

**Meeting Date:** Tuesday 13 June 2017  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 5.00pm

**NOTICE OF BUSINESS**

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**1 CONFIRMATION OF MINUTES - Meeting held on 9 May 2017**

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**Report prepared by:** Senior Coordinator - Governance**File No.:** CLM/17/1/3/2 - BP17/513

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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 4/17, held on 9 May 2017, be confirmed.

**ATTACHMENTS**

1 MINUTES - Planning and Environment Committee Meeting - 9 May 2017

**ITEM 1 (continued)**

**ATTACHMENT 1**

Planning and Environment Committee  
**MINUTES OF MEETING NO. 4/17**

**Meeting Date:** Tuesday 9 May 2017  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 5.00pm

**Councillors Present:** Councillors Yedelian OAM (Chairperson), Laxale, Pendleton and Stott.

**Apologies:** Councillor Simon.

**Absent:** Councillors Maggio and Salvestro-Martin.

**Staff Present:** Acting General Manager, Acting Director – City Planning and Development, Acting Director – Corporate and Organisational Support Services, Acting Manager – Assessment, Acting Manager – City Planning, Senior Coordinator – Development Assessment, Senior Town Planner, Senior Coordinator – Development Engineering Services, Town Planning Consultant (Planning Ingenuity), Senior Coordinator – Governance and Governance, Risk and Audit Coordinator.

**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 11 April 2017**

**RESOLUTION:** (Moved by Councillors Stott and Pendleton)

That the Minutes of the Planning and Environment Committee 3/17, held on 11 April 2017, be confirmed.

**Record for the Voting:**

For the Motion: Unanimous

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

**ITEM 1 (continued)**

**ATTACHMENT 1**

- 2 118 BALACLAVA ROAD, MARSFIELD. LOT 8 DP 16216. Local Development Application for construction of two-storey boarding house containing 10 boarding rooms. LDA2016/0287**

Note: This matter was dealt with later in the meeting as detailed in these Minutes.

- 3 1 STANSELL STREET, GLADESVILLE. LOT 1 in DP 6026. Local Development Application of demolition and construction of a 6 storey Residential Flat Building containing 23 apartments and three levels of basement car parking. LDA2016/0151**

Note: Michael Brewer (representing Concorde Enterprises Pty Ltd – applicant) addressed the meeting in relation to this Item.

Note: A Memorandum from the Acting Director – City Planning and Development dated 9 May 2017 was tabled in relation to this Item and a copy is ON FILE.

**RESOLUTION:** (Moved by Councillors Laxale and Stott)

- (a) That LDA2016/0151 at 1 Stansell Street, Gladesville be approved as a deferred commencement consent and subject to the conditions in the **ATTACHED** conditions (Attachment 1).
- (b) That the persons who made submissions be advised of Council's decision.

**Record for the Voting:**

For the Motion: Unanimous

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

- 2 118 BALACLAVA ROAD, MARSFIELD. LOT 8 DP 16216. Local Development Application for construction of two-storey boarding house containing 10 boarding rooms. LDA2016/0287.**

Note: Mark Shanahan (representing Houseroom Pty Ltd – property owner) addressed the meeting in relation to this Item.

**RECOMMENDATION:** (Moved by Councillors Laxale and Pendleton)

- (a) That Local Development Application No. LDA2016/0287 be approved via deferred commencement, subject to the **ATTACHED** conditions (Attachment 1).
- (b) That the persons who made submissions be advised of Council's decision.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Record for the Voting:**

For the Motion: Councillors Laxale and Pendleton

Against the Motion: Councillors Stott and Yedelian OAM

Note: This matter will be dealt with at the Council Meeting to be held on **23 MAY 2017** as dissenting votes were recorded.

- 3 1 STANSELL STREET, GLADESVILLE. LOT 1 in DP 6026. Local Development Application of demolition and construction of a 6 storey Residential Flat Building containing 23 apartments and three levels of basement car parking. LDA2016/0151**

Note: This matter was dealt with earlier in the meeting as detailed in these Minutes.

**4 PLANNING PROPOSAL UPDATE - 176 BLAXLAND ROAD, RYDE**

**RESOLUTION:** (Moved by Councillors Laxale and Stott)

That Council prepare amendments to Ryde Development Control Plan 2014 for the site and exhibit these amendments concurrently with the exhibition of the Planning Proposal for 176 Blaxland Road, Ryde.

**Record for the 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 5.27pm.

CONFIRMED THIS 13TH DAY OF JUNE 2017.

Chairperson

- 
- 2 12 EMU STREET, WEST RYDE. LOT 9 DP 27511 and LOT 8 DP 27511. Application pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979 to amend the approved demolition, new two-storey dwelling, pavillion, landscaping and fencing. LDA2015/0217. Section 96 No MOD2016/0110.**
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**Report prepared by:** Assessment Officer - Town Planner

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

**File Number:** GRP/09/5/6/2 - BP17/534

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## 1. Report Summary

**Applicant:** E G Nader.

**Owner:** Emile G Nader & Juliette Nader.

**Date lodged:** 11 May 2015.

This report has been prepared to enable Council's further consideration of Section 96(2) application to modify an approved consent for demolition, new two-storey dwelling, pavillion, landscaping and fencing at 12 Emu Street, West Ryde.

Council at its Ordinary Meeting of Ordinary Meeting on 28 February 2017 resolved that the subject DA be *deferred to allow mediation between the applicant and objectors to review the size, use and design of the third storey and the privacy concerns.*

A mediation meeting for this DA was held on 23 March 2017 (mediation meeting notes are **ATTACHED** to this report). Issues of concern raised at the meeting were primarily related to privacy impacts on the neighbours, and the three storey nature of the development. No outcome was reached at the mediation meeting and no amended plans were submitted following the mediation meeting, however the applicant has submitted a diagrammatic plan identifying the proposed visual access details of the addition to assist in the assessment of privacy impacts of the proposal (**ATTACHMENT 2**).

Council officers recommendation remains consistent with the original report to the Planning and Environment Committee which recommended approval of the application subject to conditions. However, following the mediation, the recommended conditions of consent (**ATTACHMENT 1**) have been amended from the original conditions proposed in the previous report to address some of the concerns raised in the mediation.

Accordingly, this DA is now referred back to enable the Planning & Environment Committee's further consideration.

**Reason for Referral to Development Committee:** Council's resolution in this matter (23 March 2017) stated *that a further report be presented to the Planning and Environment Committee as soon as practicable after the mediation occurs.*

## **ITEM 2 (continued)**

### **Public Submissions:**

- First notification period: 10 June 2016 to 29 June 2016 – Five (5) submissions received objecting to the proposal.
- Second notification period (amended plans): 27 September 2016 – 14 October 2016 – Six (6) submissions received objecting to the proposal.

The application has not been renotified following the mediation meeting as no further amendments have been made to the proposal.

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

**Value of works?** \$725,000.00 (Original cost of works)

### **RECOMMENDATION:**

- (a) That Section 96 application to modify Local Development Application No. MOD2016/0110 at 12 Emu Street West Ryde being LOT 9 DP 27511 and LOT 8 DP 27511 be approved subject to the **ATTACHED** conditions (**ATTACHMENT 1**).
- (b) That the persons who made submissions be advised of Council's decision.

### **ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 View Corridor
- 3 Final Mediation Meeting Minutes
- 4 Site Survey of Pavilion
- 5 A4 Plans
- 6 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Rebecca Lockart**  
**Assessment Officer - Town Planner**

Report Approved By:

**Vince Galletto**  
**Acting Manager - Assessment**

**Liz Coad**  
**Acting Director - City Planning and Development**

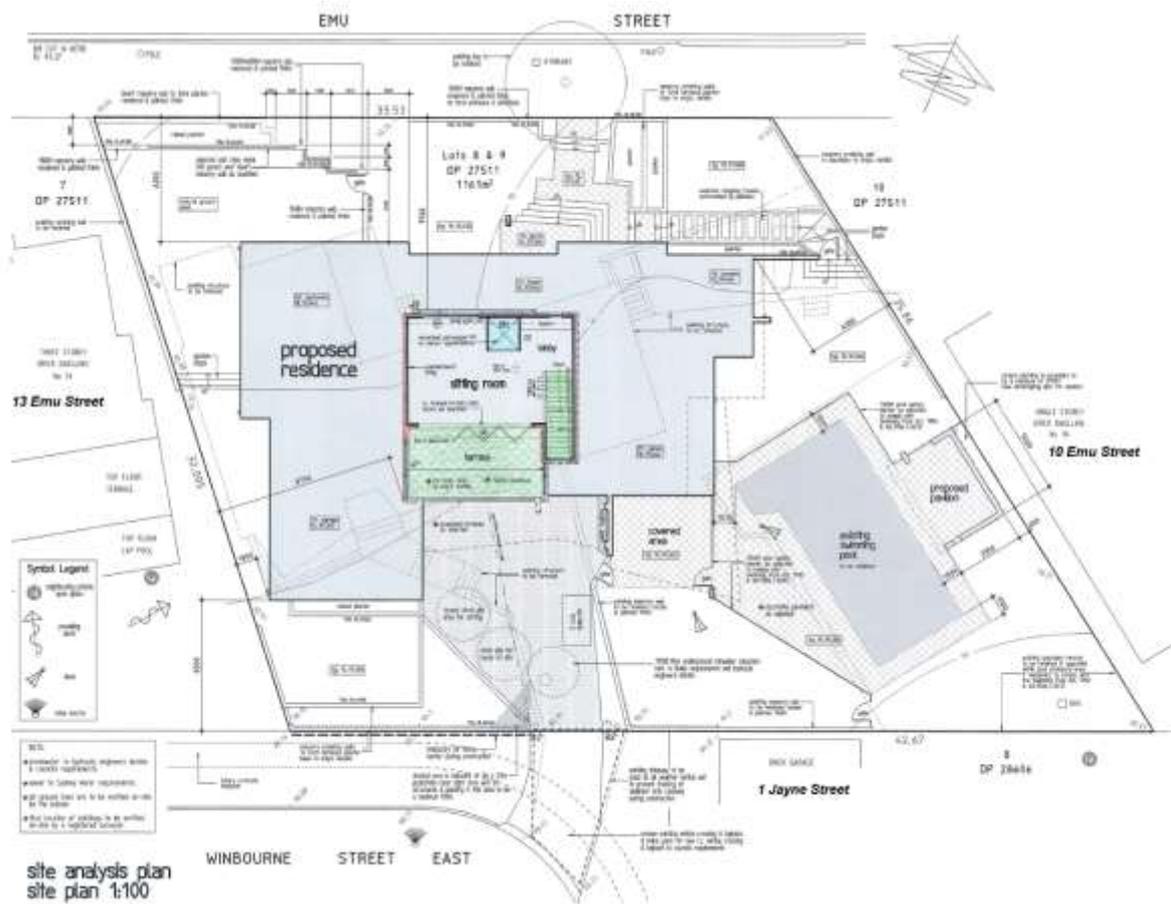
## ITEM 2 (continued)

### 2. Proposal

Modification pursuant to Section 96 (2) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) of the approved demolition, new two-storey dwelling, pavillion, landscaping and fencing.

The proposal shown at **Figure 1** involves the following modifications:

- a third storey consisting of 'lobby' with bench space and bifold doors which open to a roof top terrace,
- a new lift servicing all three storeys; and
- minor internal changes on the lower and upper floor plan to accommodate the new lift.



**Figure 1. Site Plan showing proposed modification**



## ITEM 2 (continued)

3. *The application is not satisfactory for the purposes of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 as the proposal is not in the public interest due to the nature and extent of negative amenity objections received from the local community.*

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

As the recommendation differed to the recommendation of Council officers, the application was heard by Council at its Ordinary Meeting on 28 February 2017, which made the following resolution:

(a) *That the application be deferred to allow mediation between the applicant and objectors to review the size, use and design of the third storey and the privacy concerns.*

(b) *That a further report be presented to the Planning and Environment Committee as soon as practicable after the mediation occurs.*

## 4. Actions Following Council's Resolution

### Mediation meeting Arrangements

In accordance with Council's resolution, a mediation meeting was held on 23 March 2017, attended by Council's Acting Director – City Planning & Development, Senior Co-ordinator Strategic Planning, and Assessment Officer – Senior Town Planner; the applicant's representative; and the neighbours at Nos. 1, 6, and 10 Emu Street and 94 Winbourne Street.

Following the meeting, draft minutes were prepared and circulated to the neighbours and the applicant, with final minutes circulated following comments and agreement by all parties (a copy of the mediation meeting notes are **ATTACHED** to this report).

There were no amended plans submitted following the mediation meeting, however the applicant has submitted a diagrammatic plan identifying the proposed visual access details of the addition to assist in the assessment of privacy impacts of the proposal (**ATTACHMENT 2**).

While Council's resolution required the mediation meeting to specifically review the size, use and design of the third storey and the privacy concerns, the objections were fundamentally about the three storey nature of the development above all else. Accordingly the mediation did not reach a clear outcome regarding its size, use and design as all of the objectors were strongly opposed to the proposal itself, despite any amendments that could be made to the size, use and/or design.

## ITEM 2 (continued)

### 5. Key Issues of Concern from Mediation Meeting

#### a) *Three storey development*

##### Mediation concerns

A key issue raised at the mediation meeting was a strong objection to the proposal due to the three storey nature of the proposed development, which is contrary to the controls of the Ryde Development Control Plan 2014 (Ryde DCP 2014). Being a fundamental element of the proposal, this was not resolved at the mediation meeting.

##### Development Control Plan and Assessment

Section 74BA - *Purpose and status of development control plans* of the EP&A Act states:

(1) *The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:*

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,*
- (b) facilitating development that is permissible under any such instrument,*
- (c) achieving the objectives of land zones under any such instrument.*

*The provisions of a development control plan made for that purpose are not statutory requirements.*

Accordingly, the role of a DCP is only to provide non-statutory detailed planning and design guidelines for specific types of development or specific localities, and is to be considered as a guideline only.

Council utilises this guideline to assess the impact of proposed developments. Where a development complies with the control, it is considered there will be minimal impact. While if the development does not comply, Council is able to undertake a merit based assessment of the proposal based on the impacts of the development.

In the instance of the noncompliance with the DCP number of storeys control, the original assessment included in the previous report to Planning & Environment Committee 14 February 2017 concluded that the impacts of the noncompliance, including overlooking, and privacy – acoustic and visual, were acceptable or able to be mitigated via conditions of consent.

## ITEM 2 (continued)

The report considered the three storey proposal to be acceptable as detailed in the excerpt below:

*Although not complying with controls relating to building height, this non-compliance with Council's numerical controls can be supported, and meets the above objectives, for the following reasons:*

- *The proposed dwelling is generally compliant with all the other key bulk and scale related controls such as overall height, FSR and setbacks.*
- *Existing development within the locality includes examples of three storey dwellings; as such the proposed development is considered consistent with the existing character of the area.*
- *When viewed from Emu Street, the proposed dwelling will appear as a two storey dwelling and will not present as visually dominant or as being unduly inconsistent with other dwellings within Emu Street.*
- *The development when viewed from Winbourne Street will appear similar to the development at No. 13 Emu Street*
- *The wall plate height of the proposed development complies by setting the additional storey back from the façade of levels below.*

*Given the above, the proposed non-compliance with the height controls contained within Ryde DCP 2014 is considered justifiable in this instance.*

### Calculating number of storeys

At the mediation meeting concern was raised that the examples of precedents in the assessment report of other three-storey developments in the neighbourhood consisted of two storey developments with basement garages, not three storey developments.

The definition of storey under Ryde Local Environmental Plan 2014 is:

**storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.*

Accordingly for the purposes of calculating 'number of storeys' these developments are still considered to be three-storeys in height despite the use on the basement or lower ground floor being for a garage or otherwise.

Furthermore, the examples proposed, such as 13 Emu Street, 84 and 92 Winborne Avenue (shown at **Figure 3**), all present as three storey buildings within the streetscape, regardless of the use of the ground floor.

**ITEM 2 (continued)**

It is noted that while the development will be viewed as a three storey development from Winborne Avenue, the proposal will present as two storeys when viewed from Emu Street, similar to 13 Emu Street (refer **Figure 3 and 4**), and the development will sit no higher than the development at 13 Emu Street from either perspective (see **Figure 5**).



**Figure 3. Photographs of properties surrounding the site**

**ITEM 2 (continued)**



**Figure 4. Photomontage of proposed development from Emu Street  
(Source: Submitted by applicant)**



**Figure 5. Photomontage of proposed development from Emu Street identifying maximum  
height of the development  
(Source: Submitted by applicant)**

## ITEM 2 (continued)

Additionally, as shown at **Figure 6** the positioning of the third storey addition is directly located over the double garage, stairs and sub-floor area of the lower ground level, with the lower ground floor guest, laundry and games rooms located within the portion of the development which only has two-storeys in height.

Despite other three storey developments having only a garage on the lowest level, the positioning of proposed addition is technically the same as existing approved three storey developments in the area.



**Figure 6. Mark up of lower floor plan to show location of proposed addition on third floor (Source: Council Assessment Officer)**

In light of the above, if it is considered that as the impacts of the proposed third storey addition are still acceptable or able to be mitigated via conditions of consent (as further discussed in this report) the proposed three storey element is acceptable.

### **b) Design of proposed addition**

#### Mediation concerns

The proposal relates only to the proposed third storey which includes a sitting room and terrace. Concerns were raised at the mediation meeting that there will continue to be privacy impacts with regard to overlooking, acoustic and visual privacy – particularly to 10 Emu Street.

**ITEM 2 (continued)**Original and amended proposal

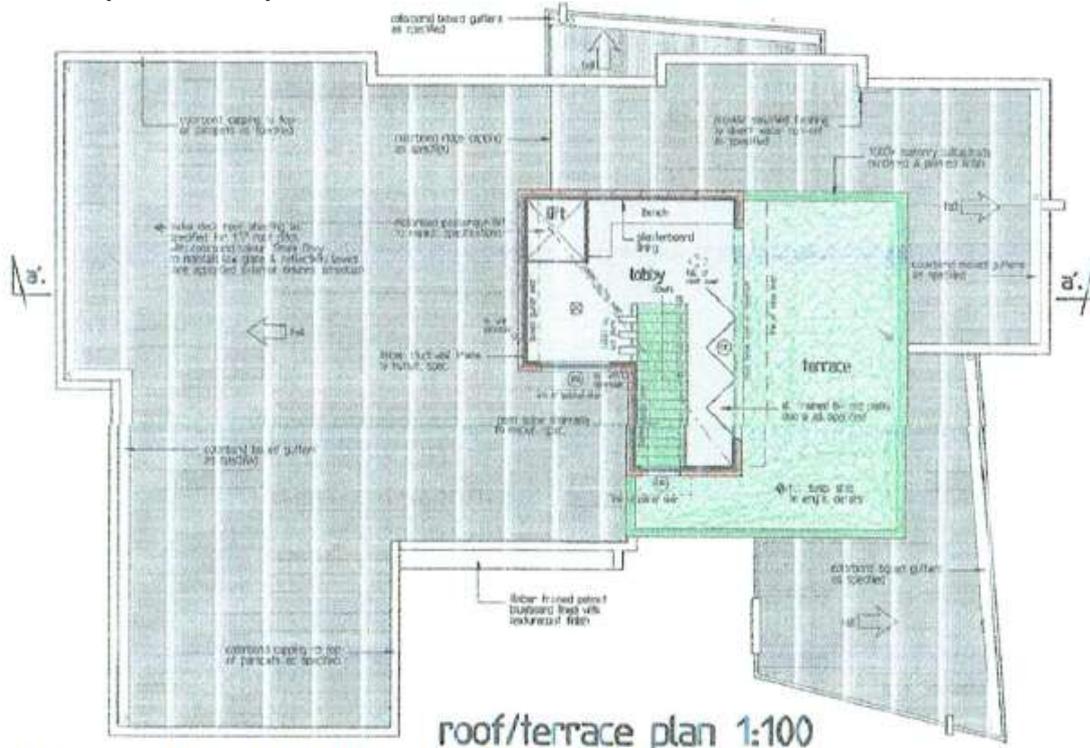
It is important to highlight that the reason for the layout of the proposed terrace and sitting room is largely in response to objections received to the original Section 96 proposal which included a much larger outdoor terrace area as compared in **Figure 7**.

Concerns were raised in response to the original proposed development regarding overlooking, privacy impacts – including visual and acoustic, potential for the proposed terrace to have future ancillary development (with or without consent), and the size of the outdoor terrace.

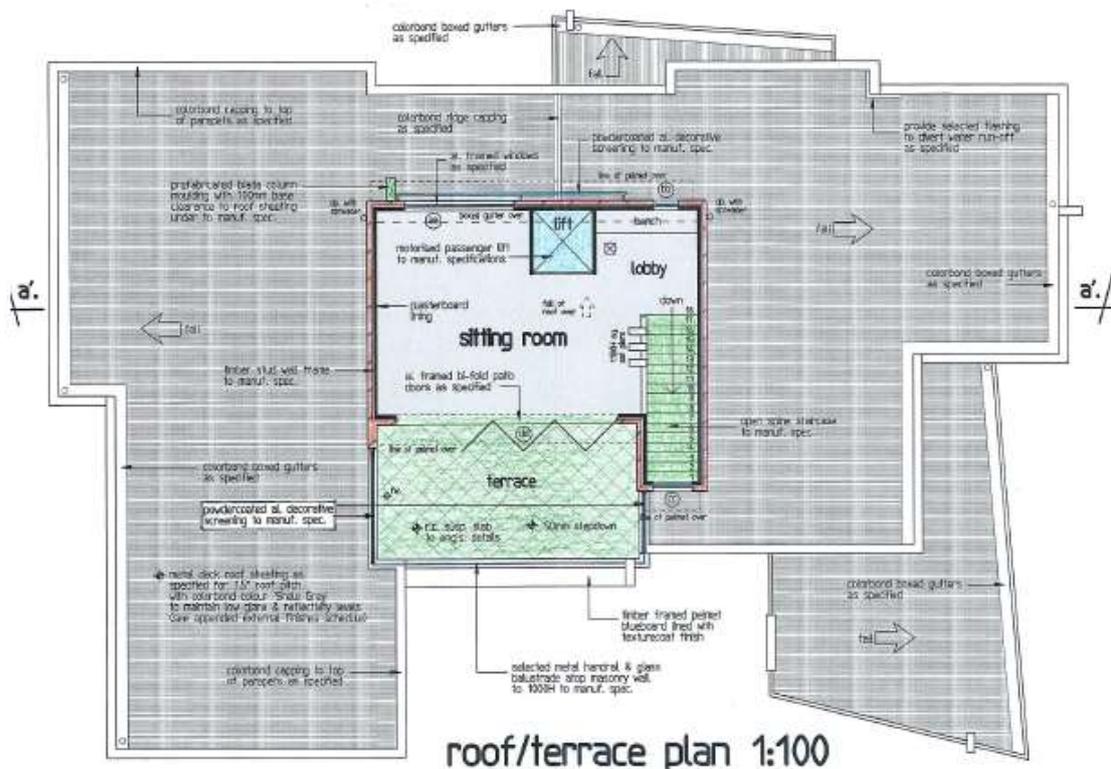
In response, the amended plans relocated much of the outdoor area to be internal within the development, minimising the overlooking and privacy concerns, while the terrace area rearranged the outlook directly down Winbourne Ave to reduce overlooking of neighbouring properties (refer **Figure 4**).

The previous report to Planning & Environment Committee 14 February 2017 contains a comparison of the original proposed development and amended design in relation to height, dimension of wall plates, and gross floor area (GFA) in response to submissions (refer Section 7(a) of that report).

**ITEM 2 (continued)**



**Original Section 96 - First notification period**



**Amended Section 96 - Second notification period**

**Figure 7. Roof/Terrace Plan as originally proposed and as amended**

## ITEM 2 (continued)

### Overlooking and Privacy

The submitted plan at **ATTACHMENT 2**, reproduced below at **Figure 8**, identifies that from the proposed terrace, viewing angles to 10 Emu Street are oblique and views are largely of the roof of 10 Emu Street. This is due to the overall height differences of the dwellings and obstruction of the roof over the approved second floor balcony. Additionally the side boundary fence and landscape planting along the side boundary will further impede views into the windows of 10 Emu Street.



**Figure 8. South East Elevation plan showing 10 Emu Street to the east and viewing angles (Source: Submitted by applicant)**

The original report to the Planning & Environment Committee (14 February 2017) recommended the following condition to prevent acoustic and visual privacy impacts to 10 Emu Street:

**1(b) Roof/Terrace North East Elevation – Privacy Screen.** *The proposed ‘powder coated aluminium decorative screening’ privacy screen along the north eastern elevation is to be replaced with a fixed wall for the full length of the terrace. The full length of the north-east elevation wall of the roof/terrace is to be provided with articulation or textured treatment to reduce the bulky appearance of the addition.*

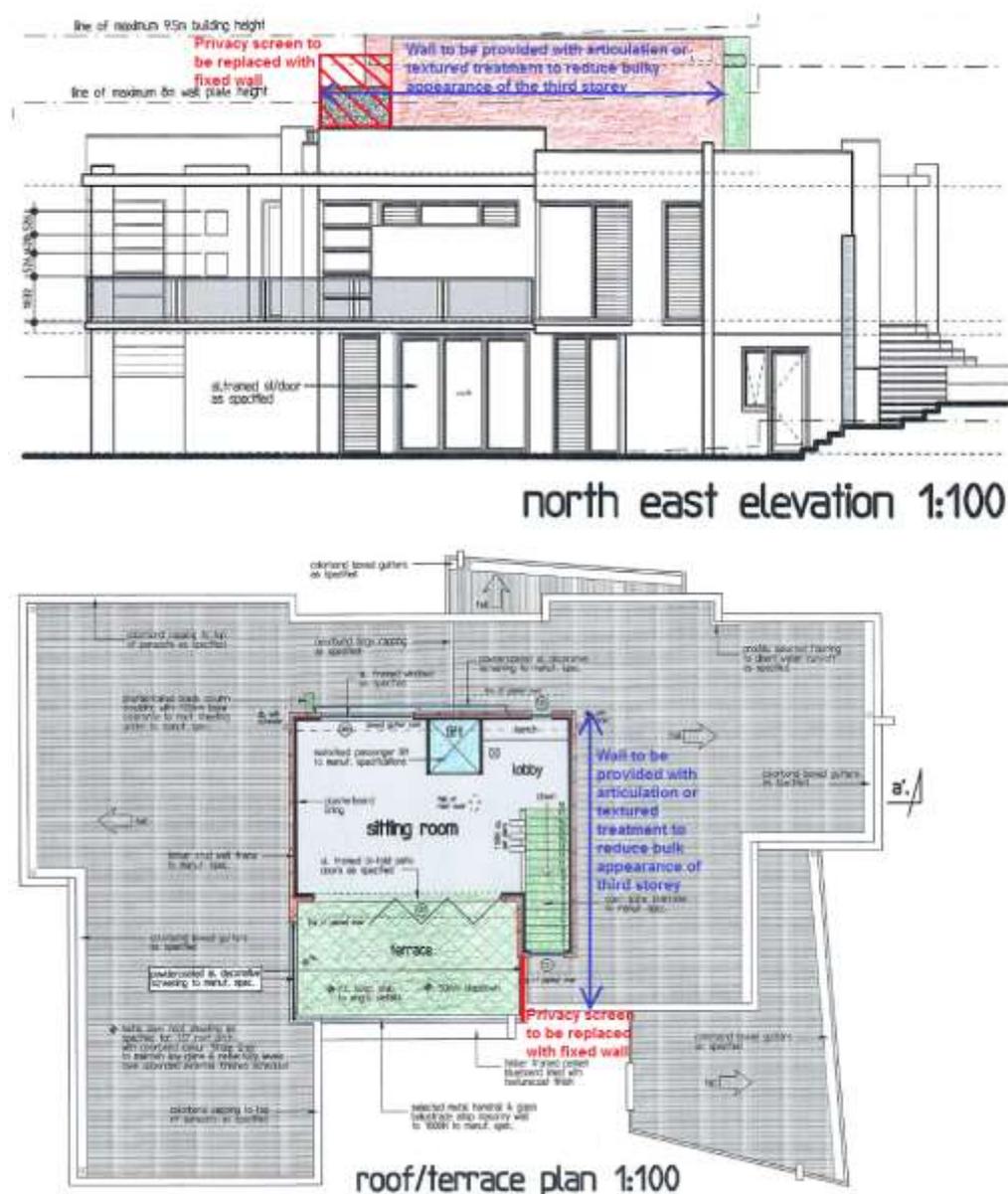
Although the viewing angles to the neighbouring property at 10 Emu Street are blocked and viewing impacts are minor, it is considered it is still beneficial to require a fixed wall rather than a privacy screen to mitigate acoustic impacts from the use of the roof terrace on 10 Emu Street.

