

**Meeting Date:** Tuesday 16 April 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

### NOTICE OF BUSINESS

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**1 CONFIRMATION OF MINUTES - Meeting held on 2 April 2013**

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**Report prepared by:** Section Manager - Governance  
**File No.:** CLM/13/1/3/2 - BP13/90

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**REPORT SUMMARY**

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

**RECOMMENDATION:**

That the Minutes of the Planning and Environment Committee 5/13, held on Tuesday 2 April 2013, be confirmed.

**ATTACHMENTS**

- 1 Minutes - Planning and Environment Committee - 2 April 2013

**ITEM 1 (continued)**

**ATTACHMENT 1**

Planning and Environment Committee  
**MINUTES OF MEETING NO. 5/13**

**Meeting Date:** Tuesday 2 April 2013

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

**Time:** 5.00pm

**Councillors Present:** Councillors Simon (Chairperson), Chung, Maggio, Pendleton and Yedelian OAM.

**Apologies:** Nil.

**Absent:** Councillor Salvestro-Martin.

**Staff Present:** Group Manager – Environment and Planning, Service Unit Manager – Environmental Health and Building, Team Leader – Assessment, Assessment Officer – Town Planner, Business Support Coordinator – Environment and Planning and Councillor Support Coordinator.

**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 19 March 2013**

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Chung)

That the Minutes of the Planning and Environment Committee 4/13, held on Tuesday 19 March 2013, be confirmed.

**Record of Voting:**

For the Motion: Unanimous

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

**2 6 CLARE STREET, GLADESVILLE. LOT 15 DP 7560. Section 96 application to delete condition of consent for new driveway and parking bay (Condition 49). MOD2012/0196.**

Note: Tod Anderson (applicant) addressed the Committee in relation to this Item.

Note: Photographs were tabled by the applicant in relation to this Item and copies are ON FILE.

**RECOMMENDATION:** (Moved by Councillors Yedelian OAM and Maggio)

**ITEM 1 (continued)**

**ATTACHMENT 1**

That Modification Development Application No. 2012/0196 at 6 Clare Street, Gladesville, being LOT 15 DP 7560 be referred to the next Council Meeting on 9 April 2013.

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **9 APRIL 2013** as substantive changes were made to the published recommendation and Councillor **YEDELIAN OAM** requested that the matter be referred to the next Council Meeting.

**3 400-426 VICTORIA ROAD, GLADESVILLE. LOT 1 DP 747541. Local Development Application for change of use, signage, and fitout for a gymnasium to operate 24 hours per day. LDA2012/0477.**

Note: Stuart Pass (applicant) addressed the Committee in relation to this Item.

Note: Photographs were tabled by the applicant in relation to this Item and copies are ON FILE.

**RESOLUTION:** (Moved by Councillors Chung and Maggio)

- (a) That Local Development Application No. 2012/0477 at 400-426 Victoria Road, Gladesville, being LOT 1 DP 747541 be approved subject to the conditions in **Attachment 2**, with the following amendments:
- (i) Condition 37 - Window Coverage: Blinds are to be fitted to all southern rear windows of the premises to ensure lighting arising from the premises is minimised, in consideration of surrounding residential properties.
  - (ii) Condition 43 - to be deleted.
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

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

The meeting closed at 5.45pm.

CONFIRMED THIS 16TH DAY OF APRIL 2013.

Chairperson

- 2 22 MONS AVENUE, WEST RYDE. LOT 23, Section C, DP 2322. Local Development Application for demolition, construction of a residential flat building with six (6) apartments and basement car parking for eight (8) cars. LDA2012/0454.**

**INTERVIEW: 5.00pm**

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**Report prepared by:** City Plan Services

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

**Report dated:** 26 March 2013 **File Number:** grp/09/5/6/2 - BP13/484

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## 1. Report Summary

**Applicant: Mr. Nasri Antoine Barbour**

**Owner: Mr. Nasri Antoine Barbour**

**Date lodged: 5 December 2012**

This report considers a proposed development which involves demolition of all existing structures on the site and the erection of a residential flat building ("RFB") containing six (6) apartments with a single basement level car park comprising eight (8) car parking spaces. The existing tree at the rear of the site will be retained. A more detailed description of the development is provided in Section 5 of this report.

The development results in variations to a number of the key development controls applying to the development. The development results in a variation to the density control under Clause 4.5B of the Ryde Local Environmental Plan 2010 ("RLEP"). A Clause 4.6 variation has been submitted in respect of this non-compliance.

The development also results in variations to a number of the Ryde Development Control Plan 2010 ("RDCP") controls, including (but not limited to) front, side and rear setbacks, landscaped area, building height (storeys), fencing, garbage storage, driveways and stormwater management.

The development is also inconsistent with many of the provisions of SEPP 65 and the Residential Flat Design Code ("RFDC") "rules of thumb".

All the non-compliances with the relevant planning controls and guidelines are outlined in detail in the body of this report.

Cumulatively, the proposed non-compliances result in adverse amenity impacts on the site, adjacent sites and the Mons Avenue streetscape.

The development also results in the potential isolation of the adjoining properties at No's. 20 and 24 Mons Avenue, West Ryde. In considering the principles established by the NSW Land and Environment Court proceedings of *Melissa Grech vs. Auburn Council [2004] NSWLEC 40* for isolated sites, as outlined in detail in this report, the

**ITEM 2 (continued)**

Applicant has failed to address the issue of site isolation adequately.

Further to the above, the Applicant has failed to secure landowners' consent from the owner(s) of No. 23-25 Station Street, West Ryde, for the purpose of establishing an easement for drainage across that property. No evidence of negotiation with the owner(s) of No. 23-25 Station Street regarding the easement has been provided. The stormwater disposal system for the proposed development relies upon this easement.

During the assessment of this application, the Applicant submitted one (1) set of amended plans on 16 February 2013 in response to Council's requests for further information ("RFI"). Council's RFIs outlined many of the above concerns and particularly, issues regarding the general bulk and scale of the proposal. The amended plans addressed some of the engineering comments raised but did not satisfactorily resolve bulk and scale issues. The Applicant's response included a written submission to justify their current design, which indicated that further design amendments were unlikely to be considered. This application is therefore presented to the Planning and Environment Committee for determination on the basis of the plans currently submitted.

The original application was advertised and notified to adjoining and nearby owners, in accordance with Council's Notification DCP (Part 2.1 of DCP 2010) and seventeen (17) submissions were received. All of these submissions objected to the development. Re-notification of the amended plans was not warranted as the changes made are not substantial and do not involve any significant design amendments.

For the reasons summarised above, and with regard to the assessment undertaken in this report against the applicable Environmental Planning Instruments ("EPIs") and the Planning Principle for site isolation, the subject application is recommended for refusal.

**Reason for Referral to Planning and Environment Committee:**

- Requested by the Mayor, Councillor Petch, and Councillors Yedelian OAM, Maggio, Pendleton, Pickering, and Salvestro-Martin.
- Number of submissions received.

**Public Submissions:** 17 submissions objecting to the development (including one (1) late submission).

**Clause 4.6 RLEP 2010 objection required?** Yes. A Clause 4.6 variation has been submitted in respect of the minimum site area for residential flat development.

**Value of works:** \$1,184,000 (including GST)

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

**ITEM 2 (continued)****RECOMMENDATION:**

- (a) That Local Development Application No. 2012/0454 at 22 Mons Avenue, West Ryde, being Lot 23, Section C, in Deposited Plan 2322 be **REFUSED** for the following reasons:
1. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to meet the objectives of the R4 High Density Residential Zone in the Ryde Local Environmental Plan 2010.
    - a) The proposal does not ensure that *"the building design does not adversely affect the amenity of the locality"*.
  2. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to meet the minimum site area requirement under Clause 4.5B of the Ryde Local Environmental Plan 2010.
    - a) Based on the unit mix proposed, the site area has a shortfall of 17.7m<sup>2</sup>.
    - b) The development does not satisfy the criteria outlined in Clause 4.6 of the RLEP.
  3. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development.
    - a) The proposal is contrary to Clause 9 Principle 1: Context
    - b) The proposal is contrary to Clause 10 Principle 2: Scale
    - c) The proposal is contrary to Clause 11 Principle 3: Built form
    - d) The proposal is contrary to Clause 12 Principle 4: Density
    - e) The proposal is contrary to Clause 14 Principle 6: Landscape
    - f) The proposal is contrary to Clause 15 Principle 7: Amenity
    - g) The proposal is contrary to Clause 18 Principle 10: Aesthetics
    - h) The proposal is inconsistent with the provisions of the Department of Planning *"Residential Flat Design Code"* in relation to building height, building separation, setbacks, landscape design, open space, orientation, visual privacy, building entries, vehicle access, storage, daylight access and facades.
  4. The proposal is contrary to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the Draft Ryde Local Environmental Plan 2011.



**ITEM 2 (continued)**

- a) The proposal is of a type and density that does not:
    - accord with urban consolidation principles;
    - promote compatibility with the existing environmental character of the locality;
    - have a sympathetic and harmonious relationship with adjoining development; and
    - enhance the amenity and characteristics of established residential areas.
  - b) The proposal does not preserve or improve the existing character, amenity and environmental quality of the land.
5. The proposal is contrary to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the requirements of the Ryde Development Control Plan 2010.
- a) The proposal is contrary to the objectives of Part 3.4 - Residential Flat Buildings and Multi Dwelling Housing (not within the Low Density Residential Zone) of the RDCP as it will:
    - Not encourage a high architectural and landscape standard;
    - Will not preserve and enhance the existing residential amenity of the site and surrounding area;
    - Will not regulate the physical characteristics of residential flat development in order to preserve the character of the area; and
    - Does not ensure maximum privacy, sunlight and air, both within and without the site.
  - b) The proposal does not comply with the maximum building height prescribed in "storeys" in Part 3.4 of the RDCP.
  - c) The proposal does not comply with the front, site and rear setback requirements of Part 3.4 of the RDCP.
  - d) The proposal does not comply with the internal setback requirements of Part 3.4 of the RDCP.
  - e) The proposal does not comply with the minimum landscaped area requirements of Part 3.4 of the RDCP.
  - f) The materials and finishes for the development are not appropriate and contribute to the visual dominance of the development and are therefore contrary to Part 3.4 of the RDCP.
  - g) The proposal is unsatisfactory with regard to the retaining wall requirements in Part 3.4 of the RDCP.
  - h) The location and design of the waste storage area is unsatisfactory with regard to the requirements of Part 7.2 of the RDCP.
  - i) The proposed driveway does not comply with the maximum width requirements in Part 8.3 of the RDCP.



**ITEM 2 (continued)**

- j) The proposed stormwater disposal method for the site does not meet the requirements of Clause 2.1.1 of Part 8.4 of the RDCP as consent has not been granted by the property owner(s) at No. 23-25 Station Street with regard to the easement for drainage across the site.
  - k) The proposal does not meet the access and mobility requirements of Part 9.2 of the RDCP in relation to disabled access provision to the outdoor common area.
  - l) The proposed visitor space does not comply with the minimum width requirement in Part 9.2 of the RDCP.
  - m) The proposal is unsatisfactory with regard to the fencing requirements in Part 9.4 of the RDCP as inadequate information has been submitted to confirm details of the proposed fencing.
6. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is likely to have an adverse impact upon the built environment in that the bulk and scale of the development will create an unreasonable sense of enclosure to the neighbouring properties and will adversely impact on the visual amenity of the Mons Avenue streetscape. Furthermore, the proposal is likely to result in the isolation of the adjoining property at No. 20 Mons Avenue, West Ryde and the possible isolation of No. 24 Mons Avenue, West Ryde.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site.
8. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest, pertaining to the number of objections that have been received in relation to the proposal.
9. The proposal is contrary to Section 5(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that it will not encourage the "*promotion and co-ordination of the orderly and economic use and development of land*" as the development application will result in the likely isolation and potential "*sterilisation*" of No. 20 and 24 Mons Avenue, West Ryde.
- a) The Applicant has not acted in accordance with the process and requirements of the NSW Land and Environment Court Planning Principles for site isolation.
  - b) The Applicant has failed to adequately demonstrate that No.'s 20 and 24 Mons Avenue, West Ryde, will not be isolated and sterilised as a result of the proposed development.
  - c) The development application, in this regard, will likely result in the isolation of sites, fragmentation of the Mons Avenue Streetscape and will set a precedent for future undesirable overdevelopment of small lots.

**ITEM 2 (continued)**

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

**ATTACHMENTS**

- 1 Compliance Table
- 2 Map
- 3 A4 Plans
- 4 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**David Ryan Consultant Planner  
City Plan Services**

Report Approved By:

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

**Liz Coad  
Manager Assessment**

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

## ITEM 2 (continued)

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

**Address** : 22 Mons Avenue, West Ryde  
Lot 23, Section C in Deposited Plan 2322

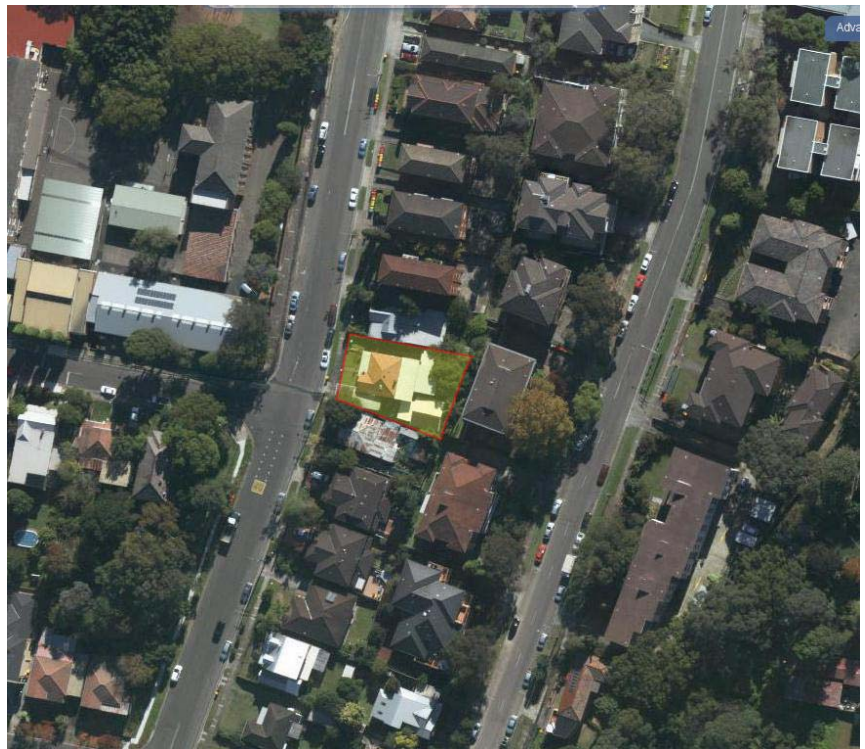
**Site Area** : 582.3m<sup>2</sup>  
Frontage 17.045 metres  
Depth 31.6/28.17 metres

**Topography and Vegetation** : The subject site has a fall towards the south-eastern corner with a moderate cross-fall to the rear of the site.

There is one (1) mature tree located adjacent to the rear boundary. This is the only tree presently growing on the site.

There are existing trees on adjacent properties and in close proximity to the site's northern and southern boundaries.

The following aerial photograph identifies the subject site and adjoining sites.



**Existing Buildings** : A single storey brick dwelling house, two (2) fibro sheds, detached brick wc / laundry, brick garage and metal carport.

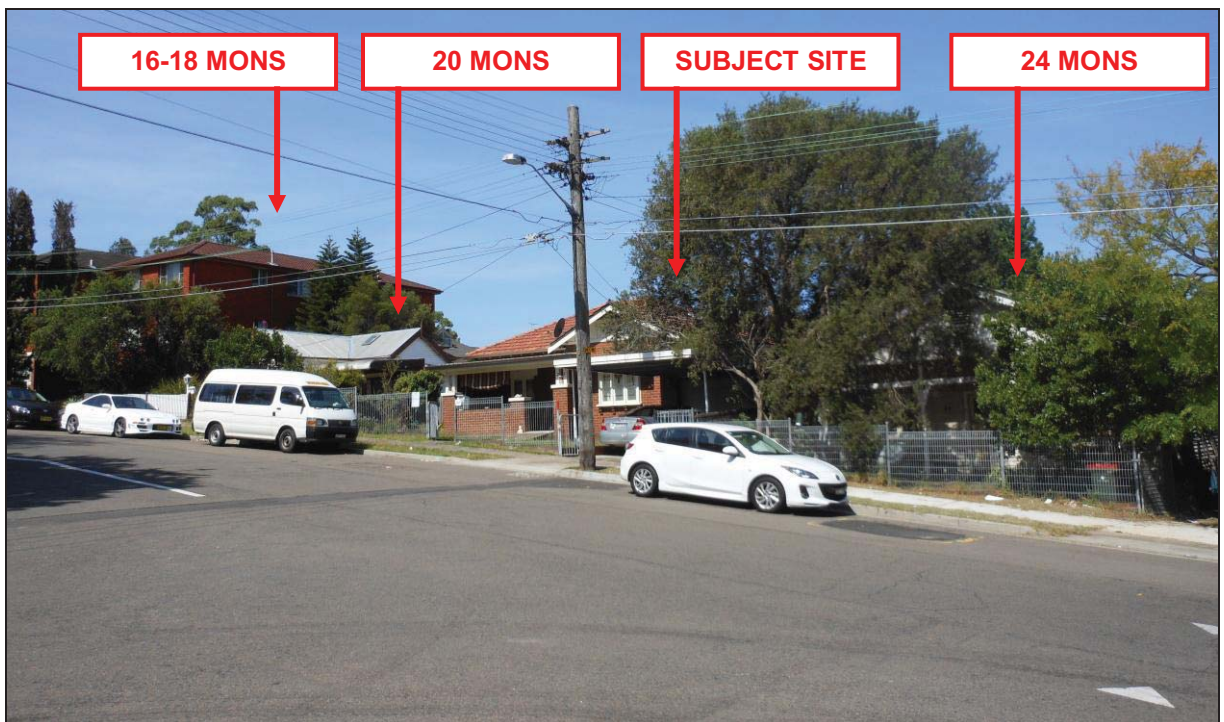
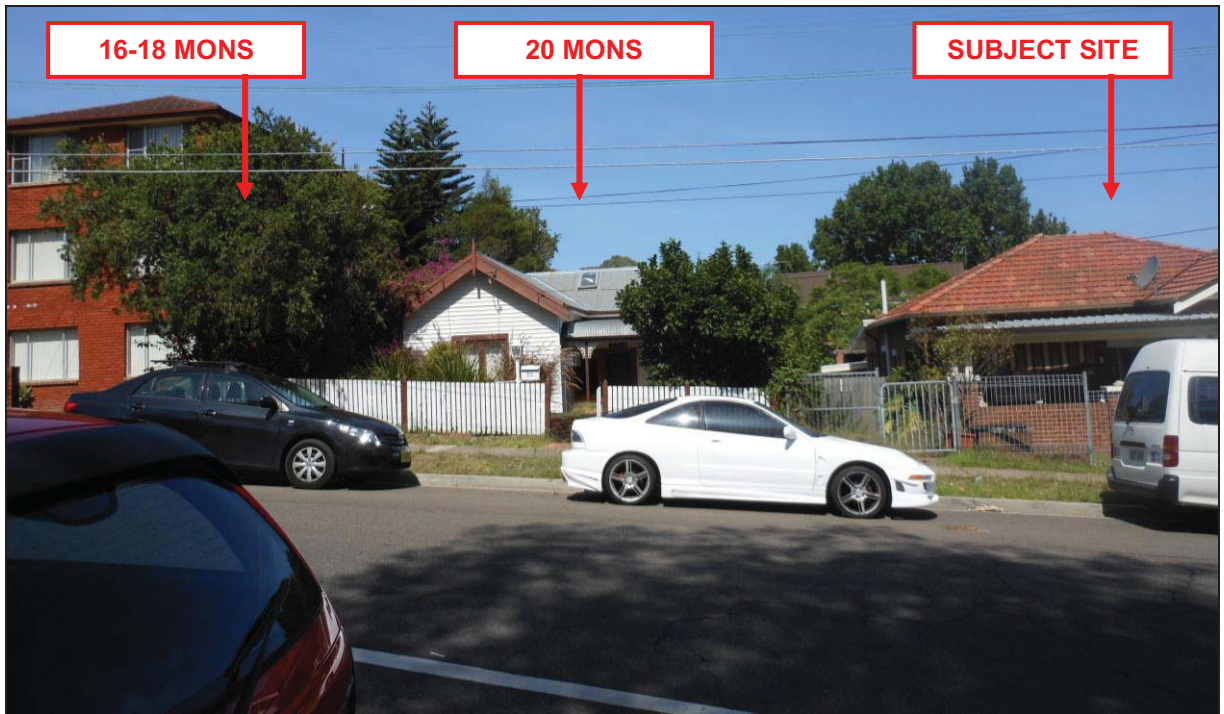
**ITEM 2 (continued)**

- Planning Controls Zoning** : R4 High Density Residential under Ryde Local Environmental Plan 2010.
- Draft Zoning** : R4 High Density Residential under Draft Ryde Local Environmental Plan 2011.
- Other** : Environmental Planning & Assessment Act 1979.  
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.  
State Environmental Planning Policy No. 55 - Remediation of Land.  
State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.  
State Environmental Planning Policy – Building Sustainability Index (BASIX) 2004.  
City of Ryde Development Control Plan 2010.

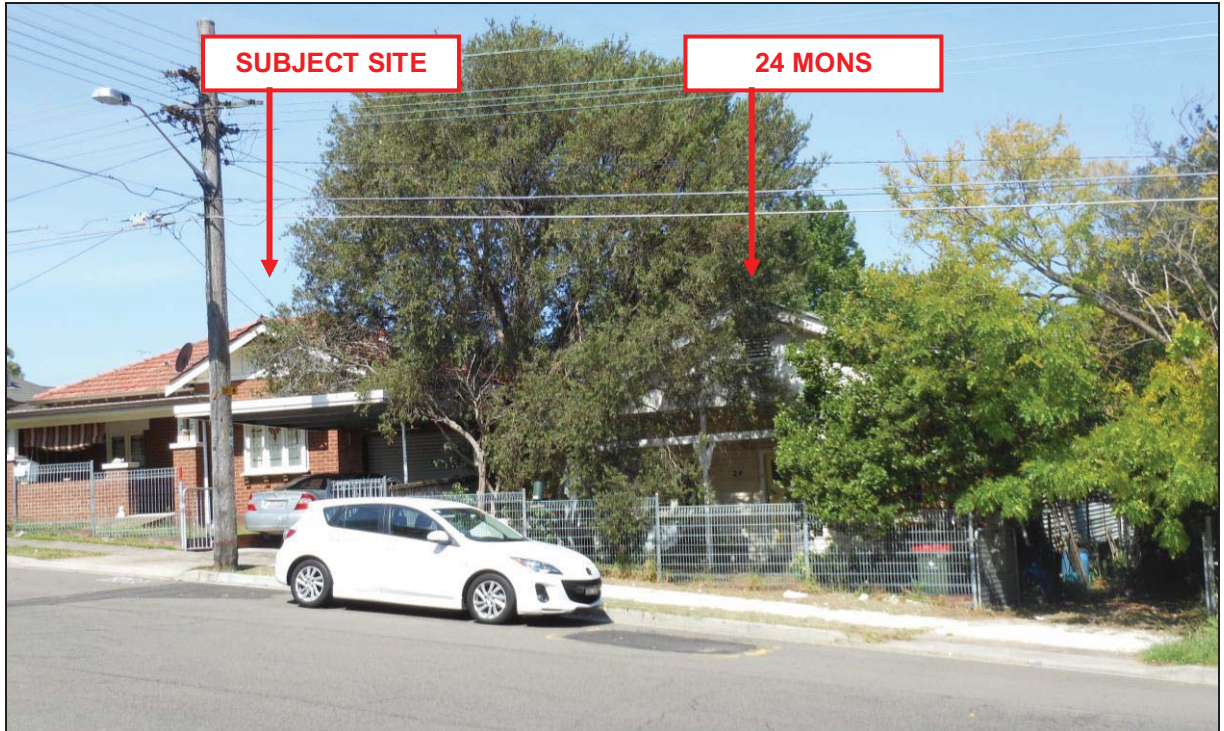




**ITEM 2 (continued)**



**ITEM 2 (continued)**



**3. Councillor Representations**

1. Name of Councillor: The Mayor, Councillor Petch

Nature of the representation: Not stated.

Date: 5/2/13

Form of the representation (e.g. via email, meeting, phone call): Phone call to the Group Manager Environment and Planning Executive Assistant

2. Name of Councillor: Councillor Yedelian OAM

Nature of the representation: On behalf of an objector.

Date: 27/2/13

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

3. Name of Councillor: Councillor Maggio

Nature of the representation: On behalf of an objector.

Date: 28/2/13

**ITEM 2 (continued)**

Form of the representation (e.g. via email, meeting, phone call): Email to Group Manager Environment and Planning.

4. Name of Councillor: Councillor Pendleton

Nature of the representation: On behalf of an objector.

Date: 28/2/13

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

5. Name of Councillor: Councillor Pickering

Nature of the representation: On behalf of an objector.

Date: 1/3/13

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

6. Name of Councillor: Councillor Salvestro-Martin

Nature of the representation: Not stated.

Date: 5/3/13

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

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No

**5. Proposal**

The proposal is to demolish the existing dwelling house and all existing structures on the site and construct a three (3) storey residential flat building ("*RFB*"). Details of the proposal are provided below.

The proposed RFB will contain six (6) apartments and will comprise the following mix:

- 1 x 1 bedroom apartment;
- 4 x 2 bedroom apartments; and
- 1 x 3 bedroom apartment

Two (2) apartments are proposed at each level of the building and all units, aside from Unit 5, are cross-through apartments. Unit 5 has a "wrap-around" configuration.



## ITEM 2 (continued)

Each of the proposed apartments will have private open space in the form of a west-facing balcony / terrace and a common landscaped open space area is proposed at the rear of the site.

Access to the apartments is via the ground floor residential lobby area, with access from Mons Avenue. Access throughout the building is via an internal staircase.

Eight (8) car parking spaces are proposed in a single level basement car park and one (1) of these spaces is to be designated as a visitor parking space.

Vehicular access / egress to the development is via a new driveway to the basement level car park.

An accessible path of travel is provided to the development via an at-grade pathway and a wheelchair platform lift is provided in the basement to provide wheelchair access to the ground level / entrance of the development.

A waste (garbage and recycling) enclosure is proposed in the north-western corner of the site.

The following is a montage of the proposed development as viewed from Mons Avenue:



**ITEM 2 (continued)****6. Background**

- A pre-lodgement meeting was held on 3 November 2010 with Council for a proposal involving the subject site and the adjoining site to the north, No. 20 Mons Avenue, West Ryde. This proposal was for a RFB to be constructed across both sites. The proposal was also presented to the Urban Design Review Panel ("UDRP"). This proposal was not formally lodged as a development application.
- A pre-lodgement meeting was held on 18 May 2012 with Council for the subject proposal, which did not include No. 20 Mons Avenue as part of the development site. The proposal was also presented to the UDRP. At this meeting, the Applicant outlined his attempt, but failed negotiations to purchase and amalgamate with No. 20 Mons Avenue.

The Panel raised a number of concerns with regard to the proposal and requested certain matters to be addressed in any future development application. These matters are summarised below:

- The stormwater management and disposal proposed for the site. A rear drainage easement is required in accordance with Council's DCP, with consent required from the adjoining property owner in this regard. Council officers would not be in a position to support the proposal in the event that an easement cannot be obtained.
- Impact of the fire stair exit from the basement within the front setback. The UDRP raised concerns regarding amenity impacts in terms of privacy and outlook for the ground floor unit (Unit 1).
- Inability to develop the land by amalgamating with the adjoining land at No. 20 Mons Avenue is raised as a concern. Any DA submission must include documentation to illustrate how the adjoining site might develop so that the impacts of two smaller develops can be considered.
- An appropriately located garbage bin storage area must be provided for the development in accordance with the requirements contained in Part 3.4 of the DCP 2010.
- Vehicle parking and access should be designed as per AS 2890.1-2004 in order to facilitate access the curvature entry to the basement for the safe passage of 2 vehicles.

In addition to the above, the Council and UDRP raised a number of compliance issues with the RDCP and inconsistencies with SEPP 65 and the RFDC. Many of these concerns have not been addressed in the subject proposal. The key outstanding issues are set out below:

**ITEM 2 (continued)**

- Building separation.
  - Front setback.
  - Side setbacks.
  - Rear setbacks.
  - Communal open space area.
  - Storage.
  - Acoustic privacy.
  - Solar access.
  - Density.
  - Landscaped area.
  - Site Isolation.
- 
- As a result of the failed negotiations to purchase and amalgamate with No 20 Mons Avenue, the subject LDA was lodged for No. 22 Mons Avenue on 4 December 2012.
  - Following a preliminary assessment of the LDA, various issues were identified. The following issues were raised via a letter to the Applicant dated 10 January 2013:
    - Non-compliances with the RLEP site area density control, the RDCP controls regarding setbacks and landscaped area, and inconsistencies with many of the RFDC rules of thumb, including communal open space and separation distances, resulting in a likely over-development of the site.
    - Impact of the abovementioned non-compliances on the ability for No. 20 Mons Avenue to realise a reasonable amount of redevelopment potential as a stand-alone site. The "*potential envelope*" identified by the Applicant for No. 20 Mons Avenue may not be attainable or reasonable due to the proposal and the small size of that site.
    - Failure of Applicant to undertake consideration of the residential flat design code and specifically, the "*rules of thumb*" for residential flat development.
    - Failure of Applicant to provide a design verification statement in accordance with the requirements of Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000*.
    - Failure of Applicant to provide details regarding the quoted landscaped area calculation.
    - Inconsistencies between the FSR noted in the SEE and on the architectural plans.
    - Failure of Applicant to provide evidence that the proposed inter-allotment easement can be secured. No documentation is included in the application to provide evidence of negotiations and consent from the landowner of the adjoining property at No. 23-25 Station Street.

**ITEM 2 (continued)**

- Request for an amended cost estimate, to include the qualifications of the signatory and consideration of Council's *"guide figures for estimating genuine cost of works for development and construction proposals"* in Council's *"Estimating Cost of Works for Development"* guide.
- Failure of Applicant to provide a detailed access report by a qualified access consultant.
- Failure of Applicant to provide justification for the location of the proposed fire stair which results in amenity impacts for the lower ground floor unit (Unit 1).
- Failure of Applicant to include materials and finishes on the architectural plans.
- Failure of Applicant to include details regarding the proposed fencing for the development.
- Failure of Applicant to provide a signed waste management plan.
- Concerns regarding the width of the driveway at the front boundary, which is considered to be excessive and result in adverse streetscape and visual impacts.

Many of the above matters were raised during the pre-lodgement meeting with Council and the UDRP.

- Following a preliminary assessment of the LDA by Council's engineering department, various issues were identified. The following issues were raised via a letter to the Applicant dated 1 February 2013:
  - Amendments to the basement car park were requested to extend further west and north by 1 metre to facilitate access to the site. Additionally, car park space 1 was requested to be increased to a minimum width of 3.5 metres and an increase in the access driveway ramp width to a minimum of 4 metres.
  - The OSD was requested to be designed as an underground SW detention tank of minimum 600mm deep, located under the rear landscaped area.
  - Provision of evidence of owners consent from the rear neighbour for the stormwater drainage easement.
  - Design of the inter-allotment pipeline to collect and pipe the entire site stormwater runoff assuming 100% blockage in the 1 in 100 year storm with accompanying calculations submitted to Council.
  - Incorporation of a 500L rain water tank as required under the BASIX Certificate.
- The proposal was advertised in the Northern District Times on 23 January 2013 and notification letters were sent to adjoining property owners. The submission period closed on 6 February 2013 and sixteen (16) submissions were received. A late submission was received on 26 February 2013. All of the submissions received were objections to the application.

**ITEM 2 (continued)**

- Amended plans were received by Council for further review (dated 16 February 2013). The amended plans only incorporate minor changes in response to Council's engineering comments to the Applicant on 1 February. The changes did not warrant re-notification of the plans.
- The amended plans were referred to Council's Engineering department for assessment. Referral back to Council's Public Works department was not considered necessary.
- The amended plans were assessed prior to completion of this report.

**7. Submissions**

The original proposal was advertised in accordance with Part 2.1, Notification of Development Applications of the RDCP. The application was advertised in the Northern District Times on 23 January 2013 and notification of the proposal was from 16 January to 6 February 2013. During this time, Council received sixteen (16) submissions in total from eight (8) properties. A late submission was also received on 26 February 2013. This submission was prepared on behalf of the owner of No. 20 Mons Avenue.

All of the submissions received were objections to the application.

Re-notification of the proposal following receipt of the amended plans was not undertaken as the changes made were mainly related to engineering matters and not substantial design changes that would warrant re-notification.

The issues raised in the seventeen (17) submissions can be summarised into the following categories:

- a) Increased traffic and congestion during construction and operation of the development and reduction in the amount of available on-street parking.*

**Response:** This objection is not supported.

Increased traffic generation during construction of the development is a matter that can be addressed by appropriate conditions of consent relating to traffic management. In terms of operational traffic generation, whilst an intensification of the level of usage for driveway access was noted, Council's Traffic Engineer has not raised any objection to the development in this regard. While the DA is not supported on other grounds, traffic generation does not warrant refusal. Refer to point p) below for discussion regarding car parking provision and on-street parking.

**ITEM 2 (continued)**

b) *Privacy impacts by virtue of overlooking, particularly on No. 20 Mons Avenue, No. 24 Mons Avenue and 26 Mons Avenue.*

**Response:** This objection is supported.

Impacts could be resolved by conditions requiring design amendments (high sill windows or obscure glazing to windows). However, within the context of other issues surrounding the development and the fact that all windows in the development would then be required to be "*treated*", on a merit basis, this is not considered to promote good design. Visual privacy is discussed further in **Section 9(b)** of this report.

c) *Overshadowing impacts to adjoining properties.*

**Response:** This objection is partly supported.

The orientation of the site, the fall of the land, and the scale of the development, means that there is a potential impact on solar access to No. 24 Mons Avenue and "*self-shadowing*" of the subject development. Self-shadowing is discussed in **Section 9(b)** of this report.

