪ dimmable lighting in living areas; and ▪ security lighting for units doorways/entrances. 	Subject to conditions

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.*

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

Agenda of the Planning and Environment Committee Report No. 9/13, dated Tuesday 4 June 2013.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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"> ▪ <i>(iii) have a sympathetic and harmonious relationship with adjoining development.</i> 	<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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comment	Complies
<ul style="list-style-type: none"> ▪ (2) (g) to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies. 	above) and therefore will not be consistent with objective (2) (g)	
<p>Clause 2.3 – Zone Objectives and land use table</p> <p>Zone B4 Mixed Use Objectives of zone</p> <ul style="list-style-type: none"> ▪ To provide a mixture of compatible land uses. ▪ To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. 	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>(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.</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 1,500m² in gross floor area</p>	The BASIX provisions override this control. The subject DA is accompanied by BASIX Certificate No. 385935M issued on 12 October 2011	-

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
Ryde Development Control Plan 2010 Part 4.1 Eastwood Town Centre		
2.1.1 Planning Principles for Eastwood		
Regional Role 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
Integrated Planning and Development 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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
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>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 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. 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>	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'.	Subject to conditions
<p>Urban Form</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>	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	No

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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>Land Use Mix</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>Transport and Access</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>

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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>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 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>	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
3.0 Development Policies		
3.1 Mixed Use Development		
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
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. Pedestrian and communal areas to be well lit and designed to minimize opportunities for concealment.	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.	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
3.2 Stormwater Management		
A stormwater inundation impact assessment or stormwater inundation management strategy is to be submitted for all developments. Floor levels within any new development should be a minimum of 300mm above the calculated flood level for the 100 year ARI event. Developments should comply with Part 8.2 Stormwater Management of this DCP.	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
3.3 Architectural Characteristics		
3.3.1 Height		
Buildings must comply with the maximum height limit shown on the Height of Buildings Map under Ryde Local Environmental Plan 2010.	Refer to LEP assessment above.	No
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 at the end of this table.	No
3.3.2 Setbacks		
New buildings are to have street frontages built predominantly to the street alignment for the first 2 storeys.	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	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
3.3.3 Urban Design/Exterior Finishes		
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
3.3.4 Corner Allotments		
The design of buildings should consider the following: i. The height of adjacent buildings; ii. Stepping the building up where the building turns the corner;	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
<p>iii. The incorporation of distinctive features to enhance the streetscape, i.e. clocks, flag poles, towers, etc;</p> <p>iv. Giving the corner a splayed, concave, convex or square recess treatment such that it signifies the intersection; and</p> <p>v. Incorporating the removal of clutter such as power poles and advertising signage from around intersections.</p>	avoid visual clutter.	
3.4 Access & Parking		
3.4.2 Contributions		
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
3.4.3 Location of Vehicle Access and Footpath Crossings		
<p>The design and location of vehicle access to developments should minimise:</p> <ul style="list-style-type: none"> ▪ Conflicts between pedestrian and vehicles on footpaths, particularly along pedestrian priority streets; and ▪ Visual intrusion and disruption of streetscape continuity. 	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
3.5 Pedestrian Access & Amenity		
3.5.1 Street Frontage Activities		
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
<p>following at ground level:</p> <ul style="list-style-type: none"> ▪ Retailing, food/drink outlets, customer counter services or other activities which provide pedestrian interest; ▪ Enclosed shop-fronts with window displays of goods and services within, and/or artworks; ▪ Open shopfronts to food outlets and/or interiors with tables and chairs for diners; ▪ 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 ▪ A high standard of finish for shop fronts. 	<p>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.</p>	
<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"> ▪ Providing visual interest; ▪ Providing well designed and attractive entrances, lobbies and commercial uses at ground level; and ▪ Incorporating, where practicable, either open or enclosed shop fronts with window displays of merchandise or services within, and/or artworks. 	<p>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.</p>	Satisfactory
<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</p>	<p>The ground floor retail/commercial tenancies have been amended to be slightly raised above footpath level. This</p>	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
3.5.4 Landscaping & Trees		
Development proposals, incorporating landscaped	A landscape plan has been submitted and reviewed by	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
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).	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.	Subject to conditions
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.	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.	Satisfactory
3.5.5 Awnings and Colonnades		
Buildings with frontage to any street must incorporate an awning or colonnade along that boundary.	An awning is proposed along Trelawney Street and most of Rutledge Street, where pedestrian activities will be generated. This is acceptable given that: - It will discourage high pedestrian traffic and associated acoustic and visual privacy impacts adjacent to ground level	Satisfactory