At the Planning and Environment Committee (14 February 2017) there was discussion about the height of the fixed wall and lack of detail in the condition. As such the recommended condition has been amended to provide clarity in this regard:

**ITEM 2 (continued)**

**1(b) Roof/Terrace North East Elevation – Privacy Screen.** The proposed ‘powder coated aluminium decorative screening’ privacy screen along the north eastern elevation is to be replaced with a fixed wall for the full length of the terrace. This fixed wall is to be constructed to the **height of the timber framed pelmet blueboard (min. 2.24m high)**. The full length of the north-east elevation wall of the roof/terrace is to be provided with articulation or textured treatment to reduce the bulky appearance of the addition.

This is depicted at **Figure 9.**



**Figure 9. North east elevation and roof terrace plan showing recommended amendment to design to reduce acoustic impacts to neighbouring properties**

## **ITEM 2 (continued)**

In light of the above conditions, the proposal is recommended for approval as the impacts of the development in relation to overlooking and privacy are mitigated via the amended design or conditions of consent.

### ***c) Compliance with the approved plans***

#### **Pavilion**

As noted in the original report to the Planning and Environment Committee (14 February 2017) concern was raised by the neighbour at 10 Emu Street that the approved pavilion has not been constructed in the location as approved under the original consent (LDA2015/217), being 600mm from the side boundary.

At the Planning and Environment Committee meeting on 14 February 2017 a copy of a survey from a registered surveyor identifying the location of the pavilion was provided to the Committee. This survey identified the pavilion as being setback 0.600m at the north western end of the structure and 0.595m at the south eastern end of the structure, which is considered to comply with the approved DA plans.

#### **Mediation concerns**

At the mediation meeting this matter was again raised and the neighbour at 10 Emu Street was advised that a Council Officer would attend the site to inspect the pavilion as constructed.

#### **Council inspection**

On 6 April 2017 Council's Building Surveyor attended the site and undertook measurements of the location of the proposed pavilion. The site visit identified that when measured from the side boundary fence the pavilion is setback between 0.530m and 0.550m.

Consequently, Council requested the applicant to obtain a survey of the boundary between 10 and 12 Emu Street, the location of the boundary fence and the setback of the pavilion. A copy of the survey is included at **ATTACHMENT 4**.

The survey identifies that the side boundary fence sits between 0.030m and 0.100m in from the side boundary, explaining the noncompliance of the pavilions location when measured from the fence line.

In light of the submitted survey plan it is considered that the location of the pavilion is in accordance with the approved development application LDA2015/217.

#### **Height of building**

#### **Mediation concerns**

At the mediation meeting it was raised that the objectors are concerned that the overall height of the building does not or will not comply with the maximum height control.

## ITEM 2 (continued)

After the meeting it was highlighted to the objectors that Condition 54 requires Critical Stage Inspections to be undertaken at various stages of the development including prior to the pouring of concrete and after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

### Additional condition of consent

To further ensure that the development is constructed in accordance with the approved plans, the following condition of consent is recommended to confirm that the final height of the development complies with the stamped approved plans:

**54A. Survey report.** *In order to ensure compliance with approved plans, a Survey Certificate to Australian Height Datum shall be prepared by a Registered Surveyor at the following stages of the development:*

- (a) *At the completed height of the building, prior to the placement of concrete form work, or the laying of roofing materials.*
- (b) *At completion of construction, the relationship of the building, and any associated structures, to the boundaries and the final height of the building including any plant and lift overruns above ground level (existing).*

*Certificates shall be provided to Council at the time of carrying out relevant progress inspections.*

*Should the development not comply with the maximum height allowed under the stamped approved plans, measures are to be taken to rectify the noncompliance prior to the issue of any Occupation Certificate.*

## 16. Other Options

Council now has the option to support the application with the modified conditions of consent, or endorse the previous recommendation of the Planning and Environment Committee on 14 February 2017 and refuse this application.

## 17. Conclusion

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 as outlined in the previous report to Planning & Environment Committee.

Following Council's resolution of 28 February 2017, a mediation meeting has been conducted in relation to this development. Many of the issues of concern were discussed at the mediation meeting, although it is noted that the scope of the Council resolution regarding the size, use and design of the third storey addition was not satisfactorily resolved.

**ITEM 2 (continued)**

The adjoining neighbours remain fundamentally opposed to three storey developments in this locality.

Accordingly this DA is presented back to the Planning & Environment Committee for consideration and determination. Approval is recommended subject to the conditions in **ATTACHMENT 1**.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**Proposed Modified Consent conditions**  
**LDA2015/0217 – MOD2016/0110**  
**12 EMU ST WEST RYDE**

That the Section 96 application No. MOD2016/0110 to modify Local Development Application No. LDA2015/0217 at 12 Emu Street West Ryde being Lot 9 DP 27511 & Lot 8 DP 27511 be approved subject to the following conditions:

The description of the development be amended to read as follows:

Development: Demolition, new ~~three two~~-storey dwelling, pavillion, landscaping and fencing.

The following conditions are to be amended as outlined below with ***bold italics*** identifying additional wording and ~~**bold strikethrough**~~ identifying words to be deleted:

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>
Site Plan & Elevations	<del>18/08/15</del> 21/09/16	<del>Issue F, 1 of 3</del> <b><i>Dwg N. 1552-08CCj, Issue J, Sheet 1 of 3</i></b>
Floor Plans	<del>18/08/15</del> 21/09/16	<del>Issue F, 2 of 3</del> <b><i>Dwg N. 1552-08CCj, Issue J, Sheet 2 of 3</i></b>
Roof Plan, Section, Elevation and Pavilion	<del>18/08/15</del> 21/09/16	<del>Issue F, 3 of 3</del> <b><i>Dwg N. 1552-08CCj, Issue J, Sheet 3 of 3</i></b>
Landscape Plan	18/08/15	Issue B, 1 of 3
Landscape Detail Plan	18/08/15	Issue B, 2 of 3
Landscape Specification Plan	18/08/15	Issue B, 3 of 3
Stormwater Management Plan	22/03/15	1 of 3
Stormwater and Sediment Management Plan	22/03/15	2 of 3
Stormwater and Sediment Management Plan	22/03/15	3 of 3

**ITEM 2 (continued)**

**ATTACHMENT 1**

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

- (a) The proposed screen planting along the eastern side boundary comprising *Elaeocarpus* (Blueberry Ash) is to be replaced with a species of screen planting that has a maximum mature height of 2.7m.
- (b) ***Roof/Terrace North East Elevation – Privacy Screen. The proposed ‘powder coated aluminium decorative screening’ privacy screen along the north eastern elevation is to be replaced with a fixed wall for the full length of the terrace. This fixed wall is to be constructed to the height of the timber framed pelmet blueboard (min. 2.24m high). The full length of the north-east elevation wall of the roof/terrace is to be provided with articulation or textured treatment to reduce the bulky appearance of the addition.***

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

3. **BASIX.** Compliance with all commitments listed in BASIX Certificate(s) numbered ~~604700S\_02, dated 06/05/15~~ **604700S\_04, dated 10/05/16.**

**54A. Survey report. In order to ensure compliance with approved plans, a Survey Certificate to Australian Height Datum shall be prepared by a Registered Surveyor at the following stages of the development:**

- (a) ***At the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials.***
- (b) ***At completion of construction, the relationship of the building, and any associated structures, to the boundaries and the final height of the building including any plant and lift overruns above ground level (existing).***

***Certificates shall be provided to Council at the time of carrying out relevant progress inspections.***

***Should the development not comply with the maximum height allowed under the stamped approved plans, measures are to be taken to rectify the noncompliance prior to the issue of any Occupation Certificate.***

63. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered ~~604700S\_02, dated 06/05/15~~ **604700S\_04, dated 10/05/16.**

**ITEM 2 (continued)**

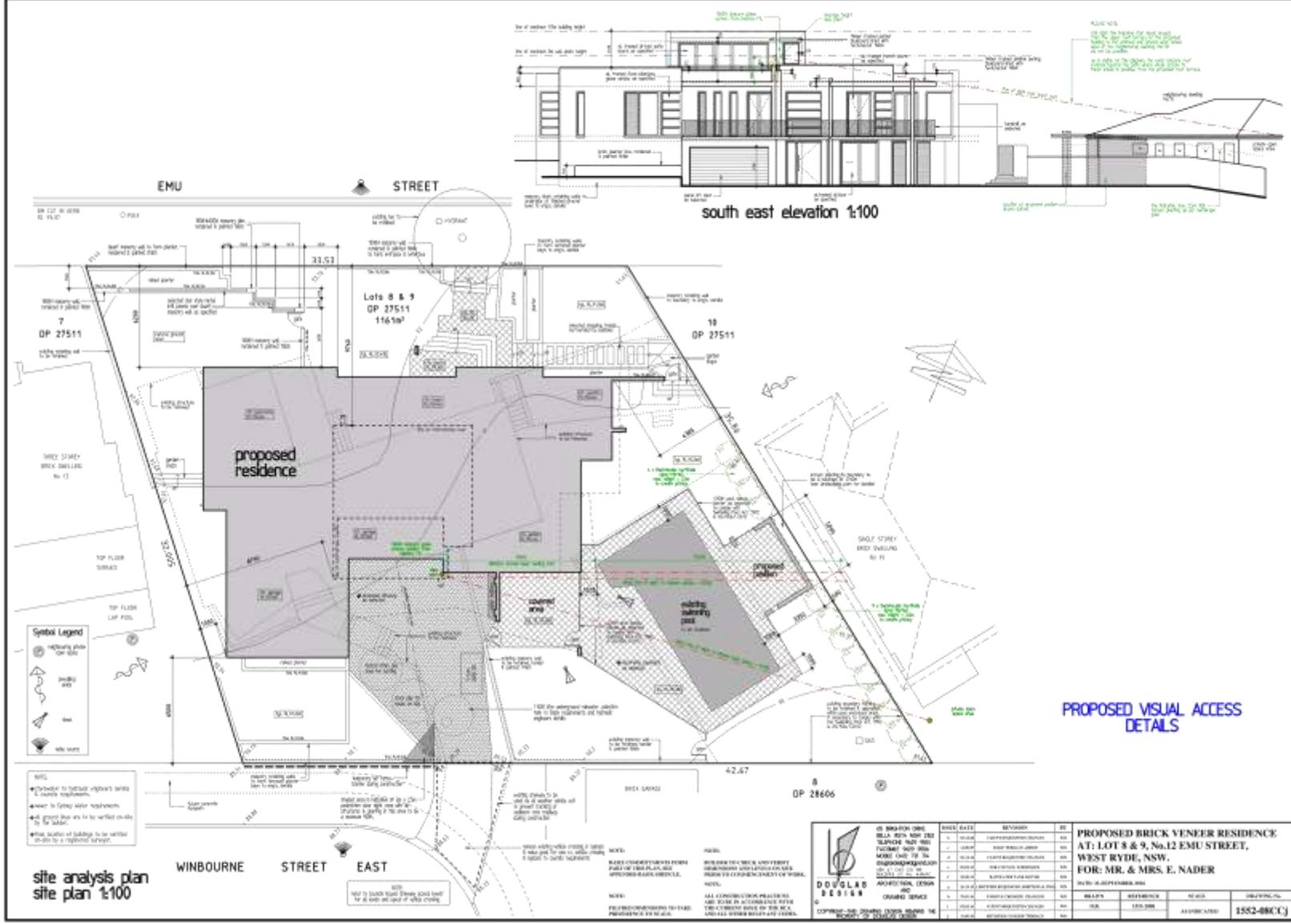
**ATTACHMENT 1**

**75A. *Tree planting – street trees. Two (2) water gum (Tristaniopsis laurina “lushious”) tree with a minimum size of 300 litres to be planted in the nature strip. Landscape plans are to be amended to reflect a suitable location.***

**75B. *Security deposit. The Council must be provided with security for the purposes in a sum \$3000 prior to the release of any Occupation Certificate and be held for a minimum of 12 months to ensure the long term health and condition of the replacement street trees.***

ITEM 2 (continued)

ATTACHMENT 2



**ITEM 2 (continued)**

**ATTACHMENT 3**



Lifestyle and opportunity  
@ your doorstep

## MEDIATION MEETING MINUTES

**Application:** LDA2015/217 – MOD2016/110

Section 96(2) of the Environmental Planning and Assessment Act, 1979 to amend the approved demolition, new two-storey dwelling, pavillion, landscaping and fencing

**Address:** 12 Emu Street, West Ryde

**Date:** 23 March 2017

### **Opening**

Council at its Ordinary Meeting on 28 February 2017 resolved that the subject DA be *deferred to allow mediation between the applicant and objectors to review the size, use and design of the third storey and the privacy concerns.*

The meeting was undertaken on Thursday 23 March 2017 at 10.00am at Council's offices at the Binary Centre, 3 Richardson Place, North Ryde.

### **Present**

#### Council

- Liz Coad, Acting Director – City Planning and Development
- Lexie Macdonald, Senior Coordinator Strategic Planning
- Rebecca Lockart, Assessment Officer – Senior Town Planner

#### Applicant

- Douglas Cummins, Douglas Design Architects

#### Objectors

- Horst Klemt, 1 Emu Street
- Peter and Mariloy Keegan, 10 Emu Street
- Jeanette and John Dunkin, 6 Emu Street
- Richard Reeve, 94 Winbourne Street

#### Apologies

- Emile Nader, applicant and owner 12 Emu Street
- Joanne Hedge, 9 Emu Street
- Mary and Ann Townshend, 8 Emu Street

**ITEM 2 (continued)**

**ATTACHMENT 3**

**Proceedings**

1. The meeting commenced at approximately 10am and was chaired by Liz Coad.
2. Liz Coad welcomed all attendees and outlined the reason and scope of the mediation meeting.
3. The chairperson gave an opportunity to the objectors to present their point of view and for the applicant to respond to individual items as required.
4. **Peter Keegan – 10 Emu Street**
  - a. Peter Keegan asked under what conditions would Council not approve a three storey dwelling.
  - b. Liz Coad discussed the Ryde LEP 2014 development controls of height and floor space ratio (FSR) and Ryde DCP 2014 development controls of number of storeys. She explained that the LEP controls are required to be complied with, however the DCP controls are guidelines which Council can consider a variation to on the individual merits of an application.
  - c. Peter Keegan asked whether the number of storeys can be revisited as part of the mediation today.
  - d. Liz Coad advised that the scope of the mediation was limited to the matters under the Council Resolution.
  - e. Peter Keegan stated that the fundamental issues he has with the application is height, privacy and footprint of the development. His position is that he wishes the DA to be refused.

*Peter submitted photos of the development from his living room.*

- f. Peter Keegan outlined that the submission of the photo was to draw attention to the privacy aspects of the development. Specifically what has been approved and why he can't support this Section 96 modification that he stated will further intrude on our privacy.
- g. Douglas Cummins advised that the subject application is limited to the application as proposed under this modification, and not the original development under which the second floor verandah is already approved.

**ITEM 2 (continued)**

**ATTACHMENT 3**

*Douglas submitted photomontages of the development from Winbourne Street and the south east of the development, in addition to the photograph of the construction from Winbourne Street.*

- h. Douglas Cummins outlined that the distance between the proposed modification and the neighbouring property at 10 Emu Street is significant and the amended design aimed to address the privacy and overlooking concerns raised to the original plans submitted for the modification application.
- i. Douglas Cummins used the tabled images to describe that the location of the addition aims to reduce impacts on views, privacy and overlooking by placing it in the centre of the roof plane.
- j. Douglas Cummins advised that he considers the development presents as a one storey with roof terrace to Emu Street, not a three storey development.
- k. The final position of Peter Keegan is that he is strongly opposed to the three storey development and the privacy impacts it will have on his house.

**5. Horst Klemt – 1 Emu Street**

- a. Horst Klemt made three statements or questions:
  - 1. Why is the original DA so different to the latest Section 96?
  - 2. Why didn't the applicant know what the final development would look like to start with?
  - 3. The difference between the original DA and the end product is completely different.
- b. Liz Coad advised that it is legitimate under planning legislation for a Section 96 to modify the development. That the reason for a modification is for various reasons, e.g. circumstances change, construction problems etc.
- c. Douglas Cummins advised that the modification is only to the roof terrace area, with the original application not changing other than to make room for the lift and stairs to the terrace. Further the application is principally the same as originally proposed.
- d. *There was then discussion about the original development approval under LDA2015/217 and the proposed modification under MOD2016/110, and the various plans for the current modification*

ITEM 2 (continued)

ATTACHMENT 3

*application. There was confusion as to whether a lift was included in the original approved development, which it was not.*

- e. Horst Klemt then asked how the 9.5m Ryde LEP 2014 height control is established, and how can you make sure that the development is constructed in accordance with the plans.
- f. Douglas Cummins advised that it is usual for Council to impose a condition requiring a registered surveyor to undertake a survey of the development to ensure it is constructed in accordance with the plans.

**Note:** Additional information about this is included at the end of these minutes.

- g. Lexie Macdonald explained how the LEP controls define height, and how the maximum height of the development is to be 9.5m which is measured at any point of a site.
- h. *There was then a discussion about the Australian Height Datum, Real Levels (RLs), height planes and how this is shown on the section plans and elevation plans of the proposed development.*
- i. Horst Klemt raised that the outlook from his windows will be a 30m+ wall, and he did not like the design of the dwelling.
- j. Horst Klemt stated that he is concerned about the removal of the tree along the Emu Street frontage. He described the circumstances under which the tree was removed and that he had questioned the builder at the time he was cutting the tree down. He highlighted his lack of trust in the construction process based on the fact this tree has been removed without consent.
- k. Horst Klemt also asked whether the proposed two trees along the street frontage will impact the power lines in relation to their height.
- l. Council staff took this question on notice.

**Note:** Further details regarding this matter was later obtained from Council's Tree Management Officer regarding the tree species and is detailed at the end of these minutes.

- m. Douglas Cummins advised that his client is committed to mitigating the loss of the tree. That the original design had attempted to consider the tree location and integrate it with the Emu Street frontage of the site.

**ITEM 2 (continued)**

**ATTACHMENT 3**

**6. Richard Reeve – 94 Winbourne Street**

- a. Richard Reeve made a number of comments and questions regarding the proposed development:
  - 1. What consideration did the development have regarding the heritage conservation area (HCA) on the opposite side of Emu Street?
  - 2. How does the development impact heritage significance?
  - 3. The proposed development increases the total covered roof area.
  - 4. What is to stop the applicant from lodging further Section 96 applications to further increase the development and increase the footprint of the third storey?
  - 5. The development is setting an undesirable precedent for the area – where are heritage considerations addressed?
  - 6. Council is assessing development 'under their own laws' and not the DCP controls, three storeys is not allowed under the controls but is being supported and occurrences of this should be made known to ratepayers.

- b. Liz Coad stated that the assessment process under the DCP controls was earlier outlined.

*(Refer point 4(b) of these minutes)*

- c. Lexie Macdonald discussed the heritage assessment of this proposal and described how the significance of the HCA is established.
- d. Rebecca Lockart summarised the heritage referrals received from Council's Heritage Advisors regarding the various iterations of the plans of the proposal and the assessment of impact of the development. She committed to look further into this and send further information at later date.

**Note:** Further details of this are at the end of these minutes.

- e. The position of Richard Reeve was summarised as being strongly opposed to the three storey aspect of the proposal.

**7. John (Roger) Dunkin – 94 Winbourne Street**

- a. Roger Dunkin asked the following questions:
  - 1. Is Council approving a third storey?
  - 2. The original application for the terrace was for a need for a view. Council is being asked to approve an application for a 3rd storey for a better 'view' - yet views are not supposed to be considered either in justification or objection. The subject application is also for a

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substantial 3rd storey building for not only a terrace but now for a large 'sitting room' as well.

3. What is to prevent future development increasing the development footprint of the third storey?
  4. This will set an undesirable precedent for future development in the area including a vacant house 'at the end of the street'.
- b. Liz Coad advised that the question of whether Council would approve a 3 storey development was a matter for the Councillors at a Council meeting.
  - c. Liz Coad stated that the proposed modification will take the FSR of the development to very close to the 0.5:1 maximum control. This was confirmed by Rebecca Lockart who advised that the proposed FSR is 0.448:1.
  - d. Roger Dunkin stated that if the 3-storey control can be varied, what is to stop the FSR control being varied.
  - e. Rebecca Lockart advised that the LEP controls of height and FSR can only be varied under strict circumstances, while the DCP controls are guidelines, under which if a development does not comply, an assessment of the non-compliance is undertaken on a merit basis.
  - f. Horst Klemt expressed concern that the rules will be broken. That there is nothing stopping the owner from expanding the roof terrace in the future with or without consent.
  - g. Douglas Cummins described the development stating that the roof above the proposed new terrace is constructed as a concrete slab, while the rest of the roof is a metal deck which is not structurally sound to be used as a terrace.
  - h. Rebecca Lockart advised that the amendment of the proposal to include a fixed wall on the eastern elevation and the privacy screens on the western elevation will make it impossible to access the rest of the roof from the proposed roof terrace.

**8. Additional matters raised**

- a. Peter Keegan asked about 11 Farnell Street West Ryde and why it was declined for being three storeys. This question was taken on notice.

**Note:** Additional information about 11 Farnell Street is included at the end of these minutes.

**ITEM 2 (continued)**

**ATTACHMENT 3**

- b. Peter Keegan also asked about the setback of the pavillion adjacent to their boundary, and questioned whether it is in the correct location. Liz Coad advised Council will have the Compliance Section review this matter. Refer further detail at end of minutes.

**Note:** Additional information about this is included at the end of these minutes.

- c. Roger Dunkin asked why the dwelling around the corner was sold by an Auctioneer who stated that the building could only be 1 storey in height?

Lexie Macdonald advised this building (102 Winbourne Street) is a heritage item, which is significant for being single storey and for the design of the development itself, and could not be modified or further developed.

- d. Roger Dunkin referred to comments by Douglas Cummins and Liz Coad referring to 13 Emu St next door as a 3 storey building. He stated that he believed that 13 Emu Street had been approved as a 2 storey building and asked if Council had made a mistake.

**Note:** Additional information about 13 Emu Street is included at the end of these minutes.

- e. Peter Keegan asked what the West Ryde Character Area under Part 3.3 of Ryde DCP 2014 is about. This question was taken on notice.

**Note:** Additional information about this is included at the end of these minutes.

**Conclusion**

9. Liz Coad outlined that that applicant would need to review their position after today's meeting, and may respond to the key areas of contention. Council officers would then act accordingly depending if an amended design was proposed, or if the applicant decided to proceed with the current design.
10. Liz Coad advised that a further report will be prepared depending on the outcome, and the matter will go back to the Planning and Environment Committee for determination.
11. Having agreed to all the above, the Chair thanked everyone and the meeting ended.

**ITEM 2 (continued)**

**ATTACHMENT 3**

**Action Items and Questions on Notice**

1. **Item 5(f).** Condition 54 of the approved development under LDA2015/217 requires critical stage inspections to be undertaken of the development through the construction phase to ensure it is built in accordance with the plans Condition 54 states:

*54. 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.*

It is noted that clause 162A(4) of the Environmental Planning and Assessment Regulation 2000 states the following:

**162A Critical stage inspections required by section 109E (3) (d)**

*(4) In the case of a class 1 or 10 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:*

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

This matter will be further assessed and a further condition recommended as part of the additional report to go to the Planning and Environment Committee.

2. **Item 5(l).** Check species of the proposed replacement trees on Emu Street. Concern is raised that the proposed Water Gums (*Tristaniopsis laurina*) may get tangled in the power lines.

**Comment:** Council's Tree Management Officer has advised the following in relation to the proposed tree species:

*Species Tristaniopsis laurina is a suitable species. There is no concern with the powerline as there are aerial bundle cable (ABC). Meaning, the clearance kept from the energy grid is only 0.5m. Additionally, there is plenty of clearance to the ABC and it will be many years until the trees reach this height.*

**ITEM 2 (continued)**

**ATTACHMENT 3**

*The lower Optus/Telstra cable is also no great concern as formative pruning can be done for the clearance (0.5m). Please note, this distance is not strictly kept as there is relative low voltage.*

3. **Item 6(b and d).** Heritage referrals to be sent to objectors along with the Heritage Inventory for 94 Winbourne Street and Brush Farm Heritage Conservation Area.

**Comment:** Council Officers will collate this information to be sent out with the final copy of meeting minutes.

4. **Item 8(a).** 11 Farnell Street West Ryde was raised by Mr Keegan as an example of a three storey development that was 'declined'.

**Comment:** A development application for a dual occupancy was submitted in May 2013. The original proposal included a basement level with a store room, laundry and powder room. The original proposal also exceeded the Ryde LEP 2010 floor space ratio and height controls, in addition to Ryde DCP 2010 wall plate height, excavation, overshadowing, basement depth and setback controls.

Amended plans were submitted during the assessment process. To reduce the overall scale of the development the basement level was deleted, thus reducing the proposal to two storeys.

The application was approved in October 2013.

5. **Item 8(b).** The location of the pavillion was raised as a concern, noting that it is believed that it is in the incorrect location.

**Comment:** Council's Compliance Section have been requested to make contact with the Principal Certifying Authority and to attend the site to review the development as constructed with the approved plans for the pavilion. The outcome of this will be reported back to Mr and Mrs Keegan whose details have been passed onto the Compliance Section.

6. **Item 8(d).** Roger Dunkin stated that he thought that 13 Emu Street was approved as a two storey dwelling and not a three storey dwelling.

**Comment:** LDA2015/107 was lodged on 6 March 2015 for *Demolition, new two storey dwelling with semi-basement parking, pool, landscaping, retaining walls and rear gates.*

The application was granted deferred commencement development consent on 22 May 2015.

**ITEM 2 (continued)**

**ATTACHMENT 3**

The definition of storey under Ryde LEP 2014 is:

*storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:*

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.*

The proposal was for a part 2 / part 3 storey development with 2 storeys provided above the garage, which is considered to be a storey under the definition of Ryde LEP 2014. The delegated authority assessment report assessed that the noncompliance was considered acceptable as:

- *Approximately 90% of the basement level will be concealed below the existing ground level.*
- *The 3 storey component is situated at the rear portion of the development.*
- *The basement level will not be visible from Emu Street or any side boundary.*

While the description of the development for 13 Emu Street is for a two storey dwelling, the semi-basement garage is considered to be a third storey, which also appears as a third storey from Windboure Ave.

7. **Item 8(d).** Mr Keegan asked what the significance of the 'West Ryde Character Area' is.

**Comment:** The West Ryde Character Area under Section 3.1 of Part 3.3 of Ryde DCP 2014 is an area that was suggested to be included as a heritage conservation area, however was not supported due to not meeting the State Government standards for significance for inclusion as a heritage conservation area.