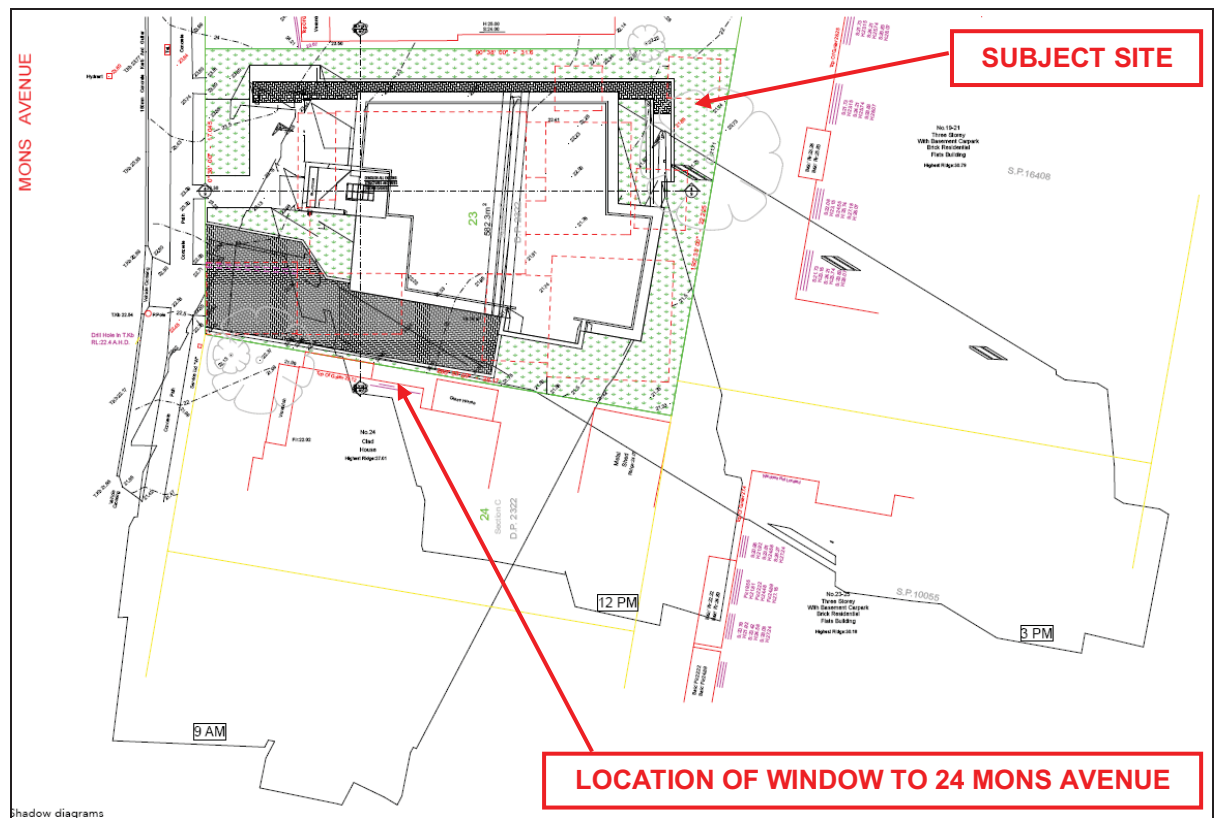
There is no quantitative control in Section 3.4 of the RDCP (for "*residential flat development*") regarding solar access. The quantitative control is drawn from the RFDC for high density residential development. As No. 24 Mons Avenue is a single dwelling house, the RFDC does not strictly apply to the existing built form. However, Section 3.3 of the RDCP prescribes that windows in dwellings to the north-facing living areas are to receive at least 3 hours of sunlight between 9:00am and 3:00pm on 21 June over a portion of their surface. Furthermore, this section requires sunlight to at least 50% of the principal area of ground level private open space of adjacent properties, not to be reduced to less than two (2) hours between 9:00am and 3:00pm on June 21.

In relation to No. 24 Mons Avenue, the shadow diagrams submitted with the application demonstrate that the window on the north facing elevation, will receive approximately 3 hours of solar access between 9:00am and 3:00pm in mid-winter.



**ITEM 2 (continued)**

Refer to the figure below.



As can be seen above (and in the elevation shadow diagrams submitted with the application) at 12:00pm, the window will receive some sunlight to part of its surface. By 1:00pm, full solar access is provided. This is considered to be satisfactory.

However, the level of solar access to the rear private open space of the dwelling appears to be adversely impacted. The elevation shadow diagrams submitted do not fully demonstrate the shadow impact to this area. The plan shadow diagram (as above) does not provide enough information to quantify the exact impact. A plan showing the impact on an hourly basis between 9:00am and 3:00pm would be appropriate in this regard. Based on the limited information provided, it is likely that the amount of solar access to the rear private open space of No. 24 Mons Avenue is reduced to less than two (2) hours (to at least 50% of the area) between 9:00am and 3:00pm in mid-winter. This is not considered to be satisfactory and impacts on the amenity of this dwelling.

The resident at No. 26 Mons Avenue raised concern regarding solar access to his/her site. The development will not result in unacceptable overshadowing impacts to No. 26 Mons Avenue. This is largely due to the site's distance from the development. There will be additional shadowing from 9:00am to approximately 11:30am during mid-winter. However, by 12:00pm, there will be no overshadowing.



**ITEM 2 (continued)**

In relation to other adjoining properties, including the two (2) RFBs to the east and south-east, adequate solar access is maintained in accordance with the RFDC requirements.

*d) Reduction in air flow across No. 20 Mons Avenue.*

**Response:** This objection is not supported.

As detailed in the site analysis undertaken by the Architect, the prevailing summer breeze is generally from the east, with winter winds extending across the locality from the west. No adverse impact on "air flow" across No. 20 Mons Avenue is anticipated as a result of the proposal.

*e) Impact on the value of neighbouring properties, particularly No. 20 and 24 Mons Avenue.*

**Response:** This objection is not supported.

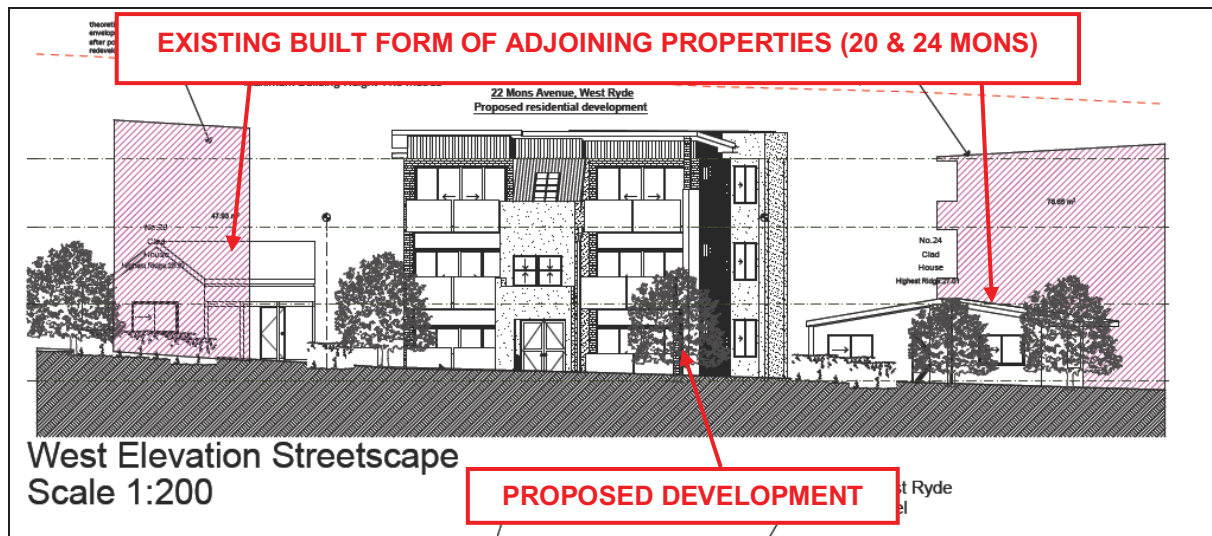
The financial impact on the value of properties as a result of development is not a direct matter for consideration by Council in the assessment of any application. However, consideration of the potential "isolation" and "sterilisation" of properties is a consideration and is undertaken in this report.

*f) Streetscape impact. The development will look out of proportion and character with the Mons Avenue streetscape.*

**Response:** This objection is supported.

The figure below, which is extracted from the site analysis prepared by the Architect, shows the bulk and scale of the development with regard to the two (2) adjacent properties on Mons Avenue. A wider streetscape analysis would show that, in the absence of No. 20 and 24 Mons Avenue being able to redevelop to a similar bulk and scale as the proposal, the development will result in fragmentation of the streetscape. This would occur mainly as a result of the isolation of No. 20 Mons Avenue.

**ITEM 2 (continued)**



Further discussion regarding site isolation and streetscape impact is undertaken below and in **Section 9(b)** of this report.

- g) *Inability for No. 20 Mons Avenue to redevelop due to site isolation and failure for the Applicant to address established NSW Land and Environment Court Planning Principles.*

**Response:** This objection is supported.

The development results in potential isolation of No. 20 Mons Avenue (and No. 24 Mons Avenue) and the Applicant has failed to satisfactorily address this issue in accordance with the established Planning Principles of the NSW Land and Environment Court. Further discussion is provided in **Section 9(b)** of this report.

- h) *Adverse visual impact on the locality and when viewed from neighbouring properties.*

**Response:** This objection is supported.

The non-compliant setbacks and separation distances and the resultant bulk and scale of the development results in a visually dominant building when viewed from the street and neighbouring properties. Visual impact is discussed further in **Section 9(b)** of this report.

- i) *Overdevelopment of the site due to height, mass and proportion.*

**Response:** This objection is supported.

**ITEM 2 (continued)**

The height of the development complies with the maximum height prescribed under the RLEP. There is a minor non-compliance with the maximum allowable storeys under the RDCP due to the fall of the land. This minor non-compliance, as a standalone matter, is not considered to be of any significant consequence. In terms of general mass, the development is out of proportion for its site. This is evidenced by the non-compliance with the RLEP minimum site area density control, RDCP non-compliances and SEPP 65 / RFDC inconsistencies. In assessing the non-compliances on a merit basis, the development results in adverse site amenity, neighbour amenity and adverse visual bulk and scale impact. For the reasons outlined in the body of this report, the proposal is considered to be an "overdevelopment".

*j) The development significant exceeds acceptable plot ratio limits.*

**Response:** This objection is supported.

There is no floor space ratio control applicable to the site in the RLEP or RDCP. There is a proposed FSR under the Draft LEP which is to be used as a "maximum". Under the current RLEP, density is controlled by a minimum site area development standard which relates to the mix and number of units within development. The site does not comply with the minimum site area based on the proposed unit density and mix. Further discussion regarding density is undertaken in **Section 9(a)** and **Section 9(e)** of this report.

*k) The development will be out of keeping with the design and character of the existing dwelling, and would have an adverse affect on the visual amenity of the area as a whole.*

**Response:** This objection is partly supported.

Council's desired future character for the area is for a higher density form of residential development and the proposed development is permitted with consent on the site. However, on a merit basis and within the context of the site, adjoining sites and the impacts of the development, the proposal results in an adverse visual amenity impact on the Mons Avenue streetscape. The general bulk and scale of the development is unacceptable and the potential isolation of No. 20 Mons Avenue would result in fragmentation of the built form along the streetscape in this location. Further discussion regarding visual impact and site isolation is provided in **Section 9(b)** of this report.

*l) Front building line is inconsistent with neighbouring properties and is out of character with the streetscape.*

**Response:** This objection is supported.

**ITEM 2 (continued)**

The front building line is generally consistent with the two (2) directly adjacent properties to the north and south. However, the proposed development represents a higher density form of development of a greater height, bulk and scale. A greater front setback would partly aid in visual bulk and scale mitigation, but not to an acceptable degree, due to the non-compliant side setbacks, the width of the proposed driveway, the potential isolation of adjoining properties (refer to discussion above at point g) and subsequent visual streetscape impact.

*m) Access to the site is not in accordance with acceptable standards and would lead to potential safety hazards.*

**Response:** This objection is partly supported.

A condition has been recommended by Council's Traffic Engineer to reduce the width of the driveway to a maximum of five (5) metres. This will address the potential conflict between pedestrians and vehicles (due to the proximity of the driveway to the pedestrian entrance to the site and the width of the required pedestrian crossing).

*n) Internal circulation within the site is unacceptable and will create conflicts between pedestrians, cyclists and vehicular movements.*

**Response:** See above comments.

*o) The development does not have the required car parking numbers. Also, insufficient parking space in the basement will impact on on-street parking availability.*

**Response:** This objection is not supported.

As discussed in the RDCP compliance table at Annexure A, there are two (2) sets of parking requirements (Part 4.3 and Part 9.3). The requirements of Part 9.3, which are less onerous than the requirements in Part 4.3, prevail. The proposed development provides eight (8) parking spaces in total (including one (1) visitor space) which accords with the "range" stipulated in Part 9.3 of the RDCP.

*p) The provision of stormwater runoff is inadequate for a development of this magnitude and will result in severe stormwater flow onto the property at 24 Mons Avenue with probable further affect to 26, 28 and 30 Mons Avenue and the properties located at the rear of 22 Mons Avenue including 19-21 Station Street.*

**Response:** This objection is partly supported.

**ITEM 2 (continued)**

The proposed stormwater disposal for the development has been assessed by Council's Development Engineer and is generally considered to be satisfactory, subject to conditions. However, failure for the Applicant to secure consent from No. 23-25 Station Street for the easement for drainage across the site is unacceptable. The Applicant was well aware of Council's requirement for owners' consent to be granted prior to development consent. The stormwater proposal is unsatisfactory in this regard.

- q) *The lack of setbacks, particularly at the 2nd and 3rd floors, and building height create a severe loss of light and result in overshadowing to adjoining properties and the unit development at the rear.*

**Response:** This objection is partly supported.

The proposal does not comply with the RDCP setbacks (front, side and rear) which results in adverse overshadowing on the site and to adjoining No. 24 Mons Avenue. However, the shadow diagrams submitted demonstrate that the dwellings and rear private open space at No. 19-21 Station Street will maintain at least three (3) hours of solar access between 9:00am and 3:00pm in mid-winter. Further discussion regarding setbacks and amenity is provided in **Section 9(b)** and **Section 9(e)** of this report.

- r) *A building of 3 storeys and more is not acceptable on such a small site and would be in conflict with the current Town Planning principles.*

**Response:** This objection is generally supported.

The development complies with the maximum height in the RLEP and results in a minor non-compliance with the maximum allowable storeys in the RDCP. However, the overall bulk and scale of the development is not acceptable for this site. Further discussion regarding bulk and scale is provided in the body of this report.

- s) *The proposal will lead to a fragmented form of development along the frontage of Mons Avenue and would be harmful to the character of the neighbourhood.*

**Response:** This objection is supported.

Refer to point f) for discussion regarding streetscape impact and fragmentation.

- t) *The demolition of the current house and construction of the new RFB with the basement will involve significant work and may damage the structure and integrity of my building (26 Mons Avenue).*

**Response:** This objection is not supported.



**ITEM 2 (continued)**

Possible dilapidation of structures on adjoining sites is a matter for consideration, particularly as the basement and driveway will be built close to the site's side boundaries. However, any potential impact would not extend to No. 26 Mons Avenue as it is not directly adjacent to the subject site.

*u) The mass, bulk and proximity of the rear elevation would present an overbearing and intrusive element to those neighbours at the rear of the property.*

**Response:** This objection is supported.

The non-compliant rear setback of the development, compounded with the non-compliant side setbacks and separation distances, is considered to result in a visually dominant building when viewed from the properties to the east and particularly, No. 19-21 Station Street. The proposed rear setback is inconsistent with the rear setback of developments surrounding the site. The proposed rear setback is 3 metres. The rear setback of No. 19-21 Station Street is 5 metres (to the balcony line) and 6 metres to the main building line. The rear setback of No. 20 Mons Avenue is 7.2 metres (minimum) and 9.9 metres to No. 24 Mons Avenue (excluding the metal shed). The rear setback of the RFB at No. 16-18 Mons Avenue varies, at a minimum of 8.2 metres. The proposed rear setback is therefore uncharacteristic of other developments in the vicinity of the site and results in building separation, visual privacy, visual amenity, overshadowing and landscaped provision impacts.

*v) The indicative building envelope shown for No. 20 Mons Avenue is not acceptable.*

**Response:** This objection is supported.

Discussion regarding this matter is undertaken in **Section 9(b)** of this report under the heading of "*context and site isolation*".

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

A Clause 4.6 variation has been submitted in respect of the minimum site area for residential flat development. The site area contravenes the development standard under Clause 4.5B of RLEP by 2.95% with an area deficit of 17.7m<sup>2</sup>.

**ITEM 2 (continued)**
**9. Policy Implications**
**Relevant Provisions of Environmental Planning Instruments etc:**
**(a) Ryde Local Environmental Plan 2010 (RLEP)**
**Zoning and Zone Objectives**

The site is zoned R4 High Density Residential under the RLEP.

The proposed development is defined as a "*residential flat building*" and is permitted with consent on the site.

Clause 2.3 of RLEP states the objectives of the R4 High Density Residential zone:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow higher density development around transport nodes and commercial and retail centres.
- To allow for revitalisation, rehabilitation and redevelopment of residential areas while ensuring that building design does not adversely affect the amenity of the locality.

The proposed development is contrary to the final objective, as the development adversely affects the amenity of the locality, as discussed further in the body of this report.

**Mandatory Requirements**

Ryde LEP 2010	Proposal	Compliance
<b>4.3(2) Height</b>		
11.5 metres	11.2 metres (maximum)	Yes See below comment
<b>4.5B Density</b>		
Clause 4.5B requires the following minimum site area based on the proposed unit mix:- <ul style="list-style-type: none"> <li>• 1 x 1 bedroom apartment = 70m<sup>2</sup></li> <li>• 4 x 2 bedroom apartments = 400m<sup>2</sup></li> </ul>	582.3m <sup>2</sup> 17.7m <sup>2</sup> non-compliance	No Cl. 4.6 Variation Submitted (see below)



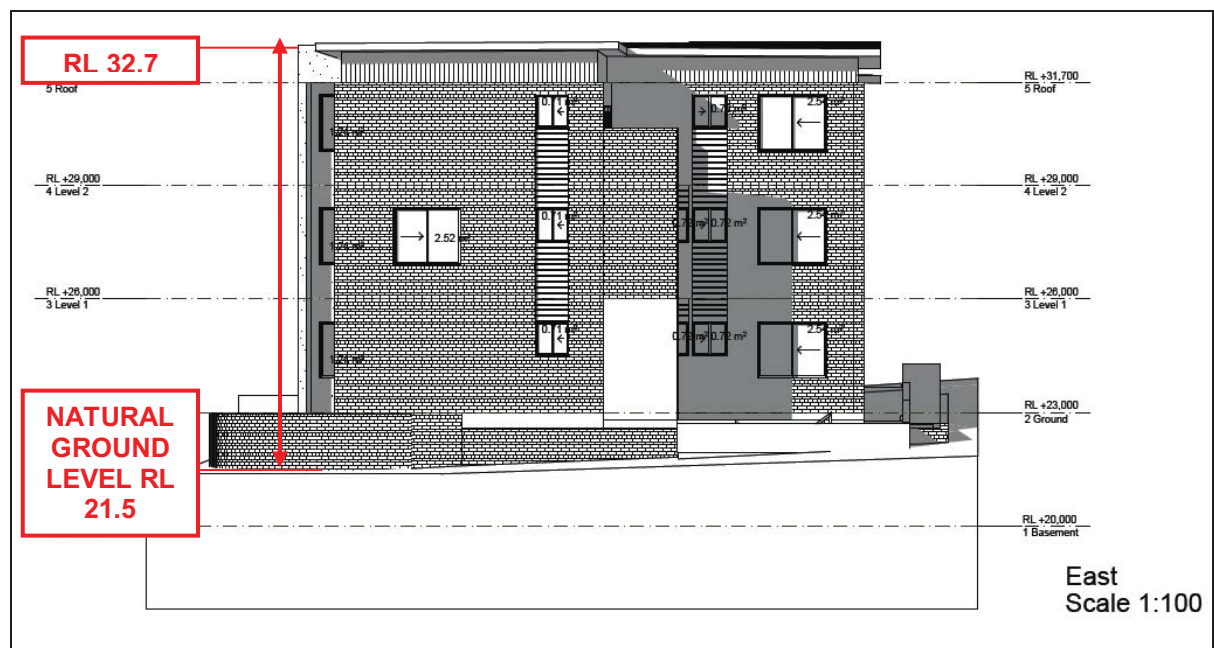
**ITEM 2 (continued)**

Ryde LEP 2010	Proposal	Compliance
<ul style="list-style-type: none"> <li>1 x 3 bedroom apartment = 130m<sup>2</sup></li> </ul> <p>Minimum site area for proposal is 600m<sup>2</sup>.</p>		

**Clause 4.3(2) Building Height**

The maximum height of the development as shown on the architectural plans (section plan) is 10.75 metres. However, the point at which the section was taken does not appear to have been taken from where the lowest natural ground level is. Therefore, based on the survey and other information provided, this calculation appears to be inaccurate.

At the south-east corner of the building, based on the survey information provided, natural ground level appears to be at RL 21.5 and the maximum RL of the building at that point is RL32.7 (*"the highest point of the building"*). Refer to the figure below:



The total maximum building height is therefore approximately 11.2 metres. The proposed development complies with the maximum building height control under the RLEP.

**Clause 2.7 Demolition Requires Development Consent**

Clause 2.7 states that development consent is required for the demolition of a building or work. Development consent is sought under the subject application for demolition of the existing dwelling at the site in accordance with this clause.

**ITEM 2 (continued)****Clause 4.4A Residential Zones - Floor Space Ratio**

The *Floor Space Ratio Map* identifies that the site is subject to a maximum floor space ratio ("FSR") of 0.75:1. However pursuant to Clause 4.4A(2), the maximum FSR on land in Zone R4 High Density Residential on the *Floor Space Ratio Map* does not apply to development for the purposes of RFBs. To this end, the maximum FSR of 0.75:1 as shown on the *Floor Space Ratio Map* does not apply to the proposal.

**Clause 4.5B Density controls for multi dwelling housing and residential flat buildings in Zone R4 High Density Residential**

Clause 4.5B of the RLEP states that the consent authority must not consent to the erection of a RFB unless the area of the subject land is not less than the requirement specified in the table of that Clause.

The minimum site area requirement based on the proposed unit mix is:

- 1 x 1 bedroom apartment = 70m<sup>2</sup>
- 4 x 2 bedroom apartments = 400m<sup>2</sup>
- 1 x 3 bedroom apartment = 130m<sup>2</sup>

Total minimum site area for proposal: 600m<sup>2</sup>.

The site has an area of 582.3m<sup>2</sup> and therefore has a shortfall of 17.7m<sup>2</sup> in area.

The Applicant has submitted a written request (annexure to the SEE) to vary this standard under the provisions of Clause 4.6 of the RLEP. Refer below for consideration of the written request with regard to Clause 4.6.

**Clause 4.6 Variation to Development Standards**

Clause 4.6 of RLEP allows exceptions to development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. The consent authority must be satisfied that the Applicant's written request has satisfied the relevant criteria and that the proposed development will be in the public interest as it is consistent with the zone objectives as well as the objectives of the particular development standard. In addition, consent cannot be granted unless the concurrence of the Director-General has been obtained. These matters are discussed below.

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

The Applicant has provided a written request seeking to justify the variation to the development standard in the annexure of the Statement of Environmental Effects ("SEE") prepared by BTG Planning.

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

Whilst the non-compliance appears to be minor in numerical terms, the development will result in adverse impacts to the amenity of the site, the adjoining properties and the public domain. The non-compliance, cumulatively with other proposed non-compliances, will adversely contribute to the bulk and scale of the building.

In these circumstances, compliance with the development standard would be reasonable and necessary.

3. Environmental grounds to justifying contravening the development standard.

The Applicant has provided the following grounds/reasons for the proposed variation:

- Compliance will not achieve a planning outcome which achieves the *"required density of development in a location close to the West Ryde urban centre and public transport"*.
- *"Council has exhibited a standard template Draft LEP 2011 which abandons the use of "site area per dwelling" density requirements in favour of FSR. The proposal will comply with these new controls"*.
- *"The non-compliance of 18m<sup>2</sup> is minor and does not give rise to any unreasonable adverse consequences. A totally compliant development could in fact have the same building bulk or envelope as the proposal but one (1) less bedroom. The non-compliance is therefore more technical in nature than related to "built form" and its consequences."*

The above reasons are not supported. Refer below:

- Council's planning controls do not prescribe a *"required density of development"*. The purpose of the subject development standard is to prescribe a minimum site area for a certain mix and associated density of development.
- Whilst Council intends to abandon this development standard in lieu of an FSR control for the site under the Draft RLEP, the subject application is to be assessed primarily under the current planning controls. Consideration of the draft controls is a requirement, but not necessarily a more weighted consideration in the assessment of this development application. Furthermore, we note that the proposed FSR under the Draft LEP is also to be used as a *"maximum"* provision.

**ITEM 2 (continued)**

The appropriate density for the site will be guided by this development standard, but the appropriateness of the development as a whole is to be considered on the basis of compliance with all other development controls and planning "merit".

- Whilst the non-compliance appears to be minor in numerical terms, the development as a whole, largely by virtue of its bulk and scale, gives rise to unreasonable adverse impacts. The non-compliance is therefore not merely "technical", but related to "built form" and the cumulative impacts of the development, as discussed further in the body of this report.
- The Applicant states that a compliant development could have the same building bulk or envelope as the proposal but with one (1) less bedroom. This is partly correct. Compliance with the standard could be achieved by removing one (1) bedroom from one (1) of the two (2) bedroom units. However, a reduction of one (1) bedroom would unlikely resolve other issues regarding the unsatisfactory bulk and scale of the proposed development.

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

The zone objectives have already been identified in an earlier section of the report. As previously concluded, the development is not consistent with all of the objectives of the zone.

There are no objectives associated with the development standard. In the absence of such objectives, it is reasonable to defer to the objectives of Clause 4.4 of the RLEP, which relate to the floor space ratio controls. Consideration of these objectives is appropriate in this instance as the development standard applies to the site to control density of development in lieu of a floor space ratio control for the site.

The objectives of Clause 4.4 are below:

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

A response to the above objectives is below:

a) *To provide effective control over the bulk of future development.*

The development proposes a 2.95% or 17.7m<sup>2</sup> variation to the minimum site area requirement. The variation occurs due to the quantum and chosen mix of apartments. Whilst the development is compliant with the maximum RLEP height control, the building envelope is non-compliant due to the proposed setbacks.

**ITEM 2 (continued)**

The massing of the development raises a number of issues in relation to site amenity, impacts on adjacent development and the Mons Avenue streetscape. Further in the body of this report, issues related to overshadowing / solar access, privacy, site amenity and visual bulk and scale are addressed in detail.

The development is not consistent with this objective as it results in a bulk and scale with unacceptable impacts.

*b) To allow appropriate levels of development for specific areas.*

For the reasons noted above, the development is not considered to comply with this objective. This is due to the overall massing of the building being inconsistent with Council's key envelope and density controls and other relevant guidelines (*Residential Flat Design Code*) and associated adverse environmental and amenity impacts.

*c) To enable the consent authority to assess and respond appropriately to future infrastructure needs.*

This objective relates to Section 94 contributions for developments to assist Council in providing the required infrastructure in terms of community and cultural facilities, open space and recreation facilities, civic and urban improvements, roads and traffic management facilities, cycleways and stormwater management facilities.

5. Concurrence of the Director General.

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

Conclusion

The variation to the development standard is 17.7m<sup>2</sup> or 2.95%. The development does not satisfy the criteria outlined in Clause 4.6 and the variation is not considered to be acceptable. There are not sufficient planning grounds to justify the variation and the development is not in the public's interest in the particular circumstances of the proposed development on this site.

**Clause 5.9 Preservation of Trees or Vegetation**

Clause 5.9 requires either development consent or a permit granted by Council for the removal of any trees. No trees are proposed to be removed as part of this development application. There is an existing tree at the rear of the site which is proposed to be retained. The Applicant has not submitted an Arborist Report to

**ITEM 2 (continued)**

assess the potential impact of the proposed development on the Tree Root Zone of this tree and to prescribe any required tree protection measures during construction.

Lack of supporting information in this regard has been included as a reason for refusal.

**Clause 6.2 Earthworks**

Development consent is required for the earthworks associated with the development. Before granting consent for earthworks the consent authority must consider the following matters:

- The likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality.
- The effect of the proposed development on the likely future use or redevelopment of the land.
- The quality of the fill or the soil to be excavated, or both.
- The effect of the proposed development on the existing and likely amenity of adjoining properties.
- The source of any fill material and the destination of any excavated material.
- The likelihood of disturbing relics.
- Proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

The proposed development includes excavation for a single level basement car park. Council's Development Engineer considers the excavation to be appropriate subject to conditions.

The site is not known to contain any relics or any other item of heritage significance.

The development is considered satisfactory in respect of this clause.

**(b) Relevant SEPPs****State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development**

This policy aims to improve the design quality of residential flat developments in NSW. It recognises 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.

The proposal has been assessed against the following matters relevant to SEPP 65 for consideration.



**ITEM 2 (continued)**

- The 10 SEPP 65 Design Quality Principles
- The NSW Residential Flat Design Code Guidelines ("*RFDC*")

SEPP 65 Design Quality Principles

The application is supported by a design statement by the project architect addressing the 10 design quality principles in SEPP 65.

The following table provides an assessment of the development proposed against the 10 design principles of the SEPP.

Planning Principle	Comment	Comply
<b>Context</b> Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.	The proposed development is not an appropriate response to its context. Whilst the zoning of the land permits residential flat development to the proposed height, the development fails to comply with a number of Council's key development controls which results in adverse environmental and amenity impacts and a poor relationship with adjacent development and the Mons Avenue streetscape. The proposed development also results in the potential isolation of No.'s 20 and 24 Mons Avenue. This is discussed in detail after this table.	No
<b>Scale</b> Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. 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	<ul style="list-style-type: none"> <li>• The proposed bulk and height of the building immediately to the street, primarily as a result of the non-compliant setbacks (front and side) and the presence of the wide driveway, does not achieve a scale that is appropriate for the site or area.</li> <li>• Whilst the "<i>desired future character</i>" is for a higher form of residential development, this</li> </ul>	No



**ITEM 2 (continued)**

<b>Planning Principle</b>	<b>Comment</b>	<b>Comply</b>
<p>for the desired future character of the area.</p>	<p>should only be achieved on sites where the context is appropriate. As stated above and following this table, the proposed high density development, notwithstanding compliance with the RLEP height control, is not appropriate for its context and results in adverse environmental and amenity impacts and the potential isolation and sterilisation of adjoining sites.</p>	
<p><b>Built Form</b>            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.            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 proposed design does not achieve an appropriate response to this principle. In terms of building alignment, the proposed bulk and scale (and particularly, the non-compliant setbacks) results in adverse visual amenity, solar access and streetscape impacts. The general envelope of the development also creates a poor built form relationship with adjoining sites and particularly with No's. 20 and 24 Mons Ave.</p>	<p>No</p>
<p><b>Density</b>            Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).            Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community</p>	<p>The applicable density control for the site is prescribed in the RLEP. The minimum site area for the proposed unit mix is 600m<sup>2</sup> and the proposal represents a 17.7m<sup>2</sup> non-compliance.            This non-compliance in conjunction with the non-compliant applicable front, rear, side setback and landscaped area controls, results in an inappropriate scale and density of the building. The breach in the relevant density provision cumulatively impacts on the amenity of the site and</p>	<p>No</p>

**ITEM 2 (continued)**

<b>Planning Principle</b>	<b>Comment</b>	<b>Comply</b>
facilities and environmental quality.	surrounding locality.	
<p><b>Resource, energy and water efficiency</b></p> <p>Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. 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 provided a BASIX Certificate (No. 453114M dated 18 November 2012) which indicates that the residential component of the building will meet the energy and water use targets set by the BASIX SEPP. A waste management plan for the demolition of existing buildings has been submitted and is considered acceptable.</p> <p>In terms of cross ventilation and the reuse of water, the proposal generally complies.</p> <p>In term of solar access, whilst there is inadequate information to determine the exact level of compliance with the RFDC, there are significant failings in this regard. Further discussion is provided in the RFDC section of this report (following this table).</p>	Partial
<p><b>Landscape</b></p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. 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,</p>	<p>The proposed planting of additional trees on the site is appropriate as it improves the biodiversity value of the site. However, in terms of quantity, the development does not comply with the minimum landscaped area requirement in the RDCP. Furthermore, the amount of landscaped open space at the rear of the building, which presumably would be designated as the communal open space area, does not comply with the minimum communal open space area requirement under the RFDC.</p>	No

**ITEM 2 (continued)**

<b>Planning Principle</b>	<b>Comment</b>	<b>Comply</b>
<p>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 useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.</p>	<p>In terms of the amenity of the rear common landscaped open space area:</p> <ul style="list-style-type: none"> <li>• There is potential for overlooking from the adjacent unit development at No. 19-21 Station Street as a result of lack of building separation. The existing tree at the rear of the site will aid in providing some screening. However, concerns are raised regarding the health of this tree and as no supporting information has been submitted to confirm that the tree can be retained and will not be impacted by excavation, privacy remains a concern in this regard.</li> <li>• The landscaped area at the frontage of the site and directly in front of Unit 2, receives very little solar access as a result of self-shadowing. This is a very poor outcome for landscaping in this area.</li> </ul> <p>The proposal does not satisfy this principle.</p>	
<p><b>Amenity</b>                      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 design and orientation of the units does not allow for sufficient levels of amenity for the occupants of the proposed building and adjoining developments. There are issues regarding solar access, visual and acoustic privacy, storage, ease of access, overlooking that are evident. Some of these issues could potentially be resolved by conditions requiring design amendments. However, as discussed further in this report, the design is not considered to be well</p>	No

**ITEM 2 (continued)**

Planning Principle	Comment	Comply
	<p>resolved and cumulatively, the issues raised in regard to lack of submitted information and adverse impacts result in the recommendation for refusal.</p>	
<p><b>Safety and Security</b>            Good design optimises safety and security, both internal to the development and for the public domain.            This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.</p>	<p>The development promotes passive surveillance of Mons Avenue by orientating the balconies to the west. The entrance to the building is clearly located and there is generally a clear delineation between public and private spaces.            Lighting details have not been provided but can be resolved via conditions            However, the width and location of the driveway and its proximity to the pedestrian footpath from the frontage to the building entrance could potential result in conflict between pedestrians and vehicles. A reduction in the width of the driveway could potentially mitigate this impact.</p>	<p>Yes,            subject to conditions</p>
<p><b>Social Dimensions and Housing Affordability</b>            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</p>	<p>The development will include the following housing mix:</p> <ul style="list-style-type: none"> <li>• 1 x 1 bedroom apartment;</li> <li>• 4 x 2 bedroom apartments; and</li> <li>• 1 x 3 bedroom apartment.</li> </ul> <p>This mix is appropriate as it comprises a range of options.</p>	<p>Yes</p>

**ITEM 2 (continued)**

Planning Principle	Comment	Comply
economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.		
<b>Aesthetics</b> Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.	A materials schedule has been submitted with the application. The main walls and downpipes (including the colour feature wall at the entrance of the development) is proposed to be rendered and painted brickwork. Window and door frames are to be stainless steel and Colorbond is proposed for the roof sheeting and aluminium fascias and gutters. Driveway and walkways are to comprise stenciled concrete with <i>"edging strips"</i> . The colour scheme is relatively neutral. The scheme incorporates a variety of colours but the amount of brick and cement rendering further contributes to the visual <i>"bulk"</i> of the development. A greater variety of textures and colours would be more appropriate for the development but would not solely mitigate the visual dominance of the development. In terms of the overall structure of the development, it does not adequately respond to its context and particularly, the small lot size. Further detailed discussion is provided in the body of this report in this regard.	No

**Context and Site Isolation**

SEPP 65 requires residential flat development to respond and contribute to its context. A good design outcome is a development that positively contributes to the quality and identity of an area, which includes areas in transition.