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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"> ▪ Be continuous for the entire length of the site frontage; ▪ Be set back from the face of the kerb by 0.6m; ▪ 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; ▪ Be weather sealed to the face of the building to which they are attached and to the adjoining awnings; ▪ Have a height clearance above the footpath level of at least 3m or a height consistent with adjacent awnings; and ▪ Maintain sufficient clearances from any overhead electricity or telecommunication 	<p>The awning along Rutledge Street ends after the main residential lobby entry. This is appropriate for the reasons discussed above.</p> <p>The proposed awnings are 3m in width, with a 600mm setback for the tree plantings.</p> <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>	Subject to conditions

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
3.7 Environmental Management		
3.7.1 Sunlight		
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
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. North-facing windows to living areas of neighbouring dwellings should not have sunlight reduced to less than the above 3 hours.	The north facing living room windows of all units will meet the minimum 3 hour solar access requirement. North-facing windows to living areas of neighbouring dwellings will not have sunlight reduced to less than the above 3 hours, where existing.	Satisfactory
3.7.2 Wind Standards		
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
3.7.3 Energy Efficiency of Buildings		
<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>
3.7.4 Vibration and Noise Mitigation		
<p>In respect of proposals for new residential buildings:</p> <ul style="list-style-type: none"> ▪ The building plan, walls, windows, doors and roof are to be designed and detailed to reduce intrusive noise levels. ▪ Balconies and other external building elements are located, designed and treated to minimise infiltration and reflection of noise onto the façade; ▪ 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). 	<p>An acoustic report has been submitted. Should the application be approved, conditions are recommended to ensure:</p> <ul style="list-style-type: none"> ▪ Sealing of external facing window frames and door frames. ▪ Provision of acoustic glazing on outward facing windows. ▪ Appropriate timeframes for delivery vehicles. ▪ Installation of a ventilation system to each unit that will satisfy internal sound levels detailed in the submitted Acoustic Report. ▪ Implementation of the roller shutter manufacturer's maintenance schedule and recommended servicing of guide rails. ▪ Compliance of the plant and equipment with the noise criteria listed in the submitted Acoustic Report. 	<p>Subject to conditions</p>

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
	<ul style="list-style-type: none"> ▪ 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. <p>Also refer to 'Environmental Health' comments.</p>	
3.7.5 Reflectivity		
<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>
3.7.6 External Lighting of Buildings		
<p>Any external lighting of buildings is to be considered with regard to:</p> <ul style="list-style-type: none"> ▪ The integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building); ▪ The contribution of the visual effects of external lighting to the character of the building, surrounds and skyline; ▪ The energy efficiency of the external lighting system; and ▪ The amenity of residents in the locality. 	<p>Discussed above.</p>	<p>Subject to conditions</p>

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
3.7.7 Waste Management		
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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
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.	A communal on-site waste storage room will be provided for the residential component. A separate room is proposed for hard waste.	Satisfactory
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.	A garbage chute is proposed, as well as an adjacent area to accommodate two bins. Also refer to the section 'Environmental Health' below.	Satisfactory
Business and Retail Premises: The system for waste management is compatible with collection services.	No concerns have been raised by Council's Environmental Health Officer.	Satisfactory
On-site source separation is facilitated.	A separate waste room is proposed for the non-residential tenancies which will consist of appropriate bin types to facilitate source separation.	Subject to conditions
An appropriately designed and well located waste storage and recycling area and/or garbage and recycling room is provided on-site.	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.	Subject to conditions

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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
7.1 Energy Smart, Water Wise	The development would be required to comply with the BASIX requirements.	Subject to conditions
7.2 Waste Minimisation and Management	Refer to above assessment and comments provided below from Council's 'Environmental Health Officer'.	Subject to conditions
9.2 Access for People with Disabilities	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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"> ▪ External pathway links and building entrance, doorway entry landings and thresholds. ▪ Door schedules and hardware. ▪ Ramp and stairway handrails, tactile surface indicators, step nosings, and risers. ▪ Lift internal floor areas, controls, handrails and the like. ▪ Fittings and fixtures of accessible sanitary facilities. ▪ Raised tactile and Braille signage for common area, public toilets and amenities. ▪ Lift lobby widths and doorway thresholds. ▪ Door widths and lever handles of adaptable units. ▪ Adaptable unit kitchen cupboards, appliances and the like. ▪ Outdoor private open space threshold ramps of adaptable units. 	

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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>9.3 Car Parking</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>9.4 Fencing</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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

Control	Comments	Compliant
9.6 Tree Preservation	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

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

Agenda of the Planning and Environment Committee Report No. 9/13, dated Tuesday 4 June 2013.



ITEM 5 (continued)

ATTACHMENT 2

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:

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

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

Contribution Type	Contribution Amount
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
The total contribution is	\$733,033.39

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

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.

Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

ATTACHMENT 1

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



Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

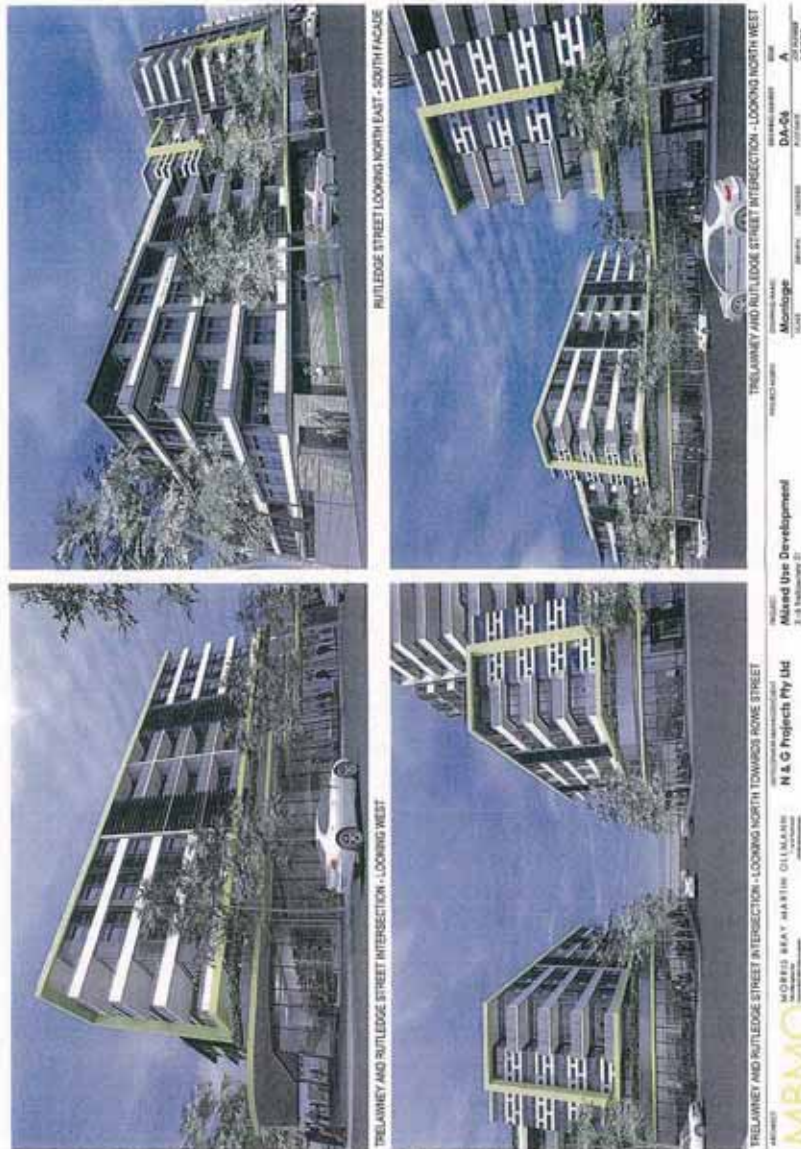
Agenda of the Planning and Environment Committee Report No. 9/13, dated Tuesday 4 June 2013.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

ATTACHMENT 2



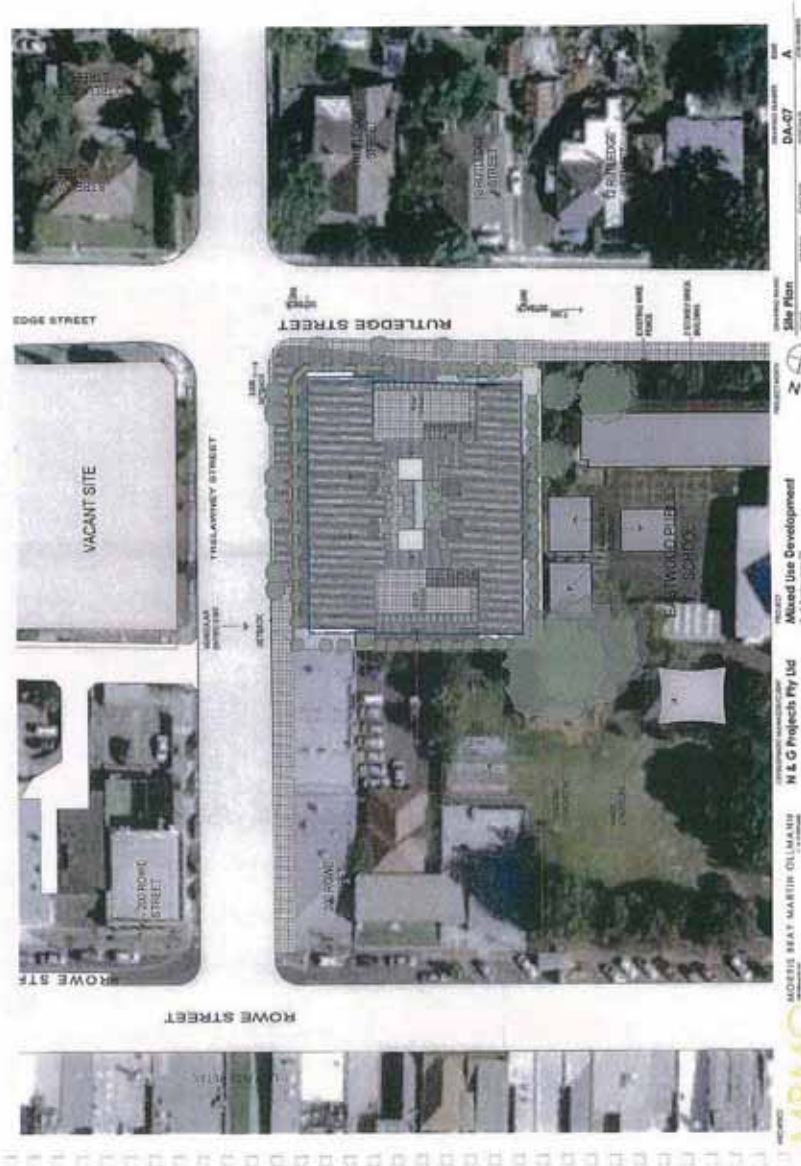
Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