The subject site falls within this Character Area. This section of Ryde DCP 2014 requires:

- a) *ront building setbacks in the West Ryde Special Development Area are to be consistent with existing setbacks and may be up to 12m in order to ensure this consistency.*

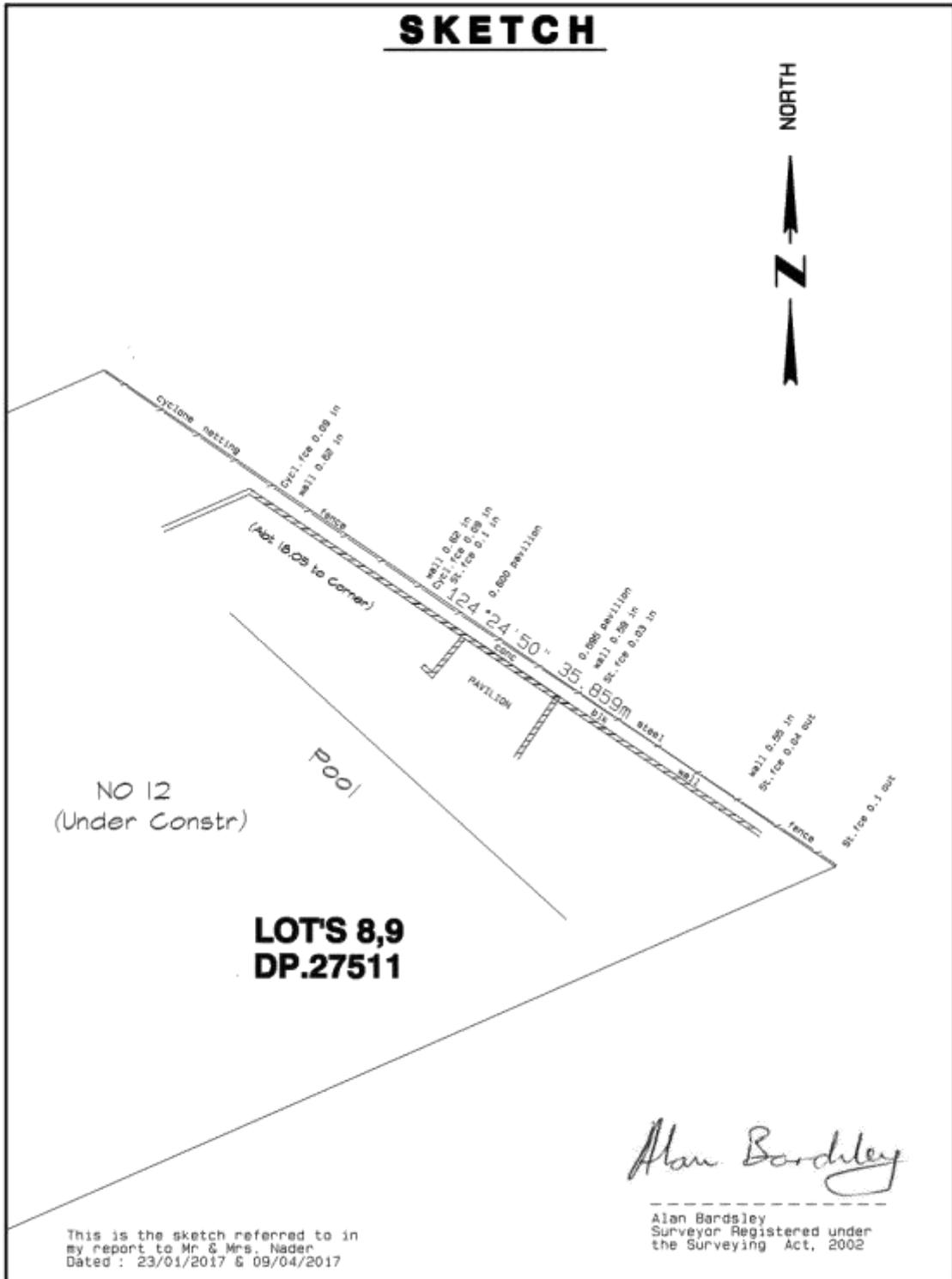
The original proposal under LDA2015/217 was approved with a 6.2m to 6.8m front setback to Emu Street and 6.5m to 11.4m to Winbourne Street East. This was considered to be consistent with existing setbacks of neighbouring dwellings respectively. The proposed modification does not change the front building setback of the development.

Minutes prepared by: *Rebecca Lockart, Assessment Officer – Senior Town Planner*  
Finalised: *4 April 2017*

ITEM 2 (continued)

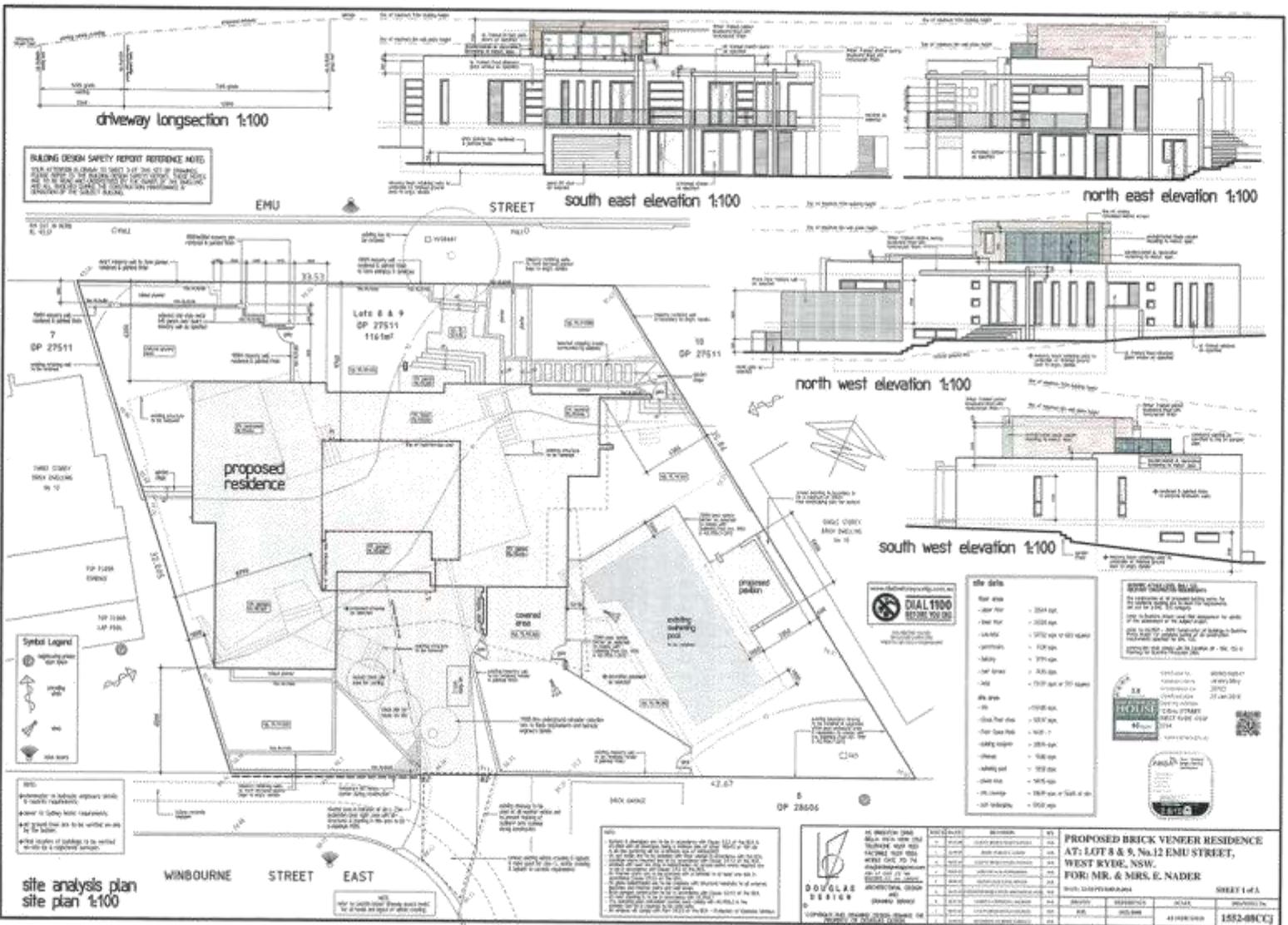
ATTACHMENT 4

Alan F. Bardsley  
Registered Surveyors



ITEM 2 (continued)

ATTACHMENT 5





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- 3 6 FOURTH AVENUE, EASTWOOD - LOT 130 IN DP4648 Local Development Application – Construction of a multi dwelling housing development containing three (3) dwellings, including a two-storey five-bedroom dwelling at the front of the site, and two single-storey three bedroom dwellings to the rear, and strata subdivision. LDA2015/0651.**
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**Report prepared by:** Creative Planning Solutions; Senior Coordinator - Development Assessment

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

**File Number:** GRP/09/5/6/2 - BP17/560

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## 1. Report Summary

**Applicant: Colin & Ellen Ng**

**Owners: Colin & Ellen Ng**

**Date lodged: 15 December 2015 (latest amended plans received 21 March 2017)**

This report considers a development application (DA) for the construction of a multi dwelling housing development containing three (3) dwellings (two-storey five-bedroom dwelling at the front of the site, and two (2) single-storey three-bedroom dwellings to the rear). The proposal also includes ancillary stormwater and landscape works and strata subdivision.

The original DA was advertised and notified in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014), and a total of 26 submissions were received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents).

Most of those submissions also referred to another DA lodged by the same applicant for the adjoining property – LDA2015/652 at No 8 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper). The issues of concern raised in the submissions were:

- Density;
- Environmental hazards (bush fire prone land, flooding, land slip and vegetation);
- Noise impacts;
- Parking and traffic;
- Stormwater; and
- Visual privacy.

### ITEM 3 (continued)

The assessment of the originally submitted DA identified the following issues which warranted a request for additional information from the applicant. A number of these issues coincided with concerns raised by objectors.

- Height of dwellings to the rear;
- Density;
- BASIX Certificate included incorrect details;
- Cut and fill;
- Visitor parking not provided;
- Arboricultural report not provided for adjoining vegetation; and
- Geotechnical assessment needed additional commentary on potential risks.

Revised plans and supporting documentation was provided to Council for consideration in August 2016. These revised plans included modifications to the proposal's design addressing the majority of concerns raised by Council officers.

These revised plans were re-notified to adjoining property owners with a further 18 submissions received maintaining an objection to the amended plans (as above, most of these were submissions to both this DA and LDA2015/652).

The submissions objected to the proposal principally on the following grounds:

- Bulk and scale
- Cross fall
- Density
- Excavation
- Noise impacts
- Parking and traffic
- Setbacks
- Solar Access
- Vegetation
- Visual privacy

Prior to presenting this report to the Planning & Environment Committee, further amended plans were requested from the applicant to reduce the number of non-compliances with Ryde DCP 2014 (in particular to ensure compliance with the front setback and rear setback requirements, to provide acoustic treatment where the garage of one unit adjoins the bedroom of another unit within the development, and also to provide details of bollard lighting of common driveway).

These further amended plans were received 21 March 2017, and were re-notified to neighbours and previous objectors. A further eight (8) submissions were received – again maintaining an objection to the amended plans. Also, the submissions to the amended plans mostly related to both this DA and LDA 2015/652.

**ITEM 3 (continued)**

The revised plans have been assessed against the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act), the *Ryde Local Environmental Plan 2014* (LEP2014), and the DCP2014.

The areas of non-compliance that relate to Ryde LEP 2014 are:

- **Clause 4.3A (2) Height of buildings (maximum 5m).** The proposed height of Dwelling 2 is 5.5m. A clause 4.6 written request has been submitted by the applicant to vary the building height development standard.

The areas of non-compliance that relate to Ryde DCP 2014 are:

- **Section 2.3: Non – preferred locations.** The subject site is within a non-preferred location, as outlined in Schedule 2 in Part 3.4, for the following reasons:
  - Land includes Urban Bushland;
  - Land affected by overland flow;
  - Land where the slope is greater than that described in Section 3.1 of DCP2014 – note the central portion of the site experiences a cross fall greater than 1:14.
- **Section 3.2: Altering the levels of the site** (levels of the site outside the building envelope should not be altered by more than 300mm).
  - The extent of fill outside the building envelope is up to 500mm for sections of the driveway.
  - The extent of fill outside the building envelope for Dwelling 3 is 600mm for sections of the private open space.
  - Extent of excavation of up to 1m for each of the proposed units.

Despite the non-compliances outlined above and the issues of concern raised in the submissions, overall the proposal is generally satisfactory for approval as discussed in the body of the report. For this reason, the subject DA is recommended for approval subject to conditions.

**Reason for Referral to Planning and Environment Committee:** Number of submissions received, nature of the proposed development.

**Public Submissions:**

- (a) Original DA plans – 26 submissions received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents);
- (b) Amended DA plans (August 2016 re-notification) – 18 submissions received;
- (c) Amended DA plans (April 2017 re-notification) – 8 submissions received.

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

Note: Most of the submissions referred to both this DA (LDA2015/651) and another DA lodged by the same applicant for the adjoining property – LDA2015/652 at No 8 Fourth Ave (a separate report has been prepared for the Planning and Environment Committee in this business paper).

**SEPP 1 (or clause 4.6 RLEP 2014) objection required?** Yes. A clause 4.6 written request has been submitted regarding non-compliance with the 5m height limit for dwellings which do not front the street in a multi-dwelling housing development – refer clause 4.3A(2) of LEP2014.

**Value of works \$880,000**

### **RECOMMENDATION:**

- (a) That Local Development Application No. LDA2015/00651 at 6 Fourth Avenue, Eastwood be approved subject to the **ATTACHED** conditions – see **Attachment 1**.
- (b) That the persons who made submissions be advised of Council's decision.

### **ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Compliance Table LEP 2014 and DCP 2014
- 3 A4 Plans
- 4 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Ben Tesoriero Planning Consultant**  
**Creative Planning Solutions**

**Chris Young**  
**Senior Coordinator - Development Assessment**

Report Approved By:

**Vince Galletto**  
**Acting Manager - Assessment**

**Liz Coad**  
**Acting Director - City Planning and Development**

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

- Address** : 6 Fourth Avenue, Eastwood  
(LOT 130 in Deposited Plan 4684)
- Site Area** : 1,012m<sup>2</sup>  
Site frontage to Fourth Avenue of 20.115m  
Eastern side boundary of 50.29m  
Western side boundary 50.29m  
Rear boundary of 20.115m  
*Note: All areas and dimensions obtained from Deposited Plan.*
- Topography and Vegetation** : The subject site falls 5.79m from a height of RL61.81 in the rear north-east portion of the site to a height of RL56.02 in the front south-western portion. This fall towards the street occurs over a distance of approximately 53m for an average gradient of 1:10.92. No significant vegetation has been identified on the site, (there are a number of trees on neighbouring land or within the street verge which may be impacted upon by the proposal).
- Existing Buildings** : Single storey dwelling (to be demolished under separate application if this development proceeds).
- Planning Controls Zoning** : R2 – Low Density Residential under *Ryde Local Environmental Plan 2014* (LEP2014)
- Other** : *Ryde Development Control Plan 2014* (DCP2014)  
*Planning For Bush Fire Protection 2006* (PBP2006)

**ITEM 3 (continued)**



**Aerial Image of subject site, including an annotation of the properties which objected to the proposed development by way of submission to Council as part of the notification of the DA.**

**Source: [www.six.nsw.gov.au](http://www.six.nsw.gov.au) – edited by CPS**



**Photograph from the Fourth Avenue frontage showing the existing dwelling house located on the subject site.**

**Source: [www.google.com.au](http://www.google.com.au)**

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

#### **3. Councillor Representations**

Name of Councillor: Councillor Chung (former Councillor)

Nature of the representation: General Enquiry regarding DA and number of submissions received.

Date: 9 February 2016

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

On behalf of applicant or objectors? Unknown

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

#### **4. Political Donations or Gifts**

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

#### **5. Proposal**

The proposal is for the construction of a multi dwelling housing development containing three (3) dwellings at 6 Fourth Avenue, Eastwood. Dwelling 1 located at the front of the site is two-storeys in height and includes five (5) bedrooms. Dwelling 2 and Dwelling 3 to the rear of the site are to be single storey and include three (3) bedrooms each.

The development also includes strata subdivision.

### ITEM 3 (continued)



**Front Elevation of the proposed development as viewed from Fourth Avenue.**

*Source: Applicant's submitted plans.*

## 7. Background

The subject DA was received by Council on 17 December 2015.

The application was notified to adjoining land owners and advertised within the Northern District Times in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014) from 13 January 2016 to 10 February 2016, and referred to a number of internal and external departments.

In response to the notification of the original DA plans, some 26 submissions received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents). Note: Most of the submissions referred to both this DA (LDA2015/651) and another DA lodged by the same applicant for the adjoining property – LDA2015/652 at No 8 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper).

Following a preliminary assessment, a letter was sent to the applicant on 14 March 2016 requesting them to address the following matters via amended plans or written submission. It is noted a number of these issues coincide with concerns raised by objectors:

**ITEM 3 (continued)**

- *Height of buildings* – the proposal identified dwellings which do not have a frontage to the street having a height of up to 6m, and therefore not complying with Council’s 5m limit under clause 4.3A(2) of the *Ryde Local Environmental Plan 2014* (LEP2014).
- *Density* – the proposal was identified as failing to achieve compliance with Council’s density standards under clause 4.5A of the LEP2014. This was because to accommodate the number of dwellings/bedrooms within the development, a minimum site area of 1,030m<sup>2</sup> was required. The subject site only has a site area of 1,012m<sup>2</sup>
- *BASIX* – the description of the project within the submitted BASIX Certificate indicated Dwelling 3 as including three (3) bedrooms, however this dwelling was taken to include four (4) bedrooms as the room labelled ‘study’ was capable of being used as a bedroom. As such, the proposal was not considered to achieve compliance with the provisions of Regulation 164A of the Regulations which require consistency between the BASIX Certificate and the submitted plans.
- *Altering site levels* – The proposal cut was identified as being up to 1.5m in the private open space areas of the dwellings, and fill of up to 900mm in the common driveway area. This was considerably in excess of the 300mm prescribed under DCP2014 and not supported.
- *Visitor parking* – no visitor parking space had been provided for the development despite the provisions of the DCP2014 necessitating one (1) visitor parking space.
- *Landscape* – concern was raised in relation to the potential impact on adjoining vegetation as a result of the proposed development. Accordingly, an aboricultural report was required to assess this vegetation and make recommendations where necessary to ensure the health of the vegetation was not compromised.
- *Geotechnical* – Additional information was required by Council’s Consultant Structural Engineer in relation to the proposed development, to ensure the applicant’s submitted documentation had appropriately taken into consideration potential geotechnical risks.

### ITEM 3 (continued)

On 2 May 2016, preliminary amended plans were received, including architectural plans and drainage plans. The drainage plans were referred to Council's Senior Co-ordinator - Development Engineering Services for assessment (and found to be satisfactory as discussed in the Referrals section of this report below). However the architectural plans were not satisfactory in relation to the non-compliance with the height controls (for units without frontage to the street). A clause 4.6 request for variation was required to be submitted. A further additional information request was sent to the applicant on 25 July 2016.

Formal amended plans (including revised geotechnical report, arborist report, architectural plans and a written request for variation under Clause 4.6 Ryde LEP 2014) were submitted 2 August 2016. These were re-notified to neighbours for a period from 8 to 25 August 2016 – and a further 18 submissions were received (most of which also referred to LDA2015/652 at 8 Fourth Ave).

The revised plans included the following modifications to the proposal's design:

- *Height of buildings* – The overall height of Dwelling 2 and Dwelling 3 has been reduced to 5.5m, however the proposal remains at variance with the 5m building height limit under clause 4.3A(2) of the LEP2014. (Clause 4.6 request for variation received in relation to this issue).
- *Density* – the revised plans submitted by the applicant have reconfigured the layout of Dwelling 3 so this it is a three (3) bedroom dwelling only, and there is able to comply with the density requirements under clause 4.5A of LEP2014.
- *BASIX* – by undertaking the aforementioned revisions to Dwelling 3, the proposal is now consistent with the description of the development under the submitted BASIX Certificate.
- *Altering site levels* – the applicant's revised plans have introduced split levels to Dwelling 2 and Dwelling 3, and also terraced the private open space area of Dwelling 3 so as to reduce the overall level of cut and fill across the site. In addition, steps leading up to the front porches of all dwellings has now been included to reduce the level of fill required for the common driveway.
- *Parking* – the applicant has made adjustments to the design to include a visitor parking space in line with the requirements of the DCP2014. The visitor parking space is to be located adjacent to the western elevation of Dwelling 3 at the end of the common driveway.
- *Landscape* – An Arboricultural Impact Assessment prepared by a suitably qualified arborist has been submitted to Council which takes into consideration not only vegetation on site, but also on adjoining land.

### ITEM 3 (continued)

Prior to submitting this report to Planning & Environment Committee, a meeting was held between Council's Acting Manager Assessment and Senior Co-ordinator – Assessment and the applicant on 21 March 2017, to seek to reduce the number of non-compliances with the controls in Ryde DCP 2014. In this regard, the previous amended plans contained a number of minor areas of non-compliance in relation to controls regarding front setbacks, side and rear setbacks, visual and acoustic privacy, and lighting (of common areas) – and the amended plans have now addressed these particular areas of non-compliance.

These amended plans were re-notified to neighbours and previous objectors as discussed in the Submissions section of this report below.

### 8. Submissions

- (a) Original Notification: The application was originally notified to adjoining land owners and advertised within the Northern District Times in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014) from 13 January 2016 to 10 February 2016. In response to the original DA plan notification, 26 submissions were received (9 individual submissions + 17 pro-forma copies of the same submission signed by local residents).
- (b) Amended Plan Notification (August 2016): When amended plans were received, these were re-notified to adjoining property owners on 8 to 25 August 2016. In response to the re-notification, a further 18 submissions of objection were received.
- (c) Amended Plan Notification (April 2017): Further amended plans were received from the applicant on 21 March 2017, following a meeting between Council officers and the applicant. These were re-notified to neighbours for a period from 13 April to 1 May 2017, and a further 8 submissions of objection were received.

Note: Most of the submissions referred to both this DA (LDA2015/651) and another DA lodged by the same applicant for the adjoining property – LDA2015/652 at No 8 Fourth Ave (a separate report has been prepared for the Planning and Environment Committee in this business paper).

The key planning objections/issues are outlined below followed by a response from the Assessing Officer to each objection.

**A – Bulk and Scale.** *Objections have been raised over the proposal's bulk and scale and negative impact on the streetscape. There have been claims the proposal does not provide architectural excellence or sufficient landscaping. Concerns have also been raised over the identical nature of the development proposed at 8 Fourth Avenue.*

### ITEM 3 (continued)

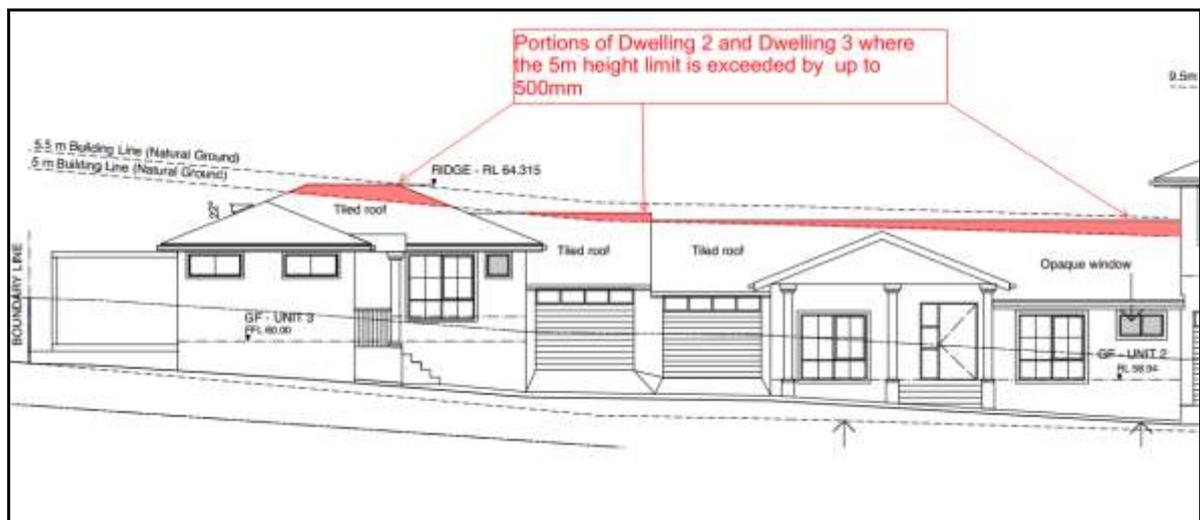
**Assessing Officer Comments:** The key elements that control the bulk and scale of multi-dwelling housing developments are building heights, the number of storeys proposed, and setbacks.

In this regard it is noted that Dwelling 1, which fronts Fourth Avenue and has frontage to the street, has a building height of 8.09m. Given the height limit for dwellings fronting the street under LEP2014 is 9.5m, the development is considered to present a satisfactory level of bulk and scale to the streetscape.

Dwelling 2 and Dwelling 3 to the rear of the site are limited to a maximum height of 5m under the provisions of LEP2014. Dwelling 2 is proposed to have a maximum building height of 5.4m, while Dwelling 3 has a maximum building height of 5.5m.

While Dwelling 2 is exceed the height limit by only 400mm, Dwelling 3 will breach the building height limit by 500mm largely due to the changing topography across the site. Despite this 10% variation to Council's development standard, the 500mm exceedance has been assessed as justifiable. This is because the height non-compliance will not result in any significant impacts on adjoining property by way of overshadowing or loss of visual privacy. Furthermore, given the non-compliance relates principally Dwelling 3 at the rear of the site, it unlikely to result in a visual impact to adjoining property or the streetscape. The following is an extract of the west elevation showing the extent of the height non-compliance.

The following drawing is a diagrammatic explanation of where the building height non-compliances occur at Dwelling 2 and Dwelling 3.



Elevation of the proposed development as viewed from the common driveway showing the portions of Dwelling 2 and Dwelling 3 which exceed the 5m building height limit by up to 500mm. Given the small scale of the exceedances, and given they are confined to the roof ridges behind the two-storey dwelling at the front of the site, they will largely be indiscernible from the street.

Source: Applicant's submitted plans, marked up.

**ITEM 3 (continued)**

With regard to the number of storeys in a development, the provisions of the DCP2014 prescribe that dwellings fronting the street may be two-storeys in height, with dwellings behind being no more than one-storey high. The proposal achieves compliance with these provisions by virtue of only Dwelling 1 fronting Fourth Avenue constituting two storeys, with Dwelling 2 and 3 behind comprising only one storey each.