**ITEM 2 (continued)**

The locality surrounding the site is undergoing a gradual process of transition. The site is zoned (current and future zoning) for high density residential development. This is the desired future character of the area. As the area comprises a number of smaller allotments, there is a general expectation that site amalgamation will occur for sites to develop to their highest and best use. Where amalgamation is not possible, it is the onus of the Applicant to adequately address the potential for "site isolation" as a result of residential flat development on smaller lots. This is to include consideration of the principles established by the NSW Land and Environment Court in proceedings of *Melissa Grech vs. Auburn Council [2004] NSWLEC 40*.

The subject site is considered to be a small allotment, with a total area of 582.3m<sup>2</sup>. The immediate surrounding environment is predominantly residential with a mix of dwelling types ranging from single dwellings, to multi-dwelling units (many of which pre-date SEPP 65 and the RFDC). Directly adjoining the site to the north is a single storey detached cottage at No. 20 Mons Avenue. That site is bounded by existing RFBs to the north and east and the area of the site is smaller than the subject site at 326.6m<sup>2</sup>.

To the south of the subject site is also a single storey dwelling with an area of approximately 375m<sup>2</sup>. To the east of this site is a RFB and to the south of the site is an attached dual occupancy development (No. 26 and 26A Mons Avenue).

The construction of a RFB on the subject site would potentially isolate both of the adjoining sites to the north and south. The small lot size and frontage of these sites is likely to restrict redevelopment for high density residential development. Further to these challenges, amalgamation of No. 20 Mons Avenue with adjoining sites to the north and east for redevelopment purposes is unlikely as they comprise existing strata-titled RFBs. There is a small chance that No. 24 Mons Avenue could amalgamate with land to the south for redevelopment purposes. However, as this land comprises an attached dual occupancy development, both properties would likely need to be purchased. This would require negotiation with two (2) landowners which poses an additional constraint to amalgamation.

The above factors present challenges to the redevelopment of the subject site for the purpose of a RFB without any site amalgamation and increases probability of site isolation.

Based on the above, it is important to determine whether the proposed development is appropriate, in considering the potential isolation of No.'s 20 and 24 Mons Avenue. In the absence of any principles, objectives or controls in the RLEP or RDCP in relation to site amalgamation and site isolation, it is appropriate to turn to the Planning Principles for site isolation, established by the NSW Land and Environment Court in proceedings of *Melissa Grech vs. Auburn Council [2004] NSWLEC 40*. Consideration of these principles is intended to "fill the gaps" where Council's planning controls do not provide sufficient information or guidance.

**ITEM 2 (continued)**

The three (3) principles to consider are:

- 1. Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*
- 2. Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*
- 3. Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s79C of the Environmental Planning and Assessment Act 1979.*

The Applicant has advised that all attempts to acquire No. 20 Mons Avenue have proven unsuccessful.

Discussion with regard to the principles above is provided below.

**In the case of principle 1 above**, Council has been provided with documentary evidence from the Applicant to suggest that negotiations may have commenced between the Applicant and owner of No. 20 Mons Avenue in 2010.

Council has also been provided with documentary evidence from the Applicant to suggest that negotiations commenced with the owner of No. 24 Mons Avenue from October 2011.

**In the case of principle 2 above**, the Applicant has provided documentary evidence to demonstrate negotiations between himself and the owner of No. 20 Mons Avenue. This includes:

- Option to purchase correspondence from the Applicant to the owner of No. 20 Mons Avenue dated 21 October 2011.

**ITEM 2 (continued)**

- A valuation report for the property at No. 20 Mons Avenue prepared by Sydney Suburban Property Valuations dated 25 November 2011. This valuation report was prepared after the option to purchase offer was made by the Applicant on 21 October 2011.
- A letter from the owner of No. 20 Mons Avenue on 14 November 2011 to the Applicant confirming that the offer to purchase dated 21 October 2011 was not accepted. The owner made a counter offer.

The Applicant provided Council with the following documentation to demonstrate negotiations commenced between himself and the owner of No. 24 Mons Avenue as follows:

- Option to purchase correspondence from the Applicant to the owner of No. 24 Mons Avenue dated 24 October 2011.
- Return correspondence from the owner of No. 24 Mons Avenue (undated) declining the sale of his property at the Applicant's offer.

Principle 2 states that the offer to the owner of the isolated property must be:

- Reasonable;
- Based on at least one (1) recent independent valuation; and
- May include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

In response to the above, there are a few issues that arise:

**20 Mons Avenue**

- the valuation report was prepared after the written letter of offer was made by the Applicant to the owner of No. 20 Mons Avenue.
- the valuation report clearly states it is a market valuation of the land only and does not consider the value of the dwelling on the site. The quoted figure therefore does not represent the true market value of the property.
- the valuation report does not include any consideration of any reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

**24 Mons Avenue**

- the offer made to the owner of No. 24 Mons Avenue does not appear to have been supported by a valuation report to substantiate the offer made.

**ITEM 2 (continued)**

In regard to principle 2 therefore, it is considered that this evidence does not adequately satisfy the Court's requirements.

**In the case of principle 3 above**, there is evidence to suggest that some negotiations were undertaken to initially address the site isolation issue with the owner. However, principle 3 requires consideration of the "*level*" of negotiation in consideration of the development application. In this case, we must consider whether the offers made to the owners of No. 20 and 24 Mons Avenue are "*reasonable or unreasonable*" to determine the amount of weight to be given to this issue in the determination of this application. Discussion is provided below.

20 Mons Avenue

As noted above, the timing and content of the valuation report should be considered.

Firstly, the valuation report was prepared after the written offer for sale was made to the owner. This does not meet the intent of the Court's ruling for the offer to be based on an independent valuation. The offer is therefore not considered to be a "*reasonable offer*".

Secondly, the valuation report does not consider the value of the dwelling on the site and does not consider any reasonable expenses likely to be incurred by the owner in the sale of the property. The valuation report is therefore considered to be inadequate in this regard.

Thirdly, the "*reasonable*" nature of the level of negotiation and offer made to the owner should also be based on "*recent*" attempts to purchase No. 20 Mons Avenue. The offer of purchase to the owner of No. 20 Mons Avenue was made in late October 2011. The subject DA was lodged on 5 December 2012. Later negotiations could have been undertaken with the owners closer to the time of DA lodgement.

Finally, the submission made by the owner of No. 20 Mons Avenue on 5 February 2013 confirms that she would either allow her property to be part of an amended application comprising an amalgamation of No. 20-22 Mons Avenue or would sell her property to the Applicant. The late submission made by Just Property & Planning provides further evidence that the property owner of No. 20 Mons Avenue approached the Applicant in an attempt to sell her property to the Applicant which failed due to a rejection by the Applicant (evidenced by a letter from First National Real Estate dated 12 March 2012). This, in conjunction with the other issues noted above, raises concern that the issue of potential lot isolation has not been adequately addressed by the Applicant. Furthermore, at the time of writing this report, we note that the property of No. 20 Mons Avenue is for sale, clearly indicating that the owner is willing to sell. The objection made by Just Property & Planning on behalf of the owner of No. 20 Mons Avenue clearly states that the owner is willing to sell her property on the basis of a "*reasonable market price*".

**ITEM 2 (continued)**24 Mons Avenue

The offer made to the owner of No. 24 Mons Avenue is not considered reasonable as the level of negotiation with the owner was inadequate.

In regard to principle 3 therefore, it is considered that the Court's requirements have not been satisfied.

Given the evidence provided, the Applicant cannot be considered to have satisfied Council in relation to these principles of Grech.

It should also be stated that the Land and Environment Court in *Cornerstone Property Group Pty Ltd vs. Warringah Council [2004] NSWLEC 189* added another principle to site isolation issues that must be considered. That is:-

4. *Can orderly and economic use and development of the separate site be achieved if amalgamation is not feasible?*

**In the case of principle 4 above**, the Applicant has provided limited detail regarding a "potential envelope" for the isolated sites. The potential envelope on both sites models a three (3) storey building with a three (3) metre setback from its southern site boundary (common boundary with the subject site). This potential envelope is not considered to be appropriate, primarily due to the lack of analysis provided by the Applicant. Discussion is provided below.

20 Mons Avenue

- There is limited analysis of the potential envelope on No. 20 Mons Avenue with regard to the applicable planning controls to that site. The potential envelope is only shown on the elevation shadow diagrams and does not include any likely development statistics. The only reference made is in the Statement of Environmental Effects prepared by BTG Planning (page 7) which states that the southern site boundary setback would be three (3) metres. There is limited analysis and justification for the potential envelope within the context of the applicable planning controls. Mere demonstration of compliance with the RLEP height control is not adequate and not the sole determining factor of an appropriate development.
- There is no analysis of the impact of the potential envelope of No. 20 Mons Avenue on the existing RFB at No. 19-21 Station Street. The impact of the potential envelope of No. 20 Mons Avenue in conjunction with the impact of the proposed development on solar access to the RFB and rear private open space of No. 19-21 Station Street cannot be quantified from the documentation submitted. Cumulatively however, the impact appears to be adverse with a significant loss of solar access, particular to the rear open space of the adjoining site.



**ITEM 2 (continued)**

- The shadow diagrams provided clearly demonstrate that a potential envelope of this scale would have significant impacts on solar access to the proposed development. Units 1 and 3 would receive a minimal amount of solar access to living rooms in mid-winter. Whilst not properly dimensioned or depicted on the shadow diagrams, it appears that a significant portion of the rear open space would be significantly overshadowed from about 12:30pm. In conjunction with "self-shadowing", this impact on solar access to the rear open space of the proposed development is not acceptable and impacts on residential amenity in this regard.
- There is no consideration of the potential solar access impact of the existing RFB at No. 16-18 Mons Avenue on the potential envelope at No. 20 Mons Avenue. The impact cannot be quantified. However, due to the potential envelope's orientation, the fall of the land, the likely non-compliant northern site boundary setback (due to minimal site width) and the existing bulk and scale of the RFB to the north, access to adequate sunlight would be difficult to achieve.
- There is no streetscape analysis undertaken to adequately justify the non-compliant setbacks and building separation distances of the potential envelope at No. 20 Mons Avenue to adjacent development. A visual bulk, scale and context analysis of Mons Avenue is necessary to quantify whether the likely setbacks and separation distances are appropriate from a visual streetscape point of view.

**24 Mons Avenue**

- There is limited analysis of the potential envelope on No. 24 Mons Avenue with regard to the applicable planning controls to that site. The potential envelope is only shown on the elevation shadow diagrams and does not include any likely development statistics. There is limited analysis and justification for the potential envelope within the context of the applicable planning controls. Mere demonstration of compliance with the RLEP building height control is not adequate.
- There is no analysis of the impact of the potential envelope of No. 24 Mons Avenue on its adjoining sites, including the properties to the south of that site.
- The potential envelope relies upon amalgamation with land to the south. As noted earlier, as the land to the south comprises an attached dual occupancy (with two (2) separate owners) amalgamation would likely require purchase of both properties. Probability of purchase is reduced with the increase in the number of owners. Therefore, amalgamation cannot be relied upon.
- There is no streetscape analysis undertaken to adequately justify the (likely) non-compliant setbacks and building separation distances of the potential envelope at No. 24 Mons Avenue to the single storey attached dual occupancy development to the south.

**ITEM 2 (continued)**

Principle 4 does not call for a detailed modeling of a potential development on No. 20 and 24 Mons Avenue. However, in order to determine whether the principle has been satisfied, a certain amount of analysis is required and at the very least, consideration of all key planning controls should be undertaken.

To assist in this assessment, an envelope for the isolated sites may be prepared indicating height, setbacks, resultant site coverage (building and basement), resultant landscaped area provision and the ability to accommodate car parking on-site. This should be schematic but of sufficient detail to understand the relationship between the subject application and the potentially isolated sites. The subject application does not provide this detail and analysis.

Due to the lack of analysis undertaken by the Applicant and justification for the "*potential envelope*" for No. 20 and 24 Mons Avenue, it cannot be confirmed that these sites can be reasonable redeveloped in an orderly and economic manner and to their highest and best use as stand-alone sites. In fact, redevelopment for anything other than a dwelling house on these sites would be difficult given the small lot size, the small site frontage (thereby making access, circulation and the provision of basement parking difficult), relationship with adjoining RFBs and the subject proposal.

With regard to the above and the issue of site isolation, we consider that:

- a) The Applicant has not satisfied the process and requirements of the Land and Environment Court Principles relating to site isolation; and
- b) Based on the information submitted, No. 20 and 24 Mons Avenue will likely be "*isolated*" and potentially sterilised from any future redevelopment to a density significantly higher than what is currently on the land. This would be inconsistent with the objectives of the R4 High Density Residential Zone of the RLEP and the Object of the Act to promote the orderly and economic development of land.

In the absence of any RLEP or RDCP provisions in relation to the development of small lots and site amalgamation / isolation, it is appropriate to defer to the Court's established Planning Principles to fill in the "*gaps*". Based on the above, and notwithstanding the other failings of the development, refusal of the proposal on the basis of site isolation and failure for the Applicant to satisfactorily respond to these principles is warranted.

**SEPP 65 Summary**

The proposed development fails to satisfy many of the ten (10) design quality principles prescribed in SEPP 65.

**ITEM 2 (continued)**
Residential Flat Design Code

The SEPP also requires the consent authority to take into consideration the requirements of the Residential Flat Design Code. These matters have been addressed in the following table.

Primary Development Control and Guidelines	Comments	Comply
<b>Part 01 – Local Context</b>		
<b>Building Height</b> Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit. Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.	The proposed development complies with the building height controls applicable under the LEP and DCP for the site. Based on the survey information available, and as outlined in the assessment under RDCP, there is a four (4) storey element of the building which exceeds the maximum three (3) storey height provision in the RDCP. This non-compliance results from the change in site levels and is not considered to be of any material consequence as a standalone issue.	Partial
<b>Building Depth</b> In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18m must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	Excluding the west facing balconies to the development, the building is consistent with the maximum building depth at a maximum of approximately 15.5 metres. The building will generally provide satisfactory ventilation to units but not adequate solar access. However, inadequate solar access is not solely attributed to the depth of the building.	Yes
<b>Building Separation</b> Building separation for buildings up to 4 storeys:  - Up to 4 storeys	Refer to discussion following this table.	No

**ITEM 2 (continued)**

<b>Primary Development Control and Guidelines</b>	<b>Comments</b>	<b>Comply</b>
<ul style="list-style-type: none"> <li>• 12m btw habitable rooms/balconies</li> <li>• 9m btw habitable rooms/balconies and non-habitable rooms</li> <li>• 6m btw non-habitable rooms</li> </ul> <p>Developments that propose less distance must demonstrate that adequate daylight access, urban form and visual and acoustic privacy has been achieved.</p>		
<p><b>Street Setbacks</b>                      Identify the desired streetscape character. In general, no part of the building should encroach into a setback area.</p>	<p>The proposed setbacks do not comply with Council's requirements, result in inconsistencies with the front setback requirement, building separation guidelines (above) and do not achieve optimal amenity for existing and future development.</p>	<p>No</p>
<p><b>Side and Rear Setbacks</b>                      Relate side setbacks to existing streetscape patterns. These controls should be developed in conjunction with building separation, open space and deep soil zone controls. In general, no part of the building should encroach into a setback area.</p>	<p>Refer to above comments. Cumulatively, as the proposal does not comply with the landscaped area requirement, building separation guidelines and results in adverse environmental and amenity impacts, the setbacks proposed are not supported.</p>	<p>No</p>
<p><b>Floor Space Ratio</b>                      Test the desired built form outcome against the proposed floor space ratio to ensure consistency with building height, building footprint, the three dimensional building envelope and open space requirements.</p>	<p>There is no FSR applicable to the site and development under the RLEP.                      The proposal complies with the proposed FSR under the Draft RLEP.                      However, the proposal does not comply with the site area density control under the RLEP and the density of the development is therefore inconsistent in this</p>	<p>No</p>

**ITEM 2 (continued)**

Primary Development Control and Guidelines	Comments	Comply
	regard.	
<b>Part 02 – Site Design</b>		
<b>Deep Soil Zones</b> A minimum of 25% of the open space area of a site should be deep soil zone. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the RFB.	The total provision of deep soil planting across the site is satisfactory in terms of proportion to the total open space/landscaped area. The total proposed landscaped (and communal open space) area on the site is not considered to be satisfactory.	Yes
<b>Fences and Walls</b> Fences and walls are to respond to the identified architectural character for the street and area. They are also to delineate the private and public domain without compromising safety and security.	There is insufficient detail provided regarding the proposed landscaping scheme. Refer to the assessment undertaken in the RDCP section of this report with regard to fencing.	Insufficient detail
<b>Landscape Design</b> Landscaping is to improve the amenity of open spaces as well as contribute to the streetscape character.	The landscaping scheme proposed is not considered to be adequate to mitigate the bulk and scale of the development. The inclusion of additional tree planting on the site and retention of the existing tree is positive. However, the landscaping scheme, and the fact that the total quantum of landscaped area does not comply with Council's DCP requirement, results in an unsatisfactory response to this provision. Furthermore, lack of supporting information regarding the existing tree and ability for it to be retained following excavation for the basement and construction of the development is unsatisfactory.	No



**ITEM 2 (continued)**

Primary Development Control and Guidelines	Comments	Comply
<p><b>Open Space</b>                      The area of communal open space required should generally be at least between 25% and 30% of the site area. Where developments are unable to achieve the recommended communal open space, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space. The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park is 25m<sup>2</sup>.</p>	<p>The minimum required communal open space area on the site is 145.57m<sup>2</sup>. There is no communal open space area nominated on the plans however the SEE submitted states that the ground level communal open space will be at the rear of the building. The amount of landscaped area at the rear of the site is not consistent with the minimum required area. As there is no justification for the shortfall or discussion, and given the proposal does not meet the required landscaped area requirement in the DCP and is non-compliant in terms of the general built form, the open space provision on the site is not supported.</p>	<p>No</p>
<p><b>Orientation</b>                      Optimise solar access to living areas and associated private open spaces by orientating them to the north.</p>	<p>All of the balconies proposed have a western orientation. Living spaces in three (3) of the units have a western orientation but have north-facing windows. The three (3) southern-most units in the development have living rooms with a western orientation and south-facing windows. Solar access to these living areas and these units in general is compromised and the required three (3) hours of solar access to private open spaces and living areas to at least 70% of units is not achieved.                      Further discussion is provided later in this table in consideration the solar access "<i>rule of thumb</i>".</p>	<p>No</p>

**ITEM 2 (continued)**

<b>Primary Development Control and Guidelines</b>	<b>Comments</b>	<b>Comply</b>
<p><b>Planting on Structures</b></p> <p>In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes:</p> <ul style="list-style-type: none"> <li>• Large trees such as figs (canopy diameter of up to 16m at maturity) - minimum soil volume 150m<sup>3</sup> - minimum soil depth 1.3m – minimum soil area 10m x 10m area or equivalent</li> <li>• Medium trees (8.0m canopy diameter at maturity) - minimum soil volume 35m<sup>3</sup> - minimum soil depth 1.0m - approximate soil area 6.0m x 6.0m or equivalent</li> <li>• Small trees (4.0m canopy diameter at maturity) - minimum soil volume 9.0m<sup>3</sup> - minimum soil depth 800mm - approximate soil area 3.5m x 3.5m or equivalent</li> <li>• Shrubs - minimum soil depths 500 - 600mm</li> </ul>	<p>The total provision of deep soil planting across the site is satisfactory in terms of proportion to the total open space/landscaped area. The total proposed landscaped (and communal open space) area on the site is not considered to be satisfactory.</p>	<p>Yes</p>
<p><b>Stormwater Management</b></p> <p>Reduce the volume impact of stormwater on infrastructure by retaining it on site.</p>	<p>Council's Development Engineer has reviewed the proposed stormwater management measures and considered them to be generally adequate, subject to conditions.</p>	<p>Yes</p>
<p><b>Safety</b></p> <p>Optimise the visibility, functionality and safety of building entrances. Improve the opportunities for casual surveillance and minimise</p>	<p>The development promotes passive surveillance of Mons Avenue by orientating the balconies to the west. The entrance to the building is clearly</p>	<p>Yes, subject to conditions.</p>

**ITEM 2 (continued)**

<b>Primary Development Control and Guidelines</b>	<b>Comments</b>	<b>Comply</b>
opportunities for concealment.	<p>located and there is generally a clear delineation between public and private spaces.</p> <p>Lighting details have not been provided but can be resolved via conditions.</p> <p>The width and location of the driveway and its proximity to the pedestrian footpath from the frontage to the building entrance results in potential conflicts between pedestrians and vehicles. A reduction in the width of the driveway could potentially mitigate this impact.</p>	
<b>Visual Privacy</b> The building separation requirements should be adopted.	Refer to discussion following this table.	No
<b>Building Entry</b> Ensure equal access to all. Developments are required to provide safe and secure access. The development should achieve clear lines of transition between the public street and shared private, circulation space and the apartment unit.	<p>The development will provide an accessible path of travel from the street to the building entrance and down to the carpark.</p> <p>The development also provides clear lines of transition between the public street and private areas of the development.</p> <p>However, the use of the unsheltered fire stair from the basement to the street level, which then provides uncovered pathway access to the entrance of the building for all residents, is a poor design solution for access. There is a reasonable expectation that residents should be able to gain sheltered and direct access to the building entrance from the basement car park and this is not achieved in the current design.</p>	No

**ITEM 2 (continued)**

Primary Development Control and Guidelines	Comments	Comply
<b>Parking</b> Determine the appropriate car parking numbers. Where possible underground car parking should be provided.	Car parking provision is assessed in accordance with Councils DCP requirements.	Yes
<b>Pedestrian Access</b> Provide high quality accessible routes to public and semi-public areas of the building and the site. Maximise the number of accessible, visitable and adaptable apartments in the building.	There are no nominated accessible, visitable or adaptable units in the building (not required). There is an accessible path of travel from the footway to the site and to the rear open space area.	Yes
<b>Vehicle Access</b> To ensure that the potential for pedestrian / vehicle conflicts is minimised. The width of driveways should be limited to 6 metres. Vehicular entries should be located away from main pedestrian entries and on secondary streets.	Vehicular access is via Mons Avenue. The proposed driveway width is 6.3 metres, or 37% of the site frontage. Council's Traffic Engineer has recommended a reduction in the width of the driveway to 5 metres. This will aid in mitigating the visual impact of the driveway and any potential "conflict" between pedestrians and vehicles.	No
<b>Part 03 – Building Design</b>		
<b>Apartment Layout</b> Single aspect apartments should be limited in depth to 8m from a window. The minimum sizes of the apartments should achieve the following; Studio - 38m <sup>2</sup> 1 bedroom – 50m <sup>2</sup> 2 bedroom – 70m <sup>2</sup> 3 bedroom – 95m <sup>2</sup>	All of the apartments achieve the minimum apartment sizes.	Yes
<b>Apartment Mix</b> The development should provide a variety of types.	The proposed unit mix will provide a variety of unit sizes within the development.	Yes

**ITEM 2 (continued)**

<b>Primary Development Control and Guidelines</b>	<b>Comments</b>	<b>Comply</b>
<b>Balconies</b> Where private open space is not provided, primary balconies with a minimum depth of 2 metres should be provided.	All balconies will provide a minimum depth of 2 metres.	Yes
<b>Ceiling Heights</b> The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level FCL). These are minimums only and do not preclude higher ceilings, if desired <ul style="list-style-type: none"> <li>• in mixed use buildings: 3.3m minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use</li> <li>• in residential flat buildings in mixed use areas: 3.3m minimum for ground floor to promote future flexibility of use in residential flat buildings or other residential floors in mixed use buildings</li> <li>• in general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non habitable rooms, however 2.25m is permitted.</li> </ul>	The ceiling heights for all habitable rooms meets the 2.7 metres minimum.	Yes
<b>Ground Floor Apartments</b> Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	Access to the ground floor units is by the common internal lobby. There are no separate entries for these units. This is not desirable but generally acceptable. No accessible units are proposed (or required).	Yes
<b>Internal Circulation</b> In general, where units are arranged off a double-loaded corridor, the number of units	The apartments are accessed via a stair corridor at the frontage of the development. The number of	Yes



**ITEM 2 (continued)**

<b>Primary Development Control and Guidelines</b>	<b>Comments</b>	<b>Comply</b>
accessible from a single core/corridor should be limited to eight. Exceptions may be allowed: <ul style="list-style-type: none"> <li>• for adaptive re-use buildings</li> <li>• where developments can demonstrate the achievement of the desired streetscape character and entry response</li> <li>• where developments can demonstrate a high level of amenity for common lobbies, corridors and units.</li> </ul>	apartment accessed from the corridor is limited to two (2) per floor.	
<b>Mixed Use</b> The development is to choose a mix of uses that complement and reinforce the character, economics and function of the local area. The development must also have legible circulation systems.	The site is zoned for residential uses and therefore a residential use is appropriate for the site.	N/A
<b>Storage</b> In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>• studio apartments - 6.0m<sup>3</sup></li> <li>• one-bedroom apartments - 6.0m<sup>3</sup></li> <li>• two-bedroom apartments - 8.0m<sup>3</sup></li> <li>• three plus bedroom apartments -10m<sup>3</sup></li> </ul> 50% of the above areas may be allocated within each respective apartment while the remaining 50% is to be located within the car parking area.	The application has not demonstrated how storage could be achieved in accordance with this guide. Part of the storage requirement is provided in the basement level in cages above the resident car parking spaces (2.8m <sup>3</sup> ). The SEE submitted with the application states that " <i>additional storage in apartments is a conditionable matter</i> ". This is correct. However, in light of other failing of the development and the fact that this was raised as an issue at the pre-lodgement meeting, this is a matter that should have been resolved in the application.	No

**ITEM 2 (continued)**

Primary Development Control and Guidelines	Comments	Comply
<p><b>Acoustic Privacy</b>            Apartments within a development are to be arranged to minimise noise transitions.</p>	<p>The apartment layout is considered appropriate, as similar uses such as kitchens, living areas and bedrooms are located opposite the same uses of adjoining units.            The non-compliant side setbacks and subsequent building separation issues with existing and future development on adjoining sites, could potentially result in noise transition.            Conditions could be imposed in relation to window treatments and building construction to ensure that the building is acoustically attenuated.</p>	<p>Yes,            subject to conditions</p>
<p><b>Daylight Access</b>            Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9.00am and 3.00pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.            Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed. how site</p>	<p>In this location the development is required to achieve 3 hours of direct sunlight to at least 70% of the apartments in mid winter.            Refer to discussion following this table for detail.</p>	<p>No</p>
<p><b>Natural Ventilation</b>            Building depths which support natural ventilation typically range from 10 to 18 metres.            60% of residential units should be naturally cross ventilated.            25% of kitchens should have access to natural ventilation.</p>	<p>All of the apartments will support acceptable natural cross ventilation due to layout, orientation and the use of windows.</p>	<p>Yes</p>

**ITEM 2 (continued)**

Primary Development Control and Guidelines	Comments	Comply
<b>Awning</b> Awnings are to encourage pedestrian activity on streets by providing awnings to retail strips.	Not applicable.	N/A
<b>Facades</b> Facades are to be of appropriate scale, rhythm and proportion which responds to the building's use and the desired contextual character.	Primarily as a result of the non-compliant setbacks, the proposed façades of the building are not considered to be of an appropriate scale and proportion with regard to the site and its context.	No
<b>Roof Design</b> Roof design is to relate to the desired built form as well as the size and scale of the building.	The roof is integrated with the overall building design and represents a contemporary style and finish.	Yes
<b>Maintenance</b> The design of the development is to ensure long life and ease of maintenance.	The proposal is considered to be acceptable in terms of building maintenance.	Yes
<b>Waste Management</b> A waste management plan is to be submitted with the development application.	A waste management plan has been submitted with the DA.	Yes

Further to the table above are the comments below.

**1. Building Separation**

Building separation requirements for buildings up to four (4) storeys apply to the development. The requirements are:

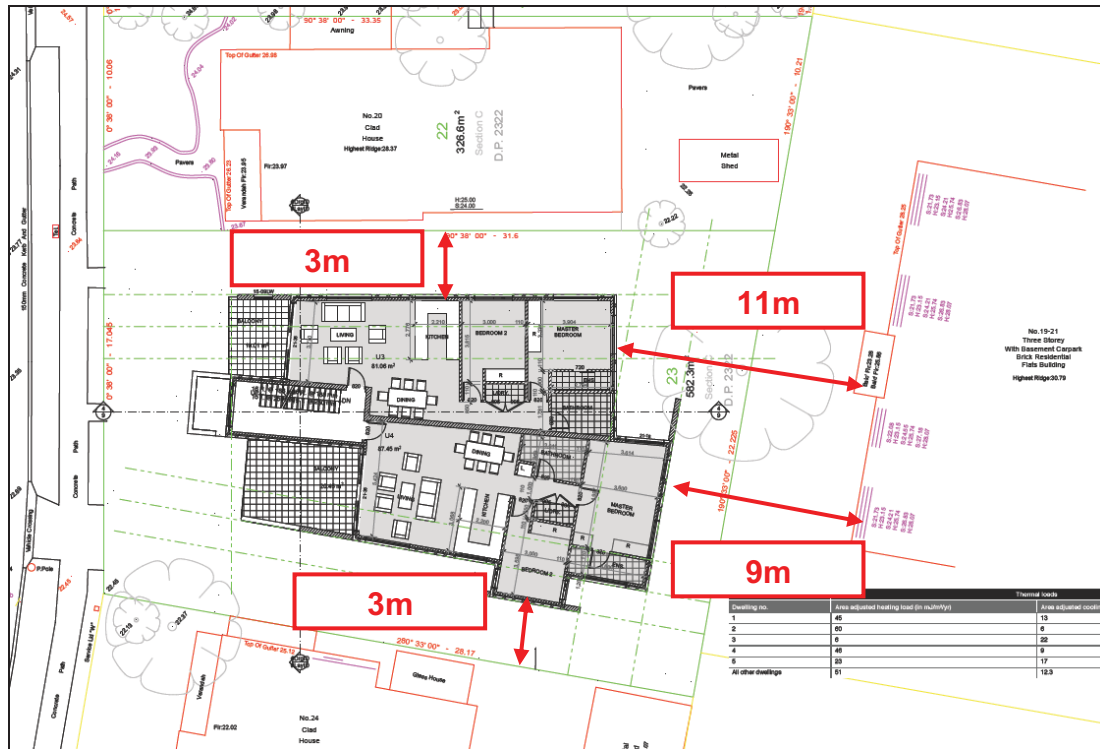
- 12 metres between habitable rooms / balconies;
- 9 metres between habitable rooms/balconies and non-habitable rooms.
- 6 metres between non-habitable rooms.

Developments that propose less distance must demonstrate that adequate daylight access, urban form and visual and acoustic privacy have been achieved.

**ITEM 2 (continued)**

The proposal is inconsistent with the building separation guidelines as follows:

- Generally, a separation distance of 12 metres is required between the rear / eastern facade of the development and the existing RFB to the east of the site (No. 19-21 Station Street). The proposed separation distances are noted below.



- The separation distance to No. 19-21 Station Street is therefore inconsistent.
- Based on the "desired area character" and for the purpose of demonstrating that No.'s 20 and 24 can be redeveloped for the purpose of residential flat development (as modelled in the Applicant's "potential envelope" for these sites), due to the 3 metre side setbacks of the development, the required building separation distances would not likely be achievable.

With regard to the above, it is necessary to consider whether the proposal achieves adequate daylight access, urban form, visual and acoustic privacy. Discussion is provided below.