ATTACHMENT 2



Agenda of the Planning and Environment Committee Report No. 9/12, dated
Tuesday 17 July 2012.

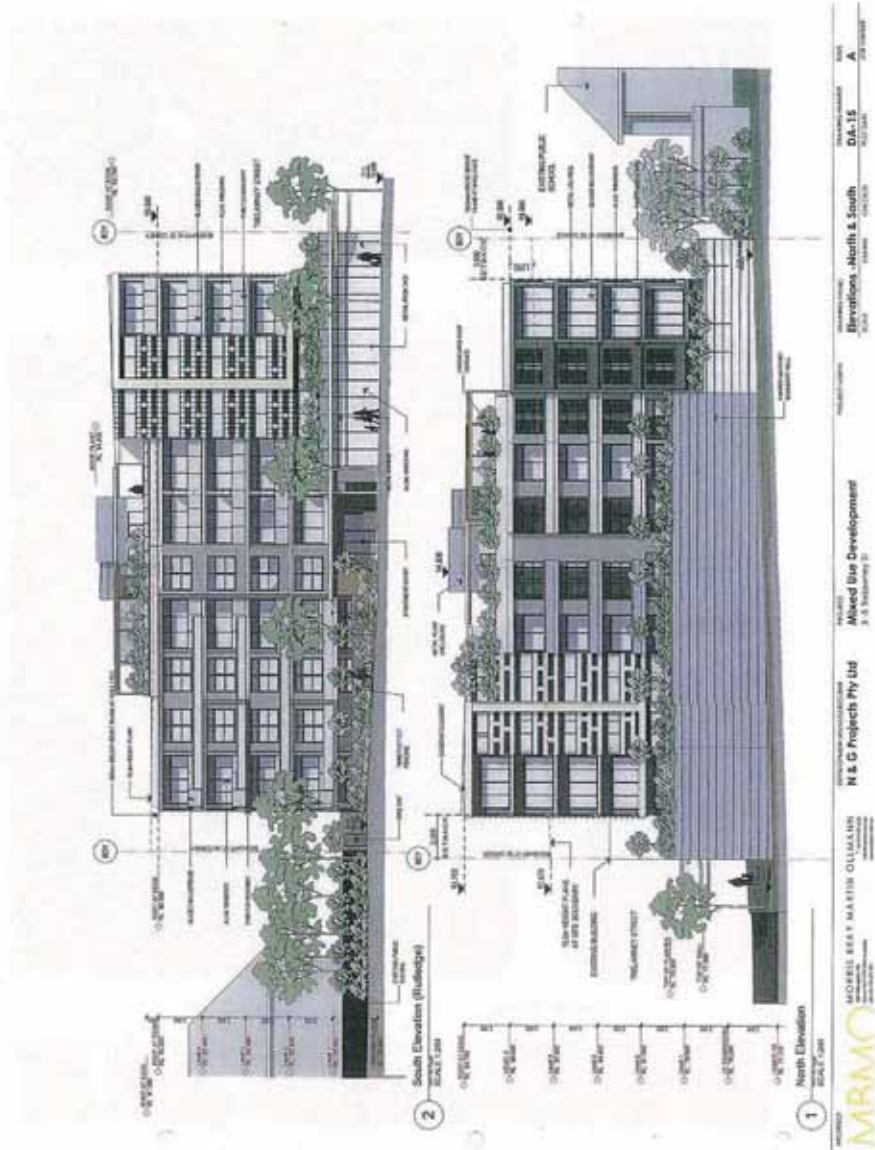
Agenda of the Planning and Environment Committee Report No. 9/13, dated
Tuesday 4 June 2013.