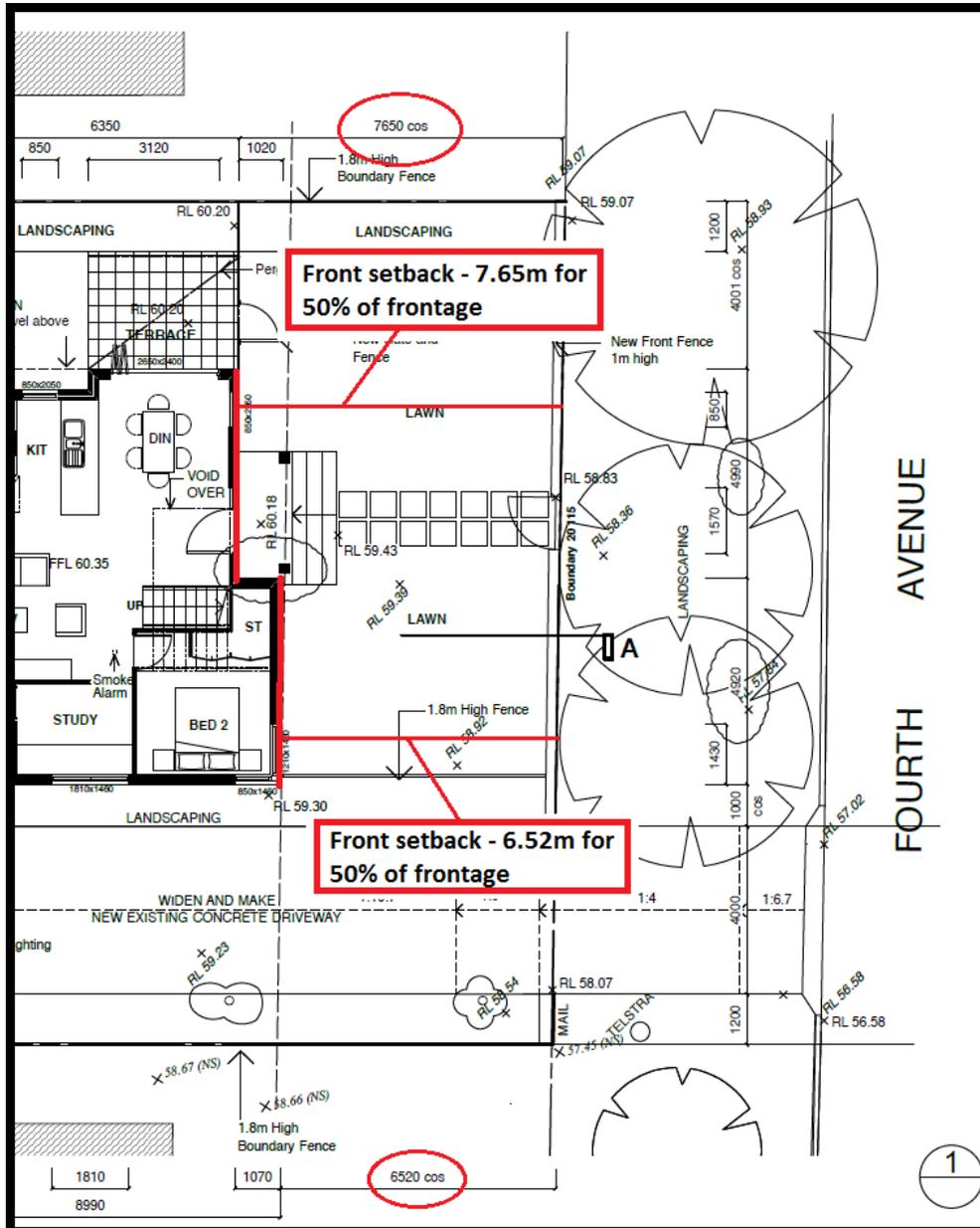
As discussed in the Background section of this report (above) prior to submitting this report to Planning & Environment Committee, the applicant has undertaken minor design amendments to achieve full compliance with the front setback, and side and rear setback requirements of Ryde DCP 2014.

The variation to Council's height controls for multi-dwelling housing buildings is not considered to result excessive bulk and scale when considering the built form. This is because the variations sought by the applicant are very minor, capable of achieving compliance with the objectives of the controls, and will largely be indiscernible from the street or adjoining development.

On this basis, objections to the bulk and scale of the development are not supported in this instance.

**Amended Plan re-notification:** In relation to the amended plans re-notification (April 2017), concern was raised that the amended plans still do not comply with the front setback requirements of Ryde DCP 2014. In this regard, the DCP states that where the streetscape is likely to change, the front setback shall be 7.5m for 50% of the frontage, and 6.5m for not less than 50% of the frontage. This was a minor issue of non-compliance in the previous plans, that has now been addressed in the amended plans – as shown in the following drawing:

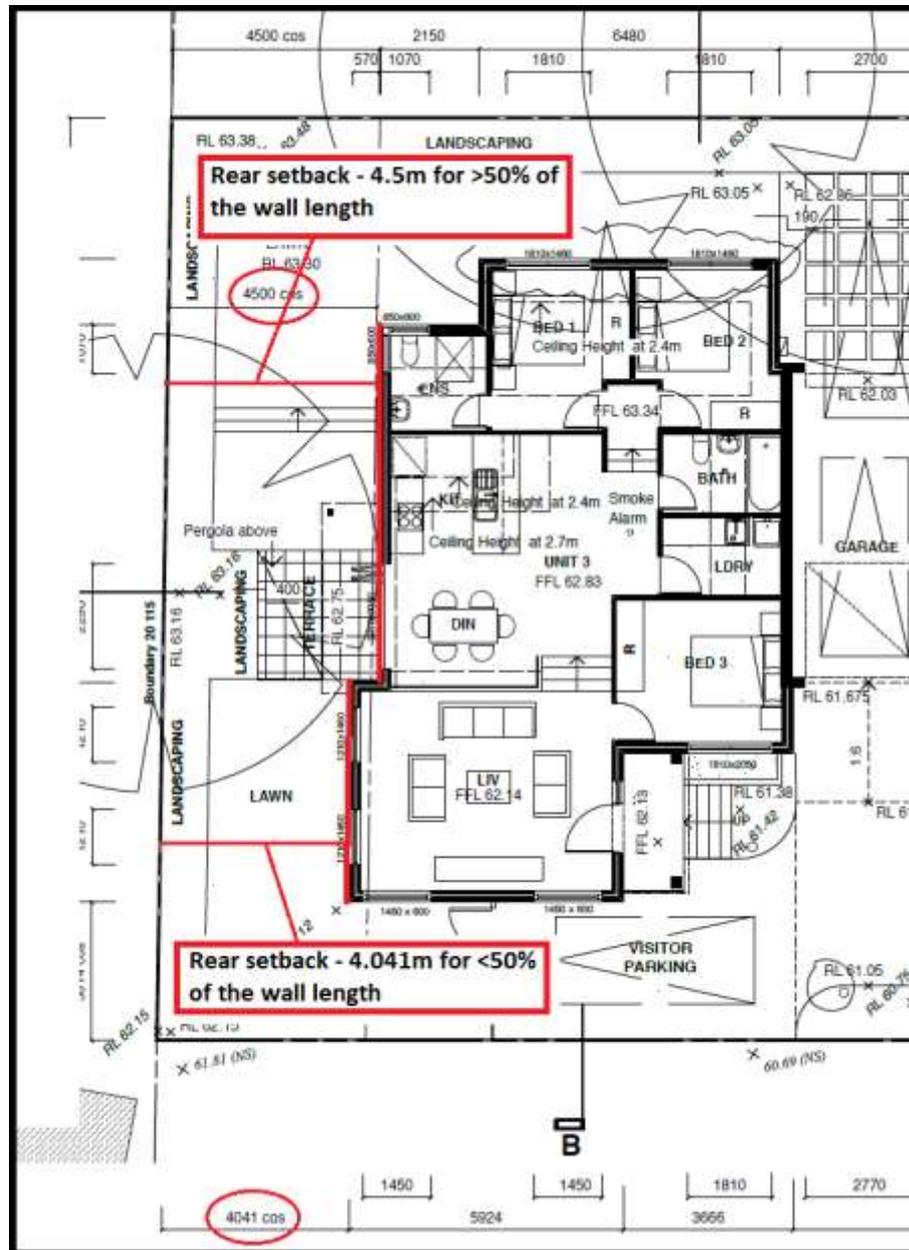
ITEM 3 (continued)



Extract of site plan showing front setbacks of Unit 1  
Source: Applicant amended DA plans, marked up.

The amended plans have also achieved full compliance with the rear setback controls in Ryde DCP 2014, which are a 4.5m rear setback that can be reduced to 3m for 50% of the length of the wall of the unit. This is shown in the following drawing.

**ITEM 3 (continued)**



Extract of site plan showing rear setbacks of Unit 3.  
Source: Applicant amended DA plans, marked up.

**B – Cross Fall.** Objectors have raised concern with the site cross fall and the development not being suitable when having regard to the provisions of DCP2014.

**Assessing Officer Comments:** Section 3.1 of Part 3.4 of DCP2014 includes development controls to ensure multi-dwelling housing developments are compatible and sympathetic with surrounding development and the street, and also to prevent adverse privacy impacts to other properties.

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

To achieve these objectives, maximum gradients are provided for sites sloping up or down from the street, as well as maximum gradients for sites with a cross fall.

These gradients are 1:6 for sites sloping up or down from the street, and also a maximum cross fall of 1:14.

Council Officer's assessment of the proposed development has identified the site slope up from the street is an average of 1:10. While the cross fall is 1:12 at the front of the site, 1:10 in the central portion of the site, and 1:7.5 toward the rear of the site.

Accordingly, the subject site is non-compliant in terms of cross falls as the gradients have been assessed as greater than 1:14.

The applicant's original submitted plans did not adequately respond to this site constraint, and as such a request for amended plans was issued. The revised plans subsequently received by Council now include a design whereby split levels are included to Dwelling 2 and Dwelling 3. These split levels allow for a development outcome which more appropriately responds to the change in the sites topography, and ensure the development remains sympathetic to surrounding development by minimising overlooking impacts and maintaining visual privacy.

It is acknowledged that Section 2.3 and Schedule 2 of Part 3.4 DCP2014 prescribes that land affected by slope greater than that described in Section 3.1 would be a non-preferred location for multi-dwelling housing development.

In this regard, reference is made to a recent Land and Environment Court decision (*Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*) whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014. Specifically, it was held that no weight be given to the non-preferred location controls under Section 2.3 of Part 3.4 of DCP2014 as the clause effectively seeks to prohibit a development that is permissible under LEP2014 (notwithstanding the use of the words "non-preferred").

Given the above, it is considered the applicant's revised plans have satisfactorily addressed the subject site's non-compliance with the cross fall controls to ensure the objectives are achieved.

Furthermore, given the Court's recent decision on the weight to be given to Council's 'Non-preferred locations' control, objections to the suitability of the site on the basis of the cross-fall non-compliance cannot be supported.

**ITEM 3 (continued)**

**Amended Plan re-notification:** In relation to the amended plans re-notification (April 2017), neighbours have raised concern that the amended plans now include a notation that the site slope has been amended to comply with Council's requirement of 1:14. This is not correct – the amended plans only include reference to the slope on the driveway gradients, however the slope of the site does not comply with the Ryde DCP 2014 requirement as discussed throughout this report.

**C - Density.** Concerns have been raised by objectors over the proposal being overly dense with the number of dwellings and number of bedrooms proposed across the site;

**Assessing Officer Comments:** Clause 4.5A of the LEP2014 states that:

*Development consent must not be granted to the erection of **multi dwelling housing** on land in Zone R2 Low Density Residential unless:*

- (a) the site area for the building is not less than:*
  - (i) for each 1, 2 or 3 bedroom dwelling—300 square metres, and*
  - (ii) for each 4 or more bedroom dwelling—365 square metres, and*

The objectives of this control are covered under clause 2.5 of Part 3.4 of DCP2014 and state:

- 1. To create a balanced relationship between the site area, dwelling size and residential population living on the site.*
- 2. To ensure the highest aesthetic Multi dwelling housing developments possible.*

With Dwelling 1 including five (5) bedrooms, and Dwelling 2 and Dwelling 3 including three (3) bedrooms each, a minimum site area of 965m<sup>2</sup> is required to satisfactorily achieve compliance with the development standard, and meet the aforementioned objectives.

The land at 6 Fourth Avenue includes a site area of 1,012m<sup>2</sup>. Given compliance is achieved, the density will create a balanced relationship between the site area, dwelling size and residential population living on the site.

In addition to the above, Section 2.6 of Part 3.4 of DCP2014 prescribes controls to ensure multi-dwelling housing developments are not the dominant form of development in an area and do not dramatically change the character of a location. To achieve this objective, DCP2014 prescribes that no development shall contain more than twelve (12) dwellings.

Given the proposal includes only three (3) dwellings, the development is considered to ensure the multi-dwelling housing proposal is not dominant in the local area.

**ITEM 3 (continued)**

Many of the submissions from neighbours have raised the concern regarding cumulative impacts (not only density but also increased traffic and parking impacts) – associated with having two concurrent development proposals on adjoining sites (namely No 6 and No 8 Fourth Ave Eastwood). In this regard, it is noted that the previous Ryde DCP 2010 contained a linear separation control which would have prevented two multi-dwelling housing proposals from being considered on immediately adjoining sites. However, Council resolved to remove these controls from the current Ryde DCP 2014, and therefore these controls no longer apply.

Ryde DCP 2014 does contain a maximum number of 12 dwellings in a multi-dwelling housing development. In this regard, the combined number of dwellings in both developments proposed at No 6 and No 8 Fourth Ave is six (6) units (ie three (3) units proposed in each development proposal), which is significantly less than the maximum of 12 prescribed in Ryde DCP 2014.

For these reasons outlined above, the objectors concerns relating to increased density are not supported in this instance.

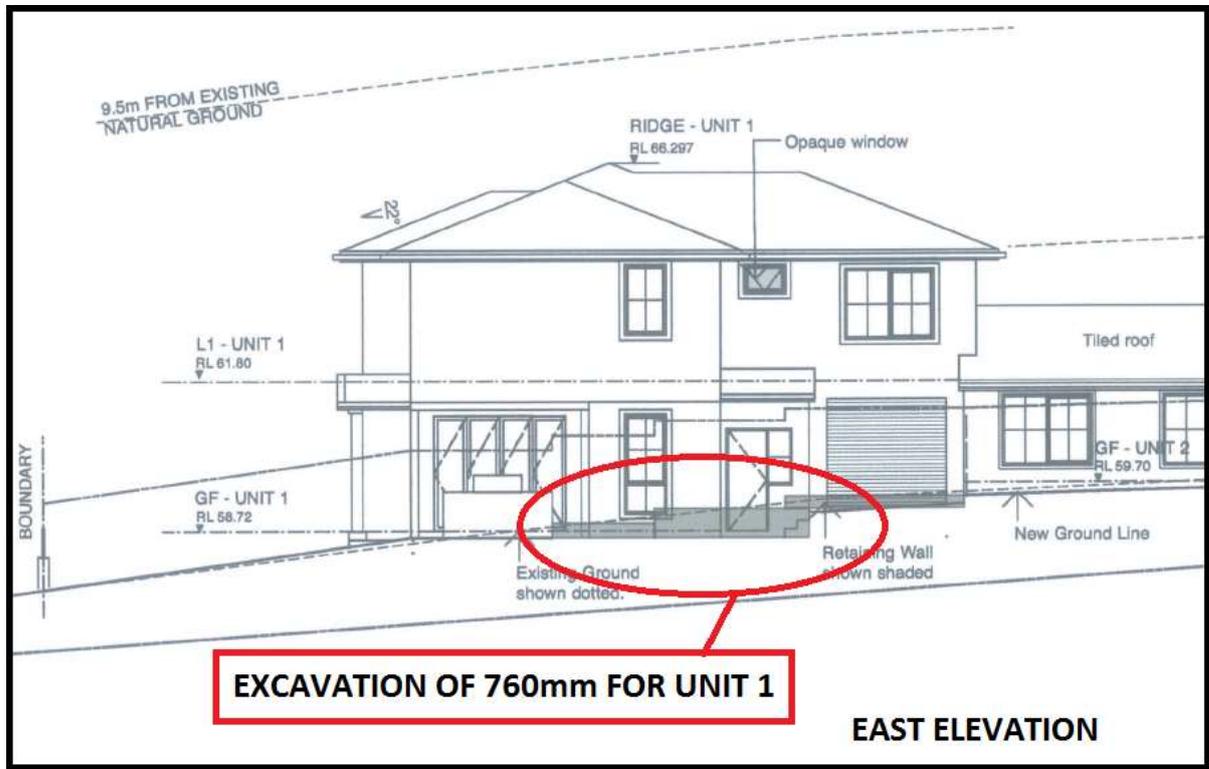
***D - Excavation.*** *Concerns have been raised by objectors about the construction involving excavation adjacent to the boundary fence which may hinder the structural stability of the boundary fence which is otherwise in good condition.*

**Assessing Officer Comments:** Ryde DCP 2014 states that the levels of the site (outside the building floor envelope) should not be altered by more than 300mm. An assessment of the proposal indicates minor areas of non-compliance, as the amount of excavation is proposed to be:

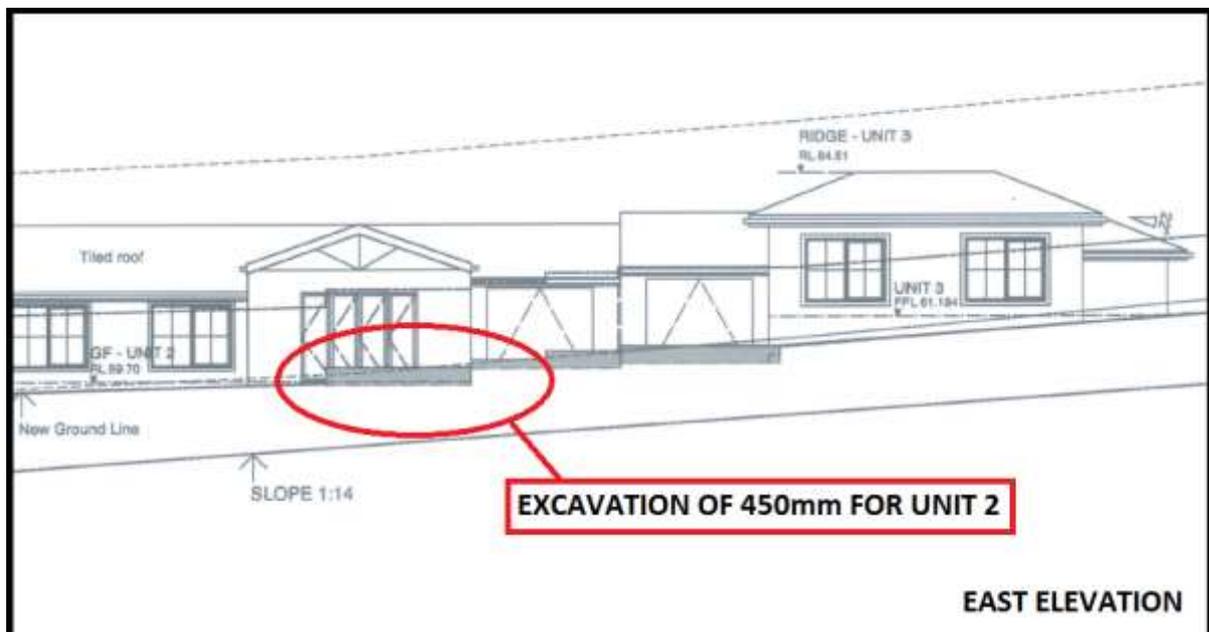
- 760mm for Dwelling 1;
- 450mm for Dwelling 2
- 1000mm for Dwelling 3; and
- around 500mm for the common driveway area.

This is shown in the following diagrams (the East and North Side elevations).

**ITEM 3 (continued)**

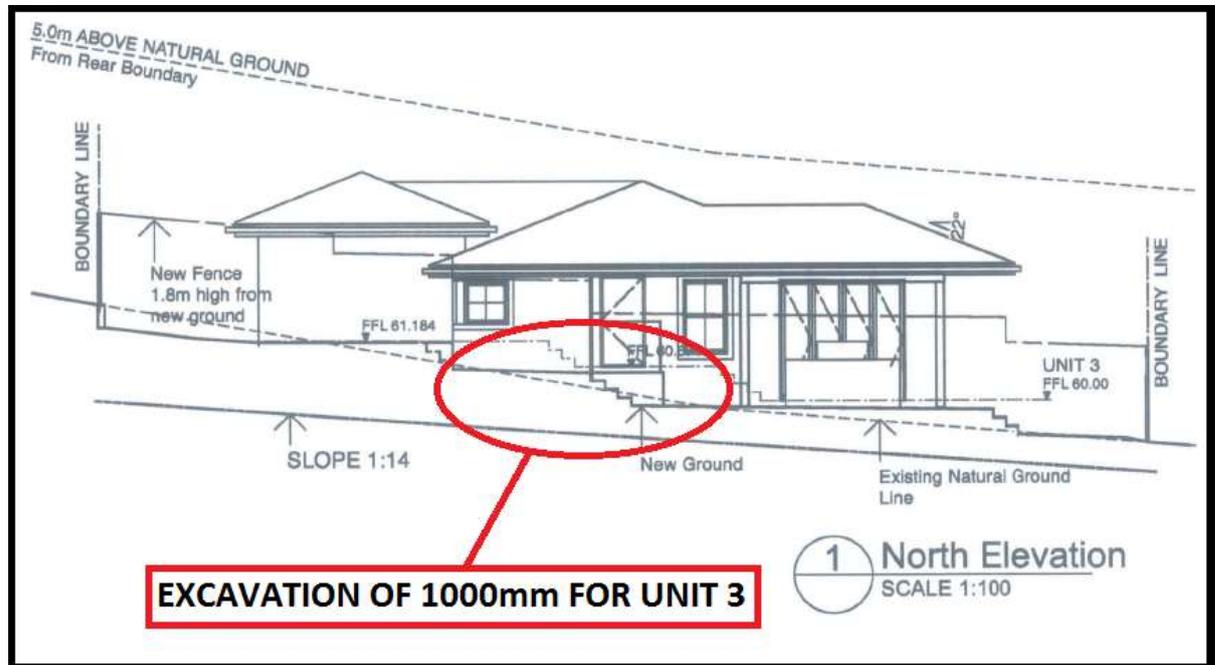


East Elevation – showing location and extent of excavation for Unit 1.  
(Source: Applicant DA plans, marked up).



East Elevation – showing location and extent of excavation for Unit 2.  
(Source: Applicant DA plans, marked up).

**ITEM 3 (continued)**



**North Elevation – showing location and extent of excavation for Unit 3.  
(Source: applicant DA plans, marked up).**

In certain areas, this will require excavation in close proximity to the property boundary, and may have the potential to impact on the structural stability of boundary fences.

To ensure new developments do not unduly impose on adjoining property boundaries, or the structural stability of adjoining developments Council Officers recommend the following standard conditions of consent:

**Condition 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.*

**Condition 8:**

**Development to be within site boundaries.** *The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.*

**ITEM 3 (continued)****Condition 47:****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.*

With regard to boundary fences, it is noted the applicant's revised plans demonstrate a new 1.8m high boundary fence is proposed along the eastern side boundary where a greater level of excavation is to occur. To ensure any such replacement fencing complies with the provisions of DCP2014, the following standard condition of consent is to be imposed:

**Condition 34:**

**Fencing.** *Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**. All new and replacement fencing is to be at the full cost of the developer.*

With the imposition of the above conditions, and also the applicant's proposal to replace the eastern side boundary fence, it is considered the concerns relating to site excavation and the potential impact on boundary fencing by objectors has satisfactorily been addressed.

**E - Noise.** *Concern over acoustic impacts from the occupation of the multi-dwelling housing dwellings. In particular, noise from new families and their pets.*

**Assessing Officer Comments:** The proposal will replace an existing dwelling house with a new multi-dwelling housing development, and as such a residential land use is maintained for the site. Residential land uses are not considered to be noise generating developments in the same way child care centres, industries or commercial premises are.

### ITEM 3 (continued)

While it is acknowledged that the proposal will result in an intensification of the site's residential land use, the proposal has been assessed as compliant with regard to the density provisions of Council's LEP2014 and DCP2014. For this reason, any noise created through general occupation of the dwellings is considered to be within expected limits.

Throughout the site, the dwellings and private open space areas have generally been located at the existing ground level. As such, noise from elevated terraces or balconies is not an issue with the applicant's revised design.

It is acknowledged no air-conditioning units are proposed on the submitted plans, however to ensure noise from any such air-conditioning or other plant equipment associated with the building is sympathetic to adjoining property, the following condition is recommended:

**Condition 80:**

**Air Conditioning/ Mechanical Plant – Noise.** *Any air-conditioning units or other mechanical plant must be enclosed in a suitable ventilated acoustic enclosure to ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.*

Concerns relating to other noise from residential occupation, such as pet noise, are subject to the provisions of the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*. As such, these are not particular matters for consideration in DA assessments under Section 79C of the *Environmental Planning and Assessment Act 1979*.

**F – Parking and traffic.** *Concerns have been raised over the proposal's use of tandem parking spaces, lack of manoeuvrability, on-street parking, and the tandem parking spaces being of inadequate dimension to accommodate a car.*

*Further – concerns were raised in the amended plan notification (April 2017) that the proposal remains non-compliant in terms of car parking.*

**Assessing Officer Comments:** Section 3.8 of Part 3.4 of DCP2014 provides car parking controls to ensure sufficient car parking on site to satisfy the needs of residents and visitors to the site.

To achieve this objective, this section also refers to Part 9.3 of DCP2014 which also includes parking controls for new developments.

For multi-dwelling housing developments, two (2) car parking spaces are required for each dwelling containing three (3) or more bedrooms. In addition, a least one space must be within a lockable garage, and at least one space is required per four (4) dwellings as visitor parking.

**ITEM 3 (continued)**

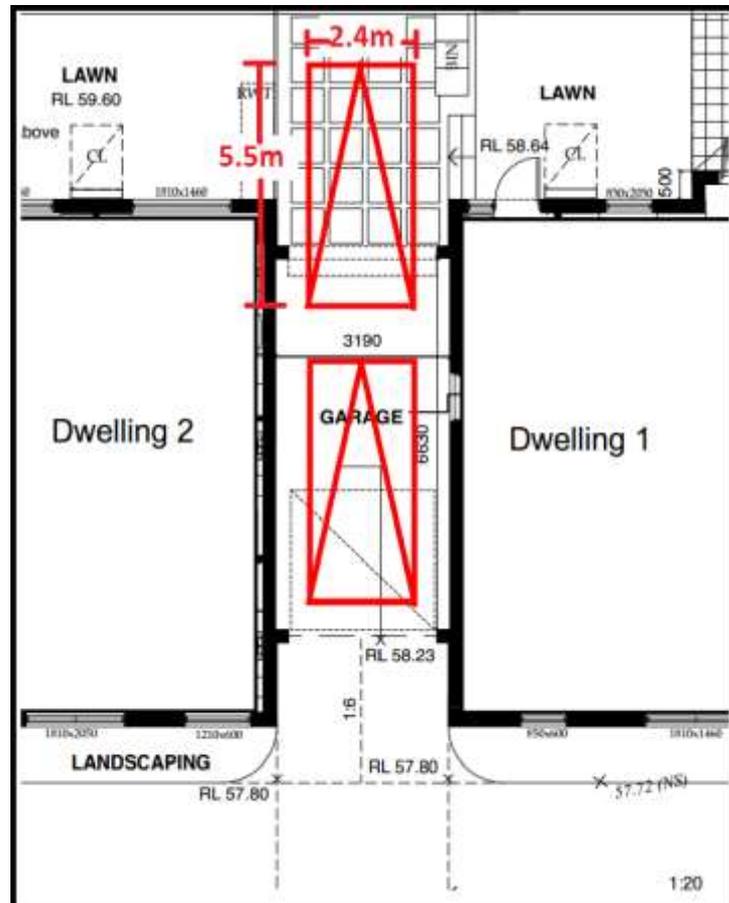
This means a total of six (6) resident parking spaces and one (1) visitor parking space is required to service the development.

The proposal achieves compliance with these minimum parking rates by including one lockable garage for each dwelling and one tandem car parking space. Furthermore, the applicant's amended plans include one (1) visitors parking space adjacent to Dwelling 3. Tandem parking spaces (ie one behind the other) are very common in multi-dwelling housing developments and have long been an accepted method of providing two parking spaces, and this form of parking provision is permitted under Ryde DCP 2014.