## **ITEM 2 (continued)**

### Acoustic Privacy

The application does not consider acoustic privacy in detail and simply states that the development will meet acoustic requirements. However, there are measures that can be incorporated into the design and construction that can address potential noise impacts (such as construction type and window treatment). As a stand-alone matter, if this application were to be approved, conditions could be imposed in this regard to mitigate potential adverse acoustic privacy impacts.

### Daylight Access

The proposed separation distances will not impact on the ability for No. 19-21 Station Street to achieve the required three (3) hours of solar access between 9:00am and 3:00pm in mid-winter.

The proposed setbacks/likely separation distances will not impact on the ability for No. 20 Mons Avenue, in the event of any future redevelopment as a RFB, to achieve the required three (3) hours of solar access between 9:00am and 3:00pm in mid-winter.

Due to the orientation of the site and fall of the land, the proposed setbacks/likely separation distances could potentially impact on the ability for any future redevelopment of No. 24 Mons Avenue to achieve an adequate amount of solar access (to living areas and open space areas). In terms of the existing development, as outlined in the "*submissions*" section of this report, the development results in adverse shadowing impacts to the rear private open space of No. 24 Mons Avenue and a significant loss of amenity to this primary recreation space.

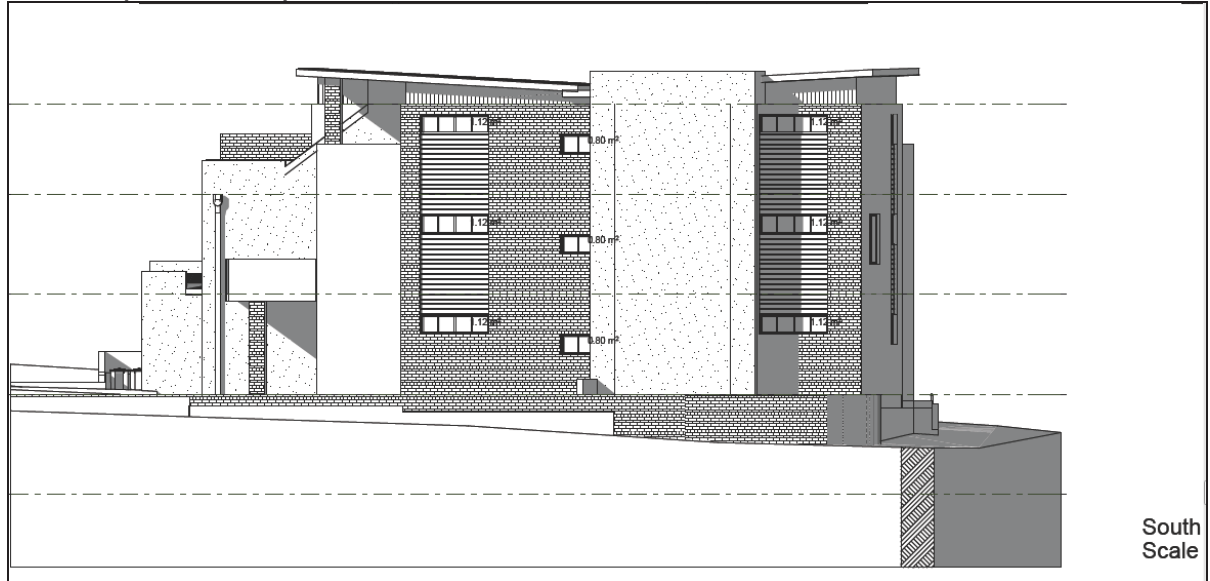
### Visual Privacy

As with acoustic privacy, there are measures that can be employed to mitigate visual privacy impacts, such as window and balcony location and treatment.

With regard to No. 24 Mons Avenue, all windows in the southern facade of the proposed RFB are high sill windows to mitigate potential overlooking. Refer to the figure below.

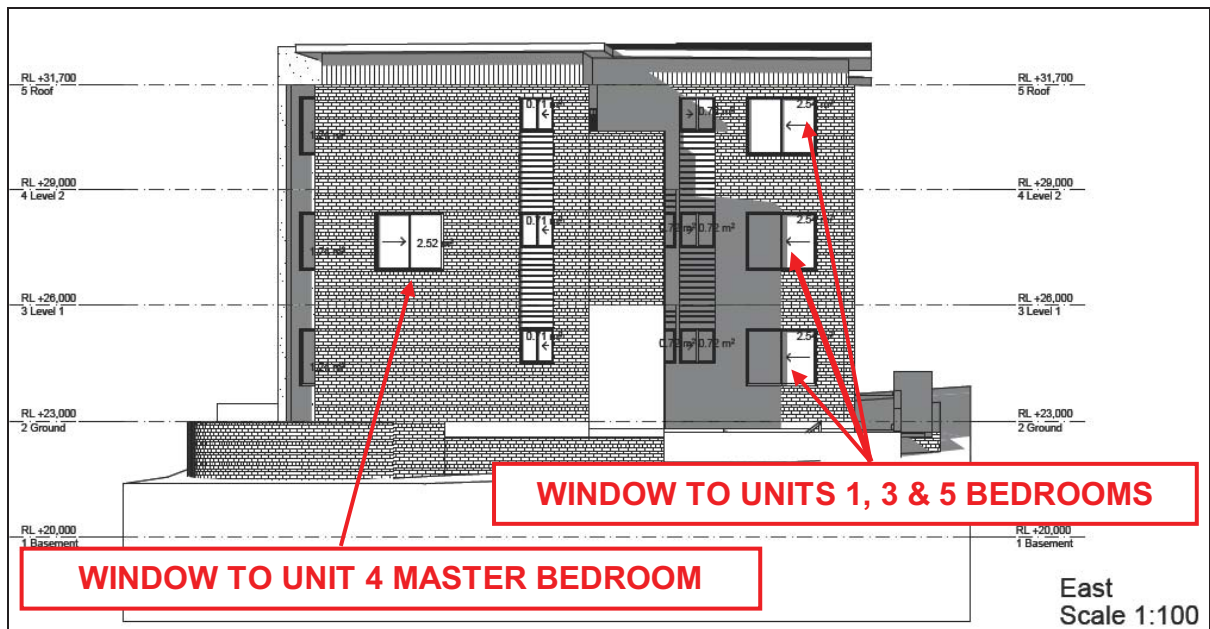


**ITEM 2 (continued)**



With regard to No. 19-21 Station Street:

- The window to the master bedroom of proposed Unit 4 has an east facing window with a sill height of approximately RL 26.9. Refer to the figure below.

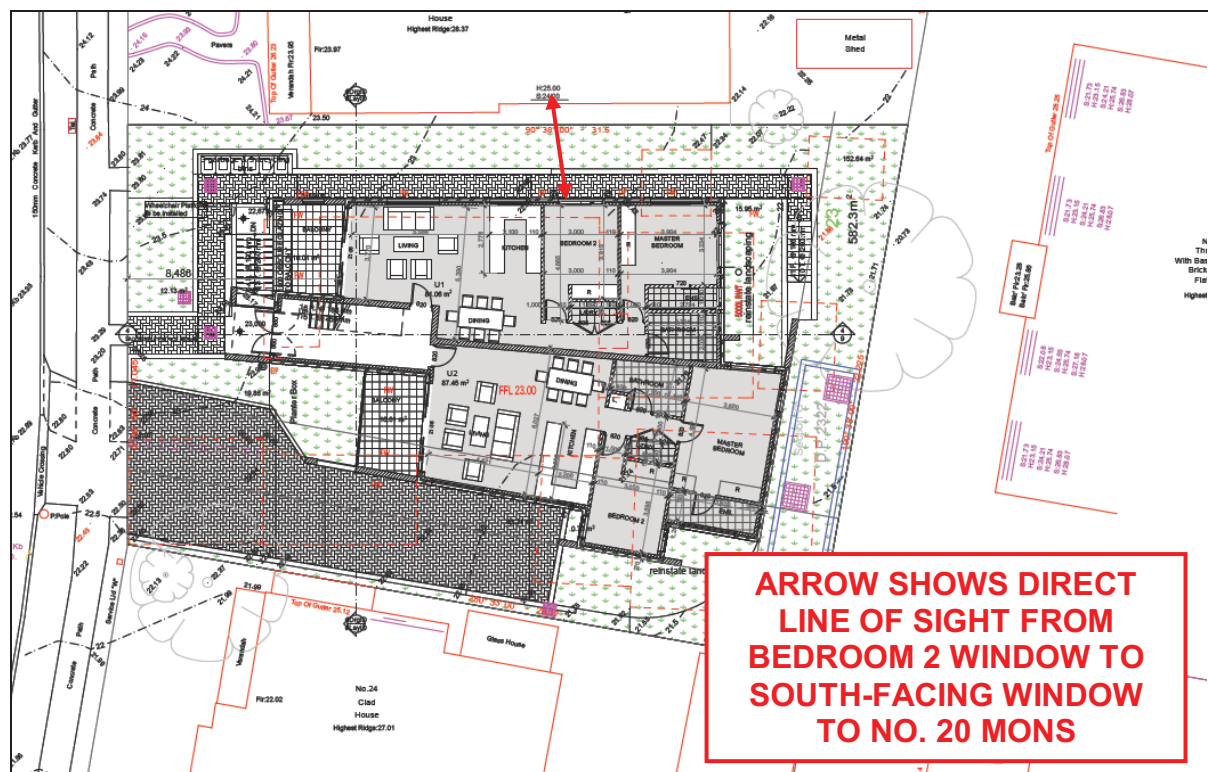


This window is partly offset from a window at the upper level of No. 19-21 Station Street with a sill height of RL 26.83. The separation distance of these two (2) windows is 9 metres. A potential impact on the privacy of residents in these two (2) units could result from an oblique view. This issue could potentially be resolved by a condition of consent requiring either a sill height of 1.6 metres (or obscure glazing to this height within the window pane).

**ITEM 2 (continued)**

- The proposed separation between the west-facing balconies to No. 19-21 Station Street and the rear bedrooms of the proposed development (Units 1, 3 and 5 as shown in the figure above) is 11 metres. A small splay wall and landscaping has been proposed as a mitigation measure. The splay wall and landscaping will not adequately mitigate any "overlooking" that may result from the lack of separation distance to meet the RFDC guidelines. The tree could provide some screening. However, concerns are raised regarding the health of this tree and as no supporting information has been submitted to Council to confirm the tree can be retained and will not be impacted by excavation, privacy remains as a concern in this regard. A condition could potentially be imposed to require the windows of the east-facing master bedrooms to be either high sill or glazed.
- The lack of separation distances and the non-compliant RDCP rear setback brings the common open space area at the rear of the site closer to the rear boundary and within closer view of the windows and balconies (west-facing) of No. 19-21 Station Street. This is unacceptable.

With regard to No. 20 Mons Avenue, there is a full size window on each level of the building (to Units 1, 3 and 5) to "bedroom 2". The sill height of the window in the southern elevation of No. 20 Mons Avenue is at RL 24.00. The sill height of the full-size window in the northern elevation of proposed Unit 1 is approximately RL 23.95. As can be seen in the figure below, there is potential for overlooking at this point.



**ITEM 2 (continued)**

This issue could potentially be resolved by a condition of consent requiring either a sill height of 1.6 metres (or obscure glazing to this height within the window pane).

Whilst not desirable, subject to conditions, privacy impacts as a result of building separation issues, could be resolved by conditions. However, for generally all windows in the development to either be high sill or obscure glazed, does not provide an ideal amenity outcome (daylight access and general outlook) for residents and is not a desired outcome for this development, particularly within the context of other shortfalls.

Urban Form

The proposed development does not present an urban form that is appropriate for the site and its context, particularly due to the potential isolation and sterilisation of No. 20 and 24 Mons Avenue.

The urban form of this building is also inconsistent with Council's RLEP and RDCP requirements.

Summary

Whilst some impacts resulting from non-compliant building separation distances can be mitigated by design amendments, this does not represent a good design outcome.

**2. Daylight Access**

The RFDC states that at least 70% of apartments receive a minimum of three (3) hours direct sunlight to living rooms and private open space between 9:00am and 3:00pm in mid-winter.

Shadow diagrams have been submitted with the application. However, these shadows are not detailed enough to undertake a completely accurate assessment. Issues regarding the diagrams are as follows:

- The "*shadows 21 June Plan*" (ref. C13DA) only provides the shadow path for 9:00am, 12:00pm and 3:00pm. A more detailed "*hourly*" analysis would provide a more accurate representation of the shadow impact of the development.
- Whilst the existing dwelling at No. 20 Mons Avenue is only single storey, as it is located to the north of the site, there is a potential for overshadowing to Unit 1 (at a minimum). The shadow of this dwelling on the proposed development is not shown on the elevation "*shadow 21 June*" plan (ref. C10DA). Furthermore, whilst separated by No. 20 Mons Avenue, there is an existing three (3) storey RFB at No. 16-18 Mons Avenue which could also potentially result in some shadowing to the subject development. This has not been considered in the application and/or shadow diagrams.

**ITEM 2 (continued)**

- As noted further in this report under the RDCP assessment, there are inadequate details provided in the architectural documentation regarding the proposed fencing scheme. The landscape plan indicates a 1.8 metre high side and rear boundary fence is proposed (to the "*Architects details*"). It is not clear whether the fencing has been considered in the shadow modeling.
- The elevation "*shadow 21 June*" plan (ref. C10DA) does not clearly demonstrate the solar access afforded to the proposed living rooms.

On the information that has been provided, the following comments are made:

- Due to the orientation and layout of units within the development and various other built form elements (such as balcony screen walls and the projecting building entrance and internal staircase), Units 2, 4 and 6 will not receive the required three (3) hours of solar access between 9:00am and 3:00pm in mid-winter. Without even considering Units 1, 3 and 5, the development fails to meet the 70% requirement of the RFDC.
- The balcony to Unit 2 receives no solar access until about 2:45pm. The balconies to Units 4 and 6 receive marginal solar access at 12:00pm, with a gradual improvement from that point. However, the actual proportion of the balconies receiving solar access is minimal until 2:00pm. This is not considered to provide a satisfactory level of amenity to these units.
- In terms of Units 3 and 5, whilst not clear on the shadow diagrams, it appears that the living rooms to these units may receive the required three (3) hours of solar access. The use of highlight windows to these living rooms does restrict the amount of solar access which is not desirable. Regarding the balconies to Units 3 and 5, whilst not an ideal proportion, they appear to achieve the minimum three (3) hours of required solar access.
- In terms of Unit 1, the shadow diagrams are not clear but it appears that the living room will not receive any solar access. As with Units 3 and 5, the level of solar access to the balcony of Unit 1 is not ideal but strictly, compliance with the required three (3) hours appears to be achieved.

The proposal is not satisfactory with regard to solar access and does not adequately satisfy the requirements or intent of the RFDC rule of thumb for amenity in this regard. The orientation of the site and building largely contributes to the lack of solar access provided internally within the development. The large staircase at the front and centre of the building is a design element that further restricts the ability for solar access to be maximised to the southern side apartments. Addressing issues regarding solar access would require a complete redesign of the proposal.

**ITEM 2 (continued)**Summary

The proposed development presents a number of inconsistencies with the RFDC as outlined in the table above that cannot be mitigated through conditions (design amendments or otherwise) and is not considered to be an appropriate development for the site.

**State Environmental Planning Policy No 55 – Remediation of Land**

The requirements of State Planning Policy No. 55 – Remediation of Land apply to the subject site. In accordance with Clause 7 of SEPP 55, Council must consider if the land is contaminated, if it is contaminated, is it suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

Due to the previous residential land uses on this site, it is unlikely to be contaminated. Accordingly, the site is considered suitable for the intended use.

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

The development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. As such, a BASIX Certificate has been prepared (No.453114M) which provides the development with a satisfactory target rating. Compliance with the BASIX Certificate commitments could be ensured by appropriate conditions.

**(c) Relevant REPs****Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above planning instrument. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the planning instrument are not applicable to the proposed development. The objective of improved water quality is satisfied through compliance with the provisions of Part 8.2 of DCP 2010. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the planning instrument.



**ITEM 2 (continued)****(d) Any draft LEPs****Draft Ryde Local Environmental Plan 2011**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan was placed on public exhibition between 30 May 2012 and 13 July 2012 and adopted by Council at its meeting held on 12 March 2013. Under this Draft LEP, the zoning of the property is R4 High Density Residential. The proposed development is permissible with consent within this zoning under the Draft LEP. The objectives of the zone are:

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

The proposal is not contrary to the objectives of the zone.

However, the proposal is not consistent with the general objectives of the Draft LEP (Clause 1.2) as it will not promote a form of development by type and density that:

- (i) accords with urban consolidation principles, and
- (ii) is compatible with the existing environmental character of the locality, and
- (iii) has a sympathetic and harmonious relationship with adjoining development
- (iv) to enhance the amenity and characteristics of established residential areas.

The proposal complies with the maximum floor space ratio (1:1) and building height (11.5 metres) prescribed for the site under the Draft LEP.

**(e) Any DCP (e.g. dwelling house, villa)****City of Ryde Development Control Plan 2010**

The following sections of the Ryde Development Control Plan 2010 ("*RDCP 2010*") apply to the proposed development.

- 3.4 Residential Flat Buildings and Multi Dwelling Housing [not within the Low Density Residential Zone]
- 7.1 Energy Smart, Water Wise
- 7.2 Waste Minimisation and Management
- 8.1 Construction Activities

**ITEM 2 (continued)**

- 8.2 Stormwater Management
- 8.3 Driveways
- 8.4 Title Encumbrances
- 9.2 Access for People with Disabilities
- 9.3 Car Parking
- 9.4 Fencing
- 9.6 Tree Preservation

A full assessment of the proposal under RDCP 2010 annexed to this report.

The key non-compliances identified in the table are assessed below.

**1) Density**

The proposal does not comply with the density requirements contained in Clause 4.5B of RLEP and therefore is inconsistent with Clause 2.1 of Section 3.4 of the RDCP. Discussion regarding this non-compliance is provided in **Section 9(a)** of this report. In summary, the non-compliance is not supported on the basis that the proposal is an overdevelopment.

**2) Storeys**

The proposal complies with the maximum height limit in the RLEP and presents as a three (3) storey building to the street.

As outlined in **Section 9(a)** of this report, the natural ground level at the south-eastern most corner of the building is approximately RL 21.5. The floor level of the storey above (ground level) is RL 23.0. The projection of the basement in this location is 1.5 metres.

Technically, the basement in this location is therefore not defined as a "*basement*" in accordance with the RLEP definition and constitutes a storey. The building is therefore a part three (3), part four (4) storey development.

The level of non-compliance is minor and is restricted to a small part of the building. However, due to the non-compliance, consideration of the impact of this projection and additional storey is necessary. Comments are below:

- The building in this location still complies with the maximum building height under the RLEP.
- The non-compliance primarily results from the topography of the site and the fall of the land to the south-eastern part of the site.

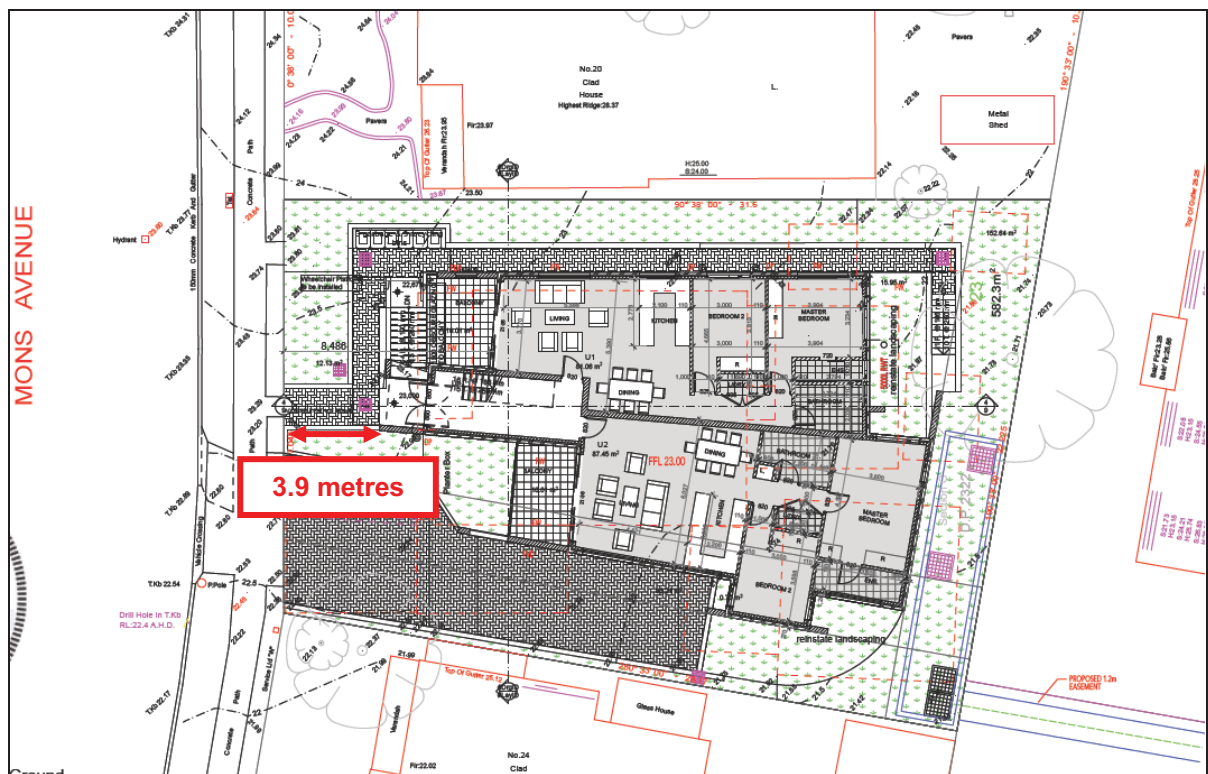
**ITEM 2 (continued)**

- The building presents as a three (3) storey building from the street and the north and with boundary fencing to 1.8 metres and landscaping, the building will not present as a true four (4) storey development from the rear/east and south of the site.

There are issues generally regarding the bulk and scale of the development, but as a standalone matter, the minor non-compliance with this DCP control is not considered to warrant refusal on this basis alone.

**3) Front Setback**

The front setback to the entry portico (which is considered to be the commencement of the front building line) is 3.9 metres and is shown below.



The RDCP states that a portion of the external wall may encroach on the front boundary setback providing the following criteria are met:

Criteria	Proposal
a. The encroachment on the specified setback does not exceed 0.5m – 1 storey building, 1.5m – 2 or 3 storey building;	Does not comply.

**ITEM 2 (continued)**

<b>Criteria</b>	<b>Proposal</b>
<i>b. The portion of the external wall, excluding balconies, so set back does not exceed 50% of the total length of the front elevation;</i>	Does not comply.
<i>c. The setback of the remainder of the external wall being such, that the unbuilt upon area between the building and the front boundary, calculated on the specified setbacks, is maintained;</i>	Does not comply.
<i>d. The portion of the external wall and/or balconies so set back takes into consideration the location of structures on adjoining properties to ensure that the general streetscape and adequate visual privacy is maintained; and</i>	Does not comply.
<i>e. Balconies are not enclosed to a height of greater than 1.2m.</i>	The west facing balconies to the development are enclosed to a height greater than 1.2 metres. These balconies are setback greater than 3.9 metres but do not comply with the 11 metre setback requirement.

The proposed front setback does not comply with the criteria above. Further discussion is provided below.

The front building line is generally consistent with the two (2) directly adjacent properties to the north and south. However, the proposed development represents a higher density form of development of a greater height, bulk and scale. A greater front setback would partly aid in visual bulk and scale mitigation, but not to an acceptable degree, due to the non-compliant side setbacks, the width of the proposed driveway, the potential isolation of adjoining properties (refer to discussion above at point g) in the "Submissions" section of this report) and subsequent visual streetscape impact. An 11 metre setback for this site is considered to be onerous and strict compliance would result in an outcome that is inconsistent with other development along the existing Mons Avenue streetscape. However, combined with other issues raised in this report, cumulatively, the proposed front setback is unsatisfactory and not supported for this development.

#### **4) Side Setbacks**

The minimum side setbacks are three (3) metres. This setback is continuous for the majority of the northern elevation and there is some articulation and variation provided to the southern elevation.

**ITEM 2 (continued)**

The RDCP states that a portion of the external wall may encroach on the side boundary setback providing the following criteria are met:

<b>Criteria</b>	<b>Proposal</b>
<i>a. The portion of the external wall and/or balcony so set back does not encroach more than 25% on the specified setback;</i>	Does not comply. The maximum encroachment is 50% of the required setback.
<i>b. A minimum setback of 3m is maintained;</i>	Complies. A minimum 3 metre setback is maintained.
<i>c. The portion of the external wall, excluding balconies, so set back does not exceed 50% of the total length of the wall adjacent to the respective boundary;</i>	Does not comply. The wide boundary setback non-compliances are for 100% of the respective elevation.
<i>d. The setback of the remainder of the external wall being such, that the unbuilt upon area between the building and the boundary, calculated on the specified setbacks, is maintained;</i>	Does not comply.
<i>e. The portion of the external wall and/or balcony so set back takes into consideration the location of structures on adjoining properties to ensure adequate visual privacy is maintained; and</i>	Visual privacy to the south is mitigated by the use of small and high sill windows. There is concern regarding a full size window in the northern elevation and to bedroom 2 of Units 1, 3 and 5. This issue could be resolved via a condition of consent (high sill window or appropriate glazing).

With regard to the above, the proposal fails to satisfy a number of the criteria. The non-compliant side setbacks contribute to the footprint of the building and non-compliances with other requirements such as landscaped area, common open space provision, maximum projection of the basement above ground level at the property boundary, and building separation guidelines under the RFDC. The non-compliant setbacks also contribute to the extent of overshadowing to the south and south-west and the unacceptable visual bulk and scale of the development when viewed from adjoining properties to the north and south and also, the Mons Avenue streetscape.

Compliance with this control would be readily noticeable from the adjoining properties and the visual bulk and scale impact to the streetscape would be significantly improved. However, greater side setbacks would require considerable design amendments that could generally not be resolved by conditions.



**ITEM 2 (continued)**
**5) Rear Setback**

The minimum rear setback provided is three (3) metres.

The RDCP states that a portion of the external wall may encroach on the rear boundary setback providing the following criteria are met:

<b>Criteria</b>	<b>Proposal</b>
<i>a. The portion of the external wall and/or balcony so set back does not encroach more than 25% on the specified setback;</i>	Does not comply. The maximum encroachment is 50% of the required setback.
<i>b. A minimum setback of 3m is maintained;</i>	Complies. A minimum 3 metre setback is maintained.
<i>c. The portion of the external wall, excluding balconies, so set back does not exceed 50% of the total length of the wall adjacent to the respective boundary;</i>	On average, the portion of the external wall that does not comply, is about 50%.
<i>d. The setback of the remainder of the external wall being such, that the unbuilt upon area between the building and the boundary, calculated on the specified setbacks, is maintained;</i>	Generally compliant.
<i>e. The portion of the external wall and/or balcony so set back takes into consideration the location of structures on adjoining properties to ensure adequate visual privacy is maintained; and</i>	Potential visual privacy impacts resulting from unacceptable separation between the window to the master bedroom at level 2 (Unit 4) and the opposite window in No. 19-21 Station Street, could be resolved via a condition (high sill window or glazing). Visual privacy otherwise in this location is maintained.
<i>f. Balconies are not enclosed to a height of greater than 1.2m.</i>	Complies. There are no balconies oriented towards the rear boundary.

With regard to the above, the proposal fails to satisfy a). The non-compliant rear setback contributes to the footprint of the building and non-compliances with other requirements such as landscaped area, common open space provision, projection of the basement above ground level at the property boundary, and building separation guidelines under the RFDC. The non-compliant setback also contributes to the extent of overshadowing to the south and south-west and the unacceptable visual bulk and scale of the development when viewed from adjoining properties to the east, south and south-east.



**ITEM 2 (continued)**

Further to the above, and as noted under point u) in the "*Submissions*" section of this report, the proposed rear setback is inconsistent with the rear setback of developments surrounding the site, including the three directly adjacent properties and the residential flat development at No. 16-18 Mons Avenue

The proposed rear setback is therefore uncharacteristic of other developments in the vicinity of the site and results in building separation, visual privacy, visual amenity, overshadowing and landscaped provision impacts.

Compliance with this control would be readily noticeable from the adjoining properties and site amenity would be improved. A greater rear setback however would require considerable design amendments that could generally not be resolved by conditions.

**6) Balconies**

Balcony balustrades scale at approximately 1.25 metres in height. A 1.5 metre high translucent glazed screen is proposed to the balcony of Unit 1 to mitigate visual amenity and privacy impacts from the bin store and fire stair from the basement respectively.

Despite the minor non-compliance, given the balustrades are to be of glass construction, they are considered to be appropriate in this regard.

**7) Internal Setbacks**

The RDCP requires all windows of habitable rooms to be located at least 10 metres from windows of habitable rooms of adjacent dwellings, on the site or on adjoining properties.

As outlined in detail in the SEPP 65 assessment section of this report ("*visual impacts*"), there are a couple of windows within the development that do not comply with this requirement. Conditions could be imposed to require these windows to be either high sill or obscure glazed, to mitigate potential overlooking impacts. However, this does not mitigate the impact of visual bulk and scale. Furthermore, if these windows were to be amended to be either high sill or obscure glazed, this would result in all windows being "*treated*". This is not a desired outcome and could potentially result in impacts on residential amenity (in terms of sunlight filtration through windows and general outlook).

**ITEM 2 (continued)****8) Parking**Parking Under Buildings

The basement carpark encroaches into the setback areas of the development. Clause 5.3 of Section 3.4 of the RDCP states that the height of the roof of the parking area must not exceed 0.75m above natural ground level at the boundary. As the "roof" of the basement generally sits directly below the footprint of the building above (aside from the northern boundary where the basement projects further north), the "roof" line is taken to be RL 22.8.

On the northern boundary, the level varies from about RL 23.5 to approximately 22.07. The basement will therefore extend approximately 0.73 metres above natural ground level on the northern boundary (maximum).

On the southern boundary, the level also varies from about RL 22.5 to RL 21.42. The basement will therefore extend approximately 1.38 metres above natural ground level on the southern boundary (maximum).

On the eastern boundary, the level also varies from about RL 21.4 to RL 21.74. The basement will therefore extend approximately 1.4 metres above natural ground level on the eastern boundary.

With regard to the above and the southern and eastern boundaries, the areas of non-compliance are related to the fall of the land in the south-eastern corner of the site. The projections of the basement in the south-eastern corner of the site are not considered to be fundamental to the failings of the development, but rather contributory factors.

Visitor Parking Space

The RDCP requires one (1) wide-bay visitor space. The proposed 2.4 metre wide visitors' space does not meet the minimum RDCP requirement of 3.66 metres. A condition could be imposed to require this space to be amended to comply with this requirement. This may require the removal of one (1) parking space, but the total quantum of parking would still comply with the "range" stipulated in Part 9.3 of the RDCP.

**ITEM 2 (continued)****9) Driveway**

Clause 2.2 of Part 8.3 of the RDCP states that the width of any footway crossing to a residential property with less than 10 cars is to be a maximum of 5 metres. The proposed driveway width is 6.3 metres or 37% of the site frontage. Council's Traffic Engineer has recommended that a condition be imposed to reduce the width of the driveway to a maximum of five (5) metres. This reduction in width would create a greater level of separation between the proposed driveway and pedestrian access to site and minimise any potential "conflict". A reduction in width would also reduce the visual impact of the driveway.

**10) Landscaping**

The proposal has a shortfall of 40m<sup>2</sup> or 16.7% landscaped area on the site. If the development was compliant with the required RDCP setbacks and other compliance issues were resolved (such as density, building separation, common open space), compliance with the required landscaped area could be achieved.

It is also important to note that a fair proportion of the landscaped area on the site does not achieve a high level of solar access. At least 50% of the landscaped area to the west of Unit 2 and at the street frontage is overshadowed for most of the day in mid-winter. The landscaping to the rear of the site is also significantly shadowed with the south-eastern corner receiving very little solar access in mid-winter. This is one of the key "useable" areas of landscaped open space on the site and levels of amenity are not acceptable.

In summary, the shortfall of landscaped area on the site is not considered to be a minor non-compliance, and when considered in the context of other failings of the development, is not satisfactory.

**11) Materials and Finishes**

A materials schedule has been submitted with the application. The architectural plans also include a materials schedule legend but these details are not annotated on the plans.

The main walls and downpipes and the colour feature wall at the entrance of the development and proposed to be rendered and painted brickwork. Window and door frames are to be stainless steel and Colorbond is proposed for the roof sheeting and aluminium fascias and gutters. Driveway and walkways are to comprise stenciled concrete with "edging strips".

**ITEM 2 (continued)**

The colour scheme is relatively neutral. The scheme incorporates a variety of colours but the amount of brick and cement rendering further contributes to the visual "bulk" of the development. A greater variety of textures and colours would be more appropriate for the development but would not solely mitigate the visual dominance of the development.

**12) Fencing and Retaining Walls**

The RDCP prescribes a maximum of a 1.8 metre high boundary fence with a maximum 1 metre within the front setback. Preferred construction is of post and lapped paling.

The landscape plan makes reference to boundary fencing in accordance with the "Architects Details". However, the architectural plans do not show any fencing proposed. The landscape plan also notes that the fencing will be a 1.8 metre high fence along the full length of the northern and southern site boundaries and will be either timber or Colorbond.

There is a lack of sufficient information regarding the proposed fencing scheme in this regard.

If the application were to be approved, this issue could potentially be resolved by a condition of consent requiring a 1.8 metre high boundary fence to the north, south and eastern boundaries with a tapering to a maximum of one (1) metre within the front setback area. The post and lapped paling construction could also be conditioned. However, the issue in this regard is that the architectural package does not appear to have considered any potential impact of the fencing with regard to overshadowing. Whilst the additional impact may only be minor, this cannot be quantified or confirmed.