ITEM 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

ATTACHMENT 2



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 4

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

Report prepared by: Client Manager

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

Report dated: 27 June 2012

File Number: D12/47050

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

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 4

Report Prepared By:

Adrian Melo
Client Manager

Report Approved By:

Liz Coad
Manager Assessment

Dominic Johnson
Group Manager - Environment & Planning

Agenda of the Planning and Environment Committee Report No. 9/12, dated
Tuesday 17 July 2012.

Agenda of the Planning and Environment Committee Report No. 9/13, dated
Tuesday 4 June 2013.

ITEM 5 (continued)

ATTACHMENT 2

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

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 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.

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 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.

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
(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 developer):	The proponents are seeking to provide:	
(a) who has sought a change to an environmental planning instrument, or	– A one off monetary contribution of \$150,000	
(b) who has made, or proposes to make, a development application, or	The above is in addition to the applicable Section 94 Contributions and can be used where deemed appropriate by Council.	Yes
(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,	The provisions of additional funds are considered to constitute material public benefit which shall be used and applied towards a public purpose.	Yes
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		Yes

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 4
Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<i>applied towards a public purpose.</i>		
(2) A public purpose includes (without limitation) any of the following:		
(a) the provision of (or the recoupment of the cost of providing) public amenities or public services,	No public amenities or public services are provided.	N/A
(b) the provision of (or the recoupment of the cost of providing) affordable housing,	No affordable housing is provided.	N/A
(c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,	No transport is provided.	N/A
(d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,	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
(e) the monitoring of the planning impacts of development,	No monitoring of planning impacts is provided.	N/A
(f) the conservation or enhancement of the natural environment.	No conservation or enhancement of the natural environment is provided.	N/A
(3) A planning agreement must provide for the following:		
(a) a description of the land to which the agreement applies,	It is considered that the VPA adequately satisfy the requirement of this part.	Yes
(b) a description of: (i) the change to the environmental planning instrument to which the agreement applies, or (ii) the development to which the agreement applies,		
(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,		
(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		

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 4

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<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>

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 4

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<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>		
<p>(9) A planning agreement cannot impose an obligation on a planning authority:</p> <p>(a) to grant development consent, or</p> <p>(b) to exercise any function under this Act in relation to a change to an environmental planning instrument.</p>	<p>The planning agreement does not impose an obligation to grant development consent or change an environmental planning instrument.</p> <p>Whilst the VPA forms part of the Development Application, support of the VPA does not grant approval to the Development Application.</p>	Yes
<p>(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 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.</p>	<p>The works proposed under the VPA are to be subject to further consideration by Council and will be determined as part of the application.</p> <p>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.</p>	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.

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

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 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 been 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 5 (continued)

ATTACHMENT 2

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 5 (continued)

ATTACHMENT 2

ITEM 2 (continued)

ATTACHMENT 5



Agenda of the Planning and Environment Committee Report No. 9/12, dated Tuesday 17 July 2012.

ITEM 5 (continued)

ATTACHMENT 3

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

Report prepared by: Client Manager

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

Report dated: 4 June 2013

File Number: D13/35847

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.

This report also considers options for the proposed contributions as resolved by Council at its meeting dated 11 December 2012.

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 accept the Voluntary Planning Agreement made by N & G Projects Pty Ltd with a reference of PJAC_100970_017.DOC.
- (b) That the above be communicated to the proponents.

ATTACHMENTS

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

ITEM 5 (continued)

ATTACHMENT 3

Report Prepared By:

Adrian Melo
Client Manager

Report Approved By:

Liz Coad
Manager Assessment

Dominic Johnson
Group Manager - Environment & Planning

ITEM 5 (continued)

ATTACHMENT 3

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 5 (continued)

ATTACHMENT 3

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.

The Application was considered by the Planning and Environment Committee on 17 July 2012 and at the Council Meeting held on 24 July 2012. On 24 July 2012 Council resolved that the matter be deferred for the Group Manager – Environment and Planning to negotiate with the applicant with particular regard to addressing the following:

- (a) An increase in the voluntary planning agreement;
- (b) The non-compliances as outlined in the officer's report; and
- (c) Meeting the needs of both the developer and community with regards to amenity.