On this basis the proposal complies with the minimum parking provisions, and therefore achieves the objective of ensuring sufficient car parking to satisfy the needs of residents and visitors on-site.

As to the adequacy of the tandem parking space dimensions, it is noted these spaces are partly provided for in the garage, and partly outside of the garage adjacent to the private open space area. Given neighbours are not provided with internal floor plans for developments, it is understandable how one may incorrectly consider the tandem parking spaces to be of inadequate dimension if referring only to a notification plan. However, the tandem parking spaces has dimensions of 5.5m x 2.4m which is sufficient to enable a vehicle to park – more detail is provided in the diagram below:

**ITEM 3 (continued)**



Extract of ground floor plan for the proposed development with the detail of the dwelling layout deleted for privacy purposes. Noted in red within this image are the typical layout for the two car parking spaces proposed. The tandem space is partly within the garage and hence why this space may be perceived to be inadequate if one were observing a notification site plan only.

*Source: Applicant's submitted plans.*

As part of the assessment of the subject DA, the proposal was referred to Council's Senior Co-ordinator - Development Engineering Services for comment. In the referral response, support has been provided to proposed parking arrangements, including dimensions and manoeuvrability. In addition, Council's Senior Co-ordinator - Development Engineering Services has raised no traffic issues with regard to the proposal.

Given the proposal is able to achieve compliance with Council's dwelling density and parking controls for multi-dwelling housing development, any minor increase in traffic generated by the proposed development would satisfactorily be accommodated within the existing road network.

Based on the above assessment, objections to the proposal on the grounds of traffic and parking are not supported in this instance.

**ITEM 3 (continued)**

**G - Setbacks.** Objectors have raised concern over the front setback being forward of adjoining property, and also non-compliances with the rear and side setback controls;

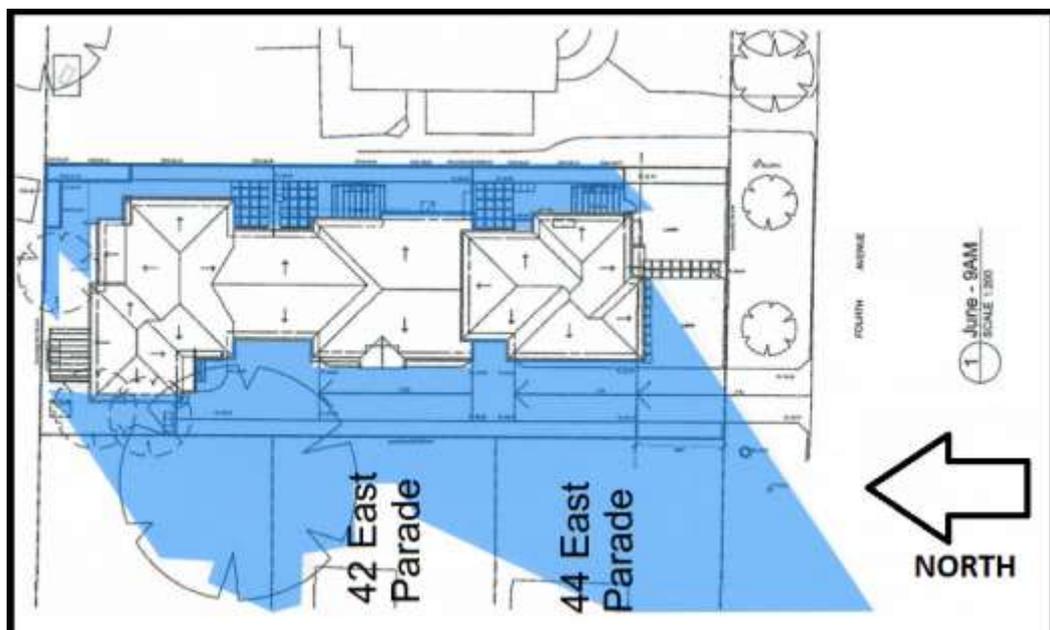
**Assessing Officer Comments:** As discussed previously, the proposal has now been amended to ensure full compliance with the front setback, and side and rear setback requirements of Ryde DCP 2014.

**H – Solar Access.** Concern is raised that the proposal will cause overshadowing of neighbouring properties.

The subject site enjoys a favourable orientation whereby the front setback and the street (ie Fourth Avenue) are generally located to the south of the development. Additionally, the distribution of the building's bulk, with the two-storey component being located to the south, means shadows cast by the multi-dwelling housing development are predominantly over the front setback, towards Fourth Avenue, and also over the common driveway area.

A compliant level of solar access is maintained to adjoining properties in line with the provisions of Section 3.9 of Part 3.4 of DCP2014. This effectively means that sunlight to at least 50% of the principal ground level private open space area of adjoining properties is not reduced to less than two hours between 9am and 3pm on June 21.

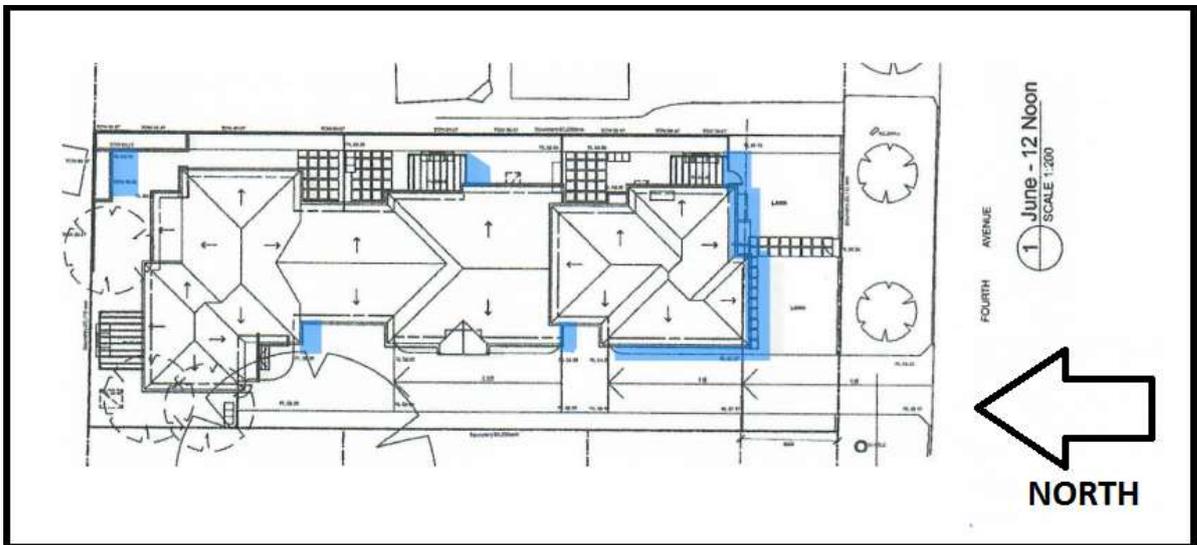
Provided below are extracts of the solar access diagrams submitted with the DA.



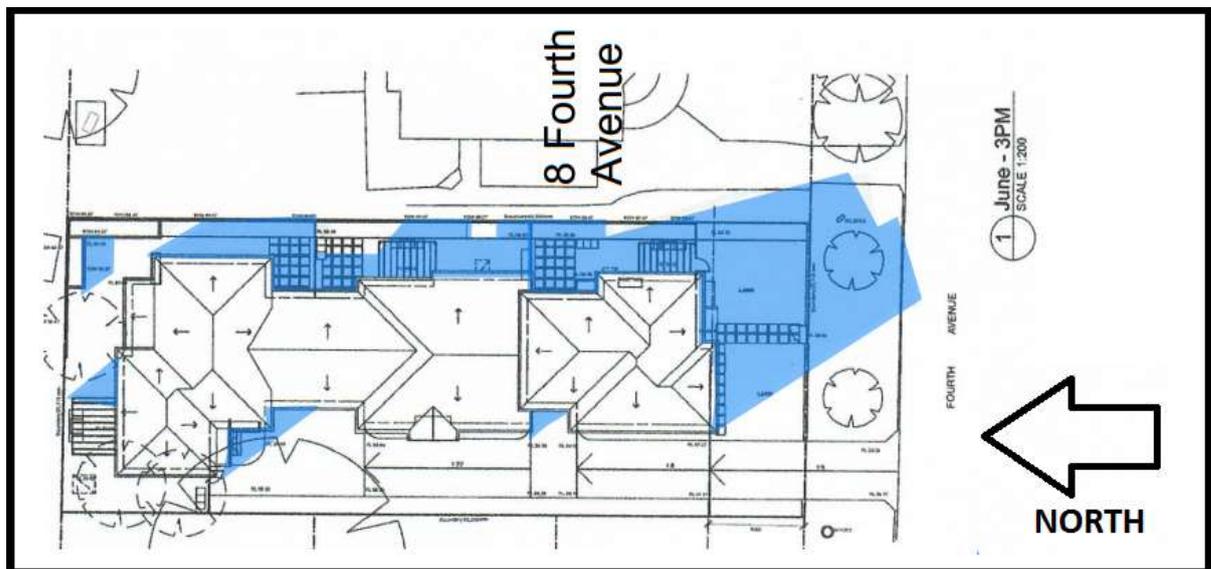
Extract of the 9am shadow diagram for the proposed development showing the shadow being cast to the west over the adjoining property at 44 East Parade, Eastwood. Despite this shadowing being cast at 9am, the adjoining property will maintain a level of solar access compliant with the minimum provisions of DCP2014 due to the favourable site orientation.

*Source: Applicant's submitted plans.*

**ITEM 3 (continued)**



**Extract of the 12pm shadow diagram for the proposed development showing the small shadow being cast over the subject site only due to the favourable site orientation.**  
*Source: Applicant's submitted plans.*



**Extract of the 3pm shadow diagram for the proposed development showing the shadow being cast over the adjacent property to the east at 8 Fourth Avenue, Eastwood. Despite this shadowing being cast at 3pm, the adjoining property will maintain a level of solar access compliant with the minimum provisions of DCP2014 due to the favourable site orientation, and the area overshadowing being the common driveway for the multi-dwelling housing development at 8 Fourth Avenue.**  
*Source: Applicant's submitted plans.*

### ITEM 3 (continued)

*I - Vegetation. Concerns over the level of impact on adjoining vegetation were raised;*

**Assessing Officer Comments:** As part of the assessment of the subject DA, the proposal was referred to Council's Consultant Landscape Architect for assessment. The referral response determined the applicant had not taken into consideration the proposed development's impact on the adjoining vegetation, and as such, an arboricultural impact assessment was required to be submitted to Council for review. This assessment was to look at the likely impact of the development on all vegetation, and make recommendations where necessary to ensure significant vegetation is appropriately retained and protected.

An arboricultural impact assessment was prepared by a suitably qualified consultant and submitted to Council. This report has indicated the proposal has the potential to impact on adjoining vegetation, and as such has recommended design amendments to ensure the continued viability of this adjoining vegetation.

The arboricultural assessment was referred to Council's Consultant Landscape Architect for review. The referral response generally outlines the design amendments made by the applicant that have reduced the level of impact to adjoining vegetation, and combined with the recommendations outlined within the arboricultural assessment and conditions of consent, the proposal should be satisfactory from an arboricultural perspective.

Note: The recommended conditions by the Consultant Landscape Architect include a requirement for permeable paving at those hard surface areas within the tree protection zone (TPZ), arborist supervision while excavation is taking place within the TPZ, and hand digging only within the TPZ.

*J – Visual Privacy. Concerns have been raised by objectors at 44 East Parade regarding the location of the proposal's windows on the western elevation to Dwelling 1 adjacent to their boundary and subsequent loss of privacy.*

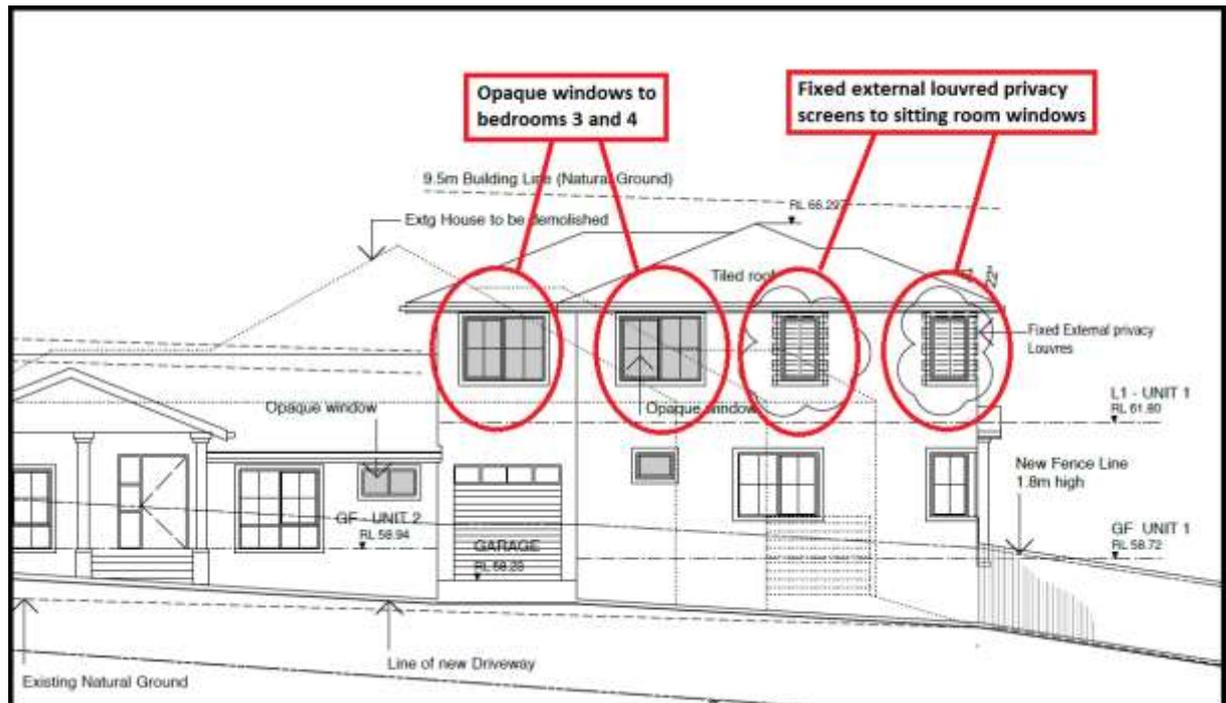
**Assessing Officer Comments:** The principal living areas for Dwelling 1 are orientated to the eastern side setback. To a lesser extent Dwelling 1 includes a partial orientation to the front setback.

Accordingly it is important to consider whether any potential overlooking opportunities occur from these living areas, and whether a subsequent loss of privacy results.

With regard to Dwelling 1 at the front of the site, the ground floor living areas have a finished floor level of RL58.72. This places the floor level at the western side facing windows 1m above the existing ground level. The windows on this elevation include a corner window for Bedroom 5 and a study room window which will give rise to potential overlooking of the adjoining private open space area for 44 East Parade.

### ITEM 3 (continued)

The applicant's amended plans dated 21 March have provided opaque windows to the first floor bedrooms 3 and 4, and fixed louvred external privacy screens to the first floor sitting room, as shown in the following diagram (extract of the west elevation). This is considered to satisfactorily resolve the issues of concern raised from No 44 West Parade which is to the west of the subject site.



**Extract of west elevation, showing opaque windows and fixed louvred privacy screens to western side first floor windows of Dwelling 1.**

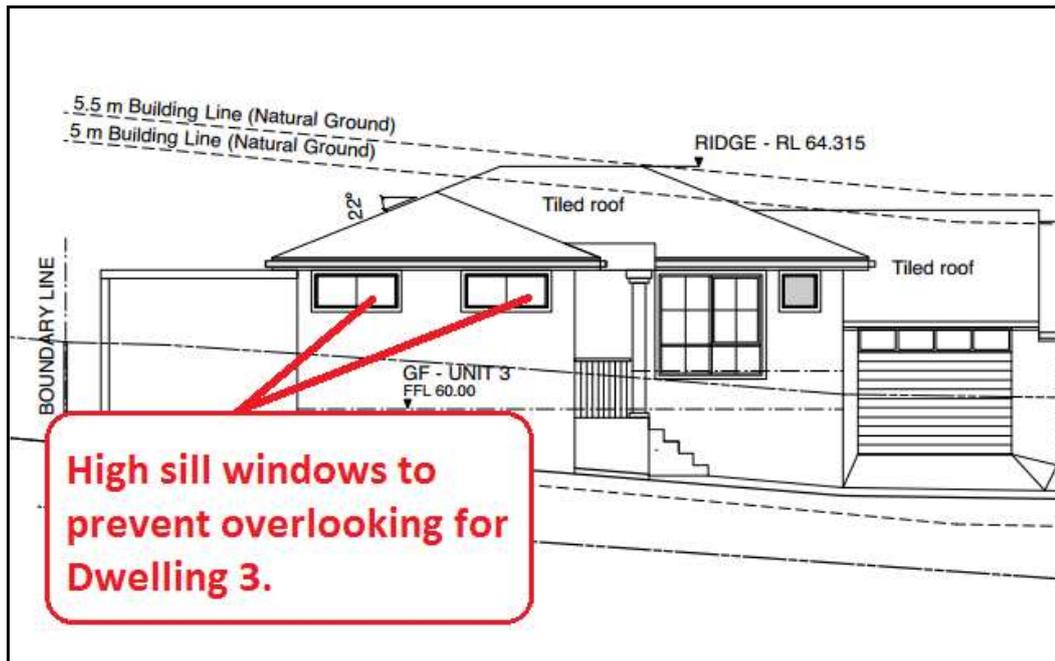
Dwelling 2 and Dwelling 3 are single storey dwellings only, and as such opportunities for overlooking are inherently reduced. However, it is important to consider whether any fill would give rise to potential overlooking.

Dwelling 2 includes a finished floor level at the eastern side boundary of RL61.798, which is almost 300mm lower than the existing ground level at the eastern side boundary. This means a 1.8m high fence on the boundary provides a satisfactorily effective screening height of 2.1m.

Dwelling 3 includes a split level arrangement with no east facing living room windows toward 8 Fourth Avenue. However, living rooms windows do face the northern rear boundary, and also the western side boundary. Importantly, it is noted the Senior Co-ordinator - Development Engineering Services's referral response conditions will increase the floor level of lowest split level by 100mm. The following is an assessment of the impact of the modified floor levels with regard to overlooking:

**ITEM 3 (continued)**

- the floor level for the living room is to be RL60.1, therefore placing the living room up to 1.1m above the existing ground level. This would present an overlooking opportunity to the west over the adjoining properties that front East Parade. However, the applicant's plans show the inclusion of high sill windows which satisfactorily limit overlooking potential.



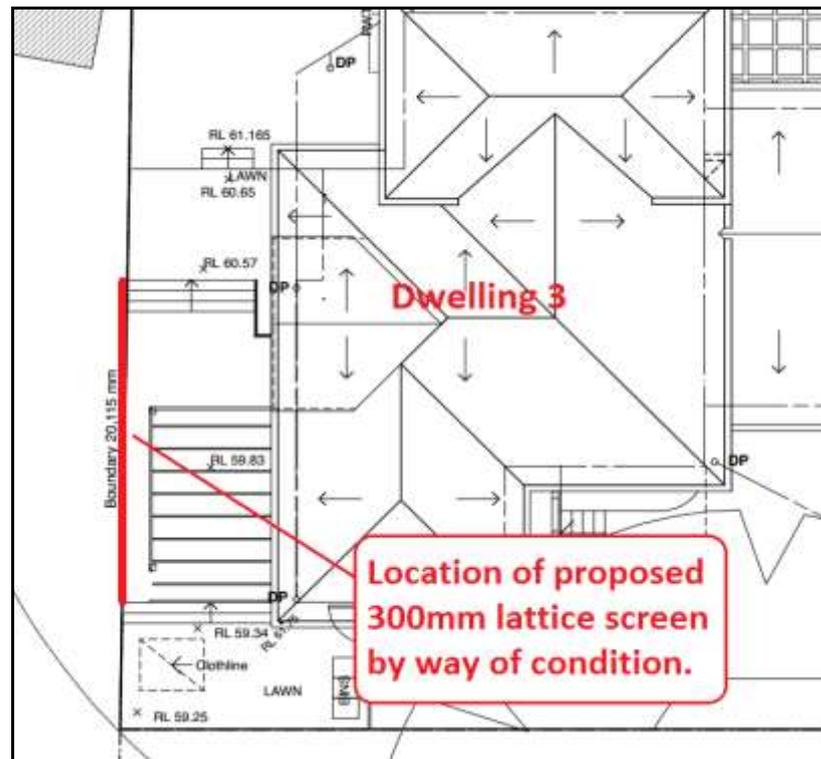
Extract of western building elevation for Dwelling 3 showing the high sill windows to the living room to limit overlooking potential of adjoining private open space areas of those dwellings fronting East Parade.

*Source: Applicant's submitted plans.*

- the floor level at the north facing living room windows at the bi-fold doors would be up to 610mm above the existing ground level with the Senior Co-ordinator - Development Engineering Services's conditions to modify the finished floor level (see Internal Referrals section later in this report). However the window to the dining room would be unaffected by this condition, and be 800mm above ground level. In either event, the 1.8m high rear boundary fence may not satisfactorily limit overlooking potential to the adjoining properties at Third Avenue. For this reason, the following standard condition of consent has been adapted for installation of 300mm high lattice screen atop a select portion of the rear boundary fence. This lattice screen on top of the boundary fence, working in conjunction the proposed 4.1m setback, vegetation planting, and pergola above the terrace are considered to satisfactorily limit overlooking potential.

**ITEM 3 (continued)**

**Lattice screening.** The provision of a lattice screen 300mm high on top of the rear boundary fence for the northern elevation of Dwelling 3 that is setback 4.1m from the rear boundary. Details of compliance are to be provided in the plans for the **Construction Certificate**.



Extract of site plan at Dwelling 3 showing the location of the proposed privacy screen by way of condition to minimise overlooking potential to adjoining property fronting Third Avenue.  
*Source: Applicant's submitted plans.*

- the floor level at the north-east facing kitchen room window is located at or below existing ground level, and as such no overlooking opportunities would present.

Furthermore, landscape strips are provided along the perimeter of the boundary which will assist in the maintenance of privacy, and softening of the buildings appearance.

Although vegetation screening should not be relied upon to achieve visual privacy, it is pertinent to note significant vegetation buffers the subject site from much of the private open space areas and buildings on adjoining allotments – see air photo earlier in this report and also the photo below:

**ITEM 3 (continued)**



Photo from rear yard of No 6 Fourth Ave, looking north towards adjoining property at No 1 Third Avenue.

Source: Assessment Officer Site Inspection Photo.

Based on the above assessment, the proposal's split level and terraced design has ensured the multi-dwelling housing development appropriately responds to site topography and minimises opportunities for overlooking, subject to conditions.

For this reason, objections based on unacceptable overlooking and loss of visual privacy are satisfied. Such concerns held by Council with the originally submitted plans have since been overcome with the applicant's revised design and will be further reduced through conditions of consent that will require screening to Dwelling 3 (see condition 34(a)).

***K – Change in applicant details.*** Neighbours have noted that the applicant's name appears to have changed on the amended plan re-notification letter.

### ITEM 3 (continued)

Comment: The listed applicant for LDA2015/651 is Colin & Ellen Ng, and for LDA2015/652 it is Aimee Ng. A single neighbour notification letter was sent for both DAs which included only the applicant name for LDA2015/652 (Aimee Ng), however there has been no change in applicant during the DA process.

#### 9. SEPP1 (or clause 4.6 RLEP 2014) objection required?

A clause 4.6 written request has been submitted for a 500mm variance to the 5m height limit for dwellings which do not front the street in an multi-dwelling housing development – refer clause 4.3A(2) of LEP2014 and the detailed assessment provided below for further details.

#### 10. Policy Implications

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

##### (a) Ryde Local Environmental Plan 2014

##### Zoning

Under the Ryde Local Environmental Plan 2014 (LEP2014) the zoning of the subject site is R2 Low Density Residential. The proposed development, being for 'multi dwelling housing', is identified as being permissible with consent under the R2 zoning.

The proposal is considered to satisfy the objectives for residential development as it will provide for the housing needs of the community within a low density residential environment.

The proposal maintains the existing general low density nature of the zone as the built form will not be incompatible with the character of the local area which includes a variety of housing types, i.e. single dwelling houses, multi-dwelling housing, and dual occupancies.

##### Principal Development Standards

A full assessment of the proposal against the relevant principal development standards contained within LEP2014 is illustrated in the Compliance Check table attached – see **Attachment 2**. The following outlines the relevant development standards applying to the proposed development, along with a comment as to how the proposal performs against these development standards:

**ITEM 3 (continued)**

Clause 4.1B – Minimum lot size for multi-dwelling housing. Clause 4.1B(2) of the LEP2014 prescribes that 'development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:

- (a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
- (b) the road frontage of the lot is equal to or greater than 20 metres.

<b>Column 1</b>	<b>Column 2</b>
Multi dwelling housing	900 square metres

The proposal also includes multi-dwelling housing development with strata subdivision on a site which has an area of 1,012m<sup>2</sup> and a total road frontage of 20.115m. Accordingly, the subject site meets the minimum lot size and frontage width for a multi-dwelling housing development, as prescribed by the LEP2014.

Clause 4.3(2) – Height of Buildings. Clause 4.3(2) prescribes that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. A review of the height of buildings map reveals the maximum height shown for the subject site is 9.5m.

Dwelling 1 has a maximum building height of 8.09m, while Dwelling 2 and Dwelling 3 have building heights of 5.4m and 5.5m respectively. Accordingly, the proposed development achieves compliance with the building height limits prescribed under clause 4.3(2) of LEP2014.

Clause 4.3A(2) – Exceptions to height of buildings. Clause 4.3(2) prescribes that the maximum height of multi-dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.

As outlined above, Dwelling 2 and Dwelling 3 have maximum building heights of 5.5m and 5.4m respectively. Accordingly these dwellings exceed the building height limit for dwellings which do not have a frontage to the street by 400mm to 500mm.

A clause 4.6 written request has been submitted by the applicant in an attempt to justify why it is unreasonable or unnecessary to comply with this development standard in the circumstances of the case. This is assessed in detail below.

Clause 4.5A(2) – Density controls for Zone R2 Low Density Residential. Clause 4.3(2) prescribes that development consent must not be granted to the erection of multi-dwelling housing on land in Zone R2 Low Density Residential unless:

**ITEM 3 (continued)**

- (a) *the site area for the building is not less than:*
- (i) *for each 1, 2 or 3 bedroom dwelling—300 square metres, and*
  - (ii) *for each 4 or more bedroom dwelling—365 square metres, and*
- (b) *each dwelling will have its own contiguous private open space.*

Given the proposal includes a single five-bedroom dwelling and two (2) three-bedroom dwellings, a minimum site area of 965m<sup>2</sup> is required to achieve compliance with clause 4.5A(2)(a) of the above development standard. Given the subject site includes an area of 1,012m<sup>2</sup>, compliance with this development standard is achieved.

With regard to clause 4.5A(2)(b), each dwelling will be provided with its own contiguous private open space which is separately accessible other than through the dwelling – i.e. through garages or side gates. In this regard, compliance is achieved with this component of the development standard.

Clause 4.6 – Exceptions to development standards. Clause 4.6 of the LEP2014 includes exceptions to development standards where a written request from the applicant seeks to justify the contravention of the development standard.

Clause 4.6(3) indicates that development 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.

A Clause 4.6 written request has been submitted by the applicant, which has adequately justified the contravention of the development standard. In particular, the applicant has reasonably justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as well as demonstrated there are sufficient environmental planning grounds to justify contravening the development standard, in accordance with clause 4.6(3) of the LEP2014.