Further to the above, retaining walls are proposed along the northern and southern site boundaries. The landscape plan states that the walls will be constructed "to suit finished levels". There is a wall shown on the northern and southern elevations of the architectural plans that could potentially be the proposed retaining walls but not enough detail is provided to confirm this. Consistency with Clause 9.5 and 9.6 of Section 3.4 of the RDCP cannot be determined.

A lack of sufficient information in this regard is unsatisfactory.

**13) Noise**

Clause 8.4 of Section 3.4 of the RDCP requires building to be designed to minimise noise transmission between dwellings and between the development and that adjoining.

**ITEM 2 (continued)**

The SEE submitted with the Application states that it complies with acoustic requirements. There is no further discussion in this regard. The non-compliant building setbacks impact on separation distances between the development and existing and future development on adjoining sites. In this regard, there is a potential for noise transmission but this can potentially be resolved by appropriate conditions and the type of building construction.

In addition to the above, the location of windows to Unit 2 and above the proposed driveway could also potentially give rise to adverse noise impacts. Furthermore, the balcony to Unit 2 is directly adjacent to the proposed driveway. Whilst this is not a desired design solution for this Unit, this can potentially be resolved by appropriate conditions and the type of building construction (such as approximate glazing to windows).

**14) Waste Storage**

There is screening of the garbage store area to the north, east and west (street view) but no screening proposed to the south. This results in a poor design outcome in terms of the relationship with the adjacent pedestrian footpath and ground floor Unit 1 in regard to visual amenity and potential odour impacts. The SEE submitted with the application states that a 1.5 metre high translucent screen to the front of the balcony to Unit 1 will screen the garbage facilities. This may provide screening to the facility from Unit 1 but this is a poor design solution. Furthermore, the SEE states that the garbage area is located in this location as "*there is insufficient space in the basement*". This is not adequate justification for the location of the bin store and further supports the view that this is an overdevelopment of the site.

In addition to the above, Council's Waste Officer has noted that there is no space nominated for a greenwaste bin to meet Council's requirements. This is a matter that could be resolved via a condition of consent requiring the bin storage area to be extended to enable a Council supplied "greenwaste bin" to fit with adequate clearance space for serviceability.

**15) Stormwater Management**

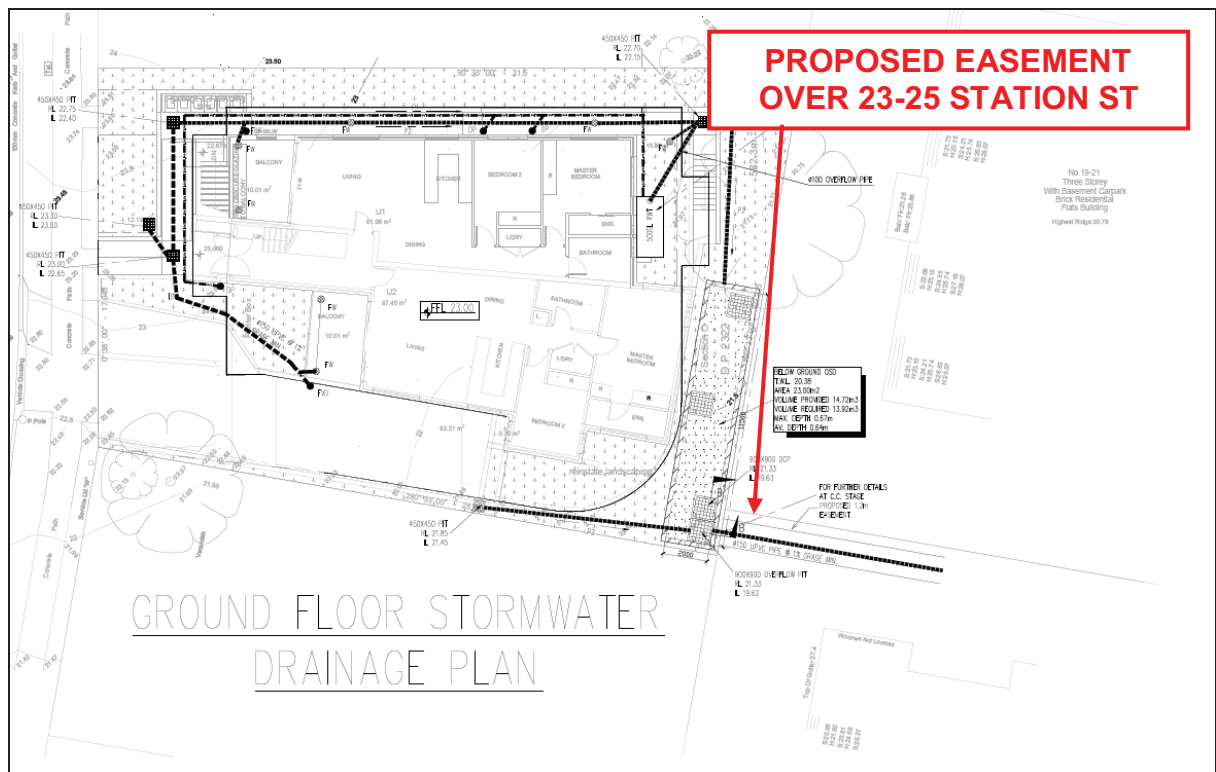
The Applicant submitted amended stormwater plans on 16 February 2013. Council's Development Engineer concluded that the proposal was generally satisfactory and that the issue of requiring an easement over the rear property could be addressed as a deferred commencement condition of consent.

Clause 9.1 of Section 8.2 of the RDCP states that in circumstances such as this, the Council will not issue a local development consent until evidence is provided to the Council from the Land Titles Office to indicate the subject property enjoys rights to use an inter-allotment drainage system. Deferred commencement consent requiring registration of the easement is not ideal, but would be accepted in this instance.

**ITEM 2 (continued)**

However, at the very least, consent should be granted by the owner(s) of No. 23-25 Station Street.

The amended documentation submitted to Council on 16 February 2013 included a series of emails between Strathfield Strata Management and the Architect regarding the easement. This correspondence appears to relate to No. 19-21 Station Street, West Ryde, the relevance of which is unclear, as the stormwater plan submitted with the application (as amended) shows a stormwater easement across No. 23-25 Station Street. Refer to the stormwater plan extract below.



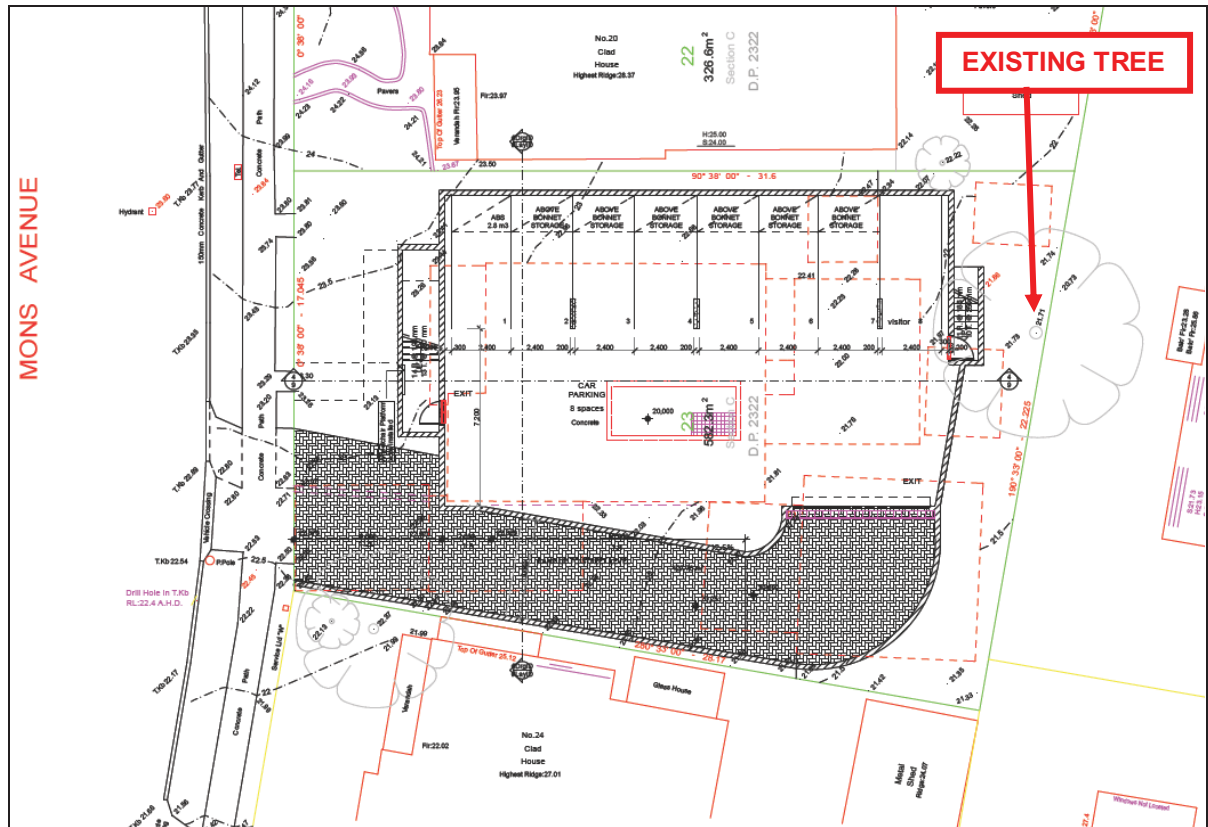
Failure to produce owners' consent or any evidence of negotiation with the owner(s) of No. 25 Station Street is unacceptable and included as a reason for refusal of this application.

**16) Tree Preservation**

The existing tree at the rear of the site is proposed to be retained. However, the basement excavation and construction is within close proximity to the tree and no details have been submitted with this information to assess the potential impact and consider any required tree protection measures.



**ITEM 2 (continued)**



The figure above shows the proposed basement level plan and the encroachment of the basement into the drip line of the tree. The eastern edge of the basement is less than two (2) metres from the tree.

It is also noted that the proposed splay wall to the common open space area at the rear of the development appears to extend into the drip line of the tree and would likely require constant pruning and maintenance as the splay wall extends the full height of the building.

The health of the tree may not necessarily be compromised as a result of the proposed excavation and construction works. However, Council cannot be certain of this without supporting information from the Applicant. A lack of information in this regard is unsatisfactory and is included as a reason for refusal of the subject application.

**17) Additional Comments**

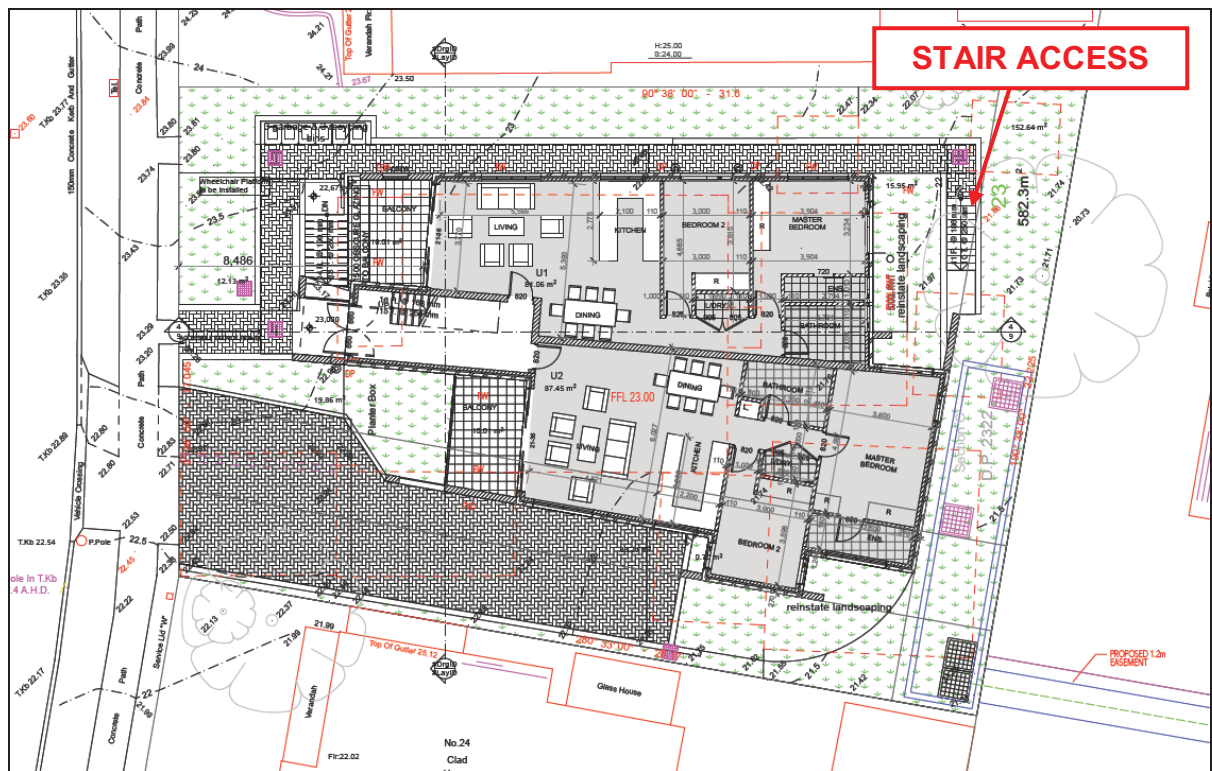
Further to the non-compliances outlined above, comments regarding additional inconsistencies with the RDCP are set out below.

## ITEM 2 (continued)

### Access

An accessible path of travel is provided from the basement level car park, to the entrance of the building, to the ground floor units and the street. This is facilitated through the proposed wheelchair platform lift in the basement car park and by paths / walkways.

There is an accessible path of travel along the northern site boundary via a proposed pathway. This provides access to the rear of the building. However, contrary to Clause 6.4.2 of Section 9.2 of the RDCP, the accessible path of travel does not extend to the rear common open space area. Provision has been made for a staircase providing access to this space as shown below.



The RDCP states that all common facilities should be accessible and this should include the common open space area.

If the application were to be approved, a condition of consent would be imposed to require compliance with AS 1428.1 2001 - General Requirements for Access - New Building Work and the Building Code of Australia 2012. However, this may further impact upon the quantum of landscaped area.

## ITEM 2 (continued)

### Design of the Proposed Balcony to Unit 1

Earlier in this report reference was made to the design of the balcony to proposed Unit 1 at the ground floor level. Concerns regarding this balcony largely result from the close proximity to the fire stair from the basement. This staircase, which is considered to be a poor design outcome for reasons outlined earlier in this report, has the potential to create a general nuisance and subsequent amenity impact on the users of the balcony. A 1.5 metre high screen is proposed to the balcony (combined with 22.679 FFL of the stair podium, giving a 1.8 metre screen to Unit 1). However, as the fire stair is used as the only path of safe travel from the basement to the entrance of the building, it is reasonable to expect there will be a pedestrian activity in front of the balcony. A balcony screen can only achieve so much visual and acoustic screening.

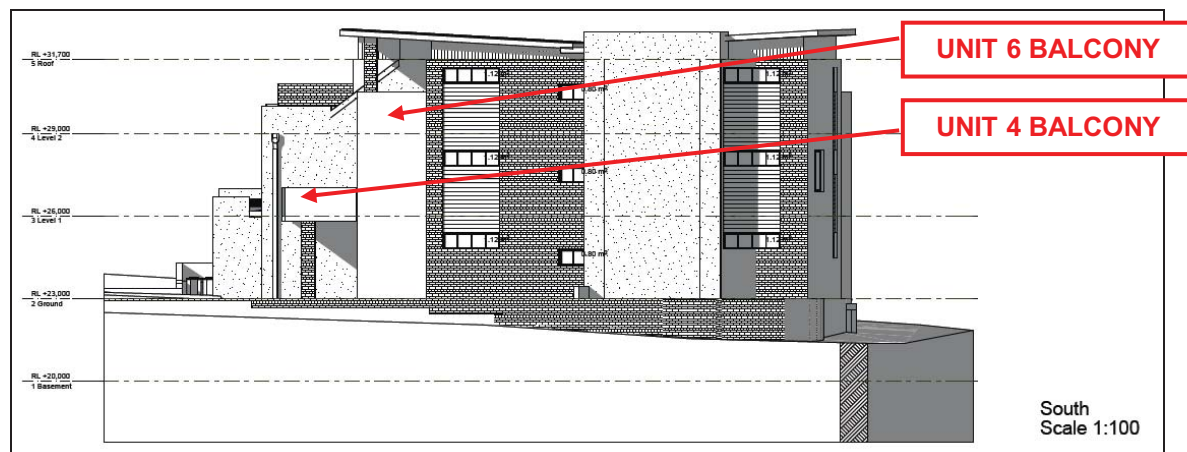
The poor relationship of the stair to the balcony was raised at the pre-lodgement stage and in Council's request for further information letter and reconsideration of this part of the design was requested. The potential for nuisance from potential overlooking (which is still possible despite the balcony screen), noise from continuous pedestrian traffic and potential odour from the unenclosed bin store are matters that cannot be resolved via conditions. This element of the design is unsatisfactory and requires reconsideration in any future application.

The above is contrary to the objectives of Section 3.4 of the RDCP which encourages a high architectural standard and requires residential amenity to be enhanced.

### Relationship between Balconies to Units 4 and 6

The relationship between the balconies to Units 4 and 6 gives rise to potential overlooking and adverse privacy impacts.

Refer to the figure below.



**ITEM 2 (continued)**

As can be seen above, the Unit 6 balcony is setback from the balcony below (to Unit 4). Whilst the balustrade can be conditioned to comprise translucent glazing, this will not adequately discourage or mitigate overlooking from the Unit 6 balcony. The enlargement of the balcony to Unit 6 or any built form treatment to this balcony (i.e. by use of a horizontal screen / roof extension above the Unit 4 balcony) would add to the bulk and scale of the development and would be unsatisfactory.

This is an unresolved matter and a design element that is contrary to the general objectives of Part 3.4 of the RDCP.

**10. Likely impacts of the Development****(a) Built Environment**

Given that the proposed development does not demonstrate a satisfactory response to the RLEP, RDCP and SEPP 65 requirements for built form, scale, landscaping, overall presentation and residential amenity, the development is not considered to result in acceptable impacts to the natural and built environment.

Furthermore, the proposal results in a development that potentially isolates the adjoining sites to the north and south. The ability for these sites to redevelop is already constrained by virtue of other adjoining development impacts and their small lot dimensions. The proposed development creates a probable outcome of site isolation and sterilisation and the Applicant has not successfully addressed this issue in accordance with the planning principles established by the NSW Land and Environment Court.

Approval of this development would set an adverse precedent for development of small sites in the locality.

**(b) Social and Economic Impacts**

The proposed development is not considered to provide a positive impact in social terms as the development will compromise the amenity of future occupants and residents of adjoining sites.

Furthermore, as stated above under (a), the proposal results in a development that potentially isolates and sterilises the adjoining sites. Further to failing to follow the process established by the Land and Environment Court planning principles, the application is not supported by an appropriate level of analysis to demonstrate that an orderly and economic redevelopment of No. 20 and 24 Mons Avenue could be achieved on those sites, within the context of site constraints, surrounds and specifically, within the context of the proposed development.

**ITEM 2 (continued)****11. Suitability of the site for the development**

These matters have been considered in the assessment of the development application. The development does not adequately respond to the site characteristics, and accordingly is not considered suitable in its current form.

**12. The Public Interest**

The public interest is served by permitting the orderly and economic development of land, in a manner that is sensitive to the surrounding environment and has regard to the reasonable amenity expectations of surrounding land users. In view of the foregoing analysis it is considered that the development:

- has failed to satisfactorily address the relevant planning objectives under all the applicable legislations, State Environmental Planning Policies, and Local Environmental Planning Controls;
- has also failed to satisfy the Land and Environment Court principles consideration for isolated sites; and
- In respect of the above, does not result in a development that is sensitive to the surrounding environment or result in an appropriate level of amenity to surrounding land users.

It is therefore considered that the proposal is not in the public interest.

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

Development Engineer: Council's Development Engineer has raised no objections to the development subject to conditions of consent.

Public Works: Council's Traffic and Waste Officers reviewed the development as a part of the combined public work referral. There were some concerns raised as follows:

Traffic Conditions

- There is a power pole located on the edge of the driveway, restricting room for exiting vehicles. A condition was recommended to address this issue, to require the power pole to be relocated 2.0 metres south of its current location.
- The potential intensification of the level of usage for driveway access was noted by Council's Traffic Engineer but was not raised as an issue.



**ITEM 2 (continued)**

- A condition was recommended to require the driveway width to be reduced to a maximum of 5 metres (for the clear internal width between the concrete wings).
- Other conditions were recommended in relation to general compliance with AS2890.1-2004.

Waste

Council's Waste Officer states has raised no objections to the development subject to a condition requiring the bin storage area to be extended to enable a Council supplied 'greenwaste bin' to fit within adequate clearance space for serviceability.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

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

**16. Other Options**

Not applicable.

**17. Conclusion**

The application has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, and the relevant Environmental Planning Instruments including the applicable State Environmental Planning Policies, Ryde Local Environmental Plan 2010, Ryde Development Control Plan 2010, and the relevant codes and policies of Council.

The proposed development has not demonstrated a satisfactory response to the intention and objectives of the design principles and controls contained within the Residential Flat Design Code in accordance with SEPP 65.

The proposal is further deficient with respect of the controls contained within Ryde Local Environmental Plan 2010 and the Ryde Development Control Plan 2010.

The proposal is also deficient in terms of the information required to make a complete and proper assessment of the subject application.

**ITEM 2 (continued)**

Given the constrained nature of the site (primarily with regard to its small lot size and frontage), the likely development outcome and the number of variations from Council's RLEP, RDCP and inconsistencies with SEPP 65 and the RFDC, the proposal is not considered to be acceptable in its current form. The Applicant has failed to satisfy the process and requirements established by the NSW Land and Environment Court in relation to site isolation. An acceptable and reasonable level of negotiation with adjoining land owners of the potentially isolated sites at No. 20 and 24 Mons Avenue has not occurred and the Applicant has failed to adequately demonstrate that these properties could be redeveloped to a similar density of development to that which is proposed. The "*potential envelope*" modelled for these sites is flawed and is not supported by adequate analysis or justification.

Despite the high density residential zoning of the site (current and proposed), and notwithstanding that the proposed development complies with the notional maximum height and floor space controls under current or future instruments, it is highly unlikely that either No. 20 or 24 Mons Avenue could be developed consistent with that proposed on the subject site. The proposed development is therefore likely to result in the isolation of these properties and subsequently, remain incompatible with the character of the subject locality of the Mons Avenue Streetscape. The Applicant has not undertaken adequate analysis to demonstrate otherwise.

Following a detailed assessment of the proposal, the development application has been assessed on its merits and is considered unsatisfactory. Some of the issues raised (compliance and merit-based) could be addressed by conditions (design amendments and otherwise). However, this would only address some of the individual issues (such as visual privacy) and would not address the failings of the proposal as a whole and would not address the issue of site isolation. Also, many of the existing RFBs within the locality were constructed prior to the introduction of SEPP 65 and the RFDC. The subject application will therefore be one of the first RFB developments in an area of transition. It is important for such development to set a high standard and benchmark for future development in the surrounding area. Approval of the development would set an adverse precedent for overdevelopment on small lots.

Accordingly, it is recommended that the development application be refused.

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RYDE DEVELOPMENT CONTROL PLAN COMPLIANCE TABLE</b>	
<b>LDA No:</b> LDA2012/0454	<b>Date Plans Rec'd:</b> 16 February 2013 (amended)
<b>Address:</b> 22 Mons Avenue, West Ryde	
<b>Proposal:</b>	Construction of a Residential Flat Building containing six (6) units.
<b>Constraints Identified:</b> None.	

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
<b>Part: 3.4</b>		
<b>Residential Flat Buildings and Multi Dwelling Housing (not within the Low Density Residential Zone)</b>		
<b>1.2 Objectives of this Part</b>		
1. To encourage a high architectural and landscape standard for residential flat development throughout the City.	The proposal does not comply with the minimum RDCP landscaped area requirements. The proposal does not encourage a high architectural standard for residential flat development. Lack of site setbacks and separation distances to adjoining properties and the general bulk and scale of the development results in adverse streetscape and amenity impacts.	No
2. To preserve and enhance the existing residential amenity of the City.	Refer to above comment.	No
3. To regulate the physical characteristics of residential flat development in order to preserve the character of the area within which the development is to be carried out.	The area is in transition and there is an expectation that sites such as the subject site will be redeveloped from low density residential development to a higher form of residential development. However, the physical characteristics of the proposal result in adverse impacts on the streetscape and the amenity of the site and adjoining sites. The proposal also results in the potential isolation of the adjoining single dwelling house at No. 20 Mons Avenue. Approval of this	No

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
	development would result in a fragmented built form development along the Mons Avenue streetscape.	
4. To ensure maximum privacy, sunlight and air, both within and without the site.	The proposal achieves adequate cross ventilation. The proposal is not adequate in terms of solar access. Visual privacy is partly mitigated through the use of balcony screening and high sill windows. However, the lack of setbacks (particularly side setbacks) could result in impacts on acoustic privacy internally within the development and to other adjoining properties (and any potential future developments on those sites).	No
5. To ensure adequate provision is made for the parking of residents' and visitors' vehicles within the limits of the site.	The proposal accords with the parking requirements of Part 9.3 of the RDCP.	Yes
<b>2.1 Density</b>		
The maximum number of dwellings which can be erected on a particular site shall be calculated in accordance with the density requirements contained in Clause 4.5B of Ryde Local Environmental Plan 2010.	The proposal does not comply with the density requirements contained in Clause 4.5B of RLEP. Refer to <b>Section 9(a)</b> of the report for discussion.	No
The number of small one bedroom dwellings in any development shall not exceed 50% of the total number of dwellings on site.	One (1) of the six (6) dwellings will comprise one (1) bedroom.	Yes
<b>2.2 Height of Buildings</b>		
A residential flat building must comply with Ryde Local Environmental Plan 2010 Height of Buildings Map and must not exceed the number of storeys contained in table 1 Max 3 storeys	The proposal complies with the maximum height limit in the RLEP. Whilst the proposal presents as a three (3) storey building to the street, based on the survey information provided, it appears that the basement in the south-eastern corner of the building protrudes more than 1 metre above natural ground level and therefore, is technically considered	No

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
	to be a storey. Refer to RDCP section of report for discussion.	
<b>3.0 SET BACKS</b>		
<b>3.1 Front, Side and Rear Setbacks</b>		
<p>The minimum setback for a residential flat building from a front rear and side boundary shall be in accordance with the setbacks contained in Table 2.</p> <p>For the site, the minimum setbacks are: 11 metre front setback 6 metre side and rear setbacks</p>	<p>The proposal does not comply with the front, side or rear boundary setbacks. Refer to RDCP section of report for discussion.</p>	<p>No</p>
<b>3.2 Encroachments on Setbacks</b>		
<p>Residential flat buildings should be designed so as to produce irregular elevations.</p> <p>In order to achieve this, Council may allow a variation to the front, side and rear setbacks</p>	<p>The encroachments into all of the required setbacks zones are not acceptable.</p> <p>The northern elevation is continuous and provides no articulation.</p> <p>There is articulation provided to the western, eastern and southern elevations. However, articulation in this instance does not mitigate potential impacts on residential amenity.</p> <p>Cumulatively, the setbacks result in a bulky and visually dominant building on the site when viewed from adjacent properties and the Mons Avenue streetscape.</p> <p>Refer to RDCP section of report for discussion.</p>	<p>No</p>
<b>3.3 Internal Setbacks</b>		
<p>Windows of habitable rooms should not be located less than 10m from windows of habitable rooms of adjacent dwellings, on the site or on adjoining properties, unless overlooking is prevented by the type or location of windows, or by permanent screening between windows to the satisfaction of Council.</p>	<p>There are some windows within the development that give rise to potential overlooking as a result of non-compliant setbacks and separation distances. This is discussed in detail under the heading "<i>visual impacts</i>" in the SEPP 65 assessment section of this report.</p> <p>Refer to RDCP section of report for discussion.</p>	<p>No</p>



**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
<b>4.0 Balconies</b>		
a. A balcony should be provided to each dwelling with a residential flat building.	Each dwelling is provided with a balcony.	Yes
c. Balconies are not to be enclosed to a height greater than 1.2m.	Balcony balustrade heights scale at approximately 1.25 metres in height. A 1.5 metre high translucent glazed screen is proposed to the balcony of Unit 1 to mitigate visual and privacy impacts from the bin store and fire stair from the basement. Despite the minor non-compliance, given the balustrades are to be of glass construction, they are considered to be appropriate in this regard.	No but acceptable
<b>5.0 PARKING</b>		
<b>5.1 Quantity</b>		
The site is located within 200 metres of Victoria Road. The requirements are: 1.0 car space per one bedroom dwelling; 1.2 car spaces per two bedroom dwelling; 1.6 car spaces per three bedroom dwelling; and 1.0 car spaces per four dwellings for visitor parking. <ul style="list-style-type: none"> <li>• 1 x 1 bedroom = 1 space</li> <li>• 4 x 2 bedroom = 4.8 spaces</li> <li>• 1 x 3 bedroom = 1.6 spaces</li> <li>• 1 visitor space</li> <li>• Total requirement = 8 resident spaces (rounded up to nearest whole number) plus 1 visitor space.</li> </ul>	The parking rates under Part 9.3 of the RDCP prevail over these parking rates.	N/A
<b>5.2 Design of Parking Areas</b>		
a. All parking spaces should be sited behind the front building line. Parking spaces shall not be provided in the front elevation of the building.	Car parking spaces are proposed in the basement car park.	Yes
b. All parking spaces provided on ground level shall comprise either	Not applicable. No car parking provided at the ground level.	N/A

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
uncovered parking spaces or carports, which are suitably screened from roads, public reserves and public places.		
c. Parking spaces having direct access to a laneway may be permitted, at Council's discretion, providing such spaces are located a minimum of 8m from the far side of the laneway.	Not applicable to this proposal. The site does not have access to a laneway.	N/A
d. All parking spaces and manoeuvring areas shall be designed so vehicles may freely enter and leave the property in a forward direction.	Council's Development Engineer has reviewed the proposal and confirmed that it is acceptable with regard to internal driveways, access, the basement, parking spaces and manoeuvring areas subject to conditions.	Yes, subject to conditions
e. All parking areas shall be drained, by gravity, to Council's stormwater drainage system.	See above.	Yes, subject to conditions
f. All parking must be designed to be in accordance with the relevant Australian Standards.	See above.	Yes, subject to conditions
<b>5.3 Parking under Buildings</b>		
a. All parking areas located beneath a residential flat building shall be located such that:		
i. a clear ceiling height of 2.2m is maintained;	A clear ceiling height of 2.5 metres is proposed.	Yes
ii. the ceiling height does not exceed an average of 1.5m above natural ground level along the appropriate elevation;	The ceiling height of the basement complies with this requirement.	Yes
iii. the ceiling height of the parking area does not exceed 2.1m above natural ground level at any point; and	The ceiling height of the basement complies with this requirement.	Yes
iv. where the parking area encroaches within the specified setback in Figure 3.4.03, the height of the roof of the parking area does not exceed 0.75m above natural ground level at the boundary with adjoining property.	The basement encroaches into the minimum setback areas and exceeds more than 0.75 metres above natural ground level in the south-east corner of the site. Refer to RDCP section of report for discussion.	No

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
c. All parking areas under buildings shall be ventilated, either naturally or by mechanical means, in accordance with Council's standards.	No mechanical ventilation is proposed for the basement as noted in the BASIX Certificate. This could be conditioned in accordance with the relevant Australian Standards and Council's requirements.	Yes, subject to conditions
<b>5.4 Driveways</b>		
a. All driveways within the property, where not used as manoeuvring area, shall have a minimum clear width of 4 metres and a minimum pavement width of 3 metres.	Council's Development Engineer has reviewed the proposal and confirmed that it is acceptable with regard to internal driveways, access, the basement, parking spaces and manoeuvring areas subject to conditions.	Yes, subject to conditions
b. The maximum grade of any driveway shall be 1 in 6. Suitable transitional grades to Council's satisfaction shall be required at changes of grade.	See above.	Yes, subject to conditions
c. All driveways are to be suitably paved. Preference should be given to natural or earth coloured paving materials. The extent of driveways should be minimised to avoid excessive amounts of hard paved surfaces. Details regarding all hard paved areas will be required to be submitted to and approved by Council prior to the release of the Construction Certificate.	The driveway is proposed to be constructed of stenciled concrete of a dark grey colour.	Yes
d. Driveways should be designed so as to reduce the visual impact of large paved areas viewed from the street, with driveways meandering to provide pockets of landscaping to eliminate the "gun barrel" effect of driveways.	The proposed driveway width is 6.3 metres, or 37% of the site frontage. This width is considered to be excessive and contribute to the adverse visual impact of the development when viewed from the streetscape. Refer to RDCP section of report for discussion.	No
<b>5.6 Visitor Parking – Location</b>		
Consideration should be given to the location of visitor car parking spaces in order that any security which may be required for residents' parking can be installed	The proposal is satisfactory in this regard.	Yes