On 26 October 2012 Council's Group Manager Environment & Planning negotiated an outcome in line with Council resolution to achieve the following:

- Level 5 units to be deleted, reducing the number of proposed apartments in the development from 61 units to 57 units;
- The VPA offer of cash contribution of \$150,000 to remain with the Section 94 Contribution being amended to reflect the reduced number of apartments;

ITEM 5 (continued)

ATTACHMENT 3

- It was agreed that the above changes could be effected via a deferred commencement condition that requires plans to be submitted prior to the consent becoming operative.

Accordingly, a report was forwarded to Council with an option of deferred commencement condition and or refusal as per original assessment report.

At its meeting of 13 November 2012, Council resolved to defer consideration of this DA pending receipt of the information required by the deferred commencement conditions including amended plans and exhibition of this information with a further report to Council for consideration in 2013. The recommended deferred commencement condition required the following:

- (a) Level 5 units to be deleted and amended plans submitted to Council. The size of the roof terraces and associated structures are not to be increased;
- (b) An amended BASIX Certificate is to be submitted which reflects the changes in part a above;
- (c) A total of 6 adaptable units are to be provided within the development. The amended plans are to clearly identify the location of these units;
- (d) That the applicant shall submit a revised Voluntary Planning Agreement to Council to address the concerns raised by Council staff in relation to Clause 23.2 of the VPA. The wordings of the VPA and the Explanatory Notes must be revised to comply with the Environmental Planning and Assessment Act 1979.

On 21 December 2012, the applicant submitted amended plans and revised BASIX Certificate in accordance with the Council resolution. The amended proposal was exhibited in accordance with Council's requirements ending on 1 April 2013. Five submissions were received including two letters of support and three objections to the proposed development. No submissions were received in response to the VPA.

On 6 December 2012 the proponent submitted an amended VPA deleting reference to Clause 23.2 of the VPA. Following the resignation of Mr John Neish, the proponents needed to further update the VPA to refer to Council's current Acting General Manager, Ms Danielle Dickson. An amended VPA was submitted 10 May 2013 correcting this reference.

6. Report

Council has received Local Development Application LDA2011/611, at 3-5 Trelawney Street, Eastwood. The development seeks consent for construction and strata subdivision of a mixed use development consisting of a building with six retail/commercial tenancies (534m²); 57 residential apartments and basement parking for 108 car.

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 5 (continued)

ATTACHMENT 3

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 original Assessment Report. The original 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.

The proposal was re-exhibited to comply with the Council Resolution of 13 November 2012. The proposal and VPA were exhibited in accordance with the requirements of Development Control Plan 2010 between 23 January 2013 and 20 February 2013. On 18 March 2013 the application was notified again for a period of 14 days ending on 1 April 2013. This was necessary as it was noted that the description of the development in letters sent out during earlier notification was incorrect. No submissions were received in regard to the VPA.

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.

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<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 developer):</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>The proponents are seeking to provide:</p> <ul style="list-style-type: none"> – A one off monetary contribution of \$150,000 <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>

ITEM 5 (continued)

ATTACHMENT 3

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<p><i>(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</i></p> <p><i>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.</i></p>		<p>Yes</p> <p>Yes</p>
<p><i>(2) A public purpose includes (without limitation) any of the following:</i></p> <p><i>(a) the provision of (or the recoupment of the cost of providing) public amenities or public services,</i></p> <p><i>(b) the provision of (or the recoupment of the cost of providing) affordable housing,</i></p> <p><i>(c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,</i></p> <p><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></p> <p><i>(e) the monitoring of the planning impacts of development,</i></p> <p><i>(f) the conservation or enhancement of the natural environment.</i></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>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.</p> <p>No monitoring of planning impacts is provided.</p> <p>No conservation or enhancement of the natural environment is provided.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes</p> <p>N/A</p> <p>N/A</p>
<p><i>(3) A planning agreement must provide for the following:</i></p> <p><i>(a) a description of the land to which the agreement applies,</i></p> <p><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></p>	<p>It is considered that the VPA adequately satisfy the requirement of this part.</p>	<p>Yes</p>

ITEM 5 (continued)

ATTACHMENT 3

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<p><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></p> <p><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></p> <p><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></p> <p><i>(f) a mechanism for the resolution of disputes under the agreement,</i></p> <p><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></p>		
<p><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></p>	The VPA does not exclude the operation of Section 94 on the proposed development.	Yes
<p><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:</i></p> <p><i>(a) the Minister, or</i></p> <p><i>(b) a development corporation designated by the Minister to give approvals under this subsection.</i></p>	Section 94EF does not apply to the proposal.	N/A
<p><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></p>	The VPA <u>does not</u> seek the exclusion of the application of Section 94.	N/A

ITEM 5 (continued)

ATTACHMENT 3

Environmental Planning and Assessment Act 1979 Clause 93F		
Clause 93F	Proposal	Complies?
<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 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.