Further to the above, the submitted written request has appropriately demonstrated that the proposed development will be in the public interest because it remains consistent with the objectives for development within the R2 zone.

A review of the submitted written request has considered the applicant's reasoning for varying a development standard. As such, it is the opinion of the Assessing Officer that it would be unreasonable and unnecessary to achieve compliance with the development standards in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard, for the following reasons:

**ITEM 3 (continued)**

- The proposed development is considered to satisfy the objectives for residential development within the R2 zone as it will provide for the needs of the community within a low density residential environment. It will also contribute to providing a variety of housing types through the provision of three (3) dwelling of varying size in the form of an multi-dwelling housing development.
- The non-compliance is considered to be acceptable representing a 10% (500mm) variance to the building height limit for Dwelling 3 and 9% variance (400mm) to the building height limit for Dwelling 2. The plans adequately present a development that does not in this case hinder compliance with solar access, privacy, views to and from the site, and the density requirements of the DCP2014.
- The proposed development responds well to the site, despite the non-compliance with the development standards, and does so without compromising relationships with adjoining developments. Strict compliance with the development standards would render the application inconsistent with the objectives specified in section 5 (a) (i) and (ii) of the EPA Act as the site will remain under-developed and would not promote the economic welfare of the community through additional housing supply.
- The proposed development is capable of maintaining the low density nature of the R2 zone as it will largely present as a two-storey dwelling house when viewed from Fourth Avenue. The development will complement the existing streetscape through the provision of a built form that will be compatible with surrounding development, and satisfactorily compliant with Council's planning controls.
- Enforcing compliance with the development standard will restrict a development that would otherwise be appropriate on the site<sup>1</sup>. Through a skillful design, the proposal demonstrates the site is capable of being developed without unduly impacting on the adjoining properties. Overall the proposal maintains compliance with the relevant provisions and controls under the LEP2014 and DCP2014. Where compliance hasn't been achieved, the development has proved to be capable of achieving the objectives of the development controls and accordingly, flexibility has been recommended when having regard to the provisions of Section 79C(3A)(b) of the Act.

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<sup>1</sup> Note - *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179* whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014.

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

- The variation to the development standard under the circumstances will ensure that the site is able to be developed and result in better management of the site as well economic enhancement for the community.
- Council have varied the building height control for dwellings which do not front the street in multi-dwelling housing development to ensure appropriately pitched roof are included on undulating sites. In this regard, refusing consent on this basis would be inconsistent with Council's previous application of the development standard.

Having regard to the above, it is considered that enforcing compliance with the aforementioned development standard would be unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the contravention in the circumstances of the case.

#### **(b) Relevant State Environmental Planning Policies (SEPPs)**

##### State and Sydney Regional Environmental Planning Policies

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

*State Environmental Planning Policy No.55 – Remediation of Land* (SEPP55) applies to the entire state of New South Wales and includes planning controls for the remediation of contaminated land. It also requires an investigation to be made if land contamination is suspected.

A review of Council's environmentally sensitive land mapping, and historic air photos has identified that the land has only been used for residential purposes. Therefore the site is unlikely to be affected by site contamination, and therefore no further investigation is required in this regard..

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

A compliant BASIX Certificate (Cert. No. 693042M, dated 17 December 2015) has been submitted with the subject DA. A standard condition of consent will be imposed to ensure compliance with the BASIX Certificate (see condition 3).

Note: The description of the project within the submitted BASIX Certificate indicated Dwelling 3 as including three (3) bedrooms, however this dwelling was taken to include four (4) bedrooms as the room labelled 'study' was capable of being used as a bedroom. As such, the proposal was not considered to achieve compliance with the provisions of Regulation 164A of the Regulations which require consistency between the BASIX Certificate and the submitted plans.

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

By undertaking the aforementioned revisions to Dwelling 3, the proposal is now consistent with the description of the development under the submitted BASIX Certificate.

#### Other State Environmental Planning Policies

No other SEPPs have been identified as being applicable to the proposed development.

#### **(c) Any draft LEPs**

No draft environmental planning instruments that have been identified which are considered relevant for the proposed development on the subject site.

#### **(d) The provisions of any development control plan applying to the land**

##### **Ryde Development Control Plan 2014**

The proposal has been assessed using the development controls contained in the *Ryde Development Control Plan 2014* (DCP2014). The full assessment is detailed in the Compliance Check table attached – see **Attachment 2**.

The following outlines those non-compliances identified with the subject DA, and elaborates on how these non-compliances are either justifiable in the circumstances of the case, or are not justifiable and require amendment to the design or imposition of mitigation measures by way of conditions of consent.

#### Non-Compliances: Justifiable

As covered by Section 79C(3A)(b) of the *Environmental Planning and Assessment Act 1979* (the Act), if a development control plan contains provisions that relate to the development that is the subject of a DA, the consent authority is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

With the above in mind, the following outlines those aspects of the proposal which have been assessed as non-compliant with the applicable development controls under DCP2014, but nonetheless have been determined acceptable as they are able to achieve the objects of those standards.

- 1. Non – preferred locations:** Section 2.3 and Schedule 2 of Part 3.4 DCP2014 prescribes that land affected by slope greater than that described in Section 3.1 would be a non-preferred location for multi-dwelling housing development.

**ITEM 3 (continued)**

When looking at Section 3.1, the maximum gradient specified for multi-dwelling housing sites is 1:6 when looking at slopes up and down from the street. In addition, Section 3.1 also prescribes a maximum cross fall of 1:14 for multi-dwelling housing sites.

Council officer's assessment of the proposed development has identified the site slope up from the street is an average of 1:8.7. While the cross fall is 1:12 at the front of the site, 1:10 in the central portion of the site, and 1:7.5 toward the rear of the site.

Accordingly, the subject site includes a non-compliant cross fall.

Given the site fails to achieve compliance with this control the provisions of Section 2.3 and Schedule 2 would therefore stipulate the site as being non-suitable for multi-dwelling housing development.

In this regard, reference is made to a recent Land and Environment Court decision (*Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*) whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014. Specifically, it was held that no weight be given to the non-preferred location controls under Section 2.3 of Part 3.4 of DCP2014 as the clause effectively seeks to prohibit a development that is permissible under LEP2014 (notwithstanding the use of the words "non-preferred").

Given the above, it is the opinion of the Assessment Officer that non-compliance with the non-preferred location control under the DCP2014 should not surmount to grounds for refusal.

Nevertheless, it is prudent to assess how the proposal performs against the objectives of Council's site slope controls to ensure the proposed multi-dwelling housing development is compatible with the site and surrounding development by not unduly impacting on the amenity to neighbouring properties.

On this point reference is made to the detailed assessments on overshadowing, privacy, noise and visual impact provided when responding to concerns raised by objectors earlier in this report.

In addition, despite the slope of the site, Council's Senior Co-ordinator - Development Engineering Services has indicated the proposal is satisfactory from a stormwater perspective, subject to conditions. Additionally, despite the slope of the site and the land being subject to land slip, the proposal has also been assessed as being satisfactory from Council's Consultant Structural Engineer, subject to conditions.

### ITEM 3 (continued)

Given the proposal has proven to be satisfactory when considering these impacts, it must be held that the development is compatible with the local area.

For the reasons outlined above, the proposal is considered supportable, despite it not achieving compliance with the provisions of Section 3.1, Section 2.3, and Schedule 2 of the DCP2014.

- 2. Altering the levels of the site:** Section 3.2 in Part 3.4 of the DCP2014 prescribes setback multi-dwelling housing development must not alter the levels of a site by more than 300mm outside of the building envelope.

An assessment of Dwelling 1 has revealed that the proposed ground level for the private open space area is to be excavated up to 760mm to accommodate the lawn and terrace area.

For Dwelling 2, has revealed that the proposed ground level for the private open space area is to be excavated up to 450mm to accommodate the lawn and terrace area.

For Dwelling 3, the proposed ground level is also to be terraced across different levels for the eastern and northern lawn areas, as well as the terrace area in front of the dining room. To achieve this excavation of up to 1m would be required, with a maximum 110mm of fill for the terrace also required when applying the Senior Co-ordinator - Development Engineering Services's consent conditions.

For the western side setback, the common driveway is generally located at ground level, with some portions of fill up to 500mm is required.

Having regard to the above, it is evident the proposal will exceed the 300mm limit under DCP2014 by 460mm for Dwelling 1, 150mm for Dwelling 2, 700mm for Dwelling 3 and around 200mm for the common driveway area.

Despite the above variations to Council's cut and fill controls, the proposal is considered justifiable for the following reasons:

- The proposal has utilised terracing throughout the site, as well as split levels within the dwellings in order to maintain a built form outcome that respects the site topography.
- Despite the excavations proposed, the favourable orientation of the site ensures that a compliant level of solar access is achieved to the private open space and living areas of the dwelling. For example, the living room areas of all dwellings have at least two aspects so as to capture both morning and afternoon sun.

**ITEM 3 (continued)**

- As demonstrated earlier in this assessment report when responding to objector concerns, the proposed development satisfactorily minimises overlooking opportunities and maintains visual privacy to adjoining property, subject to conditions. By virtue of the level alteration being mostly cut as opposed to fill, the effective height of the boundary fences will remain satisfactory in most circumstances. In other areas a condition for 300mm lattice screening has been proposed – i.e. adjacent to the terrace (see condition 34(a)).
- The proposal has been assessed by Council's Senior Co-ordinator - Development Engineering Services, and also Council's consultant structural engineer. The referral responses do not raise impact on ground water as a concern for the development. Furthermore, Council's engineers have provided support for the proposed development despite the site being impacted upon by land slip.

For the reasons outlined above, the proposal is supported, despite it not achieving compliance with the provisions of Section 3.2 of Part 3.4 of DCP2014.

**Section 94 - Development Contributions Plan – 2007 Interim Update (2014)**

Council's current Section 94 Development Contributions Plan 2007 (Interim Update (2014) effective 10 December 2014) requires a contribution for the provision of various additional services required as a result of increased development density. The contribution is based on the number of additional dwellings there are in the development proposal. The contribution that are payable with respect to the increase housing density on the subject site (being for residential development outside the Macquarie Park Area) are as follows:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community and Cultural Facilities	\$7,056.38
Open Space & Recreation Facilities	\$17,371.38
Civic & Urban Improvements	\$5,908.34
Roads & Traffic Management facilities	\$805.94
Cycleway	\$503.44
Stormwater Management Facilities	\$1,600.14
Plan Administration	\$135.72
<b>The total contribution is</b>	<b>\$33,381.34</b>

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

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

##### **(a) Built Environment**

A detailed assessment of the impacts of the proposed development on the built environment has been undertaken as part of the assessment of the proposed development. This has included a compliance check against all relevant planning controls, referral of the proposal to relevant technical officers within Council, and a detailed assessment report.

The assessment of the proposal has revealed that it is unlikely to adversely impact on the existing character of the locality in terms of bulk and scale. Whilst it is acknowledged that the scale and built form density of the subject site will increase as a result of the development, the proposed multi-dwelling housing development has been appropriately designed so that the building has a similar appearance to a large dwelling house from the street.

Having regard to the above, the proposed development is considered unlikely to significantly impact the streetscape or surrounding development.

##### **(b) Natural Environment**

The proposed development is located in an established urban area, and as such is not considered to result in any significant impacts on the natural environment. Imposition of Council's standard conditions of consent, along with external referral conditions from the Rural Fire Service relating to protection of the environment, are considered to satisfactorily mitigate any adverse impact on the proposed multi-dwelling housing development.

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

A review of Council's map of Environmentally Sensitive Areas (held on file) identifies the subject site is subject to the following constraints:

- Bushfire Prone land (comments/conditions provided by the NSW RFS – see Referrals Section of this report below)
- Flood Prone (see Senior Co-ordinator - Development Engineering Services's assessment in Referrals section of this report below).
- Within 100m of a Heritage Item (see Heritage Officer's assessment in Referrals section of this report below).
- Slope Instability (see Consultant Structural Engineer's assessment in Referrals section of this report below).

### ITEM 3 (continued)

Despite these environmental/planning hazards, it has been determined the proposal is suitable for the subject site as it will not unduly impact on the streetscape or adjoining development, nor give rise to potential risks associated with bush fire so long as the recommended conditions of consent are adhered to.

### 12. The Public Interest

The proposed development is considered satisfactory having regard to the objectives and requirements of the LEP2014 and DCP2014. Key potential impacts on adjoining property have been considered and addressed within this report. As such it is considered that the proposed development is in the public interest.

The proposal contributes to the delivery of a variety of housing types to meet the needs of the community within the R2 zone through the provision of a multi-dwelling housing development in an area that is predominantly single dwelling houses.

### 13. Consultation – Internal and External

#### Internal Referrals

**Senior Co-ordinator - Development Engineering Services:** The originally submitted proposal and revised plans were referred to Council's Senior Co-ordinator - Development Engineering Services for assessment. In the referral response the following comments were made:

#### Stormwater Management

*The proposed stormwater management system for the development discharges to the kerb in Fourth Avenue and incorporates an onsite detention system having detailed parameters complying with Councils requirements.*

*A review of the plan has noted the following matters which need to be addressed;*

- The plans have located the proposed detention system in a landscaped area of the front setback. To minimise the extent of the hard surface paving, the detention system must be located in the driveway region and this has been addressed as a condition of consent.*
- It is noted the design has incorporated a defined overland channel running along the downstream boundary which is intended to arrest any runoff entering the neighbouring property. Whilst this is not sufficient enough to arrest major overland flow (nor required), it is beneficial to prevent nuisance seepage issues and the measure is enforced in the condition concerning the submission of a detailed drainage plan.*

**ITEM 3 (continued)**

- *The consultants OSD calculations are slightly incorrect in that they have offset the detention volume by a 1/3 of the rainwater tank volume. This is contrary to the BASIX regulations and Council's DCP. Accordingly the tank is to accommodate the full volume and this can be readily addressed.*

*These can be dealt within the standard condition of consent regarding stormwater management.*

*Vehicle Access and Parking*

*A review of the parking area with respect to the DCP and Australian Standard requirements notes the following;*

- *The existing footpath/ verge is elevated well above the road carriageway and City Works may attempt to redress this as part of the development works (lowering the footpath slightly). Accordingly the boundary level may be slightly lower than existing. A review of the resulting ramp grades indicates that there is sufficient length to the first parking space for the ramp to provide transitions and grades in accordance with the AS 2890.1. It is warranted that a driveway profile be prepared to ensure that this matter is addressed.*
- *A review of the swept path access to the garage between units 1 and 2 notes that the required swept path clearances are compromised. This could be addressed by widening the driveway access a further 500mm just opposite the garage entry and widening the separation between unit 1 and 2 by some 400mm. This is addressed by condition of consent.*
- *The proposed visitor carspace will require a multipoint turn to exit in a forward manner. Whilst the level of manoeuvring is not ideal, this is typical for villa development given that the development footprint and site width does not permit a turning bay to be located in such areas. Widening the driveway to the boundary in the region fronting garages serving Units 2 and 3 would facilitate and reduce the level of manoeuvring.*

*These matters have been addressed as a condition of consent.*

*It is noted that revised plans have been requested to make provision for a visitor car space which is likely to be located at the end of the driveway access. As noted in the development assessment for 6 Fourth Avenue, the car space will require a multipoint turn to enter/ exit. Whilst this is not ideal, the arrangement is typical for a villa development. It is advised that widening the driveway in this region would provide additional manoeuvring area, thereby facilitating this movement.*

**ITEM 3 (continued)***Flooding and Overland Flow*

*A review of the submitted flood report notes several anomalies with the information presented;*

- The report notes that the consultant was informed by Council's CW&I that the overland flowrate through the property was in the order of 3 m<sup>3</sup>/s, though the remaining section of the report and HEC-RAS analysis has utilised Q=0.3m<sup>3</sup>/s. Noting the size of the contributing catchment (1.4 Ha) and accounting for public drainage system upstream in Fourth Avenue, an overland flowrate of 0.75m<sup>3</sup>/s is estimated. It is however reasonable to assume that a portion of the overland flow would be conveyed in the inground drainage network upstream of the site in Fourth Avenue. In this case, a flowrate through the site of 0.3m<sup>3</sup>/s is plausible though not conservative.*
- The HEC-RAS results are noted to be the same for "pre" and "post" development. This is possible if the development works do not intrude into the flowpath and surface levels are maintained.*
- The analysis has not produced the cross-sections over the entire overland flow path. Whilst this is poor approach, the shortfall produces higher flood levels than what may be anticipated as the models considers flow being contained only to the specified cross-section.*
- The report makes a recommendation to adopt a maximum flood level of RL59.80m at station "40" however the tabled HEC-RAS data does not correlate with this for the given station.*

*In summary, the analysis has underestimated the overland flowrate but this has been countered by the consultant's failure to include the full overland flowpath.*

*To clarify the flood impacts, a simple HECRAS model was prepared based on Councils topography data and aerial photos of neighbouring dwellings. The model incorporated the anticipated estimated runoff of 0.75m<sup>3</sup>/s, disregarding the capacity of the upstream inground drainage infrastructure (a conservative approach). The analysis indicated flow depths of 250mm, therefore only marginally higher than the consultant's report (240mm estimated).*

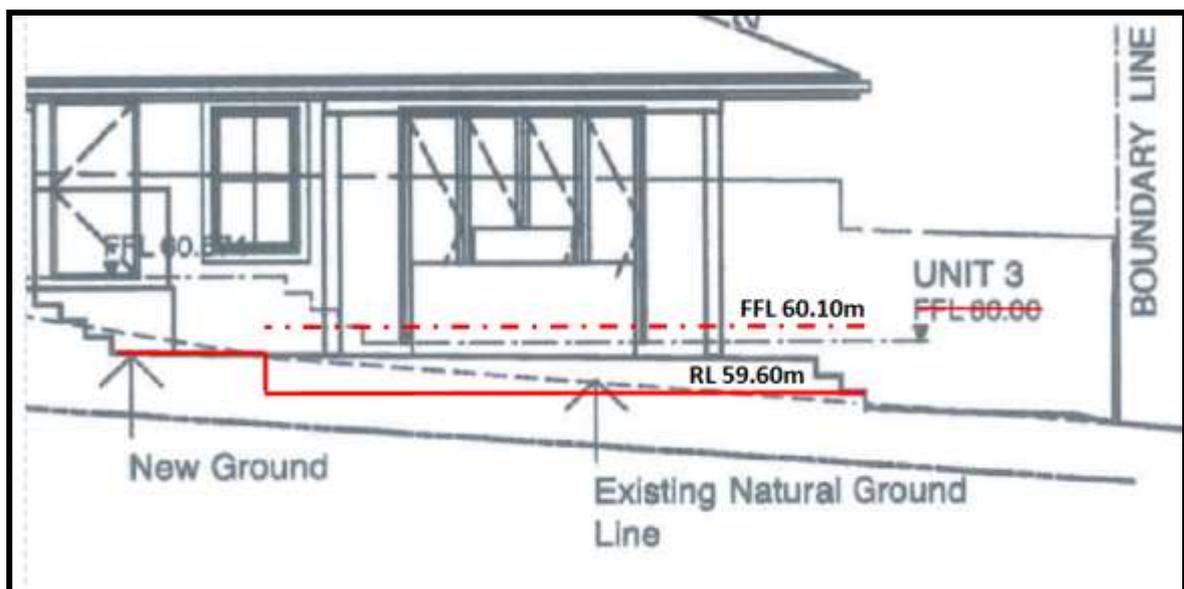
*The output correlates with Councils floodplain management results (see drawing below) which indicate flow depths (depicted as light blue areas) anticipated to be in the region of 100mm to 250mm depth.*

### ITEM 3 (continued)

*Accordingly, Council's requirements for development in flood affected areas are considered in light of this;*

- *Flood Protection – The level of flood affectation is low risk and would warrant a freeboard of 300mm. Considering the depth of flooding adjoining unit 3 is anticipated to be in the order of 250mm, the entry threshold to unit 3 in the area of the terrace must be 550mm above the immediate ground level. The recently revised plans do not observe these requirements.*
- *Flood Impacts – Council's topography plans, survey data and flood reports conducted for neighbouring property indicate that there is a natural valley at the rear of the subject site and continues along the rear of the adjoining properties No. 40 to 44 East Parade. Whilst the development intrudes into the flowpath, the modelling results indicate that the development dams the flow (impacting the subject site itself) rather than diverting it into these properties. Accordingly it is crucial that the existing ground levels be maintained. Some minor excavation would be beneficial.*

*With this in mind, it is advised that the external terrace area of unit 3 (which will receive the brunt of this flow) be levelled to RL59.60m (slightly below existing) and, to satisfy freeboard requirements, the living area of Unit 3 be raised to RL60.10m (A 100mm increase). To preserve the amenity of the external terrace area, the terrace area may be a suspended structure (e.g. timber deck) constructed such to permit water to enter the property and flow under and through the structure.*



***This diagram from the Development Engineer's referral response shows the northern elevation of Dwelling 3 with the impact of the Development Engineer's conditions to modify the proposed floor levels to address overland flow issues on the site.***

***Source: Submitted ground floor plan by applicant.***

**ITEM 3 (continued)***Recommendation*

*There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development.*

**Assessing Officer Comment:** The Senior Co-ordinator - Development Engineering Services has recommended twenty-four (24) conditions of consent. Of note from a planning perspective are the conditions recommending widening of the garage for Dwelling 1, and also widening of the common access driveway. A review of the plans reveals there is scope to narrow the vegetation buffers along select portions of the driveway to enable the Development Engineer comments. It is considered there is scope to widen the garage for Dwelling 1 by encroaching on the adjacent living room/bathroom without unduly impacting on the internal dimensions of Dwelling 1, or requiring further encroachment into the front setback area.

It is noted that due to overland flow the finished floor levels for part of Dwelling 3 are required to be raised by 100mm. The floor level that is required to be raised relates to the living/family room and bedroom 1 area. In the previous plans, this area was proposed to have the finished floor level at RL60.00, raising this will result in a finished floor level of RL60.10.

It is considered the 100mm increase in the floor levels will contribute to potential visual privacy impacts, and as such the assessment throughout this report has made recommendation for privacy screens in select locations to reduce overlooking potential.

The overall height is not considered to be impacted upon by the proposed conditions by the Senior Co-ordinator - Development Engineering Services as the floor to ceiling heights for the living area of Dwelling 3 are 3.3m. A 100mm increase should be accommodated within the existing building envelop, thus resulting in a floor to ceiling heights of approximately 3.2m.

The applicant's amended plans dated 21 March 2017 have included the required 100mm increase to the lower split level of Dwelling 3. This has been achieved without any increase to the height of this dwelling. It is noted that these amended plans have been re-notified to neighbours as discussed in the Submissions section of this report above.

**Consultant Structural Engineer:** The subject site is identified as being within an area subject to slope instability. Accordingly, the originally submitted proposal and revised plans were referred to Council's Consultant Structural Engineer for assessment. In the original referral response concerns were raised over the adequacy of the applicant's submitted geotechnical assessment. In particular:

**ITEM 3 (continued)**

“... it would be prudent to obtain written assurance from Davies Geotechnical that the site filling of up to 1.3m in depth in conjunction with localised excavation up to a maximum depth of 2.9m below natural surface level for construction of the proposed stormwater detention tank will no change their risk assessment or recommendations.”

As such, this information was conveyed to the applicant and a supplementary geotechnical assessment has been provided to Council for assessment. This was referred back to Council’s Consultant Structural Engineer, who has advised that it is now satisfactory for approval, subject to conditions of consent requiring compliance with the recommendations contained in the Davies Geotechnical Reports. Compliance with the Davies Geotechnical Reports is required by condition 1 of the consent.

**Heritage Officer:** The DA has been referred to Council’s Heritage Officer who has made an assessment and provided the following comments:

*The development proposal seeks Council’s approval for the demolition of the existing detached-style dwelling house on the site and construction of a part single storey part two-storey attached multi-dwelling units.*

**Reason for the Heritage Referral:**

*The development proposal has been referred for heritage consideration as the subject site is within the vicinity of the following items of heritage significance listed under Schedule 5 of Ryde LEP 2014:*

- i) ‘Seat’ East Parade (outside 36A) (Item No.150)*
- ii) ‘Open Space’ Darvall Park, Chatham Road (Item No.126)*

**Consideration of the heritage impacts:**

*The subject site contains a single-storey, detached style dwelling house which displays the key characteristics attributed to the Post-War period of the 1960s and is an architectural style that is not considered rare or under threat in the locality. Demolition is supported accordingly.*

*The proposal then involves the site clearing, including the removal of trees followed by the construction of a part single-storey, part double-storey attached multi-dwelling units.*

*The subject site is within the vicinity of Darvall Park and a seat, both of which are listed items of local heritage significance and located within the vicinity of the site. While there is a partial visual relationship between the subject site and Darvall Park, there is no visual relationship to the seat which is situated in the road reserve in East Parade.*

**ITEM 3 (continued)**

*In considering the proposed development, there will be no material affectation to the heritage items in the vicinity nor will the redevelopment of the site result in any adverse visual impacts on the setting or visual relationship with Darvall Park.*

**Recommended conditions**

*There are no conditions recommended.*

**Consultant Landscape Architect:** The originally submitted proposal and revised plans were referred to Council's Consultant Landscape Architect for assessment. In the original referral response concerns were raised over the development's potential impact on adjoining significant vegetation. As such, it was requested that an arboricultural impact assessment prepared by a suitably qualified arborist be submitted to Council for assessment.

This arboricultural impact assessment dated 26 April 2016, along with revised plans, were submitted to Council as part of the additional information package from the applicant, and subsequently referred back to Council's Consultant Landscape Architect for review and comment.