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
without impeding access to visitors' parking.		
<b>6.0 Landscaping</b>		
<b>6.1 Quantity</b>		
<p>The minimum landscaped area within each development shall be calculated in accordance with the landscaping requirements Area 4 1 bed = 30m<sup>2</sup> x 1 unit 2 bed = 40m<sup>2</sup> x 4 units 3 bed = 50m<sup>2</sup> x 1 unit Total requirement: 240m<sup>2</sup></p>	<p>The proposed landscaped area is 200m<sup>2</sup> and therefore does not comply with the RDCP requirement. The shortfall of 40m<sup>2</sup>, or 16.7%, is considered to be unacceptable, particularly within the context of the other evident non-compliances. Refer to RDCP section of report for discussion.</p>	No
<b>6.2 Landscaping Treatment</b>		
<p>Landscaping should be an integral part of the overall design of the development. The whole of the allotment external to buildings should be landscaped to Council's satisfaction in accordance with a plan to be submitted with the Development Application and completed prior to the occupation of the development or issue of a Certificate of Classification. This plan is required to be prepared by a qualified Landscape Architect and show details of all existing landscape features, including trees proposed to be removed. It is Council's policy to preserve existing trees of landscape significance, wherever possible.</p>	<p>A landscape plan has been submitted with the application. The whole of the allotment external to the building is proposed to be landscaped (either soft or hard landscaping).</p>	Yes
<p>The landscaping treatment should: i. Ensure that trees and shrubs have an informal and softening effect on the development and the overall environment, with trees and shrubs planted in sufficient numbers and scale to achieve this aim; ii. Screen poor views; iii. Give privacy to occupants and neighbouring properties; and</p>	<p>The landscaping treatment proposed is not considered to be adequate to offset issues regarding the bulk and scale of the development. Refer to RDCP section of report for discussion.</p>	No

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
iv. Be easily maintained.		
<b>6.4 Common Landscaped Area</b>		
A portion of the landscaped area should be provided behind the front building line as communal open space. Preferably this space should be so located to provide dwellings within the development with an internal aspect.	A common open space area is proposed at the rear of the development.	Yes
<b>8.0 General requirements</b>		
<b>8.1 Materials</b>		
a. Details of all finished surface materials, including colour and texture to be used in construction are to be submitted to Council with the Development Application b. Preference should be given to materials with natural textures and colouring.	Refer to RDCP section of report for discussion.	No
<b>8.2 Fencing</b>		
The site is to be fenced in accordance with a plan indicating the height, the type of material and construction and extent of all fencing is to be approved prior to construction.	The architectural plans do not show any fencing proposed. However, the landscape plan makes reference to boundary fencing in accordance with the <i>"Architects Details"</i> . There is a lack of sufficient information in this regard. Refer to RDCP section of report for discussion.	No
A wall, fence or kerb shall be constructed along the front alignment of the property. 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.	See above comments and refer to RDCP section of report for discussion.	Insufficient detail
<b>8.3 Clothes Drying Facilities</b>		
Adequate clothes drying facilities shall be provided for each dwelling. These facilities can be provided either in the form of mechanical dryers or external clothes lines. Where external clothes lines are provided, they	No details provided but capable of compliance subject to conditions.	Yes, subject to conditions



**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
shall be suitably screened from view from any street, public place or adjoining property.		
<b>8.4 Noise</b>		
Buildings should be designed so as to minimise noise transmission between dwellings and between the development and that adjoining. Buildings are to comply with the requirements of the Building Code of Australia.	Refer to RDCP section of report for discussion.	Insufficient detail
<b>8.5 Services</b>		
a. All water services are to be in copper or another non corrosive material.	Capable of compliance subject to conditions.	Yes, subject to conditions
b. All drainage pipes, except downpipes, are to be concealed in ducts.	Capable of compliance subject to conditions.	Yes, subject to conditions
c. All power and telephone lines shall be underground from the street alignment. All developments should have sufficient electricity capacity to accommodate the likely future needs of the occupants of that development.	The application does not include any consideration of availability of services and capacity to cater for demand generated by the development. This is a matter that can be resolved via conditions.	Yes, subject to conditions
d. All dwellings are to be connected by gravity flow to the Sydney Water sewer to the satisfaction of the Council and the Board before occupation.	Capable of compliance subject to conditions.	Yes, subject to conditions
e. Only one external television antenna shall be provided for each residential flat building with multiple point connections for each dwelling.	No details provided but capable of compliance subject to conditions.	Yes, subject to conditions
f. An outdoor lighting system for the illumination of all common vehicular and pedestrian accessways is to be provided to the satisfaction of Council for all developments.	No lighting details provided but could be resolved via conditions.	Yes, subject to conditions

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
<b>9.0 Engineering requirements</b>		
<b>9.5 Earthworks and Retaining Walls</b>		
a. Where the height of cut or fill is greater than 600mm above or below the adjoining property, an approved retaining structure is to be constructed.	Retaining walls are proposed along the northern and southern site boundaries. The landscape plan states that the walls will be constructed " <i>to suit finished levels</i> ". There is a wall shown on the northern and southern elevations that could potentially be the proposed retaining walls but not enough detail is provided to confirm this. Refer to RDCP section of report for discussion.	Insufficient detail
<b>9.6 Setbacks for Walls or Batters</b>		
Where retaining walls or batters over 600mm in height are to be erected along the boundaries of the property and would injure the amenity of the adjoining property, they shall be setback from the boundary a distance of at least equal to the height of the wall or batter. All cases will be treated on their merits.	Refer to above comments.	Insufficient detail
<b>10.0 Health requirements</b>		
<b>10.1 Garbage Storage Areas</b>		
a. The storage area is to consist of a brick or other approved masonry structure with a concrete floor and is to be sufficient to screen garbage carts therein from view.	A garbage storage area is proposed in the north-west corner of the site. The storage area will consist of brickwork with cement render internally and externally. There is screening of the bin area to the north, east and west (street view) but no screening proposed to the south. Refer to RDCP section of report for discussion.	No
b. The minimum width of storage space per cart is 700mm. The minimum depth of storage space per cart is 750mm. The minimum internal height of storage space where a roof is provided is 1200mm.	The proposal complies in this regard.	Yes

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
c. A roof is not required on the storage area if the area is adequately screened by other means. A roof will generally be required where developments exceed 1 storey in height and where occupants can look down on the storage area.	Refer to above comment regarding screening.	No
d. Whilst Council's general policy in respect of structures within the building line remains restricted to 1066mm in height, in the case of garbage storage areas only this restriction is varied to 1300mm. Anyone wishing to provide a storage area in excess of this height should make special application to Council for consideration on the merits of the individual case.	The proposal complies in this regard.	Yes
f. The floors of storage areas and minimum 1 metre wide access paths to the front boundary of the property must be in concrete or other approved material, suitably graded and drained.	The proposal complies in this regard.	Yes
g. There must be no steps up or down, either in the storage area or in the approaches thereto, and the floors of storage areas and the access paths must be on the same level as the adjoining footpath/nature strip.	The proposal complies in this regard.	Yes
h. No part of the storage area is to be more than 15 metres from the kerb in front of the property.	The maximum distance of the storage area from the kerblines is 10.35 metres.	Yes
i. Storage space should be provided at the rate of 1 space for every 2 flats or home units, and 1 space for each town house or villa home, unless other arrangements are specifically called for in Development or Building Consents.	One (1) garbage storage bin and one (1) recycling bin is proposed for every two (2) units. There is no storage provision for green waste. Council's Waste Officer has recommended a condition of consent to require the bin storage area to be extended to enable a Council supplied "greenwaste bin" to fit with adequate clearance space for serviceability.	Yes, subject to conditions

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
j. The location and landscape treatment of the garbage storage area is to be incorporated into the landscape plan which has to be submitted and approved prior to release of the building consent.	Landscaping is proposed to the north and west (site frontage) of the garbage storage area for screening purposes and is included in the submitted landscape plan.	Yes
<b>11.0 Building Requirements</b>		
Developments are to be carried out in accordance with the Building Code of Australia.	Capable of compliance subject to conditions.	Yes, subject to conditions
<b>Other Detailed Provisions</b>		
The proposed development is to comply with the provisions of the following parts of the DCP:		
<b>Part 7.1 – Energy Smart, Waterwise</b>	The proposed development is supported by a BASIX certificate (No. 453114M dated 18 November 2012) which satisfies the requirements for sustainability with regard to water, thermal comfort and energy, including efficient water fixtures, energy efficient lighting and appliances.	Yes
<b>7.2 Waste Minimisation and Management</b>	A waste management plan has been submitted with the application and is adequate. Refer to comments above under Clause 10 of Section 3.4 of the RDCP.	Yes, subject to conditions
<b>8.1 Construction Activities</b>	Capable of complying subject to conditions recommended by Council's Development Engineer and standard conditions of consent regarding construction management.	Yes, subject to conditions
<b>8.2 Stormwater Management</b>	The Applicant submitted amended stormwater plans on 16 February 2013. Council's Development Engineer concluded that the proposal was generally satisfactory subject to conditions. However, no owners consent has been obtained from No. 23-25 Station Street for the easement over that property. Refer to RDCP section of report for discussion.	No

**ITEM 2 (continued)**

**ATTACHMENT 1**

RDCP 2010 Requirement	Proposal	Comply
<p><b>8.3 Driveways</b></p>	<p>Council's Development Engineer has reviewed the proposal and concludes that it is generally acceptable, subject to conditions (including relocation of the existing powerpole at the frontage of the site and reduction in the width of the driveway). Refer to RDCP section of report for discussion.</p>	<p>Yes, subject to conditions</p>
<p><b>8.4 Title Encumbrances</b></p>	<p>Refer to above comments under Section 8.2 of the RDCP. Consent has not been granted by the owner(s) of No. 23-25 Station Street.</p>	<p>No</p>
<p><b>9.2 Access for People with Disabilities</b> Class 2 Requirements</p> <ul style="list-style-type: none"> <li>An accessible path of travel from the street to and through the front door of all units on the ground floor, where the level of the land permits. If the development has three or more residential storeys, with 10 or more units, to all units on all storeys.</li> </ul>	<p>There is no requirement for adaptable units as the development does not involve 10 or more units. An accessible path of travel from the street and to the front door of all units on the ground floor is provided. The wheelchair platform from basement to the ground floor provides equitable access for visitors and residents. The access review submitted with the application confirms that the proposal can comply with the relevant Australian Standards and BCA requirements for disabled access. The proposal could therefore comply, subject to conditions.</p>	<p>Yes, subject to conditions</p>
<p>1 wide bay space for each accessible or adaptable unit At least 1 wide bay visitors' space</p>	<p>No wide bay spaces are proposed as none are required (no accessible or adaptable units are proposed). A 2.4 metre wide visitors' space is proposed. This does not meet the DCP requirement of 3.66 metres.</p>	<p>No</p>



**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
<p><b>9.3 Car Parking Residential Development - High Density (Residential Flat Buildings)</b></p> <ul style="list-style-type: none"> <li>• 0.6 to 1 space / one bedroom dwelling</li> <li>• 0.9 to 1.2 spaces / two bedroom dwelling</li> <li>• 1.4 to 1.6 spaces / three bedroom dwelling</li> <li>• 1 visitor space / 5 dwellings</li> </ul>	<p>There are two (2) sets of parking requirements in the RDCP, in Part 4.3 and Part 9.3. Part 4.3 of the RDCP prescribes parking rates for sites located within 200 metres of Victoria Road, which apply to the site. However, Clause 1.2 of Part 9.3 states that the rates in that part prevail in the event of a discrepancy with any other part of the DCP. The parking requirements in Part 9.3 are stipulated as a "range":</p> <p><b><i>"Residential Development - High Density (Residential Flat Buildings)</i></b></p> <ul style="list-style-type: none"> <li>• <i>0.6 to 1 space / one bedroom dwelling</i></li> <li>• <i>0.9 to 1.2 spaces / two bedroom dwelling</i></li> <li>• <i>1.4 to 1.6 spaces / three bedroom dwelling</i></li> <li>• <i>1 visitor space / 5 dwellings."</i></li> </ul> <p>The requirements for the development are as follows:-</p> <ul style="list-style-type: none"> <li>• 1 x 1 bedroom = 0.6 - 1 space.</li> <li>• 4 x 2 bedroom = 3.6 - 4.8 spaces.</li> <li>• 1 x 3 bedroom = 1.4 - 1.6 spaces.</li> <li>• 1 visitor space</li> </ul> <p>Total Requirement: 5.6 - 7.4 spaces + 1 visitor space.</p> <p>The proposed development provides a total of seven (7) resident spaces and one (1) visitor space. This is considered to be an appropriate response to the "range" stipulated, particularly as the site is located in a relatively accessible location. Council's Development Engineer has reviewed the proposal and</p>	<p>Yes, subject to conditions</p>


**ITEM 2 (continued)**

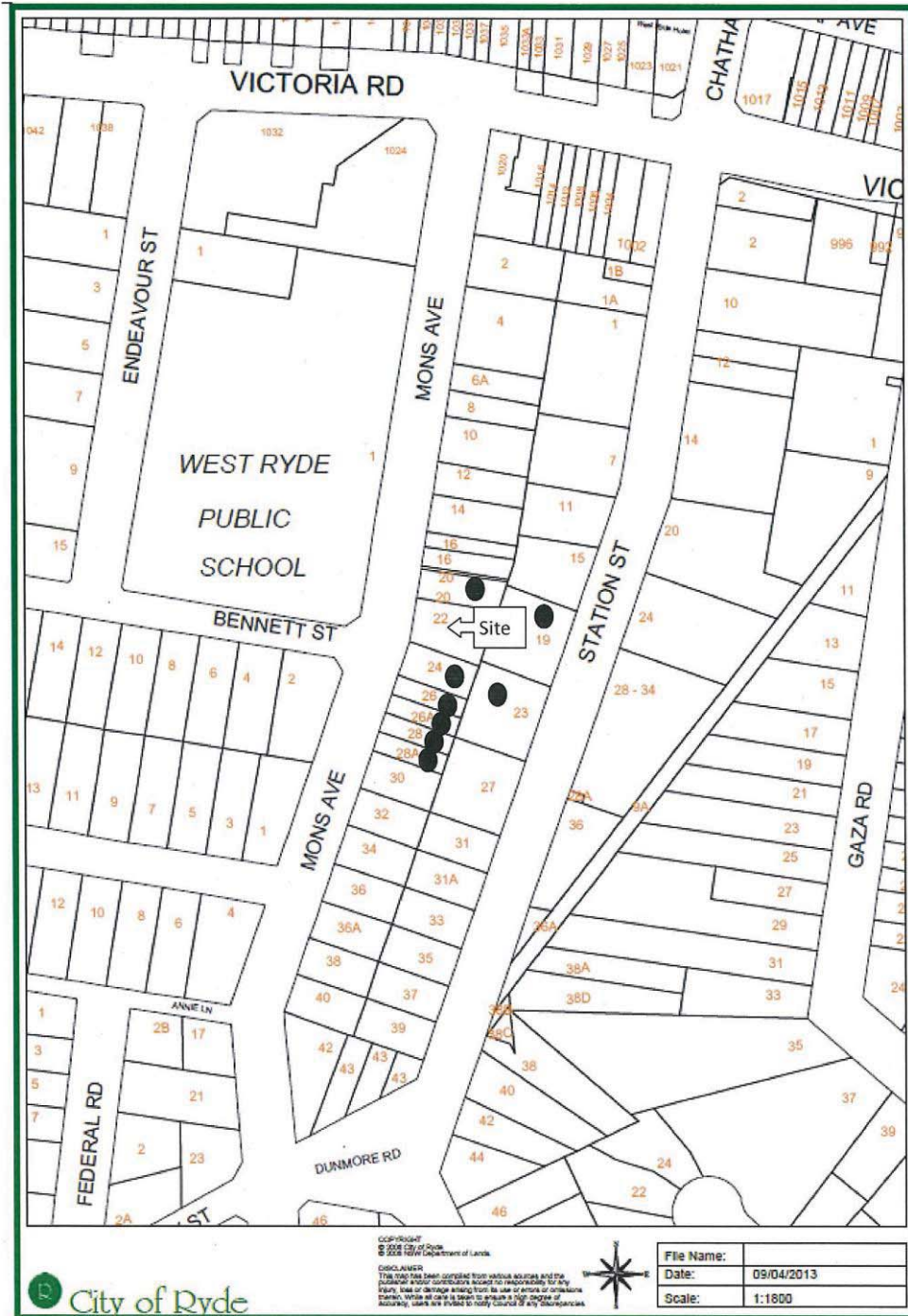
**ATTACHMENT 1**

<b>RDCP 2010 Requirement</b>	<b>Proposal</b>	<b>Comply</b>
	concludes that it is generally acceptable, subject to conditions.	
<p><b>2.7 Bicycle Parking</b> a. In every new building, where the floor space exceeds 600m<sup>2</sup> GFA (except for dwelling houses and multi unit housing) provide bicycle parking equivalent to 10% of the required car spaces or part thereof.</p>	GFA does not exceed 600m <sup>2</sup> . No bicycle car parking is required.	Yes
<b>9.4 Fencing</b>	Refer to comments under Clause 8.2 of Section 3.4 of this table.	Limited detail
<b>9.6 Tree Preservation</b>	<p>The existing tree at the rear of the site is proposed to be retained. However, the basement excavation and construction is within close proximity to the tree and no details have been submitted with this information to assess the potential impact and consider any required tree protection measures. Refer to RDCP section of report for discussion.</p>	Limited detail

ITEM 2 (continued)

ATTACHMENT 2

 Indicates submissions received (note: multiple submissions received from some properties)







**ITEM 2 (continued)**

**ATTACHMENT 3**

**GENERAL NOTES**

**MATERIALS & FINISHES**

**STRUCTURAL & SERVICES**

**MECHANICAL & ELECTRICAL**

**PLUMBING & SANITARY**

**PAINTS & COATINGS**

**GLASS & GLAZING**

**ROOFING**

**LANDSCAPE & EXTERIOR**

**INTERIORS & FURNITURE**

**FIXTURES & COMPONENTS**

**11-033**




**West**  
Scale 1:100



**North**  
Scale 1:100



**South**  
Scale 1:100



**East**  
Scale 1:100



**Section 1**  
Scale 1:100





**NOTES**

- 1. All work to be completed in accordance with the relevant Australian Standards.
- 2. All work to be completed in accordance with the relevant NSW Building Code of Practice.
- 3. All work to be completed in accordance with the relevant NSW Building Code of Practice.
- 4. All work to be completed in accordance with the relevant NSW Building Code of Practice.



Rev	By	Date	Description

**Project Information**

**Client:** Mr. A. Barbour

**Address:** 1 Kings Avenue, West Ryde, NSW 2114

**Project Name:** Residential Flat Building

**Architect:** designitect proprietary limited

**ABN:** 99 066 386 709

**Address:** 1 Hurst Street, Parramatta NSW 2150

**Phone:** F: +61-2-9475-5256

**Mobile:** M: +61-413-775-555

**Email:** E: mail@designitect.com.au



**ITEM 2 (continued)**

**ATTACHMENT 3**



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**3 93-95 VIMIERA ROAD, EASTWOOD. LOT 9 SP 68723. Section 96 application to delete condition of consent requiring compliance with (former) State Environmental Planning Policy No 5 - Housing for Older People or People with Disabilities. MOD2012/122.**

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**Report prepared by:** Team Leader - Assessment

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

**Report dated:** 2 April 2013

**File Number:** grp/09/5/6/2 - BP13/502

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**1. Report Summary**

**Applicant: Mr Zheng Liu.**

**Owner: The Owners Strata Plan No 68723.**

**Date lodged: 29 August 2012.**

This report considers a Section 96 application to delete a condition of consent requiring occupation of the development by older people or people with a disability in relation to Unit 9 at this complex.

This development of twelve (12) units was approved under the (former) State Environmental Planning Policy No 5 – Housing for Older Persons or Persons with a Disability (“SEPP 5”), with a condition (condition 2) requiring that it must only be occupied in accordance with SEPP 5.

The subject unit (unit 9) is not being occupied in accordance with the SEPP 5 occupation limitation, and is therefore in breach of the consent. Enforcement action has been undertaken by Council’s Health and Building Unit for this breach. The current Section 96 application has been lodged by the applicant (and owner of unit 9) in response to the enforcement action by Council.

Neighbouring property owners (including the units within the subject site) were notified and two (2) objections were received.

Significant concerns are raised from a town planning point of view regarding this application, in particular the occupation of “SEPP 5” housing developments contrary to the occupation limitation specified in SEPP 5 causes a reduction in the amount of housing specifically designed and approved for older people/people with a disability. It is considered that although the circumstances of this application are understandable (which is basically that the current owners bought and then occupied the subject Unit without being made aware of the SEPP 5 occupation restriction), such a lack of awareness does not provide sufficient justification for approval of the application.

Legal advice from Council’s Solicitors has been obtained on Council’s ability to determine the current Section 96 application, and also whether or not the current modification is substantially the same development as originally approved (which is an

**ITEM 3 (continued)**

essential criteria for consideration in Section 96 modification applications). The legal advice states that the proposed modification is not substantially the same development as the development for which consent was originally granted; and that Council does not have the power to approve the proposed deletion of condition 2.

It is therefore recommended that the current Section 96 application be refused, and that Council's Manager Health and Building be requested to re-commence enforcement action that will ensure compliance with Condition 2 of the original consent. The proposed enforcement action will be to allow a reasonable time for the owner of unit 9 to comply with the occupation limitation of the consent. A timeframe of 12 months will be given for compliance.

**Reason for Referral to Development Committee:** Requested by Councillor Perram.

Public Submissions: Two (2) submissions were received objecting to the development.

SEPP 1 (or clause 4.6 RLEP 2010) objection required? Not required.

Value of works? Nil for Section 96 application.

**RECOMMENDATION:**

- (a) That the Section 96 application MOD2012/0122 to modify Local Development Application No. LDA1999/1609 at 93-95 Vimiera Rd Eastwood being Lot 9 SP 68723 be refused for the following reasons;
  - 1. Deletion of the subject condition of consent (condition 2) would lead to a reduction in the amount of housing specifically designed and approved for older people/people with a disability.
  - 2. The proposed modification is not substantially the same development as the development for which consent was originally granted, and so Council does not have the power to approve the proposed modification.
  - 3. In the circumstances of the case, approval of the Section 96 application would not be in the public interest.
- (b) That the persons who made submissions be advised of Council's decision.
- (c) That the Manager Health and Building be requested to re-commence enforcement action that will ensure compliance with Condition 2 of Consent No 1999/1609, and that the owners of the property be required to either vacate the premises or take action to ensure that the premises are being occupied in accordance with State Environmental Planning Policy No. 5 within 12 months.

**ITEM 3 (continued)**

**ATTACHMENTS**

- 1 Statement of Environmental Effects
- 2 Map
- 3 Legal advice provided to Council - CIRCULATED UNDER SEPARATE COVER  
- CONFIDENTIAL

Report Prepared By:

**Chris Young**  
**Team Leader - Assessment**

Report Approved By:

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

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

**ITEM 3 (continued)****2. Site** (*Refer to attached map.*)

<b>Address</b>	:	93-95 Vimiera Rd Eastwood
<b>Site Area</b>	:	2033.9m <sup>2</sup> Frontage 43.33m Depth 47m
<b>Topography and Vegetation</b>	:	Site generally slopes down to the rear. Existing vegetation consists of landscaping of the subject development and is unaffected by the current application.
<b>Existing Buildings</b>	:	Approved "SEPP 5" housing development for older people/people with disabilities containing 12 units.
<b>Planning Controls Zoning</b>	:	Residential 'A'
<b>Other</b>	:	(Former) State Environmental Planning Policy No 5 – Housing for Older People and People with a Disability. Section 96(1A) of the Environmental Planning & Assessment Act 1979

**3. Councillor Representations:**

Name of Councillor: Councillor Perram

Nature of the representation: Call-up to Planning & Environment Committee

Date: 29 August 2012

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

On behalf of applicant or objectors? Applicant.

Any other persons (e.g. consultants) involved in or part of the representation: None.

**4. Political Donations or Gifts**

None disclosed in applicant's DA submission or in any objections received.



**ITEM 3 (continued)****5. Background**Original Approval – LDA1999/1609

On 15 August 2000, consent was granted for the erection of twelve (12) units under the provisions of the former State Environmental Planning Policy No 5 – Housing for Older People and People with Disabilities (“SEPP 5”).

At issue in this application is Condition 2 of the consent, which is repeated as follows:

*2. The development only being occupied in accordance with the provisions of State Environmental Planning Policy No 5 – Housing for Older People and People with Disabilities.*

SEPP 5 contained a clause (clause 15) which limited the occupation of housing approved under that policy:

*“Development approved by this Policy may be carried out for the accommodation of the following:*

- (a) Older people or people who have a disability (“older people” were defined as people aged 55 years and over in the dictionary under SEPP 5);*
- (b) People who live with older people or people who have a disability;*
- (c) Staff employed to assist in the administration of and provision of services to housing provided under this Policy”*

In February 2012, Council’s Health and Building Unit received a complaint from the owners of one of the units in this development, that Unit 9 was not being occupied in accordance with SEPP 5 (ie the owner of the property is not aged 55 years or over), and therefore the occupation of Unit 9 is in breach of condition 2 of the consent. Council wrote to the Strata Managers for the site on 16 February 2012, requesting an explanation of this situation.

Further complaints were received in June 2012, including representations from The Hon Victor Dominello (State Member for Ryde) on behalf of the complainant, regarding the occupation of Unit 9 by persons who did not meet the requirements of SEPP 5.

On 10 July 2012, Council issued a Notice of Proposed Order to the owner of Unit 9, requiring the owners to either vacate the unit, or provide evidence that the unit is being occupied in accordance with SEPP 5.

**ITEM 3 (continued)**

On 17 July 2012, Council received an email from the Strata Managers, advising that the Owner's Corporation had considered the occupancy of Unit 9 in response to Council's letter dated 16 February 2012, and advised that the occupancy limitation was not enforceable (by the Owner's Corporation), and also that they had not received any complaints regarding the behaviour of any of the current owners.

On 18 July 2012, Council's Health and Building Unit advised that Council may consider an application under Section 96 of the Environmental Planning & Assessment Act 1979 to remove this condition. Subsequently, the subject Section 96 application was lodged as discussed in the following section of this report.

Current Application (Section 96 Application No MOD2012/122)

On 29 August 2012, Council received the subject Section 96 application to modify the consent by deleting condition 2. This application underwent a preliminary assessment, notification to neighbours (including those within the subject development complex) and allocation to the assessment officer.

Legal advice was sought from Council's Solicitors (through the General Counsel), regarding whether or not Council has the power to approve the current application having regard to the provisions of SEPP 5. A full copy of the Legal Advice is provided in **Attachment 2** (as a confidential attachment to this report).

**6. Proposal**

The current Section 96 application involves deletion of condition 2 which requires occupation of the development in accordance with SEPP 5 in relation to unit 9 in the development.

As justification in support of the current Section 96 application, the applicant's submission is summarised as follows:

- *The applicant was unaware of this occupation limitation – due to the failure of the vendor (from whom the applicant purchased the property) to include details of the development consent in the contract of sale of the land, and furthermore, the vendor (and previous owner) was himself not aware of the age restriction on this development;*
- *The application has the support of the Owner's Corporation for this site;*
- *The lack of environmental harm.*

There are no physical changes to the building or the site.

**ITEM 3 (continued)****7. Submissions:**

The proposal was notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications – both to neighbouring properties surrounding the site, and also to the other Unit owners within the site. Notification of the proposal was for a period from 5 to 20 September 2012.

In response, two (2) submissions were received, from the owner of Unit No 10 within the site, and also No 84 Vimiera Road (opposite the site). The issues raised in the submissions are discussed as follows:

**A. *Development must be occupied in accordance with SEPP 5.*** *I vigorously object to the application to remove the occupation restriction. I bought into this property specifically because of the condition. I specifically chose my property because it was a living environment which has been designed and established for the needs of my age group and which I understood and believed would continue to be regulated by the condition.*

*The condition was imposed to enhance the quality of life for older people/people with disabilities. Deleting this condition would be a rejection of the social aim which it reflects and would compromise the goal of the long-term physical and mental wellbeing for senior and disabled citizens in the community.*

Comment: This objection is supported. The development was approved as a complex for older people/people with a disability, and there are significant concerns (from a town planning point of view) that approval of this proposal would lead to a reduction in such housing.

**B. *Lack of awareness is not sufficient justification.*** *The application requests deletion of the condition because the applicant was unaware of the condition at the time of purchase, however this is not considered to be sufficient justification. Ignorance of the law is no excuse for breaking it.*

Comment: The applicant's main submission in this Section 96 application is that they were not aware of the restriction due to the failure of the vendor to disclose such restriction. Whilst this is understandable, it is not sufficient justification from a town planning point of view. It is reasonable to expect that people would make sufficient enquiries at the time of purchase regarding such a significant restriction on the occupation of the subject Unit.

### ITEM 3 (continued)

**C. Support for other owners in complex is not sufficient justification.** *The objection notes that the application appears to be supported by the majority of owners, who may view the deletion of the condition as an opportunity to improve the marketability of their properties (in the future). The objection notes that the applicant has attempted to “garner support for the application” (by campaigning to the other owners in the complex). The prospect of a financial gain for the other owners in the complex is not proper basis for Council to base a decision to delete the condition.*

Comment: These points of objection are also generally supported, however it should be noted that when the adjoining owners were notified (including those within the complex), there was only two (2) submissions received, and only one from within the complex. This appears to support the applicant’s submission (in the Section 96 application) that there is a lack of environmental harm as a result of the occupation of this unit in the manner described in this application.

### 8. SEPP1 Objection received?

Not required for this application.

### 9. Policy Implications

#### Relevant Provisions of Environmental Planning Instruments etc:

#### Ryde LEP 2010

#### Zoning

The subject modification is permissible within the R2 Low Density Residential zone, subject to the approval of Council.

#### Mandatory Requirements

There are no mandatory requirements in Ryde LEP 2010 that are of relevance to the current application.

#### Matters for consideration pursuant to Section 96(1A) Environmental Planning and Assessment Act 1979:

The provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979 allow a consent authority to modify the consent where the application if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*

**ITEM 3 (continued)**

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with: the regulations, if the regulations so require, or a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Under s96(1A) Council must be satisfied that the development as modified is substantially the same as was approved in the original consent. In arriving at this determination there should be no consideration of the merits of the proposal but rather a straight before and after comparison. If it is determined to be substantially the same then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant council planning controls.

The legal advice received regarding this application states that it is not substantially the same development. In particular, it is noted that the Land and Environment Court has established guidelines for the exercise of this test (of whether or not the application is substantially the same development). In *Vacik Pty Ltd vs Penrith City Council (1992)* the Court held that “a development ... must be assumed to include the way in which the development is to be carried out”.

In this regard, the proposed modification would (in effect) convert the approved development from a SEPP 5 development (designed/constructed specifically for housing of older people and people with a disability) to a medium density residential development.

**Relevant SEPPs**State Environmental Planning Policy No 5 – Housing for Older People and People with Disabilities

This was the Planning Instrument under which the subject development was approved (and has now since been replaced with SEPP (Seniors Living) 2004). The pertinent clause in the former SEPP 5 was clause 15.

Apart from the above, there are no clauses in SEPP 5 of relevance to the current application.



**ITEM 3 (continued)****Relevant REPs**

There are none that affect this application

**Any draft LEPs**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the zoning of the property is R2 Low Density Residential. The proposed development is permissible with consent within this zoning under the Draft LEP, and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zoning.

Draft LEP 2011 was adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.

**The provisions of any Development Control Plan applying to the land**

There is no part of Ryde DCP 2010 that is relevant to this application.

**10. Likely impacts of the Development****(a) Built Environment**

The nature of the current application relates only to the occupation of Unit 9 in this complex, and there are no physical/design changes to the subject Unit, or any building in the complex.

**(b) Natural Environment**

The proposed modifications do not impact on the landscaping and other measures included in the original consent.

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

Issues regarding suitability of the site for the development were considered at the time when the original DA was approved. There are no issues regarding site constraints (eg bushfire, landslip, overland flow etc) of relevance to this current Section 96 application.

**ITEM 3 (continued)****12. The Public Interest**

In the circumstances of the case, approval of the current Section 96 application to delete condition 2 as it relates to Unit 9 would not be in the Public Interest as discussed throughout this report.

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

Council's Solicitors (Planning Law Solutions) have provided Legal Advice in this matter. A full copy is Circulated to Councillors (as a Confidential attachment to this report).

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

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

**16. Other Options**

None relevant.

**17. Conclusion:**

The subject application has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979.

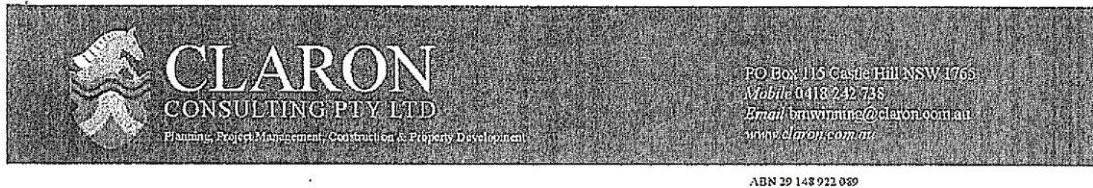
Significant concerns are raised from a town planning point of view regarding this application, in particular the occupation of "SEPP 5" housing developments contrary to the occupation limitation specified in SEPP 5 causes a reduction in the amount of housing specifically designed and approved for older people/people with a disability. It is considered that although the circumstances of this application are understandable (basically that the current owners bought and then occupied the subject Unit without being made aware of the SEPP 5 occupation restriction), such a lack of awareness does not provide sufficient justification for approval of the application. Approval of the application would undermine the integrity of SEPP 5 and could set a precedent for other applications, in which greater height or FSR could be achieved using the current SEPP for Housing for Older People and People with a Disability in residential areas – and thus the developer or subsequent owner seeking to convert such developments into regular residential flat buildings which may not have been permissible in that zone.

**ITEM 3 (continued)**

Also, the legal advice that Council has received in this application indicates that the proposed modification is not substantially the same development as the development for which consent was originally granted, and so Council does not have the power to approve the proposed modification.

**ITEM 3 (continued)**

**ATTACHMENT 1**



# Statement of Environmental Effects

Lot 9, SP 68723(93-95) Vimiera Road, Eastwood

Application to Modify Development Consent No.  
DA1609-99

Prepared for:

Zheng Liu

Prepared by:

Brent Wining

17<sup>th</sup> August 2012

**ITEM 3 (continued)**

**ATTACHMENT 1**

**INTRODUCTION**

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This Statement of Environmental Effects has been prepared to accompany an application to modify Development Consent No. DA1609/99 issued by City of Ryde Council ("Council") on 15 August 2000 for "Erection of twelve (12) units under the provisions of State Environmental Planning Policy No. 5 – Housing for Older People and People with Disabilities".