ITEM 5 (continued)

ATTACHMENT 3

Item	Value
VPA - Cash Contribution	\$150, 000.00
Contribution under Council's Section 94 Contribution Plan	\$698, 964.49
Total Contributions to Council	\$848, 964.49

Accordingly, the VPA offer constitutes 21% of the applicable Section 94 Contributions. When combined with the Section 94 Contribution, the VPA offer totals 121% 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.

At Councils meeting held 11 December 2012, Council resolved:

That the General Manager provide options for Council to consider when further dealing with the VPAs for proposed developments at 3-5 Trelawney Street and 7-9 Rutledge Street Eastwood to fully allocate the funds from the VPAs, if accepted, to legacy projects for the community at Eastwood in close proximity to the developments that are capable of being undertaken in conjunction with or in the same time frame as the developments. Options to include:

- *Completion of electricity undergrounding along the remaining section of Trelawney Street between Rutledge and Rowe Streets;*
- *Provision of safe and legal bicycle access to the two developments across Rutledge Street from Trelawney Street the southern side and bicycle access along the frontage of both developments and beyond to the gate of Eastwood Public School for the safety and benefit of school children.*
- *Combination of the above.*

It should be noted that the developments at 3-5 Trelawney St and 7-9 Rutledge St are independent from one another. As such, the funds proposed under this VPA are separate from those proposed under the VPA for 7-9 Rutledge St. This means that the total sum of funds to be delivered under this VPA is \$150, 000.

Any consideration of potential uses for the allocation of funding should give consideration to the timing of receipt of funds. In this respect, Council imposes standard 5 year consent for developments of this scale. The timing for the funding is any time prior to issuing of the construction certificate. The issuing of a Development Consent is no guarantee that the development will proceed. Should the development not proceed, Council will not receive the \$150,000 proposed under the VPA. Constraints to the undertaking of the development include matters such as market forces and their impacts on financing. This means that there is no definitive timing or certainty for the receipt of these funds other than within 5 years of the issuing the consent, should the development progress.

ITEM 5 (continued)

ATTACHMENT 3

In response to the above resolution of Council, potential allocated uses for the funds are discussed below.

1. Allocate funds for upkeep and maintenance of public domain

A condition has been proposed that will require the upgrading of the public domain areas surrounding the site in accordance with Council’s Public Domain Technical Manual. This will require the provision of granite paving, tree planting and other quality finishes above and beyond those existing.

In discussions with Councils Manger Assets System, it was identified that these higher quality finishes will incur additional costs for their upkeep and maintenance. Council has not identified any funds for the upkeep and maintenance of these assets. Accordingly, a potential use of the funds to be delivered under the proposal could be for their allocation to be used for the upkeep and maintenance of the public domain infrastructure to be delivered by the proposal on Council land.

2. Allocate funds for Bicycle Access

Council’s resolution identifies a potential use for the fund for the provision of safe and legal bicycle access. In this regard, it should be noted that Council has prepared the *Ryde Bicycle Strategy and Master Plan 2007*. The Ryde Bicycle Strategy and Master Plan is a comprehensive plan for improving the environment for people who ride bicycles for transport, health and fitness. This Strategy updates all previous bicycle plans and aims to facilitate increased bicycle use within the City of Ryde over the next 10 years and beyond.

The Strategy and Masterplan also includes a Proposed Bicycle Network Connectivity Plan which identifies local and regional links and routes throughout the Local Government Area. An extract of this is provided below.

Extract from Proposed Bicycle Network Connectivity Plan



It can be seen from the above, that the holistic plan for the bicycle network within Ryde does not include links along Rutledge St or access to the gate of Eastwood Public School.

ITEM 5 (continued)

ATTACHMENT 3

Notwithstanding the above, should Council still wish to allocate funds for this purpose, at a minimum the following would need to take place:

- i. Scoping report and project feasibility undertaken to determine costs and best delivery mechanism for the bike path.
- ii. Small scale master plan for Rutledge St to identify appropriate location of the bike path and other infrastructure works necessary. This could potential include items such as:
 - a) Updating of traffic signalling,
 - b) widened footpaths, and
 - c) kerb realignments.
- iii. A review of the strategy and master plan to determine Network Plan would need to be amended in response to new path,
- iv. Consultation with the school to determine whether:
 - a) the school would be in favour of a bicycle route,
 - b) active encouragement of children would take place to maximise the use of the cycle route,
 - c) gates are best arrival / departure location for the school, and
 - d) other alternative locations should be considered.
- v. Independent Road Safety Audit of the final scheme to ensure that no children are exposed to risk. Safety of proposed path would be considered throughout process however this step is the final verification that the scheme is safe.