The response from the consultant is the revised design's level of impact on adjoining vegetation is generally satisfactory, subject to the recommendations within the submitted arboricultural report, and also subject to the following conditions of consent:

**Species Substitution.** *The Jacaranda mimosifolia proposed within the front yard of the allotment is to be substituted for a Syncarpia glomulifera (Turpentine) which meets the following specifications:*

- a) *The tree shall be planted in accordance with the specifications as prescribed in Section 6 of the City of Ryde Urban Forest Technical Manual;*
- b) *The tree is to be located a minimum of 4m from any dwelling, carport or swimming pool;*
- c) *The container size of the replacement tree at planting shall be a minimum of 45 litres;*
- d) *The replacement tree shall be maintained until it reaches five (5) metres tall or has a stem circumference of 450mm, at which time the tree shall be protected by the City of Ryde Development Control Plan 2010 Part 9.6 (Tree Preservation);*
- e) *If a replacement tree dies before it reaches this size it shall be replaced in accordance with Replanting Conditions listed above;*
- f) *It is your responsibility as the property owner to ensure that all work is carried out according to the conditions of this consent. Failure to do so is an offence under the Environmental Planning and Assessment Act 1979 and you may be subject to fines or legal action.*

**ITEM 3 (continued)**

**Permeable Paving. Tandem Parking Spaces.** *The tandem parking spaces for Dwelling 2 and Dwelling 3 are to utilise permeable paving within the Tree Protection Zones identified within the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26 April 2016.*

**Tree Protection.** *All tree protection works including installation of any fencing is to be undertaken prior to any demolition or site clearing works on site.*

**Tree Protection Fencing.** *All protective fencing and signage around Tree Protection Zones must be located in accordance with AS4970: Protection of trees on development sites. In this regard, any fencing required to be constructed around the Tree Protection Zone is to be in accordance with AS4687 Temporary fencing and hoardings.*

**Project Arborist.** *A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on the subject site and neighbouring allotments in accordance with AS4970-2009 Protection of trees on development sites and the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26.04.2016. All trees are to be monitored to ensure adequate health throughout the construction period is maintained. Additionally, all work within the Tree Protection Zones is to be supervised by the Project Arborist throughout construction. Details of the Project Arborist are to be submitted to Council prior to the commencement of construction.*

**Stormwater Trench/Pit Locations.** *The location of stormwater infrastructure located along the western side boundary is to be located as far away from existing trees to be retained as practical. Should the excavation for the stormwater pits and trenches conflict with any major structural roots (greater than >25 mm diameter) of existing trees, their location and alignment is to be modified in consultation with the Project Arborist to avoid impact. Under no circumstances should roots be severed or cut without prior approval from the Project Arborist.*

**Species Substitution.** *The Jacaranda mimosifolia proposed within the front yard of the allotment is to be substituted for a Syncarpia glomulifera (Turpentine) which meets the following specifications:*

- (a) The tree shall be planted in accordance with the specifications as prescribed in Section 6 of the City of Ryde Urban Forest Technical Manual;*
- (b) The tree is to be located a minimum of 4m from any dwelling, carport or swimming pool;*

**ITEM 3 (continued)**

- (c) *The container size of the replacement tree at planting shall be a minimum of 45 litres;*
- (d) *The replacement tree shall be maintained until it reaches five (5) metres tall or has a stem circumference of 450mm, at which time the tree shall be protected by the City of Ryde Development Control Plan 2010 Part 9.6 (Tree Preservation);*
- (e) *If a replacement tree dies before it reaches this size it shall be replaced in accordance with Replanting Conditions listed above;*
- (f) *It is your responsibility as the property owner to ensure that all work is carried out according to the conditions of this consent. Failure to do so is an offence under the Environmental Planning and Assessment Act 1979 and you may be subject to fines or legal action.*

**Underground Utilities.** *Any utility services to be located underground within the TPZ are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than >25 mm diameter). To prevent soil compaction and root damage these works should be conducted with non-motorised hand tools or directional drilling.*

**Fill Requirements.** *All fill to be placed within the Tree Protection Zones of neighbouring trees is to be gap graded structural soils which allows for gaseous exchange and future root growth. The Project Arborist is to confirm suitability of the proposed material prior to installation.*

**Excavation within TPZ.** *Any excavation or grading/re-grading within the identified TPZs of trees to be retained shall be carried out by hand using manual hand tools. Roots greater than 25mm are not to be damaged or severed without the prior written approval of the Project Arborist.*

**Retaining Wall Construction.** *Any retaining wall construction necessary within the Tree Protection Zones of trees to be retained is to utilise a construction technique which minimises the level of impact to existing tree roots such as pier and beam with a suspended beam, modular concrete sleepers with steel post supports or gravity wall. The design and method of construction is to be reviewed and approved by the Project Arborist as part of the Construction Certificate.*

**Soil Moisture within TPZ.** *Soil moisture levels within all TPZs are to be regularly monitored by the Project Arborist during construction. If temporary irrigation or watering is required within the TPZ, then any above-ground irrigation system is to be installed and maintained by a suitably qualified individual.*

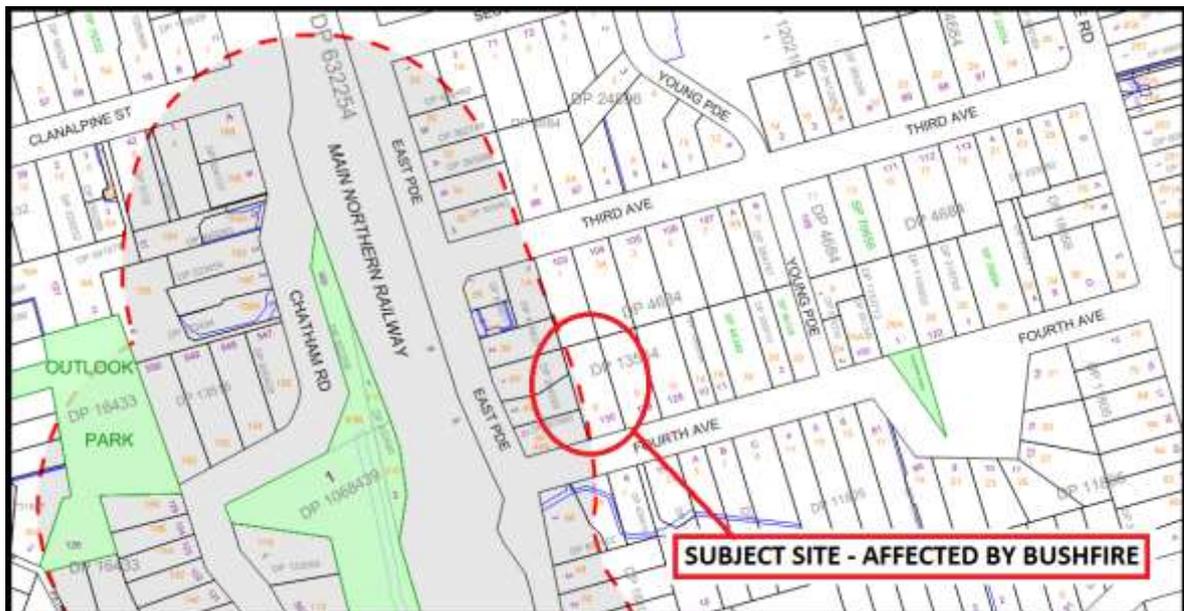
### ITEM 3 (continued)

**Final Assessment of Trees.** At completion of all construction works the Project Arborist is to carry out an assessment of all trees that were required to be retained. This assessment is to be documented in writing, a copy of which is to be submitted to Council prior to the issue of any occupation certificate for the development. The documentation is also to specify any required on-going remedial care that is required to be undertaken to ensure the continuous health and retention of the specified trees.

#### External Referrals

**NSW Rural Fire Service (RFS):** A small proportion along the western boundary is identified as being located within the bushfire buffer area 'Vegetation Category 1', as shown on the City of Ryde Bush Fire Prone Land Map below.

**NOTE:** This constraint of affectation by Bush Fire Risk affects No 6 Fourth Ave, and NOT No 8 Fourth Avenue. Accordingly, this DA (LDA2015/651) has been referred to the NSW RFS for comment, but the DA for No 8 Fourth Ave (LDA2015/652) was not required to be referred to the NSW RFS.



Land affected by bushfire risk (grey shading with broken red line), with subject site location shown. Subject Site is affected by bushfire risk.  
Source: Ryde Council mapping system.

Under s.100B(1)(a) of the *Rural Fires Act 1997* a bush fire safety authority is required for subdivision of bush fire prone land that could be used for residential purposes. The proposal includes strata subdivision, and pursuant to s.4B of the *Environmental Planning and Assessment Act 1979*, strata subdivision falls under the definition of 'subdivision of land'. Accordingly, an external referral to the RFS was undertaken as part of the assessment of the subject DA.

**ITEM 3 (continued)**

A response, deemed a bush fire safety authority as required under s.100B of the *Rural Fires Act 1997*, from the RFS was received on 30 September 2016.

This response imposes the following conditions (which are incorporated into the Draft Consent):

**Condition 23:**

**Asset Protection Zones.** *The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:*

*At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

**Condition 20:**

**Water and Utilities.** *The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:*

*Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'*

**Condition 21:**

**Access.** *The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:*

*Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.*

**Condition 22:**

**Design and Construction.** *The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:*

*New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.*

### ITEM 3 (continued)

**General Advice – consent authority to note.** *This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.*

Assessment Officer's Comment: Council's Bushfire Consultant has advised that the proposed driveway width of 4m as shown on the DA plans will ensure compliance with Section 4.1.3(2) of *Planning for Bushfire Protection 2006*, as required in the above conditions from the NSW Rural Fire Service.

#### 14. Critical Dates

There are no critical dates or deadlines to be met.

#### 15. Financial Impact

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

#### 16. Other Options

The recommendation of this report is approval subject to conditions.

The only practical alternative to this recommendation of approval would be refusal. In this regard, the various issues of concern arising from assessment of this DA as discussed throughout this report (ie DCP non-compliances and concerns in submissions from neighbours) could form the basis for reasons for refusal.

However it is not considered that Council would be successful in defending an appeal in the Land and Environment Court based on these issues, because the development is generally considered to be satisfactory on merit despite these issues, as discussed throughout this report.

Many of the submissions from neighbours have raised the concern regarding cumulative impacts (not only density but also increased traffic and parking impacts) – associated with having two concurrent development proposals on adjoining sites (namely No 6 and No 8 Fourth Ave Eastwood). In this regard, it is noted that the previous Ryde DCP 2010 contained a linear separation control which would have prevented two multi-dwelling housing proposals from being considered on immediately adjoining sites. However, Council resolved to remove these controls from the current Ryde DCP 2014, and therefore these controls no longer apply.

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

Ryde DCP 2014 does contain a maximum number of 12 dwellings in a multi-dwelling housing development. In this regard, the combined number of dwellings in both developments proposed at No 6 and No 8 Fourth Ave is six (6) units (ie three (3) units proposed in each development proposal), which is significantly less than the maximum of 12 prescribed in Ryde DCP 2014.

### **17. Conclusion**

The proposed development has been assessed using the heads of consideration listed in Section 79C of the Act and is generally considered to be satisfactory for approval.

Although areas of non-compliance with LEP2014 and DCP2014 were identified, these were either considered to be justifiable given the circumstances of the subject site and the development proposed, or alternatively addressed via imposition of consent conditions.

The proposed multi-dwelling housing development is considered to result in a built form outcome that is consistent with the objectives of the R2 Low Density Residential zone. The proposal contributes to the delivery of a variety of housing types to meet the needs of the community within the R2 zone through the provision of a multi-dwelling housing development in an area that is predominantly single dwelling houses.

The proposal has attracted a number of submissions from the notification of the DA and subsequently amended plans. These submissions have raised issue with the proposal's density, traffic and parking impacts, and the general suitability of the site based on perceived amenity impacts to adjoining development. Each of the issues raised by objectors has been taken into consideration and addressed in detail within the Submissions section earlier in this report. The issues raised have been either dealt with via the applicant's amended plans, or mitigated to acceptable levels through the imposition of consent conditions.

The non-compliances or issues associated with the proposal are not considered sufficient to warrant further design amendments or justify refusal of the proposal.

Accordingly, LDA2015/0651 at 6 Fourth Avenue, Eastwood is recommended for approval, subject to conditions.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**DRAFT CONDITIONS OF CONSENT**  
**6 FOURTH AVE EASTWOOD**  
**LDA2015/651**

**GENERAL**

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

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

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Floor Plans	21.03.17	141010DA.02, Rev D
Elevations	21.03.17	141010DA.03, Rev C
Sections	22.04.16	141010DA.04, Rev B
Landscape Plan	16.04.16	ZIN003, Rev C
Arboricultural Impact Assessment	26.04.16	Prepared by New Leaf Arboriculture
DA-Stage Geotechnical Assessment, as amended by the Supplementary Da-Stage Geotechnical Assessment	09.06.15/ 27.04.16	Prepared by Davies Geotechnical – Ref No. 15-008.C
Site Waste Minimisation and Management Plan	17.07.15	Prepared by Glenn Wong

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

- (a) To ensure safe and efficient vehicle access to the Unit 1 garage, the driveway opposite the garage entry is to be widened 500mm (coinciding with a vehicle swept path in) and the garage must be widened by 400mm. Refer to the condition "Vehicle Access and Accommodation".
- (b) To facilitate vehicle manoeuvring when entering/ exiting the visitor carspace, the driveway must be widened to adjoin the western boundary in the region fronting the garages to Units 2 & 3. Refer to the condition "Vehicle Access and Accommodation".
- (c) For the development to comply with Council's Floodplain Management controls, the floor level of Unit 3 must be modified to comply with the freeboard requirements of the DCP Part 8.2 (Stormwater and Floodplain Management). Refer to condition "*Flooding and Overland Flow Protection*".

**ITEM 3 (continued)**

**ATTACHMENT 1**

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(s) numbered 693042M, dated 17 December 2015.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.
5. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Hoardings.**
  - (a) An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
  - (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
7. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
8. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
9. **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.

**ITEM 3 (continued)**

**ATTACHMENT 1**

10. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
11. **Roads Act.** Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.

Engineering Conditions

12. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with Council's 2014 DCP Part 8.5 (Public Domain Works), except otherwise as amended by conditions of this consent.
13. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
14. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
15. **Road Activity Permits.** To carry out work in, on or over a public road, the Consent of Council is required as per the Roads Act 1993. Prior to issue of a Construction Certificate and commencement of any work, permits for the following activities, as required and as specified in the form "Road Activity Permits Checklist" (available from Council's website) are to be obtained and copies submitted to Council with the Notice of Intention to Commence Work.
  - a) Road Use Permit - The applicant shall obtain a Road Use Permit where any area of the public road or footpath is to be occupied as construction workspace, other than activities covered by a Road Opening Permit or if a Work Zone Permit is not obtained. The permit does not grant exemption from parking regulations.

**ITEM 3 (continued)**

**ATTACHMENT 1**

- b) Work Zone Permit - The applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.
- c) Road Opening Permit - The applicant shall apply for a road-opening permit and pay the required fee where a new pipeline is to be constructed within or across the road pavement or footpath. Additional road opening permits and fees are required where there are connections to public utility services (e.g. telephone, telecommunications, electricity, sewer, water or gas) within the road reserve. No opening of the road or footpath surface shall be carried out without this permit being obtained and a copy kept on the site.
- d) Elevated Tower, Crane or Concrete Pump Permit - The applicant shall obtain an Elevated Tower, Crane or Concrete Pump Permit where any of these items of plant are placed on Council's roads or footpaths. This permit is in addition to either a Road Use Permit or a Work Zone Permit.
- e) Crane Airspace Permit - The applicant shall obtain a Crane Over Airspace Permit where a crane on private land is operating in the air space of a Council road or footpath. Approval from the Roads and Maritime Services for works on or near State Roads is required prior to lodgement of an application with Council. A separate application for a Work Zone Permit is required for any construction vehicles or plant on the adjoining road or footpath associated with use of the crane.
- f) Hoarding Permit - The applicant shall obtain a Hoarding Permit and pay the required fee where erection of protective hoarding along the street frontage of the property is required. The fee payable is for a minimum period of 6 months and should the period is extended an adjustment of the fee will be made on completion of the works. The site must be fenced to a minimum height of 1.8 metres prior to the commencement of construction and throughout demolition and/or excavation and must comply with WorkCover (New South Wales) requirements.
- g) Skip Bin on Nature Strip - The applicant shall obtain approval and pay the required fee to place a Skip Bin on the nature strip where it is not practical to locate the bin on private property. No permit will be issued to place skips within the carriageway of any public road.

**ITEM 3 (continued)**

**ATTACHMENT 1**

16. **Flood and Overland Flow Protection.** The property has been identified as being susceptible to flooding and overland flow during large storm events. In accordance with Council's Floodplain Risk Management controls, the following measures are required to be implemented in the development.
- a) All fencing shall be constructed in a manner that does not affect the flow of flood waters so as to detrimentally change flood behaviour or increase flood levels on adjacent properties. To this end, the fence should be constructed as per the recommendations of the Flood and Overland Flow Study by JAS Engineers dated 14 July 2015.
  - b) The habitable floor level of the lower living area of Unit 3 and surrounding surface levels must be modified to preserve the overland flowpath and ensure the unit has sufficient freeboard above this flow, anticipated to occur during large storm events. To this end, the lower living area of Unit 3 must be raised to an RL 60.10m and the natural ground level in the terrace area (between the building footprint to the retaining wall at the boundary and between stairways), is to be levelled to RL59.60m as marked in red on the approved stormwater management plan. Any deck/ landing or stairway in this area must be an open structure, designed to permit the conveyance of overland flow underneath and is to provide a metre clearance from upstream boundaries/ structures/ fences such to allow overland flow to pass under and continue. Any retaining walls/ garden beds along the upstream boundary must be level with the retained surface to ensure that overland flow is not diverted to the adjoining property.
  - c) The open channels to be located along the side boundaries are to be suitably lined to prevent vegetation and siltation buildup, which over time, would decrease the effectiveness of the channels.
  - d) All structures subject to flooding and overland flows must be constructed of flood compatible building components,
  - e) All external steps leading to natural ground are to have open risers to permit the free flow of flood waters.
  - f) External structures subject to flooding and overland flows must be structurally designed to withstand the forces imposed by these flows, including forces imposed by floating debris and buoyancy. To achieve this, the structure must be designed and certified by a suitably qualified structural engineer to comply with this condition.
  - g) Works designed to permit the conveyance of overland underneath the strand constructed to allow the free passage of flood waters and overland flows under the new structure. Any screening elements at foundation level must be frangible and have no greater than 50% coverage to ensure there is no potential for blockage due to the accumulation of debris.

### ITEM 3 (continued)

### ATTACHMENT 1

Certification of the structural design and details complying with this condition must be undertaken in consultation with a suitably qualified drainage engineer, and submitted to the Accredited Certifier for approval prior to the issue of a Construction Certificate.

#### General Landscape Architecture Conditions

17. **Stormwater Trench/Pit Locations.** The location of stormwater infrastructure located along the western side boundary is to be located as far away from existing trees to be retained as practical. Should the excavation for the stormwater pits and trenches conflict with any major structural roots (greater than >25 mm diameter) of existing trees, their location and alignment is to be modified in consultation with the Project Arborist to avoid impact. Under no circumstances should roots be severed or cut without prior approval from the Project Arborist.
18. **Underground Utilities.** Any utility services to be located underground within the Tree Protection Zones are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than >25 mm diameter). To prevent soil compaction and root damage these works should be conducted with non-motorised hand tools or directional drilling.
19. **Fill Requirements.** All fill to be placed within the Tree Protection Zones of neighbouring trees is to be gap graded structural soils which allows for gaseous exchange and future root growth. The Project Arborist is to confirm suitability of the proposed material prior to installation.

#### General Bushfire Conditions

20. **Water and Utilities.** Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
21. **Access.** Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
22. **Design.** New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
23. **Asset Protection Zones.** At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**Note:** This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'

**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.

24. **Section 94.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$7,056.38
Open Space & Recreation Facilities	\$17,371.38
Civic & Urban Improvements	\$5,908.34
Roads & Traffic Management Facilities	\$805.94
Cycleways	\$503.44
Stormwater Management Facilities	\$1,600.14
Plan Administration	\$135.72
<b>The total contribution is</b>	<b>\$33,381.34</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 Interim Update (2014), effective from 10 December 2014.

**ITEM 3 (continued)**

**ATTACHMENT 1**

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

The contribution must be paid **prior to the issue of any Construction Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

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

25. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.
26. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.
27. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation)
28. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
  - (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
29. **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**.

**ITEM 3 (continued)**

**ATTACHMENT 1**

30. **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**.
31. **Sydney Water Tap in™.** The approved plans must be submitted to the Sydney Water Tap in™ on-line service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Sydney Water Sydney Water Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, eg relocating or moving an asset.

Sydney Water's Tap in™ online service is available at:  
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

32. **Road and rail noise/vibration.** The development must be acoustically designed and constructed to meet the relevant provisions of Australian Standard AS 2107:2000 *Recommended design sound levels and reverberation times for building interiors*. Written endorsement of compliance with these requirements must be obtained from a suitably qualified person.
33. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
34. **Fencing.** Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**.

**ITEM 3 (continued)**

**ATTACHMENT 1**

In addition, the following shall be provided for additional privacy attenuation to the neighbours:

- (a) **Lattice screening.** The provision of a lattice screen 300mm high on top of the rear boundary fence for the northern elevation of Dwelling 3 that is setback 4.1m from the rear boundary. Details of compliance are to be provided in the plans for the **Construction Certificate**.
35. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
36. **Boundary Alignment Levels.** The applicant is to apply to Council for site specific boundary alignment levels prior to the issue of any Construction Certificate. The application would need to be accompanied by engineering plans of any civil works along the frontage of the development site. Fees are payable in accordance with Council's Schedule of Fees & Charges at the time of the application.
37. **Reconstruction of Footpath Crossing.** The existing footpath crossing must be reconstructed to coincide with the new vehicle entry width and comply with Council specifications. Accordingly the driveway crossover must be replaced with a crossing which conforms with Council's requirements in terms of design, materials and construction details. Finished levels shall conform with property alignment levels issued by Council's Public Works Division and all grades and gradient transitions must comply with AS 2890.1.
38. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

With respect to this, the following revision(s) must be undertaken:

- a) All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. In this respect, the driveway ramp must be revised to have a grade no greater than 12.5% for the first 6m into the property and transition grades (no greater than 12.5% for crest's and 15% for sag's). To ensure compliance with the Standard, a driveway profile must be prepared, showing ramp lengths, grades and surface RL's taken from the Council issued boundary levels to the parking space area. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur.

**ITEM 3 (continued)**

**ATTACHMENT 1**

- b) To ensure safe and efficient vehicle access to the Unit 1 garage, the driveway opposite the garage entry is to be widened 500mm (coinciding with a vehicle swept path in) and the garage must be widened by 400mm. To demonstrate the adequacies of these measures, the construction certificate plans are to depict a swept path analysis utilising the B85 turning template.
- c) To facilitate manoeuvrability into and out of the visitor carspace, the driveway fronting the garages to Units 2 & 3 is to be widened to adjoin the southern boundary.

These amendment(s) must be clearly marked on the plans submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

39. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to Fourth Avenue generally in accordance with the plans by JAS Consulting Engineers (Refer to Job Ref. J290515 Sheet 1 Rev C dated 28 April 2016 & Sheet 2 Rev B dated 27 April 2016) subject to the following variation(s);

- The onsite detention system is to be relocated under the driveway so as to maximise the degree of infiltration intended by the pervious landscaping.
- The nominated offset of the detention volume is not permitted by the BASIX regulations and Councils DCP. Accordingly the volume of the tank must be expanded to accommodate the required volume of 26.3m<sup>3</sup> (by the consultants original calculations).

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and prepared by a chartered civil engineer and comply with the following;

- The certification must state that the submitted design (including any associated components such as WSUD measures, pump/ sump, absorption, onsite dispersal, charged system) are in accordance with the requirements of AS 3500.3 (2003) and any further detail or variations to the design are in accordance with the requirements of Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.

**ITEM 3 (continued)**

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40. **Erosion and Sediment Control Plan.** An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified consultant, detailing soil erosion control measures to be implemented during construction. The ESCP is to be submitted with the application for a Construction Certificate. The ESCP must be in accordance with the manual “Managing Urban Stormwater: Soils and Construction“ by NSW Department – Office of Environment and Heritage and must contain the following information;

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

The ESCP must be submitted with the application for a Construction Certificate. This condition is imposed to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

41. **Retaining Wall Construction.** Any retaining wall construction necessary within the Tree Protection Zones of trees to be retained is to utilise a construction technique which minimises the level of impact to existing tree roots such as pier and beam with a suspended beam, modular concrete sleepers with steel post supports or gravity wall. The design and method of construction is to be reviewed and approved by the Project Arborist as part of the Construction Certificate.

42. **Permeable Driveway Paving.** Permeable paving is to be provided within the driveway and visitor parking area to the full extent of the Tree Protection Zone of Tree 3 (*Eucalyptus tereticornis*) as described within the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26.04.2016. Details of compliance shall be submitted to the Principal Certifying Authority with the plans for construction certificate.

**ITEM 3 (continued)**

**ATTACHMENT 1**

43. **Species Substitution.** *The Jacaranda mimosifolia* proposed within the front yard of the allotment is to be substituted for a *Syncarpia glomulifera* (*Turpentine*) which meets the following specifications:

- (a) *The tree shall be planted in accordance with the specifications as prescribed in Section 6 of the City of Ryde Urban Forest Technical Manual;*
- (b) *The tree is to be located a minimum of 4m from any dwelling, carport or swimming pool;*
- (c) *The container size of the replacement tree at planting shall be a minimum of 45 litres;*
- (d) *The replacement tree shall be maintained until it reaches five (5) metres tall or has a stem circumference of 450mm, at which time the tree shall be protected by the City of Ryde Development Control Plan 2010 Part 9.6 (Tree Preservation);*
- (e) *If a replacement tree dies before it reaches this size it shall be replaced in accordance with Replanting Conditions listed above;*
- (f) *It is your responsibility as the property owner to ensure that all work is carried out according to the conditions of this consent. Failure to do so is an offence under the Environmental Planning and Assessment Act 1979 and you may be subject to fines or legal action.*

Details of compliance shall be submitted to the Principal Certifying Authority with the plans for construction certificate.

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

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

44. **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.

**ITEM 3 (continued)**

**ATTACHMENT 1**

45. **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.
46. **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).

47. **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.
48. **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.

**ITEM 3 (continued)**

**ATTACHMENT 1**

49. **Footpath Paving Construction.** The applicant shall, at no cost to Council, construct standard concrete footpath paving across the frontage of the property. Levels of the footpath paving shall conform with levels issued by Council's Engineering Services Division.
50. **Tree Protection.** All tree protection works including installation of any fencing is to be undertaken prior to any demolition or site clearing works on site.
51. **Tree Protection Fencing.** All protective fencing and signage around TPZs must be located in accordance with AS4970: Protection of trees on development sites. In this regard, any fencing required to be constructed around the TPZ is to be in accordance with AS4687 Temporary fencing and hoardings.
52. **Project Arborist.** A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on the subject site and neighbouring allotments in accordance with AS4970-2009 Protection of trees on development sites and the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26.04.2016. All trees are to be monitored to ensure adequate health throughout the construction period is maintained. Additionally, all work within the Tree Protection Zones is to be supervised by the Project Arborist throughout construction. Details of the Project Arborist are to be submitted to Council prior to the commencement of construction.

**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.

53. **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*.
54. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.
55. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.

**ITEM 3 (continued)**

**ATTACHMENT 1**

56. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- Fill is allowed under this consent;
  - The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
  - the material is reused only to the extent that fill is allowed by the consent.
57. **Construction materials.** All materials associated with construction must be retained within the site.
58. **Site Facilities**  
The following facilities must be provided on the site:
- toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - a garbage receptacle for food scraps and papers, with a tight fitting lid.
59. **Site maintenance**  
The applicant must ensure that:
- approved sediment and erosion control measures are installed and maintained during the construction period;
  - building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
  - the site is clear of waste and debris at the completion of the works.
60. **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".
61. **Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.
62. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.
63. **Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.

**ITEM 3 (continued)**

**ATTACHMENT 1**

64. **Tree works – provision of arborist details.** Council is to be notified, in writing, of the name, contact details and qualifications of the Consultant Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.
65. **Soil Moisture within Tree Protection Zones.** Soil moisture levels within all Tree Protection Zones are to be regularly monitored by the Project Arborist during construction. If temporary irrigation or watering is required within the Tree Protection Zones, then any above-ground irrigation system is to be installed and maintained by a suitably qualified individual.
66. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.
67. **Traffic Management.** Any traffic management procedures and systems must be in accordance with AS 1742.3 1996 and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems
68. **Erosion and Sediment Control.** The applicant shall install erosion and sediment control measures in accordance with the approved plan at the commencement of works on the site. Suitable erosion control management procedures in accordance with the manual “Managing Urban Stormwater: Soils and Construction“ by the NSW Department – Office of Environment and Heritage, must be practiced at all times throughout the construction. Where construction works deviate from the plan, soil erosion and sediment control measures are to be implemented in accordance with the above referenced document.
69. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of the Stormwater Management Plan by JAS Consulting Engineers (Refer to Job Ref. J320615 Sheets 1 - 2 dated 10 November 2015) submitted in compliance to the condition labelled “Stormwater Management.” and the requirements of Council in relation to the connection to the public drainage system.
70. **Excavation within Tree Protection Zones.** Any excavation or grading/re-grading within the identified Tree Protection Zones of trees to be retained shall be carried out by hand using manual hand tools. Roots greater than 25mm are not to be damaged or severed without the prior written approval of the Project Arborist.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**PRIOR TO OCCUPATION CERTIFICATE**

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

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

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

71. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered 693042M, dated 17 December 2015.
72. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.
73. **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 Occupation Certificate.