The modification application is made pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979*.

This report should be read in conjunction with:

- Notice of Proposed Order under s.121B of the *Environmental Planning and Assessment Act, 1979*;
- Strata Plan No. 68723;
- Planning Certificate No. PLN2011/1580 issued 23 May 2011; and
- Minutes of Meeting of Executive Committee of Owners Corporation of the building 93-95 Vimiera Road Eastwood dated 13 August 2012.

**SITE AND LOCATION DESCRIPTION**

The subject site consists of a SEPP 5 part single storey and part two storey apartment complex consisting of twelve (12) individual units. The site lies on the western side of Vimiera Road Eastwood between Wood Street and Deborah Place.

The subject lot is Unit 9 ("unit") and located on the first floor of the two-storey section of the complex, which is situated to the rear (western) part of the site.



**ITEM 3 (continued)**

**ATTACHMENT 1**



Photo 1 - Site Location (Source: Dept of Lands SIX Viewer)

**BACKGROUND**

The Applicant, Mr Liu, purchased the unit in October 2011 and has resided in the unit with his wife and three year old child since that date.

On 10 July 2012 Council issued Mr Liu with a *Notice of Intention to Issue an Order* (s.121B) alleging that Mr Liu was in breach of Condition 2 of the Development Consent. Mr Liu seeks leave to modify the Development Consent to stay the Order and remain in permanent occupation of the unit.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**PROPOSED MODIFICATION**

The applicant seeks consent to modify the following condition of Development Consent No. DA1609-99:

- Condition 2– delete.

**ASSESSMENT OF PROPOSED MODIFICATIONS**

The Condition proposed to be deleted is described in the Consent as being:

2. The development only being occupied in accordance with the provisions of State Environmental Planning Policy No. 5 – Housing for older people and people with disabilities.

The relevant Clause is 15 of SEPP 5 (Repealed) which is in the following terms:

**STATE ENVIRONMENTAL PLANNING POLICY NO 5-HOUSING FOR OLDER PEOPLE OR PEOPLE WITH A DISABILITY - REG 15**

**Who can live in housing for older people or people with disabilities?**

15 Who can live in housing for older people or people with disabilities?

Development allowed by this Policy may be carried out for the accommodation of the following:

- (a) older people or people who have a disability,
- (b) people who live with older people or people who have a disability,

The Dictionary to SEPP 5 defines the following:

"housing for older people or people with disabilities" means residential accommodation which is or is intended to be used permanently as housing for the accommodation of older people or people with a disability which may consist of a residential care facility, a hostel or a grouping of 2 or more self-contained dwellings, or a combination of these, but does not include a hospital.

"older people" means people aged 55 years or over.

**ITEM 3 (continued)**

**ATTACHMENT 1**

"people with a disability" means people of any age who, as a result of having an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full and active life.

At issue is the fact that Mr Liu is not aged 55 years or over nor does he have a disability as so defined.

**Notice of Intention to Issue an Order**

The *Notice of Intention to Issue an Order* dated 10 July 2012 relies on the following Reasons for Serving Order:

1. The Premises had been approved under SEPP 5 – *Housing for older persons and people with disabilities* within the development consent DA 1609/09 in August 2000.

I note that the SEPP 5 under which the Development Consent was issued has now been repealed and replaced by *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. In our opinion the transitional arrangements as described within Clause 6(1)(c) of the new SEPP provides for a consent previously granted under SEPP 5 to remain in force.

2. The Premises are not being occupied by persons who are able to meet the requirements of the consent and as such there is a breach of the consent condition.

The breach is acknowledged by the occupant, Mr Liu.

However the mitigating circumstance that gave rise to the breach is the failure of the vendor from whom Mr Liu bought the unit to include the Development Consent #1609/99 in the 'Contract For Sale of Land'. The Planning Certificate #PLN2011/1580 (which was appended to the Contract) notes the absence of any Consent relating to *SEPP (Housing for Seniors)* post 11 Oct 2007, although there is no mention of any Consent issued under SEPP 5 prior to this date.

We are informed that Mr Liu purchased the unit from the previous owner who was also unaware of the age restriction despite having resided there for some six years previous.

**ITEM 3 (continued)**

**ATTACHMENT 1**

We are further informed that the building Strata Manager was also unaware of the restriction.

In our view Mr Liu has made all reasonable attempts to carry out proper due diligence prior to his acquisition of the unit, and his failure to identify (or become aware of) the Consent Condition in question should not lead to his eviction from the unit as a direct consequence.

Mr Liu has consulted with the Owners' Corporation and the proposed amendment enjoys their support, having been appropriately considered by a meeting of the Executive Committee on 13 August 2012 in accordance with Schedule 3(10) of the *Strata Schemes Management Act 1996*.

3. It is in the public interest to do so.

My perusal of the Notice has failed to discover where Council provides evidence in support of this contention. The owner Mr Liu has been in occupation of the unit since 2011 without, to my knowledge, any complaint being received by the relevant Owners' Corporation. Mr Liu appears to enjoy the support of the majority of his neighbours, evidence to this effect being provided by the written support of the Owners' Corporation.

Clearly the breach of a Consent Condition may give rise to enforcement measures being imposed by Council where it is in the public interest; however in the absence of any public harm being alleged or proven Council has the discretion to refrain from taking any enforcement measures and to amend the offending Condition.

I conclude therefore that as Mr Liu's continued occupation of the unit is not offensive to his neighbours or the general public there is no justification in planning terms for him being forced to cease his occupation of the unit. Compliance with Condition 2 is thus unreasonable and unnecessary in this circumstance and no planning purpose is achieved in enforcing this condition.

**SECTION 79C ASSESSMENT**



**ITEM 3 (continued)**

**ATTACHMENT 1**

I have also considered the proposed amendment against s.79C of the EP&A Act 1979 (as amended), this being:

*79C Evaluation*

*(1) Matters for consideration – general. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii) any development control plan, and*

*(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*

*that apply to the land to which the development application relates,*

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

*(c) the suitability of the site for the development,*

*(d) any submissions made in accordance with this Act or the regulations,*

*(e) the public interest.*

In this regard I make the following observation.



**ITEM 3 (continued)**

**ATTACHMENT 1**

The proposal has been assessed against the relevant planning instruments and whilst the current occupancy of Mr Liu is in conflict with the age restriction for Seniors Housing there is an absence of environmental harm. The subject unit is suitable for the development as modified.

The requested modification of the development consent would have negligible economic or social impact, and would not be antipathetic to the public interest.

**SECTION 96 ASSESSMENT**

Section 96(1A) of the Act empowers Council to modify a Consent if:

*(a) it is satisfied that the proposed modification is of minimal environmental impact, and*

*(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The town planning assessment undertaken above demonstrates that the proposed modification has minimal environmental impact, to both the natural and built environments. Section 96(1A)(a) is satisfied.

The development resulting from the proposed modification would both qualitatively and quantitatively be substantially the same as the development approved by Council on 15 August 2000. Section 96(1A)(b) is therefore satisfied.

**SUMMARY**

The condition imposed by Council that is the subject of the s.96 application does serve a planning purpose but is not supported by evidence of public harm. The removal of this condition would not offend any reasonable and objective interpretation as to usage of a dwelling unit for residential purposes, notwithstanding the age limitation.

**ITEM 3 (continued)**

**ATTACHMENT 1**

I recommend therefore that the s.96 application be supported and that Condition 2 be deleted from the Consent as requested.

CLARON CONSULTING PTY LTD



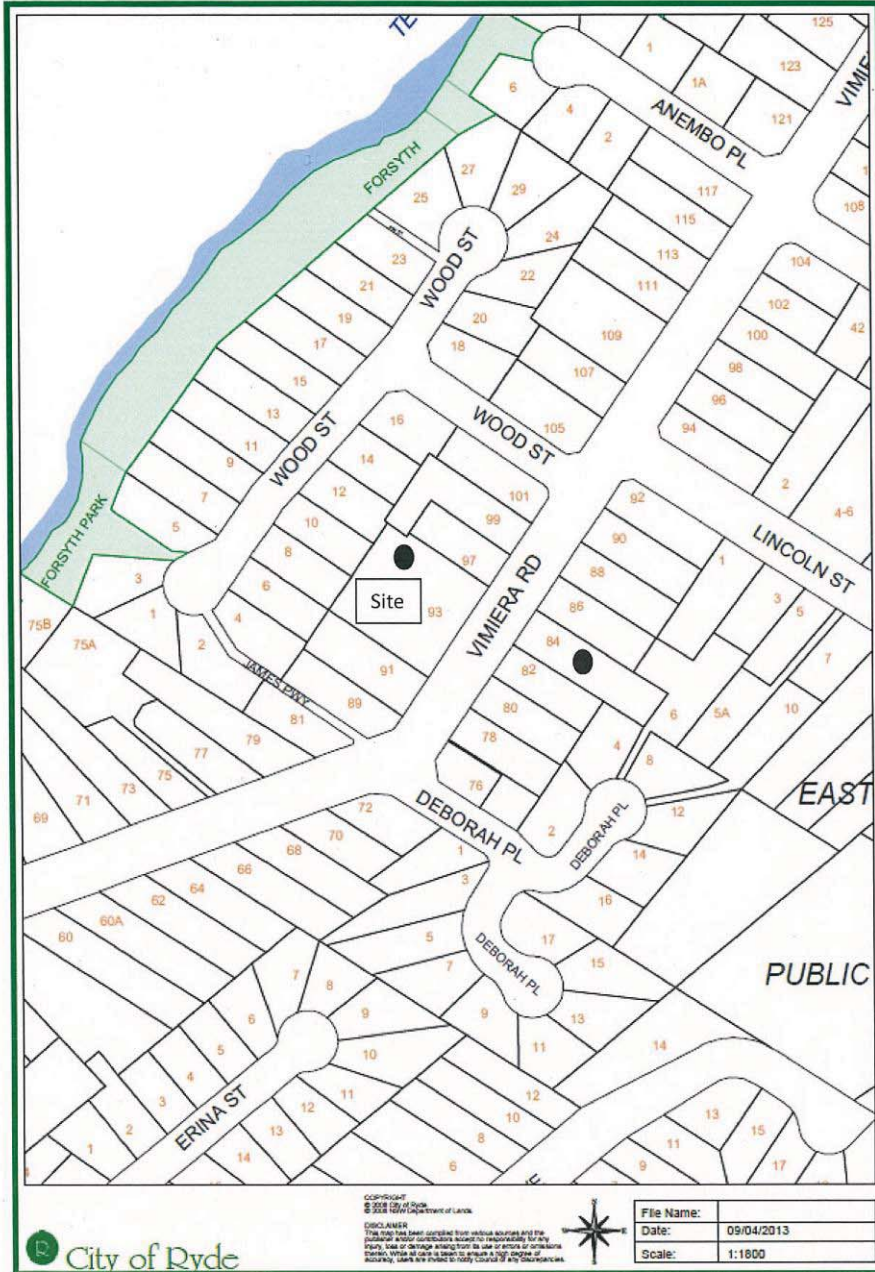
**Brent M Winning JP** [B.Build, MAIB, GDURP, CPP, MPlA]  
Certified Practising Planner, Project Manager and Development Consultant

17<sup>th</sup> August 2012

**ITEM 3 (continued)**

**ATTACHMENT 2**

● Indicates submissions received



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**4 66A PELLISIER ROAD, PUTNEY. LOT B DP 419543. Local Development Application for new dual occupancy. LDA2012/0106.****INTERVIEW: 5.10pm**

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**Report prepared by:** Senior Town Planner**Report approved by:** Manager Assessment; Group Manager - Environment & Planning**Report dated:** 2 April 2013**Previous Items:** 4 - 66A PELLISIER ROAD,  
PUTNEY. LOT B DP 419543.  
Local Development Application  
for new dual occupancy.  
LDA2012/0106. - Planning and  
Environment Committee - 20  
November 2012**File Number:** grp/09/5/6/2 - BP13/505

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**1. Report Summary****Applicant: E Parsons.****Owner: E J Grodzicky.****Date lodged: 5 April 2012**

This report has been prepared to enable Council's further consideration of a development application (DA) for a two storey dual occupancy (attached) located at 66a Pellisier Road, Putney. The subject site is a corner allotment with Dwelling 1 facing Pellisier Road and Dwelling 2 facing McGowan Street.

At the Council Meeting of 27 November 2012, it was resolved to defer consideration of this DA to allow the Group Manager Environment & Planning to undertake mediation between the applicant and the objectors to achieve closer compliance with Council's Development Control Plan 2010. A further report was to be provided to the Planning & Environment Committee within three months.

Part of the resolution required a report to be presented to the Planning and Environment Committee within three months (27 February 2013). However due to the Christmas break the objectors were not able to meet until 30 January 2013. Amended plans were submitted on 19 February 2013. This delay has meant that Council's Officers have not been able to achieve the timeframe specified in the resolution.

The mediation meeting was held on 30 January 2013 at the Ryde Planning & Business Centre to discuss the issues of concern. The notes of the Mediation Meeting, including details of the persons attending and the summary of discussions, are held as **Attachment 4** to this report. At the meeting, the applicant agreed to increase the rear setback, where it is currently non compliant from 6.8m to 8.5m and push back the front garage so that it is not forward of the building line. This was

**ITEM 4 (continued)**

considered an acceptable solution by the objectors present at the time.

Subsequently, on 19 February 2013, amended plans were received incorporating the following design changes:

- Increase the ground floor setback, where it is currently non compliant to a minimum of 8.5m. Bedroom 1 on the 1<sup>st</sup> floor is now also setback between 8.5m to 9.6m from the rear boundary.
- Redesigned of the front façade to bring the study forward and push the garage back 1m behind the front façade.
- Internal reconfiguration to Unit's two 1<sup>st</sup> floor ensuite and wardrobe area to convert it to another bedroom.

As agreed in the mediation meeting, these amended plans were re-notified to people who made a submission for a period of seven days from 25 February 2013 to 5 March 2013. During this period four neighbours lodged another submission to the proposal.

Approval is recommended subject to the conditions in **Attachment 1**. These are generally the same conditions attached to the original report to Planning & Environment Committee – but updated to include the latest amended plans.

**Reason for Referral to Planning and Environment Committee:** Previously called-up by the Mayor, Councillor Petch and subsequent resolution of Council.

Public Submissions: After mediation meeting, amended plans were received and re-notified. Four submissions were received still objecting to the amended proposal.

Clause 4.6 RLEP 2010 submission required? Yes – variation to minimum lot size of 580m<sup>2</sup> under Clause 4.5A (2). This has been assessed in the original report.

Value of works? \$500,000

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

**RECOMMENDATION:**

- (a) That Local Development Application No. 2012/0106 for 66a Pellisier Road be approved subject to the **ATTACHED** conditions (Attachment 1).
- (b) That the persons who made submissions be advised of Council's decision.



**ITEM 4 (continued)**

**ATTACHMENTS**

- 1 Proposed Conditions
- 2 A4 Plans
- 3 Map
- 4 Mediation Meeting Notes
- 5 Original report to Planning and Environment Committee - 20 November 2012 -  
CIRCULATED UNDER SEPARATE COVER
- 6 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE  
COVER

Report Prepared By:

**Sandra McCarry**  
**Senior Town Planner**

Report Approved By:

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

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

**ITEM 4 (continued)**

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



Locality Map – red dot denote submission received after mediation meeting.

<b>Address</b>	:	66a Pellisier Rd Putney
<b>Site Area</b>	:	577.4m <sup>2</sup> Corner Allotment - Frontage: Approximate 13m to Pellisier Road (including splayed corner) and secondary frontage to McGowan Road - 39m.
<b>Topography and Vegetation</b>	:	The site slopes from the front (south- west) corner to the rear (north- eastern) corner, with a gradient of approximately 1:16, which is a relatively gentle slope. There are no significant trees on site. A small tree is located in the rear north eastern corner, which is to be retained.
<b>Existing Buildings</b>	:	Dwelling house – to be demolished under a separate application.
<b>Planning Controls</b>	:	R2 – Low Density Residential Zone pursuant to the Ryde Local Environmental Plan (LEP) 2010
<b>Zoning</b>	:	State Environment Planning Policy – Building Sustainability Index: BASIX SEPP No. 55 – Remediation of Land Sydney Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshore & Waterways Development Control Plan
<b>Other</b>	:	

**ITEM 4 (continued)**

Ryde Development Control Plan (DCP) 2010  
Part 3.3 – Dwelling Houses and Duplex Buildings  
Part 7.2 – Waste Minimisation and Management  
Part 8.2 – Stormwater Management  
Part 9.4 – Fencing

**3. Background**

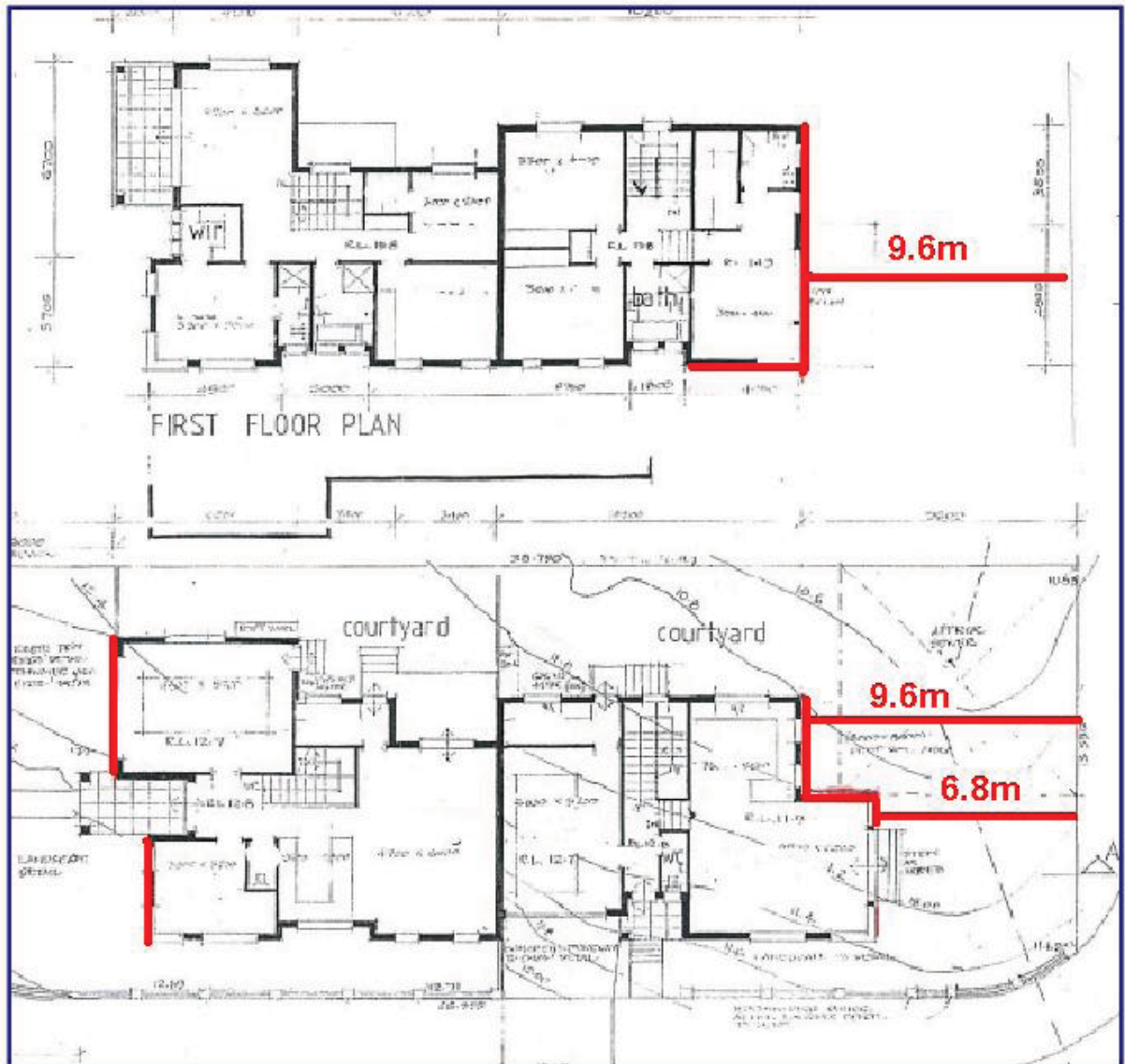
- The previous report to Planning & Environment Committee dated 6 November 2012 contains an assessment of the proposal as originally submitted. See **Attachment 5**.
- At its meeting of 27 November 2012 Council resolved:
  - *That LDA2012/106 at No 66A Pellisier Road, Putney, being Lot B DP 419543, be deferred for the Group Manager Environment & Planning to undertake a mediation with the applicant and objectors to bring the dual occupancy into closer compliance with Council's Development Control Plan 2010 and a further report was to be provided to the Planning & Environment Committee within three months.*
- The mediation meeting was held on 30 January 2013. At the meeting, the applicant agreed to increase the rear setback where it was currently non compliant to 8.5m and push back the garage by 1m to be behind the building line. This was acceptable to the objectors present at the time.
- On 19 February 2013, amended plans were received incorporating the following design changes:
  - Rear setback, where it was non compliant increased from 6.8m to 8.5m. Note: 1<sup>st</sup> floor setback, which was previously compliant, has also been altered to between 8.5m to 9.6m.
  - Redesigned the front façade by bringing the study forward (6m setback) and pushing the garage back 1m to be behind the building line.
  - Internal changes to Unit's two 1<sup>st</sup> floor area by converting an ensuite and wardrobe to another bedroom, resulting in Unit two comprising of four bedrooms.
- As agreed in the mediation meeting, the amended plans were re-notified to all the objectors for a period of seven days from 25 February 2013 to 5 March 2013. During this period four submissions were received still objecting to the proposal. The issues raised in the submissions are discussed in details below.
- The notes of the Mediation Meeting, including details of the persons attending and the summary of discussions, are included as **Attachment 4** to this report.

**ITEM 4 (continued)**

**4. Proposal – (As amended through mediation)**

Amended plans were received from the applicant on 19 February 2013, which amended the rear setback and pushed the garage behind the building line, as discussed on the mediation meeting. These are shown in the following drawings:

**Original Plan**

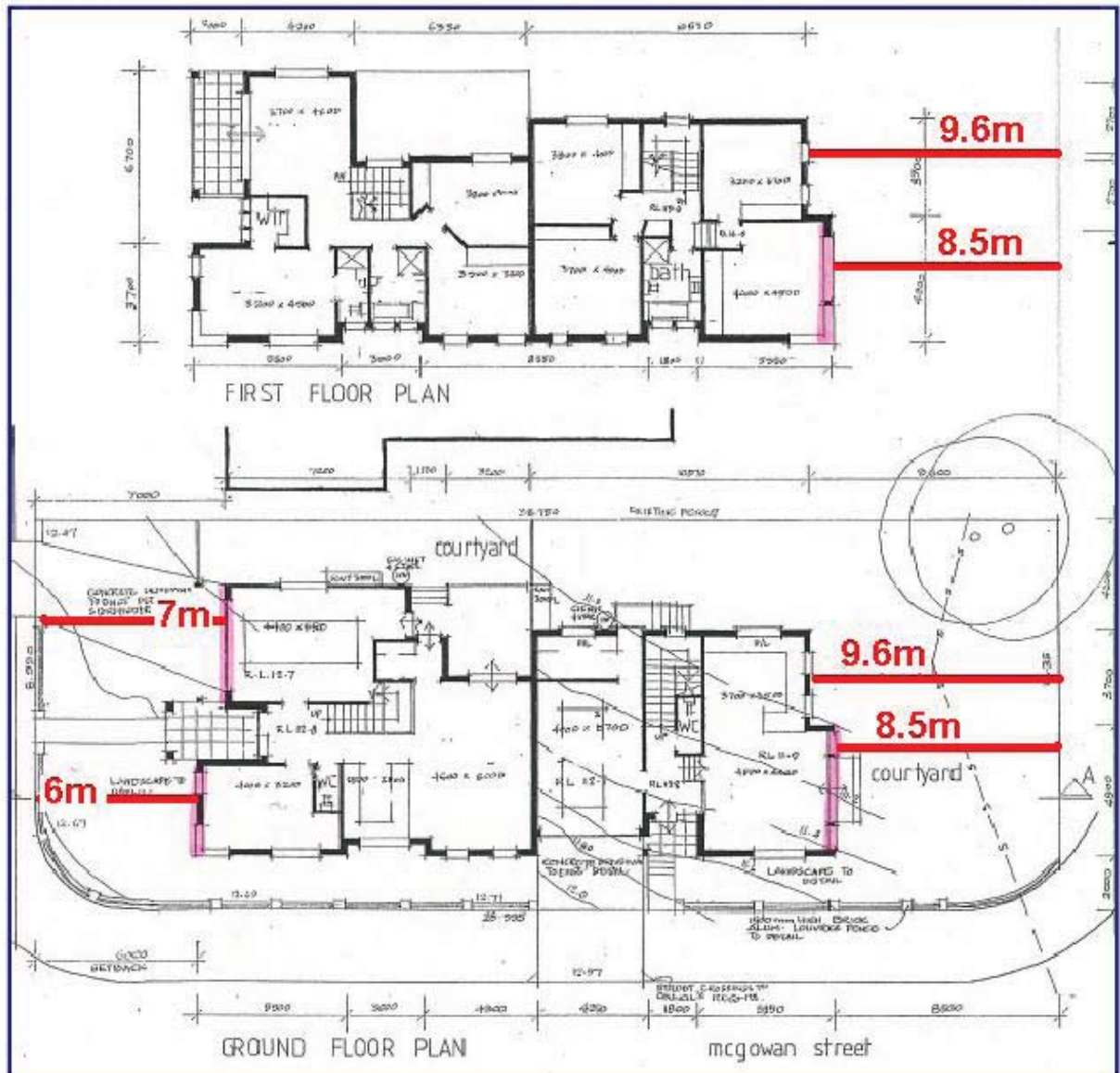


Original Proposal with rear setback between 6.8m to 9.6m and garage forward of the building line.



**ITEM 4 (continued)**

**Amended Plan – received 19 February 2013 (and notified to objectors)**



Increased rear setback on the ground floor from 6.8m to 8.5m, 1<sup>st</sup> floor setback amended to between 8.5m to 9.6m and garage now behind building line.

The amendment also changed the 1<sup>st</sup> floor rear setback from 9.6m to between 8.5m to 9.6m and convert the ensuite and wardrobe area of Unit 2 to another bedroom.

After notification of the amended plans, the residents at 68 Pellisier Road strongly objected to the decrease in the 1<sup>st</sup> rear setback from 9.6m to 8.5m stating that this was never agreed to in the mediation meeting and the 1<sup>st</sup> floor setback was to remain fully compliant.

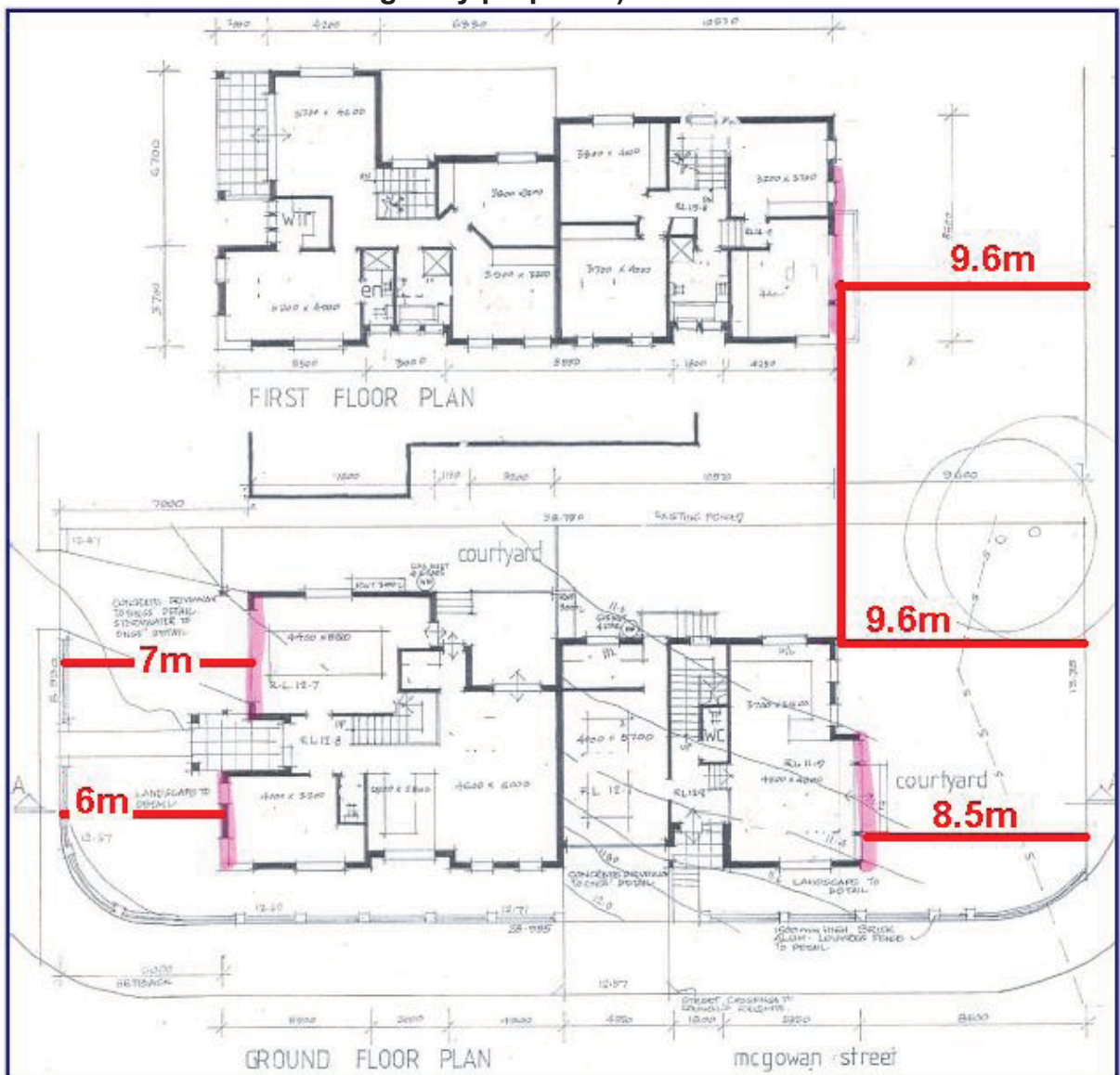


**ITEM 4 (continued)**

It would appear that there was a misunderstanding by the applicant as to what was allowed. The applicant advised that they were under the impression that due to the lost of floor space on the ground floor, the 1<sup>st</sup> floor setback can be amended to be in line with the agreed setback of 8.5m.

The applicant was advised that this was not the case. The decrease in the 1<sup>st</sup> floor setback was not agreed to as the 1<sup>st</sup> floor setback was fully compliant. Accordingly, the applicant has amended the plans (dated 18 March 2013) to increase the 1<sup>st</sup> floor setback to 9.6m as originally proposed, as shown below.

**Amended Plan – received 18 March 2013 (not notified to objectors as increased 1<sup>st</sup> floor rear setback as originally proposed).**



Amended plans dated 18 March 2013 with the 1<sup>st</sup> floor setback of 9.6m. The 1<sup>st</sup> floor setback is fully compliant.

**ITEM 4 (continued)****5. Submissions**

The amended plans were notified to the objectors who made a submission in the original proposal for a period of seven days from 25 February 2013 to 5 March 2013. During this period four submissions were lodged:-

- 68 Pellisier Road (attended the mediation meeting)
- 70 Pellisier Road (did not attend mediation meeting, but gave authority for Mr Bailey of 68 Pellisier Road to act on their behalf)
- 72 Pellisier Road (did not attend mediation meeting but gave authority for Mr Bailey to act on their behalf) and
- 8 McGowan (did not attend mediation meeting but gave authority for Mr Bailey to act on their behalf).

The following issues were raised in the above submissions:

*The rear ground floor setback was agreed to be 8.5m instead of what was required of 9.6m. The rear first floor setback was to remain fully compliant at 9.6m –it was not ever agreed to decrease it to 8.5m. As a result of not adhering exactly what was agreed at mediation, due diligence has not been carried out, and on a point of law, the result is that we are retracting completely what was agreed at our first mediation meeting.*

Comment:

The applicant advised that they were under the impression that it was agreed to allow for the reduced 1<sup>st</sup> floor setback to offset the reduction in the floor space from the increase setback on the ground floor.

It was advised that as the 1<sup>st</sup> floor was fully compliant, the issue of amending the 1<sup>st</sup> floor setback was never discussed or agreed to. Accordingly the applicant has amended the plans to set back the 1<sup>st</sup> floor to 9.6m as originally proposed and assessed in the original report.

*We are still not satisfied that the proposal complies with the streetscape impact. The proposal has little (if any real) articulation – the façade could be much better designed with a consistent design, harmonious to the locality. As it is a corner allotment, the proposal will change the character to McGowan Street. The house opposite at 68 Pellisier Road (an award winning house) is well articulated in both Pellisier Rd and McGowan Street. Our award winning home along McGowan Street, with its house wall of numerous large setbacks (of 10m, 8m with swimming pool, 10m curved, 4m and curved balcony & roofs) and hence superior articulation, to the almost 25m straight house wall proposed for 66A, with its set back of just 2m. It will impact adversely on the surrounding property and locality.*

**ITEM 4 (continued)**Comment:

The concern about streetscape and building articulation has been discussed in the original assessment of the report where it was considered satisfactory. Articulations have been provided by indenting the kitchen, garage area and the front entry to Unit 2 to provide some architectural relief. Whilst the extent of articulation is not as great as the dwelling at 68 Pellisier Road, the proposal is not out to replicate the dwelling opposite. There are numerous examples of corner allotments where the secondary frontage is articulated to approximately the same degree as the proposal without adverse impact on the streetscape. The area is not in a conservation area with the dwellings within the locality being a mixture of older cottages and new contemporary two storey dwellings. The proposed development is not untypical of the newer type dwellings being constructed within the City of Ryde. Therefore the proposal is not considered to be out of character with the streetscape of the area and can be supported by Council.