From the above, it can be seen that the process for the proposed bike path would not necessarily be short. The delivery of such a project would be entirely dependent on receipt of funds as part of VPA and accordingly, no timing can be specified as to when it could occur. Given the conceptual nature of the scheme at this point in time no detailed costings can be provided. Costings will be significantly influenced by the extent of work required which will be influenced by the final location of the path. However, it is likely that additional funds will need to be allocated to augment the funds delivered under the VPA.

3. **Allocate funds for undergrounding of powerlines**

Along the western side of Trelawney St, there are no power lines to be undergrounded. However, potentially the funds could be allocated to underground power lines along the eastern side of Trelawney St.

In order to allow for the undergrounding of power lines, existing light poles would need to be replaced with Multi Function Poles which significantly adds to the cost of undergrounding. It would also require undergrounding of power lines crossing Trelawney St to service existing buildings which would significantly increase the cost of works.

ITEM 5 (continued)

ATTACHMENT 3

Generally, the replacement of existing light poles with Multi Function Poles (MFP) is in excess of \$60,000 dependant on site constraints, sourcing of materials and potential issues with the infrastructure. This does not include additional costs for the undergrounding of power lines from the existing buildings to new MFPs.

The delivery of such a project would be entirely dependent on receipt of funds as part of VPA and accordingly, no timing can be specified as to when it could occur. Given the conceptual nature of the scheme at this point, no detailed costings can be provided. Costings will be significantly influenced by the extent of work required. However, it is likely that additional funds will need to be allocated to augment the funds delivered under the VPA.

4. Do not allocate funds and accept generic cash contribution

Council could receive the funds proposed under the VPA for a not specific use. This could then be used for any purpose determined by Council. Council has adopted the *Four Year Delivery Plan 2012–2016 Including One Year Operational Plan 2012/2013*. This details the delivery of Council's 10 year vision as articulated in the Community Strategic Plan.

The Plan details 21 programs supported by 123 planned projects and activities over four years prioritised and aligned to the delivery of the seven outcomes for the City of Ryde. The Four Year Delivery Plan details how Council will spend over \$500 million up to 2016.

Council could receive the funds proposed under the VPA and use this money to support the 123 planned projects. This particular application of the funds would negate any potential issues regarding timing as the funds would be used to augment and support Council's existing funding resources. This would allow for greater flexibility in the use of the funds.

The preferred use for the funds is that Council accept the \$150, 000 as a generic cash contribution without an allocated use. This is as it allows for flexibility in the application of the funds and negates any issues regarding timing of receipt of the funds.

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 5 (continued)

ATTACHMENT 3

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.

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.

Accordingly, it is recommended that if Council resolves to approve Local Development Application 2011/0611 at 3-5 Trelawney Street, Eastwood then Council accept the Voluntary Planning Agreement made by N & G Projects Pty Ltd with a reference of PJAC_100970_017.DOC.

ITEM 5 (continued)

ATTACHMENT 4

4.00 DESIGN COMPLIANCE
The building has been designed to incorporate the requirements of the BCA

2.00 SITE AREA
The site area is 210 m²

3.00 ZONING
The land is zoned B1 - Mixed Use

4.00 BUILDING HEIGHT PLANE
LEVEL 5 UNITS DELETED

5.00 UNIT BREAKDOWN

Ground	1 bed	4
Level 1	2 bed	10
Level 2	3 bed	10
Level 3	3 bed	10
Level 4	3 bed	10
Totals		44

Total units: (Inclusive of 6 adobeable units) 44

6.00 CARPARKING REQUIREMENTS

RETAIL PARKING REQUIREMENT: (per 25m² accessible to public)
Retail GFA (incl. 6 bed) = 350m²
Retail Parking Spaces required = 14 (inc. 1 acc. space)

RESIDENTIAL PARKING REQUIREMENT
1 Bedroom = 13 x 1 = 13 (inc. 6 age space)
2 Bedroom = 44 x 1.2 = 53
Visitors per 4
Residential Parking Spaces Required = 15 (inc. 1 age space)
81 Spaces

TOTAL REQUIRED = 95 Spaces

6.01 CARPARKING PROVIDED: **UPDATED**

Lower Ground	41
Basement 01	57
TOTAL PROVIDED	148 Spaces

7.0 Daylight Access (Sunlight)
70% of total apartments in a class urban area should receive 2 hours of daylight access in winter
Apartments receiving 2 hours or more = 44
% of apartments receiving 2 hours or more of sunlight = 77%

8.0 Natural Ventilation **UPDATED**
Min 60% of total apartments should receive natural cross ventilation
Apartments with natural cross ventilation = 36
% of apartments with natural cross ventilation = 63%

PROJECT DATA
10071

DA01

MIXED USE DEVELOPMENT

3 - 5 TRELAWNEY STREET EASTWOOD, NSW

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MBMO

ITEM 5 (continued)

ATTACHMENT 5

● Indicates submissions received
(note: some submissions outside map range)