*We also believe that the FSR now of 48% with now a bigger building of 313.6sqm<sup>2</sup> (previously 47% with 307.7sqm<sup>2</sup>), needs a thorough check as we believe it could be above the allowed FSR of 50%.*

Comment:

The floor space calculation was checked again to ensure that the proposal did not exceed the maximum allowed. The amended proposal has a floor space ratio of 0.5:1 which complies with Council's requirement. Condition 19 has been included to ensure that the total floor area does not exceed a floor space ratio of 0.5:1.

*The overall size of the block does not conform to Council's regulations regarding dual occupancy. The size of the allotment falls short of the 580 square metres stated for dual occupancy. Will this therefore set a precedent for future development in the area?*

Comment:

As stated in the original assessment for the proposal, whilst the size of the allotment falls short of the 580m<sup>2</sup> required for dual occupancy there are provisions in the planning control (Clause 4.6) to provide Council with the flexibility to vary a development standard if it can be demonstrated that compliance with the development standard is unreasonable or unnecessary. The applicant has submitted a written request to consider the variation for the shortfall of 2.6m<sup>2</sup> under Clause 4.6 and Council must assess any request under Clause 4.6 on its merits. This was assessed in the original assessment of the proposal where it was concluded that the non-compliance is very minor and will not adversely contribute to the bulk and scale of the building. The proposal complies with the floor space ratio, height and is consistent with the zone objectives in that it will provide housing in the community and is not considered to significantly alter the character of the area. Therefore it was considered that compliance with the standard is unreasonable or unnecessary in this instance and can be supported by Council.

**ITEM 4 (continued)**

This development will not set a precedent for future development in the area. As mentioned above, each request under Clause 4.6 needs to be assessed on its own merits rather than relying on previous decisions.

*Motor vehicle access and safety is still a very major concern for local residents. Whilst the Council's Development Engineer reviewed the proposal regarding this particular matter, as it had been included in our previous submissions, we feel he has failed to take into account all the factors, particularly the blind and almost invisible corner, as you pass around the eastern end of our adjacent neighbours property at 68 Pellisier Rd. Council's engineer apparently advised that the proposal was satisfactory, as it complied with the Australian Standard for distance away from the corner and sight clearances. Did he look eastwards we ask? The section of road in McGowan Street where the proposed garage and driveway will be situated is in what is already a dangerous position. With parking on both sides of the road, on that section, and a blind curve in the road, at that point, it will only exacerbate the present unpalatable and often dangerous position.*

**Comment:**

Council's Development Engineer has re-inspected the site and has advised that her previous comments still stand in regard to the driveway of Unit 2.

*The proposed new site access for the subject site is about 14m from the eastern boundary of the subject site and even more than this from the corner of McGowan Street (adjoining north eastern corner of No 68 Pellisier Road). The distances from the driveway to the easterly corner of McGowan Street and to the corner of McGowan and Pellisier Road comply with the requirements of Figure 3.1 and Figure 3.3 of Australian Standard AS 2890.1.*

*The traffic in this area is low and vehicles coming along McGowan Street from south turning towards the westerly direction have adequate sight distance to see any vehicles reversing from the proposed driveway. There are no objections to the location of the new driveway.*

**6. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Ryde Local Environmental Plan 2010****Zoning**

Under Ryde LEP 2010, the property is zoned R2 Low Density Residential. The proposal is permissible with consent within this zoning.

**ITEM 4 (continued)**
Mandatory Requirements

Height remains the same as per the original proposal – see mandatory requirements table below:

Ryde LEP 2010	Proposal	Compliance
<b>4.3(2) Height</b>		
9.5m	8.7m	Yes
<b>4.4(2) &amp; 4.4A(1) FSR</b>		
0.5:1	Ground floor: 169.1m <sup>2</sup> Second floor: 160.2m <sup>2</sup> Less 36m <sup>2</sup> (2 x single garage allowance for parking) Total (Gross Floor Area): 293.3m <sup>2</sup> / 577.4 FSR: 0.5:1	Yes

**(b) Relevant SEPPs**
**State Environmental Planning Policy (BASIX) 2009**

Amended BASIX Certificate No. 406110M-02 dated 21 March 20113 was submitted. Appropriate condition will be imposed requiring compliance with the amended BASIX commitments. See Condition 3.

**(c) Any draft LEPs**
Draft Local Environmental Plan 2011

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the zoning of the property is R2 Low Density Residential. The proposed development is permissible with consent within this zoning under the Draft LEP, and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zoning.

Note: Draft LEP 2011 was adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.



**ITEM 4 (continued)****(d) Any DCP (e.g. dwelling house, villa)**DCP 2010

The previous report to Planning & Environment Committee contained an assessment of the proposal, which addressed the areas of non compliance with the requirements of DCP 2010, such as rear setback, garage of Unit 1 fronting Pellisier Road being forward of building line, setback of the garage for Unit 2, eaves overhang and location of front fence.

The two main areas of concern discussed at the mediation meeting were the non compliance with the rear setback and the impact on the streetscape of Pellisier Road by the garage of Unit 1 being forward of the building line.

The other areas of non compliance are relatively minor, with the variations either supported or conditioned to comply.

The amendments submitted by the applicant following the mediation meeting do not result in any change to the development's height and only minor changes to the siting of the building. The floor space ratio was recalculated and the development proposes a FSR of 0.5:1 which is consistent with the DCP. A full assessment under the DCP is not required for the amended plans.

The amended plans result in an increase to the rear ground floor setback and compliance with the streetscape to Pellisier Road with the front garage pushed back behind the building line. The amendments are discussed below:

**Rear Setback:**

This was the one of the key issues of concern to be discussed in the mediation following Council's resolution of 27 November 2012 regarding this DA.

The clause in Council's DCP 2010 regarding rear setback states:

***Objectives***

- 1. To provide an area for private outdoor recreation and relaxation.*
- 2. To allow space for vegetation, mature trees and deep soil zones.*
- 3. To separate dwellings to achieve privacy.*
- 4. To enable contiguous vegetation corridors across blocks.*

***Controls***

- a. The rear of the dwelling is to be set back from the rear boundary a minimum distance of 25% of the length of the site or 8 metres, whichever is the greater.*

**ITEM 4 (continued)**

- b. Allotments which are wider than they are long, and so cannot achieve the minimum rear setback requirement, are to have a minimum rear setback of 4 metres.*
- c. Dwellings on battle-axe (hatchet shaped) allotments are to be setback from the rear boundary of the front allotment. A minimum of 8 metres. A single storey garage or outbuilding may be located within this setback.*

The subject site is 38.7m in length and based on the above, a setback of 9.6m is required. The original proposal proposed a rear ground floor setback of between 6.8m to 9.6m. The non compliance of 6.8m was only on the ground floor with the two storey element setback 9.6m, as required by the DCP. The mediation meeting was held to bring the development closer to compliance with the DCP. It is now proposed to have a rear ground floor setback of between 8.5m to 9.6m. Note the 1<sup>st</sup> floor directly above has been amended to have a 9.6m setback as originally proposed. The 8.5m setback for the ground floor was agreed to at the mediation meeting as it was considered to be a good compromise and would still satisfy the above objectives. Sufficient private outdoor recreation area is provided at the rear and side (over 100m<sup>2</sup>). Privacy will be maintained to the adjoining rear property (2 McGowan Street) as existing and proposed landscaping on the subject site and on the adjoining property currently screen 2 McGowan Street. In addition, the driveway and garage of 2 McGowan Street is adjacent to the rear common boundary, as such adequate visual privacy is maintained.

**Streetscape**

The issue of the garage of Unit 1 being forward of the building line was another key issue discussed in the mediation following Council's resolution of 27 November 2012 regarding this DA.

The clause in Council's DCP 2010 regarding location of garages states:

***Objectives***

- 1. To provide for off-street parking.*
- 2. To ensure car parking structures and garage doors are not prominent features with regard to either the individual lot or the streetscape.*
- 3. To ensure that car parking structures are consistent with the design of the dwelling.*

Clause 2.10.1 (c ) and (p) of the DCP states:

- c. Garages are to be located at least 1 metre behind the front building elevation.*
- p. Garages, whether free standing or incorporated into the house, are to be set back at least 1 metre from the building's front façade.*

#### ITEM 4 (continued)

In the original proposal the garage of Unit 1, facing Pellisier Road was forward of the building line by 1m, which is not in accordance with the above requirements.

Council's DCP requires the garage to be set back behind the dwelling so that garages are not a dominant feature of the streetscape. The applicant has amended the design by bringing the study room forward (minimum 6m setback) and pushing the garage back 1m behind the building line. The amended front garage design is in accordance with Council's requirements and satisfies the intent of the DCP.

#### Section 94 Contributions Plan 2007

The original assessment report quoted that Section 94 contribution amounts payable for this development, using the contribution rates current for the most recent quarter at the time of writing that report being September quarter.

The amended plans involve internal reconfiguration, changing the number of bedrooms in Unit 2 from three bedrooms to four bedrooms. The Section 94 contributions need to be re-calculated to reflect this increase in rooms and using the CPI figures for the most recent quarter available at the time of writing this report (December quarter).

The proposed development will result in the following contributions under Council's Section 94 Contributions Plan:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community and Cultural Facilities	\$4,088.87
Open Space and Recreation Facilities	\$10,065.95
Civic and Urban Improvements	\$3,423.52
Roads and Traffic Management Facilities	\$466.90
Cycleways	\$291.70
Stormwater Management Facilities	\$926.84
Plan administration	\$78.65
<b>TOTAL</b>	<b>\$19,342.43</b>

Recommended Condition 12 relates to the payment of the above contributions.

#### 7. Conclusion

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979. It is generally considered that the proposed development is suitable for approval subject to conditions.

**ITEM 4 (continued)**

The further design changes made by the applicant to the rear setback and front garage facing Pellisier Road, as agreed by the applicant and the objectors at the mediation meeting regarding improvements to the amenity and streetscape, have resulted in closer compliance with Council's DCP. The applicant has co-operated with the neighbours and Council officers in making further design amendments, in keeping with the agreed outcomes of the mediation session for this development.

The submissions received after re-notification raised concerns about the allotment size (undersized by 2.6m<sup>2</sup>) which has been assessed under Clause 4.6 and was considered acceptable. The issue of lack of articulation along McGowan Street, though discussed at the mediation meeting, concluded that articulation has been provided and whether it is sufficient is a subjective matter. The matter of safety of Unit 2 driveway was revisited by Council's Development Engineer who in her professional assessment of the location of the driveway considered it to be satisfactory. Accordingly this DA is presented back to the Planning & Environment Committee for consideration and determination.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**CONDITIONS**

**GENERAL**

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

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Floor Plans & West elevation	18/3/13 (submitted 20/3/13)	0411 D01 <sup>C</sup> Issue C
Elevations	18/3/13 (submitted 20/3/13)	0411 D02 <sup>C</sup> Issue C
Section & north elevation	18/3/13 (submitted 20/3/13)	0411 D03 <sup>C</sup> issue C
Landscaping Plan	10/10/12	L01/1-R16903 Rev A

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

- (a) **Privacy Screen:** To protect the amenity to the adjoining northern property a privacy screen be provided along the outer edge of the raised deck area of Unit 1. The screen is to be a fixed privacy screen to have a minimum height of 1.6m above the finish floor level and constructed of complimentary materials and shall not allow greater than 50% visible transparency to the adjoining property.
- (b) **Front setback.** The front porch is not to encroach within the front 6m setback with the area within the setback being deleted.

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

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **BASIX.** Compliance with all commitments listed in BASIX Certificate numbered 406110M-02 dated 21 March 20113.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
- (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.



**ITEM 4 (continued)**

**ATTACHMENT 1**

5. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
7. **Fill.** No fill to be provided between the side of building & boundary.
8. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria 1999 and City of Ryde Development Control Plan 2010 Section 8* except as amended by other conditions.
9. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
10. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
11. **Road Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No drainage work shall be carried out on the footpath without this permit being paid and a copy kept on the site.

**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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$4,088.87
Open Space & Recreation Facilities	\$10,065.95
Civic & Urban Improvements	\$3,423.52
Roads & Traffic Management Facilities	\$466.90
Cycleways	\$291.70
Stormwater Management Facilities	\$926.84
Plan Administration	\$78.65
<b>The total contribution is</b>	<b>\$19,342.43</b>

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

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

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

13. **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**.
14. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (Category: dwelling houses with delivery of bricks or concrete or machine excavation).
15. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
- (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy

**ITEM 4 (continued)**

**ATTACHMENT 1**

16. **Alignment Levels.** The applicant is to apply to Council, pay the required fee, and have issued site specific alignment levels by Council prior to the issue of the **Construction Certificate**.
17. **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**.
18. **Sydney Water – quick check.** The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre, prior to the release of the **Construction Certificate**, to determine whether the development will affect any Sydney Water assets, sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

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

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

Or telephone 13 20 92.

19. **Floor Space Ratio.** The floor space ratio for the development is not to exceed 0.5:1. Confirmation of compliance is to be shown on the plans for the Construction Certificate.
20. **Fencing.** Fencing is to be in accordance with Council's Development Control Plan and details of compliance are to be provided in the plans for the **Construction Certificate**.
21. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, carparking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.
22. **Driveway Grades.** The maximum grade of all internal driveways and vehicular ramps shall be 1 in 4 and in accordance with the relevant section of AS 2890.1. The maximum change of grade permitted is 1 in 8 (12.5%) for summit grade changes and 1 in 6.7 (15%) for sag grade changes. Any transition grades shall have a minimum length of 2.0m. The driveway design is to incorporate Council's issued footpath and gutter crossing levels where they are required as a condition of consent. A driveway plan, longitudinal section from the centreline of the public road to the garage floor, and any necessary cross-sections clearly demonstrating that the driveway complies with the above details, and that vehicles may safely manoeuvre within the site without scraping shall be submitted with the Construction Certificate application.

**ITEM 4 (continued)**

**ATTACHMENT 1**

- 23. Control of Stormwater Runoff.** Stormwater runoff from all impervious areas shall be collected and piped by gravity flow to the street gutter, a suitable Council pipeline or other point of discharge acceptable to Council. The minimum capacity of the piped drainage system shall be equivalent to the collected runoff from a 20 year average recurrence interval storm event. Overland flow paths are to be provided to convey runoff when the capacity of the piped drainage system is exceeded for storms up to the 100 year average recurrence interval and direct it to Council's drainage system. Runoff which enters the site from upstream properties must not be redirected in a manner which adversely affects adjoining properties. The design shall ensure that the development, either during construction or upon completion, does not impede or divert natural surface water so as to have an adverse impact upon adjoining properties. Details to be provided on the plans for the Construction Certificate
- 24. Car Parking.** To facilitate safe sight distance in accordance with AS 2890.1-2004 all fencing (including vegetation planted adjacent to it) forward of the building alignment to Pellisier Road are to have a maximum solid height of 900mm. Additionally, a safe sight triangle shall be provided at the driveway entrance to the proposed garage off McGowan Street. Details to be provided on the plans for the Construction Certificate.
- 25. Water Tank First Flush.** A first flush mechanism is to be designed and constructed with the water tank system. Details of the first flush system are to be submitted with the construction certificate application.
- 26. Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan (ESCP)* shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction*" prepared by the Landcom. These devices shall be maintained during the construction works and replaced where considered necessary.

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

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

**ITEM 4 (continued)**

**ATTACHMENT 1**

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

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

**27. Site Sign**

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

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

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

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

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



**ITEM 4 (continued)**

**ATTACHMENT 1**

**30. Excavation adjacent to adjoining land**

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

**32. 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.

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

**34. Vehicle Footpath Crossings.** Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements of Council. Crossings are to be constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's Public Works Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.

**DURING CONSTRUCTION**

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

**35. 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*.

**ITEM 4 (continued)**

**ATTACHMENT 1**

36. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
37. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- (b) Fill is allowed under this consent;
  - (c) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
  - (d) the material is reused only to the extent that fill is allowed by the consent.
38. **Construction materials.** All materials associated with construction must be retained within the site.
39. **Site Facilities**  
The following facilities must be provided on the site:
- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.
40. **Site maintenance**  
The applicant must ensure that:
- (e) approved sediment and erosion control measures are installed and maintained during the construction period;
  - (f) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
  - (g) the site is clear of waste and debris at the completion of the works.
41. **Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".
42. **Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or otherwise necessary as a result of construction works approved by this consent.
43. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.
44. **Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.
45. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**PRIOR TO OCCUPATION CERTIFICATE**

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

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

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

46. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 406110M dated 13 January 2012.
47. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.
48. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed front and side fence shall encroach onto Council's land. In particular the Documentary evidence of correction of the misalignment of the front fence is to be submitted to Council prior to Occupation Certificate.
49. **Sydney Water – Section 73.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

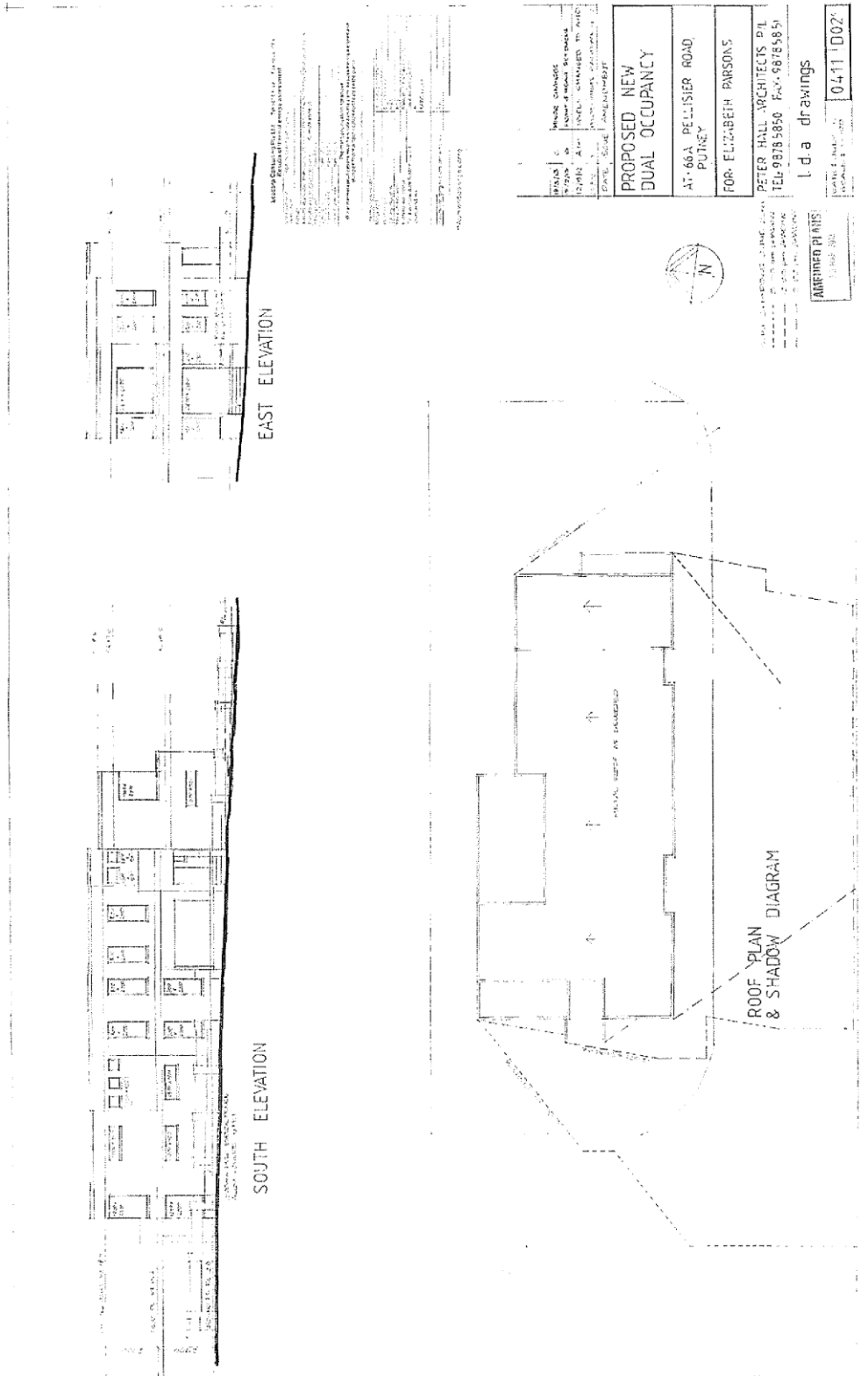
Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway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

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

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

ITEM 4 (continued)

ATTACHMENT 2



**ITEM 4 (continued)**

**ATTACHMENT 2**

**PROPOSED NEW DUAL OCCUPANCY**

AT 66A PELLISSIER ROAD, PUTNEY

FOR ELIZABETH PARSONS

PETER HALL ARCHITECTS P/L  
TEL: 98785850 FAX: 98785851

1d a drawings

10411 D03e

**NORTH ELEVATION**


**SECTION A-A**

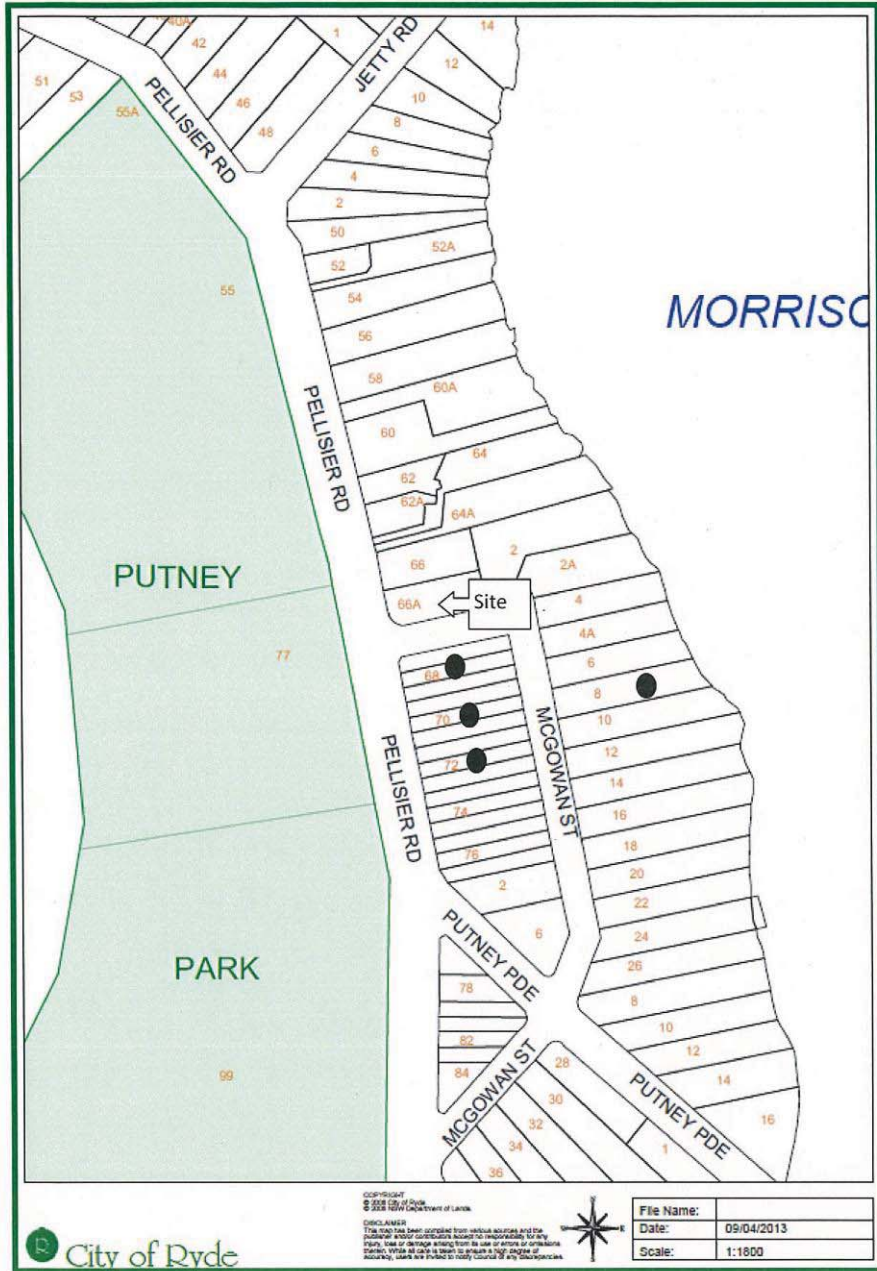
bed 1, bed 2, bed 4, bed 1, bath, study, kitchen, living, garage, living



ITEM 4 (continued)

ATTACHMENT 3

 Indicates submissions received



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File Name:	
Date:	09/04/2013
Scale:	1:1800

**ITEM 4 (continued)**

**ATTACHMENT 4**

<b>Meditation Meeting Notes</b>	
<b>66a Pellisier road Putney. Lot B DP 419543. Proposed two storey dual occupancy.</b>	
<b>Wednesday 30<sup>th</sup> January 2013, 4.30 to 6.00pm.</b>	
<b>Ground Floor Meeting Room, Ryde Planning and Business Centre</b>	
<b>In attendance:</b>	
<u>Council Officers:</u>	DJ = Dominic Johnson: Group Manager Environment & Planning (Chair) SM = Sandra McCarry: Senior Town Planner
<u>Applicant</u>	MG = Mark Grodzicky, on behalf of his wife – E Parsons (Grodzicky – applicant.) PH = Peter Hall (of Peter Hall Architects P/L)
<u>Neighbours:</u>	DB = Don Bailey (of 68 Pellisier Road) JB = Janet Bailey (of 68 Pellisier Road) HW = Helen Workman (of 66 Pellisier Road) DC = Darren Carr (of 66 Pellisier Road) MK = Martin Kinsky (of 74 Pellisier Road) AK = Anne Kinsky (of 74 Pellisier Road) TM = Thomas Mithen (Planning Consultant from Plandev)
<u>Absent:</u>	Filippa & Philip Scardilli of 70 Pellisier Road Rhonda & John Dreverman of 72 Pellisier Road Terence & Linda Lo of 4A McGowan Street Vince & Christina DiBella of 8 McGowan Street. Note: The above people were advised of the meeting but did not attend however Mr Bailey provided authorisation to act on their behalf.
<b>SUMMARY OF DISCUSSIONS:</b>	
DJ	<ul style="list-style-type: none"> <li>• Welcomed and opened the meeting</li> <li>• Introduced those attending from Council.</li> <li>• Explained the process of the mediation meeting (hand out of Mediation Information Sheet), set the ground “rules” to be followed in the meeting including providing opportunities for everyone to speak and raise their concerns, mutual respect for each other’s position.</li> <li>• Read out the full resolution of Council’s Meeting of 27 November 2012. Explained that the resolution was to bring the development “closer” to compliance with the DCP and that the meeting was not about discussing suitability of dual occupancy on the site.</li> </ul>

**ITEM 4 (continued)**

**ATTACHMENT 4**

	<ul style="list-style-type: none"> <li>• Explained that after the mediation meeting a further report will be prepared to go back to Planning and Environment Committee who may chose deferred, refuse or approve the proposal. This has to be unanimously agreed upon otherwise it will go to a full Council meeting.</li> <li>• Asked if there were any questions about the process of the meeting.</li> </ul>
DB	<ul style="list-style-type: none"> <li>• Asked about the legality of Mark Grodzicky at the meeting as the applicant is Elizabeth Parson.</li> </ul>
MG	<ul style="list-style-type: none"> <li>• Explained that Elizabeth Parson is his wife – Elizabeth Grodzicky is at home looking after the children.</li> </ul>
DJ	<ul style="list-style-type: none"> <li>• Explained that the non compliances being:             <ul style="list-style-type: none"> <li>– rear setback</li> <li>– front facade, garage forward of the building</li> </ul> </li> </ul>
TM	<ul style="list-style-type: none"> <li>• Requested to clarify whether compliance is meant to include the objectives of the control or are we just dealing with the numerical requirements? Believe that the proposal does not satisfy the objectives in terms of streetscape as the proposal provide little articulation (McGowan street elevation).</li> </ul>
DJ	<ul style="list-style-type: none"> <li>• Advised that the “objectives” may be difficult to demonstrate compliance in this instance as the matter of “dual occupancy” is a subjective discussion. Council’s Assessing Officer has assessed the proposal and has determined the proposal to satisfy the intent and objectives of the controls. We will be dealing with the numerical compliance but Council’s Assessment Officer will advise on the articulation/streetscape presentation of the building.</li> </ul>
JB	<ul style="list-style-type: none"> <li>• Some of the objectors have concerns about the safety of the proposal - namely Unit 2 garage facing McGowan Street with vehicles backing out onto McGowan.</li> </ul>
SM	<ul style="list-style-type: none"> <li>• This concern was raised in the submissions, accordingly Council’s Development Engineer was requested to review the proposal with regard to this particular matter. It was advised by the Engineer that the proposal was satisfactory as the proposal complies with the Australian Standard for distance away from the corner and sight clearances.</li> </ul>
DB	<ul style="list-style-type: none"> <li>• Do not agree with the Development Engineer comments. McGowan Street is a high traffic area, especially given that people park in McGowan Street due to close vicinity to Putney Park.</li> </ul>
JB	<ul style="list-style-type: none"> <li>• Would like a better development, maybe possibility of relocating the garage. This is just a suggestion and is aware that it is up to the applicant.</li> </ul>

**ITEM 4 (continued)**

**ATTACHMENT 4**

DJ	<ul style="list-style-type: none"> <li>The issue of safety has not been identified as a non compliance and the applicant is under no requirement to amend the location of Unit 2's garage.</li> </ul>
TM & DB	<ul style="list-style-type: none"> <li>Not satisfied that the proposal complies with streetscape impact. The proposal has little articulation; the façade could be better design. As it is a corner allotment, the proposal will change the character to McGowan Street. The house opposite at 68 Pellisier Road (award winning house) is well articulated.</li> <li>The garage adds to the bulk and not compliance with the setback. Impact on the streetscape that is why there are public concerns. Need to do changes to the design.</li> </ul>
SM	<ul style="list-style-type: none"> <li>Advised that in my professional opinion and in assessing the proposal, it was considered that the proposal is satisfactory in term of streetscape. Along Pellisier Road, articulation is provided. The appearance of the dwelling is not dissimilar to other new contemporary dwellings being constructed in Ryde. Along McGowan Street articulation has also provided, together with new fence and landscaping along the McGowan to screen the proposal. It is noted that across the road there is a high straight wall.</li> </ul>
MK	<ul style="list-style-type: none"> <li>Concern about vehicular access, the setback is important, the size of the house is too much.</li> </ul>
DJ	<ul style="list-style-type: none"> <li>Advised that the proposal is compliant with regard to FSR and is not an issue. The applicant has amended the proposal to reduce the FSR as requested by Council.</li> <li>Asked the owners of 66 Pellisier Road (adjoining property to the north) their concerns.</li> </ul>
HW & DC	<ul style="list-style-type: none"> <li>Happy with the design, not happy with the dual occupancy (two backyards facing their property). Will diminish their property value and concern about privacy – overlooking into their rear yard. Don't understand why previously one dwelling facing Pellisier Road is now "turned" around with two dwellings looking onto their property.</li> </ul>
DJ & SM	<ul style="list-style-type: none"> <li>Advised that provided that the dwelling addresses a street and as it is a corner allotment, it is possible to orientate the dwellings to front McGowan Street, as is the case with Unit 2.</li> <li>Property value is not a planning consideration.</li> <li>Concerns about privacy have been addressed and is not a non compliance. The applicant was requested to amend the plans to consider privacy to 66 Pellisier Road. Consequently the kitchen and laundry windows along the northern elevation of Unit 2 were changed to</li> </ul>

**ITEM 4 (continued)**

**ATTACHMENT 4**

	<p>high light windows. Adjoining properties were re-notified of these changes. These changes together with the proposed setback, privacy is not considered to be an issue.</p>
PH	<ul style="list-style-type: none"> <li>• Advised that he has 47 years experience in designing dwellings, duplexes &amp; villas. A dwelling house can be done as a complying development with only a 3m rear setback and 1.5m side setback. This proposal has a much greater side setback. Efforts have been made for privacy along the north elevation - reduce number and size of windows.</li> <li>• What is the numerical requirement for the rear setback that everyone will be happy with? (noting that 9.6m is required).</li> </ul>
MG	<ul style="list-style-type: none"> <li>• Note that alterations are proposed on 66 Pellisier Road and that a privacy screen is proposed along the common boundary.</li> <li>• With regard to garage in front of dwelling, numerous of houses in Pellisier Road have their garage forward of the dwelling, in front.</li> </ul>
PH	<ul style="list-style-type: none"> <li>• The 1<sup>st</sup> floor currently complies with the 9.6m setback. There will be issue with regard to suitable floor area for the living area if the ground floor setback is increased to 9.6m. Can we met half way and have the ground floor setback at 8.5m? Also is it possible to provide the 1<sup>st</sup> floor balcony as per original plan. The applicant would like balcony for solar access.</li> </ul>
Group	<ul style="list-style-type: none"> <li>• Everyone happy with the 8.5m setback, good compromise.</li> <li>• 66 Pellisier Road do not want 1<sup>st</sup> floor balcony. East facing balcony not good for solar access.</li> <li>• Agree to set back the garage to behind building line by bringing the study room forward and pushing the garage back.</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Increase the ground floor setback, where it is currently non compliant, to minimum of 8.5m.</li> <li>• Redesign of the front façade by bringing the study area forward (not beyond the 6m front setback) and push the garage back 1m to behind the front façade. 1<sup>st</sup> floor front balcony okay to remain as is.</li> <li>• No objections to internal reconfiguration provided there is no changes to windows and compliant with FSR.</li> <li>• Amended plans to be submitted which will be re-notified to those who made a submission.</li> </ul> <p>Meeting closed 5.55pm.</p>