74. **Public domain – work-as-executed plan.** A works as executed plan for works carried out in the public domain must be provided to and endorsed by Council prior to the issue of any **Occupation Certificate**.

**ITEM 3 (continued)**

**ATTACHMENT 1**

75. **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.
76. **Stormwater Management - Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Occupation Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system (including any onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption system) and finished surface levels which convey stormwater runoff.
77. **Engineering Compliance Certificates.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate. All certification must be issued by a qualified and practising civil engineer having experience in the area respective of the certification unless stated otherwise.
- a) Confirming that all components of the parking areas contained inside the site comply with the relevant components of AS 2890 and Council's DCP 2014 Part 9.3 (Parking Controls).
  - b) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and has been constructed to function in accordance with all conditions of this consent relating to the discharge of stormwater from the site.
  - c) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual "Managing Urban Stormwater: Soils and Construction" by the NSW Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).
  - d) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.
  - e) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual "Managing Urban Stormwater: Soils and Construction" by the NSW Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).
  - f) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction

**ITEM 3 (continued)**

**ATTACHMENT 1**

78. **On-Site Stormwater Detention System - Marker Plate.** To ensure the constructed On-site detention will not be modified, a marker plate is to be fixed to each on-site detention system constructed on the site. The plate construction, wordings and installation shall be in accordance with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures. The plate may be purchased from Council's Customer Service Centre at Ryde Civic Centre (Devlin Street, Ryde).
79. **Final Assessment of Trees.** At completion of all construction works the Project Arborist is to carry out an assessment of all trees that were required to be retained. This assessment is to be documented in writing, a copy of which is to be submitted to Council prior to the issue of any occupation certificate for the development. The documentation is also to specify any required on-going remedial care that is required to be undertaken to ensure the continuous health and retention of the specified trees.
80. **Air Conditioning/ Mechanical Plant – Noise.** Any air-conditioning units or other mechanical plant must be enclosed in a suitable ventilated acoustic enclosure to ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.

**PRIOR TO SUBDIVISION CERTIFICATE**

The following conditions in this Part of the consent apply to the Subdivision component of the development.  
All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

81. **Final plan of subdivision.** The submission of a final plan of subdivision plus 3 copies suitable for endorsement by the Authorised Officer of Council.
82. **Final plan of subdivision – title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land.
83. **Section 88B Instrument.** The submission of an Instrument under Section 88B of the Conveyancing Act 1919 plus 3 copies, creating Easements, Positive Covenants and Restrictions on Use. This Instrument shall nominate the City of Ryde as the authority empowered to release, vary or modify the terms of the Instrument.

**ITEM 3 (continued)**

**ATTACHMENT 1**

84. **Section 73 Certificate.** 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 issue of the Subdivision Certificate.

85. **Utility provider – compliance.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc).
86. **Final Occupation Certificate.** The final occupation certificate associated with Development Consent LDA2015/651 and any related S96 applications, must be issued for the entire development prior to the release of the Strata Subdivision Certificate.
87. **Registration of easements.** The registration of all necessary easements is required to ensure all proposed lots will have legal access to all utility services, drainage and vehicular access. Prior to release of the Subdivision Certificate, certification shall be obtained from a registered surveyor and submitted to Council confirming the above requirement will be met upon registration of the linen plan at the Land and Property Information.
88. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to the relevant section of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention components incorporated in the approved Stormwater Management system. This is to ensure that the drainage system will be maintained and operate as approved throughout the life of the development, by the owner of the site(s). The terms of the instrument are to be in accordance with the Council's terms for these systems as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7, and to the satisfaction of Council.

**ITEM 3 (continued)**

**ATTACHMENT 1**

89. **Restriction as to User - Floodway.** A restriction as to user is to be placed on the property title to prevent any works which would result in the alteration of the ground surface level or impose on overland flow due to stormwater runoff in the 100ARI, such to adversely impact flood protection of the approved dwelling or have an adverse impact on neighbouring properties. The terms of the restriction shall be generally in accordance with Council's draft terms for provision for overland flow, to the satisfaction of Council and must be registered on the title of the property prior to the release of any Occupation Certificate.

**ITEM 3 (continued)**

**ATTACHMENT 2**

**COMPLIANCE TABLE**

<b>LDA No:</b>	<b>LDA2015/0651</b>
<b>Date Plans Rec'd</b>	<b>15 December 2015, amended plans on 21 March 2017</b>
<b>Address:</b>	<b>6 Fourth Avenue, Eastwood</b>
<b>Proposal:</b>	<b>Multi dwelling housing development containing 3 dwellings – 1 x 2 storey (5 bedroom unit) at the front, 2 x single storey at the rear (2 x 3 bedroom). Includes strata subdivision.</b>
<b>Constraints Identified:</b>	<b>Bushfire prone, flood prone, landslip, within 100m of a heritage item.</b>

<b>Ryde LEP 2014</b>	<b>Proposal</b>	<b>Compliance</b>
<b>4.1B Minimum lot size</b>		
<ul style="list-style-type: none"> <li>900 square metres</li> </ul>	<p>The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 130 DP 4684)</p> <p>Therefore satisfactorily complies with the minimum site area requirement.</p>	Yes
<ul style="list-style-type: none"> <li>Road frontage of the lot is equal to or greater than 20 metres.</li> </ul>	<p>The subject site has a total road frontage to Fourth Avenue of <b>20.115m</b></p> <p>(Lot 130 DP 4684)</p> <p>Therefore complies with the road frontage requirement.</p>	Yes



**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>2.1 Site Analysis</b>		
<ul style="list-style-type: none"> <li>○ Must have a SA</li> <li>○ SA should relate dwgs to surrounds + minimise amenity impacts</li> </ul>	Site analysis drawing has been submitted. Where specific details have not been provided, pursuant to Schedule 1 of the DCP2014, the information can generally be found elsewhere on other drawings submitted as part of this development application.	Yes
<b>2.2 Minimum allotment size</b>		
Area: (not <900m <sup>2</sup> )	The subject site has a total area of <b>1012m<sup>2</sup></b> (Lot 130 DP 4684). Therefore satisfactorily complies with the minimum site area requirement.	Yes
Primary Frontage: (not <20m)	The subject site has a total road frontage to Fourth Avenue of <b>20.115m<sup>2</sup></b> . Therefore complies with the road frontage requirement.	Yes
Not hatchet shaped	Allotment is not hatchet shaped	Yes
<b>2.3 Non-Preferred Locations</b>		
Is the proposed development within a non-preferred location?	Subject site is located within a non-preferred location for the following reasons: <ul style="list-style-type: none"> <li>• Land includes Urban Bushland;</li> <li>• Land affected by overland flow;</li> </ul> Land where the slope is greater than that described in Section 3.1 of DCP2014 – note the	No

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	central portion of the site experiences a cross fall greater than 1:14	
<b>2.4 Retention of existing dwellings</b>		
Retention of an existing dwelling as part of a new Multi dwelling housing development will not be approved.	No retention of existing dwelling proposed	Yes
<b>2.5 Density</b>		
As per clause 4.5A RLEP2014 – which state: (a) Site Area: <ul style="list-style-type: none"> <li>○ 300m<sup>2</sup> per 1,2,3br dwelling</li> <li>○ 365sqm per 4+ bedroom dwellings</li> </ul>	1 x 5 bedroom, 2 x 3 bedroom dwellings are proposed, therefore 965m <sup>2</sup> site area required.  The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 130 DP 4684), thus the development does not comply with the density controls.	Yes
<b>2.6 Number of Dwellings</b>		
Not more than 12 Dwellings	3 dwellings proposed.	N/A
<b>2.7 Type of Dwellings</b>		
(a) If 4 or more dwellings on site, <75% with same number of bedrooms (rounded down) e.g. 6 dwg = 4x3B + 2x2B	3 dwellings proposed.	N/A
In any proposed Multi dwelling housing development the slope of the site, proposed levels, height of dwellings, site coverage, landscaping, setbacks, accessibility and overshadowing must be considered when assessing:  i. Whether the development will complement and enhance the	Noted.	



**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	<p>At the rear of the site, a cross-fall of 1:7.5 is experienced. This is based on RL61.81 at the north eastern corner, and RL59.28 on the north western corner that occurs over a distance of 19m.</p> <p>The gradients calculated at the front, centre and rear of the site are greater than 1:14, therefore the subject site is not considered appropriate for multi dwelling housing.</p>	No
<b>3.2 Altering the Levels of the Site</b>		
No imported Fill	The proposal does not appear to include the introduction of any imported fill to the site.	Yes
<300mm Cut or Fill outside building envelope.	<p>The development proposes more than 300mm cut and fill outside building envelope:</p> <p>The extent of cut outside the building envelope is generally between 300mm and 750mm. This occurs within the private open space areas of Dwellings 1, 2 &amp; 3.</p> <p>The extent of fill outside the building envelope is generally between 110mm and 500mm. This highest level of fill occurs within the common driveway area.</p>	No
No basement garages, minimal steps, minimal retaining walls	Revised plans with amended levels across the site are considered to satisfactorily minimise the number of retaining walls.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
POS generally at NGL.	<p>POS for Dwellings 1, 2 &amp; 3 is not located at EGL. This is due to the extent of cut proposed.</p> <p>POS for Dwelling 1 and 2 are generally located at EGL. However, there are proportions of the POS area for Dwelling 1 that will require a cut of 760mm and a cut of 450m will be required for Dwelling 2.</p> <p>POS for Dwelling 3 is generally within 300mm with portions of excavation of up to 1m is required.</p>	No
<b>3.3 Storey and Height</b>		
<b>3.3.1 Storeys</b>		
<p>Dwg with frontage to street can be 2 storeys provided:</p> <ul style="list-style-type: none"> <li>○ 2 st dwg not attached to any other 2 st dwg</li> <li>○ 2 st dwg is suitable in regards streetscape</li> </ul>	<p>The proposed development incorporates a 2 storey dwelling, which has a frontage to Fourth Avenue.</p> <p>2 x single storey buildings are proposed to the rear. As such the proposed development is compliant with this control.</p>	Yes
<b>3.3.2 Height</b>		
<p>As per Clause 4.3(2a) – which state the <b>maximum</b> height is:</p> <p>(a) for dwgs in bldg with no frontage to street – 5m</p>	<p>Dwelling 2 &amp; 3 do not have a road frontage and each exceed 5m in height.</p> <p><u>Dwelling 2 – 5.4m</u>            EGL RL 58.7            Roof pitch RL 64.1</p> <p><u>Dwelling 3 - 5.5m</u>            EGL RL 58.815            Roof pitch RL 64.69</p>	No

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
(b) for dwgs with a frontage to street is maximum 9.5m	The maximum height for Unit 1 is <b>8.09</b> <u>Unit 1</u> EGL RL 58.2 Roof pitch RL 66.29	Yes
<b>3.4 Site Coverage</b>		
Site coverage < 40%	Buildings on the site cover an area of 397m <sup>2</sup> , which equates to 38.8% of the site area	Yes
Pervious area > 35%	358.2m <sup>2</sup> of the site is pervious. This equates to approx. 35% of the site.	Yes
<b>3.5 Setbacks</b>		
<b>3.5.1 Front Setbacks</b>		
<p><u>Front Setbacks:</u></p> <p>The same distance as one of the buildings on an adjoining allotment, if the difference between the setbacks of the building on the two adjoining allotments is not more than 2 m; or</p> <p>If the difference between the setbacks of the adjoining buildings is more than 2m the development must be setback the average of the front setback of the two adjoining developments.</p>	<p>The development on adjoining allotments are setback as follows:</p> <p>44 East Parade – N/A – dwelling on corner lot and does not have a primary frontage to Fourth Avenue.</p> <p>8 Fourth Avenue – 7.4m</p> <p>In this instance, the proposed development does not have a setback of 7.4m, as such is not considered to comply.</p> <p>Refer above. This cannot be calculated as one of the adjoining buildings does not have a primary frontage to Fourth Avenue</p>	<p>See below (Section 3.5.1c)</p> <p>N/A</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<p>Setback of 1m less than the above standard for not more than 50% of the front elevation for interest in the streetscape.</p>	<p>In this instance, Dwelling 1 could have a setback of 7.4m for 50% and a setback of 6.4m for 50% in order to comply. This is based on the front setback of the existing dwelling at 8 Fourth Avenue.</p> <p>Dwelling 1 proposes a front setback of 6.5m and 7.6m, thus does not comply with this development control.</p>	<p>See below (Section 3.5.1c)</p>
<p>Council may vary this requirement if streetscape is likely to change: &gt;7.5m for 50% of frontage, &gt;6.5m for 50% of frontage.</p>	<p>Dwelling 1 proposes the following front setback: 6.5m (for maximum 50%) to 7.6m</p>	<p>Yes</p>
<p><b>3.5.4 Side and Rear Setbacks</b></p>		
<p>Min 4.5m unless vehicular access is included in this area, then min 6m. To promote variation &amp; interest up to 50% may be not less than 3m</p>	<p><u>Dwelling 1:</u> Side setbacks proposed to eastern boundary are as follows: Total wall length = 11.13m 4m setback for 3.36m (30%) 4.5m setback for 4.67m (42%) 5.3m setback for 3.1m (27%)</p> <p><u>Dwelling 2:</u> Side setbacks proposed to eastern boundary are as follows:</p>	<p>Yes</p> <p>Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	<p>Total wall length = 14.37m            4m setback for 6.59m (45.8%)            4.5m setback for 4.68m (32.5%)            5.3m setback for 3.1m (21.5%)</p> <p><u>Dwelling 3:</u>            Side setbacks proposed to eastern boundary are as follows:            Total wall length = 13.03m            3m setback for 6m length (46%)            4.5m setback or greater for 7.03m (54%)</p> <p>Rear setbacks proposed to rear northern boundary:            Total wall length = 14.03m            4.1m setback for 7m (50%)            4.5m setback or greater for 7.03m (50%)</p> <p>Side setback proposed to the western side boundary – where vehicle access is provided:            A minimum setback of 6m is provided to all dwellings.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>Must provide appropriate solar access.</p>	<p>All courtyards appropriately located to achieve compliant level of solar access when having regard to the provisions of the Ryde DCP 2014</p>	<p>Yes</p>
<p>Ensure existing substantial trees not within proposed courtyard areas.</p>	<p>No substantial trees are to be retained within the courtyard areas.</p>	<p>Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>3.5.5 Internal Setbacks</b>		
Habitable room windows don't overlook	Generally, the proposed development has been designed so that habitable room windows within the development do not overlook one another.	Yes
9m separation between facing dwellings habitable room windows?	The proposed multi dwelling housing development is included within one single unbroken building and thus there is not building separation proposed.	N/A
<b>3.6 Private Outdoor Space</b>		
Min 35m <sup>2</sup> for 3+B	Unit 1 (5B) – 37.85m <sup>2</sup> (excluding parking space) Unit 2 (3B) – 50.66m <sup>2</sup> (excluding parking space) Unit 3 (3B) – 126m <sup>2</sup> (excluding parking space)	Yes
Min dimension 4m and generally at NGL	A minimum 4m x 4m dimension is achieved for all dwellings, that is generally provided at NGL.	Yes
Solar access: 50% for ≥2hrs	The submitted shadow diagram indicates that the courtyards of all dwellings will achieve more than two hours sunlight to 50% of their area between 9am and 3pm on June 21.	Yes
Do not contain ex'g big trees	No substantial trees are to be retained within the courtyard areas.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
Access to courtyard other than through dwg?	<p>Access to the POS of all dwellings is provided through the garage.</p> <p>This arrangement has been advised by Council as an acceptable solution.</p> <p>Dwellings 1 and 3 also provide access via a gate.</p>	Yes
Securely enclosed (not roofed) + visible from liv rms	Living areas face courtyards and are securely enclosed with fencing and gates.	Yes
Not within front setback	No area of POS is located within the front setback.	Yes
<b>3.7 Landscaping</b>		
Extent of landscaping, existing trees retained in common areas?	<p>The submitted Landscape Plan shows that are no existing trees to be retained within the common area.</p> <p>Council's Consultant Landscape Architect has reviewed the amended plans, and has indicated support for the proposal, subject to conditions.</p>	Yes
<p>If landscaping used for privacy:</p> <ul style="list-style-type: none"> <li>• ≥1.2m landscaped strip</li> <li>• Shrub mature height 3-4m, if possible small trees mature height 5-m in combination with screen planting</li> </ul>	<p>Landscape strips are provided within the common areas, where appropriate.</p> <p>A landscape strip is also proposed between the common driveway and the adjoining property, which will include plantings with a mature height of 1.8m.</p> <p>Landscaping is also provided along the eastern side boundary, adjacent the</p>	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
	<p>courtyard area of each dwelling.</p> <p>The submitted landscape plan shows that mature trees, which will reach a mature height up to 12m, will be planted within the courtyard of each dwelling.</p> <p>Council's Consultant Landscape Architect has reviewed the plans and recommended conditions to ensure the landscaping outcome for the site is appropriate, and will not unduly impact on the development or adjoining property. Reference should be made to the assessment report for further details.</p>	
<p>1m strip between driveway and wall of dwgs</p>	<p>A 1m (minimum) wide landscape strip is proposed between the driveway and the wall of the dwellings where appropriate.</p>	<p>Yes</p>
<p>Nature Strips: Street trees retained and protected?</p>	<p>No street trees affected by proposed development.</p>	<p>Yes</p>



**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>- No tandem parking in front of garage</li>   <li>- Conveniently located for occupants</li>   <li>- Located so they separate dwellings.</li> </ul>	<p>No tandem parking proposed in front of the garage.</p> <p>Each garage is located adjacent to the corresponding dwelling with internal access provided to each garage from the respective dwellings.</p> <p>As mentioned above, the garages have been provided in an arrangement that will separate each of the dwellings within the development.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>Manoeuvrability:</p> <p>Enter and leave garage/parking area with single 3pt turn, in a forward direction (unless safe to reverse - corner allotment only).</p>	<p>Sufficient on site turning/ manoeuvrability is considered to have been provided. Refer to Engineers comments.</p>	<p>Yes</p>
<p>Driveways</p> <p>Suitably paved, extent minimised, to avoid excessive amounts of hard paving.</p>	<p>The extent of pervious area meets the minimum requirement of 35% of the site.</p>	<p>Yes</p>
<p>Driveway Crossings</p> <p>Width:</p> <p>&lt;10 spaces, min 4m</p> <p>&gt;10 spaces, max 6m</p> <p>Driveways &lt;30% of frontage</p>	<p>4m proposed</p> <p>19% of frontage width</p>	<p>Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>3.9 Overshadowing and Access to Sunlight</b>		
Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.	All habitable room windows face courtyard areas. Habitable room windows are no closer than 1.5m to a facing wall.	Yes
Sunlight to at least 50% of each courtyard, and principal ground level open space >2hrs between 9am and 3pm on June 21 <b>or</b>	<p>The submitted shadow diagram demonstrates that courtyards of all units, within the development, will achieve more than two hours sunlight to at least 50% of their area between 9am and 3pm on June 21.</p> <p>The submitted diagram also demonstrates that the POS of the adjacent properties to the north east and north west of the subject site will not be reduced to less than 2 hours between 9am and 3pm.</p>	Yes
Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.	Adjacent properties to the east and west of the subject site will not be reduced to less than 2 hours between 9am and 3pm.	N/A
Shadow diagrams must indicate extent of shadowing within development and adjoining properties.	Satisfactory shadows diagrams have been submitted which indicate the extent of shadowing within development and adjoining properties.	Yes
<b>3.10 Visual and Acoustic Privacy</b>		
Min 9m separation between facing habitable room windows	The proposed multi dwelling housing development is included within one single unbroken building and thus there is not building separation proposed.	N/A

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<p>No direct views between living area windows of adjacent dwellings (otherwise screening or obscuring necessary)</p>	<p>The living room windows of the proposed development will not be within 9 metres of the existing windows located on the adjoining property at 8 Fourth Avenue (as per the submitted Survey Plan).</p> <p>As such, it is anticipated that there will not be direct views from the living room windows of the proposed development, to the adjacent dwelling.</p>	<p>Yes</p>
<p>Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius.</p>	<p>An assessment of the proposed development has revealed that views from living areas are not likely to extend to the private open space of the existing adjoining dwelling at 8 Fourth Avenue, to the east.</p> <p>This is largely due to the neighbouring driveway and buildings orientation proposed within the 8 Fourth Avenue.</p> <p>The west facing living room windows of Dwelling 3 have the potential for direct views into the POS of 42 and 44 East Parade due to the extent of fill proposed. However, these windows have a sill height of 1.7m.</p> <p>Windows on Dwelling 1, will be obscured to reduce overlooking concerns.</p>	<p>Yes</p>
<p>Balconies prohibited on all dwellings Elevated landings (or similar associated with stairs into courtyard) max 1m wide.</p>	<p>No balconies proposed. No elevated landings proposed.</p>	<p>Yes Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
Living and sleeping areas protected from high levels of external noise?	<p>The layout of each unit of the development is generally considered to be acceptable in terms of protecting living and sleeping areas of high levels of external noise.</p> <p>Amended plans now provided showing a notation that walls are acoustically treated where the bedroom of one unit adjoins the garage of another unit</p>	Yes
Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A)	<p>No air conditioning or pool pumps are shown on the plans as being proposed.</p> <p>Address via standard condition</p>	Yes
<b>3.11 Accessibility</b>		
<b>3.11.1 Pedestrian Access</b>		
All multi dwelling housing developments should be designed and constructed so that they are safe and accessible for pedestrians including children, people with disabilities and older people.	<p>The proposed development has been designed to provide safe and accessible access for pedestrians.</p> <p>A continuous accessible path of travel to all dwellings will be provided.</p>	Yes
<b>3.11.2 Access for People with Disabilities – Developments of 6 or more dwellings</b>		
Developments of 6 or more dwellings must be designed so not <35% of the dwellings provide access to people with disabilities, in accordance with AS4299.	N/A Proposed development includes 3 dwellings only.	N/A

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
Dwellings which have been designed to AS4299 must be able to access the street, car parking and common areas using a continuous path of travel.	N/A Proposed development includes 3 dwellings only.	N/A
<b>3.11.3 Access Audits</b>		
Access audit submitted that has been conducted by a qualified and accredited access auditor.	N/A Proposed development includes 3 dwellings only.	N/A
<b>4.1 Appearance</b>		
Complement streetscape	Despite the proposal including a number of non-compliances with Council's planning controls, the development is considered to satisfactorily complement the existing neighbourhood to an acceptable level – refer to discussion in assessment report.	Yes
Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick	Pitched roofs, eaves, vertically orientated windows, porches and face brick are proposed.	Yes
At least 1 dwg must face street	Dwelling 1 has fronts Fourth Avenue.	Yes
<b>4.2 Ceiling Height</b>		
Floor to Ceiling min 2.7m	Minimum 2.7 provided for all dwellings.	Yes
<b>4.3 Roofscape and Roof Materials</b>		
Pitch 22-30° (35° where 2 <sup>nd</sup> floor is within roof)	The development proposes a roof pitch of 22 degrees for each single a two storey dwelling.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
Min 300mm eaves overhang for roofs & verandas	Minimum 300 provided eaves are provided.	Yes
Gables to street frontage?	A small gable is provided to the entrance portico for Dwelling 1.	Yes
Variation to roof line?	Roof has been broken up into smaller elements so as to create variation and reduce bulk.	Yes
Roof materials consistent with traditional ones in the street?	The tile roof, proposed for each dwelling, is consistent with existing dwellings on Fourth Avenue, which predominately consists of pitched tiled roofs.	Yes
<b>4.4 Building materials for Walls</b>		
In keeping with the traditional materials for the locality. Detailing to break up large areas of wall adding interest and individuality	Visual interest has been incorporated into the design through the addition of features, such as, front balconies, walls and roof lines which have been broken up into smaller elements to add articulation, and the use of a variety of colours and materials, which add create depth to the buildings.	Yes
Proportion of windows and other openings consistent with character of locality. (windows generally 2:1 and 3:1 vertical proportion)	Proportion of windows is considered to be consistent with the surrounding area of development.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>4.5 Fences</b>		
<b>4.5.1 Front fence</b>		
Max ht 1m, and 70% visually permeable, return to be similar to front fence	The submitted plans indicate that front fencing is proposed to a maximum height of 1m.	Yes
Materials compliment dwelling e.g. wooden pickets, masonry with infill panels, wrought iron or similar etc	Materials to compliment dwelling.	Yes
<b>4.5.3 Other boundary fences</b>		
Min ht 1.8m	Side and rear boundary to be replaced with a 1.8m high fencing as indicated on the submitted Landscape Plan.	Yes
Lapped and capped timber	This is not required as boundary side boundaries are not facing another street	N/A
<b>4.6 Clotheslines and drying area</b>		
External clotheslines (not visible from adjoining properties or public areas)	The submitted SEE has indicated that external clothes drying areas will be located within the courtyard of each dwelling.	Yes
Each dwelling must have its own laundry	Laundries provided to each dwelling	Yes
<b>4.7 Lighting</b>		
Front yard lighting and lighting for the front of dwellings is to be provided	Details shown on DA plans	Yes
Location of external lighting must not have adverse effect on adjoining properties.	Details shown on DA plans	Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>4.8 Garbage bin enclosures</b>		
For developments up to 5 dwellings on sites that are not steeply sloping and which have a wide road frontage: - Each dwelling must be provided with a storage area for Council's standard rubbish and recycling bins. - Storage area should be behind the dwelling, not visible from public spaces, common areas and habitable room windows	Garbage storage area capable of being accommodated within the courtyards of each dwelling within the development.	Yes
<b>Drainage</b>		
Refer to Part 8.2 Storm water Management DCP 2010	See Development Engineers comments	Yes
<b>Tree Removal</b>		
Refer to Part 9.6 Tree Preservation DCP 2010	See Landscape Officers comments.	Yes

<b>BASIX</b>	<b>Proposal</b>	<b>Compliance</b>
All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans <b>BASIX Cert 693042M dated 17/12/2015</b>		
• RWT 2000L per dwelling	Shown on plans	Yes
• Thermal Comfort Commitments: - Insulation as per schedule - Windows & glazing as per schedule - Construction as per schedule - TCC – Glazing as per schedule.	Shown on plans Shown on plans Shown on plans Shown on plans	Yes Yes Yes Yes
• Fixtures - 4 star taps - 3 star showerheads - Toilets Flushing system 4 star	Shown on plans Shown on plans	Yes Yes

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>BASIX</b>	<b>Proposal</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>• Lighting</li> <li>- 40% LED</li> </ul>	Shown on CC plans	N/A
Water Target 40	Shown on plans	Yes
Energy Target 40	Shown on plans	Yes
Correct description of property/proposal on 1 <sup>st</sup> page of Certificate.	Correct description	Yes

BASIX certificate indicates that Dwelling 3 contains 3 bedrooms; however the submitted plans indicate 4 bedrooms (including the room marked as 'study').

Non-compliances

***Development Standards***

***Clause 4.3A (2) Exceptions to height of buildings***

*Dwelling 2 does not have a road frontage and exceeds the 5m building height limit by 500mm. A clause 4.6 written request has been submitted by the applicant to vary the building height development standard.*

*Note: This non-compliance is also reflected in the height controls under Section 3.3.2 of Part 3.4 of DCP2014.*

***Development Controls***

***Section 2.3: Non - preferred locations***

The subject site is within a non-preferred location, as outlined in Schedule 2 in Part 3.4 of the DCP2014. This is due to the fact that the slope is greater than prescribed in Section 3.1 and contains bushfire prone land.

***Section 3.1: Slope of Site***

Crossfall: The gradients calculated at the front, centre and rear of the site are greater than 1:14, therefore the subject site is not considered appropriate for multi dwelling housing, pursuant to Schedule 2 on Part 3.4 of the DCP2014.

***Section 3.2: Altering the levels of the site.***

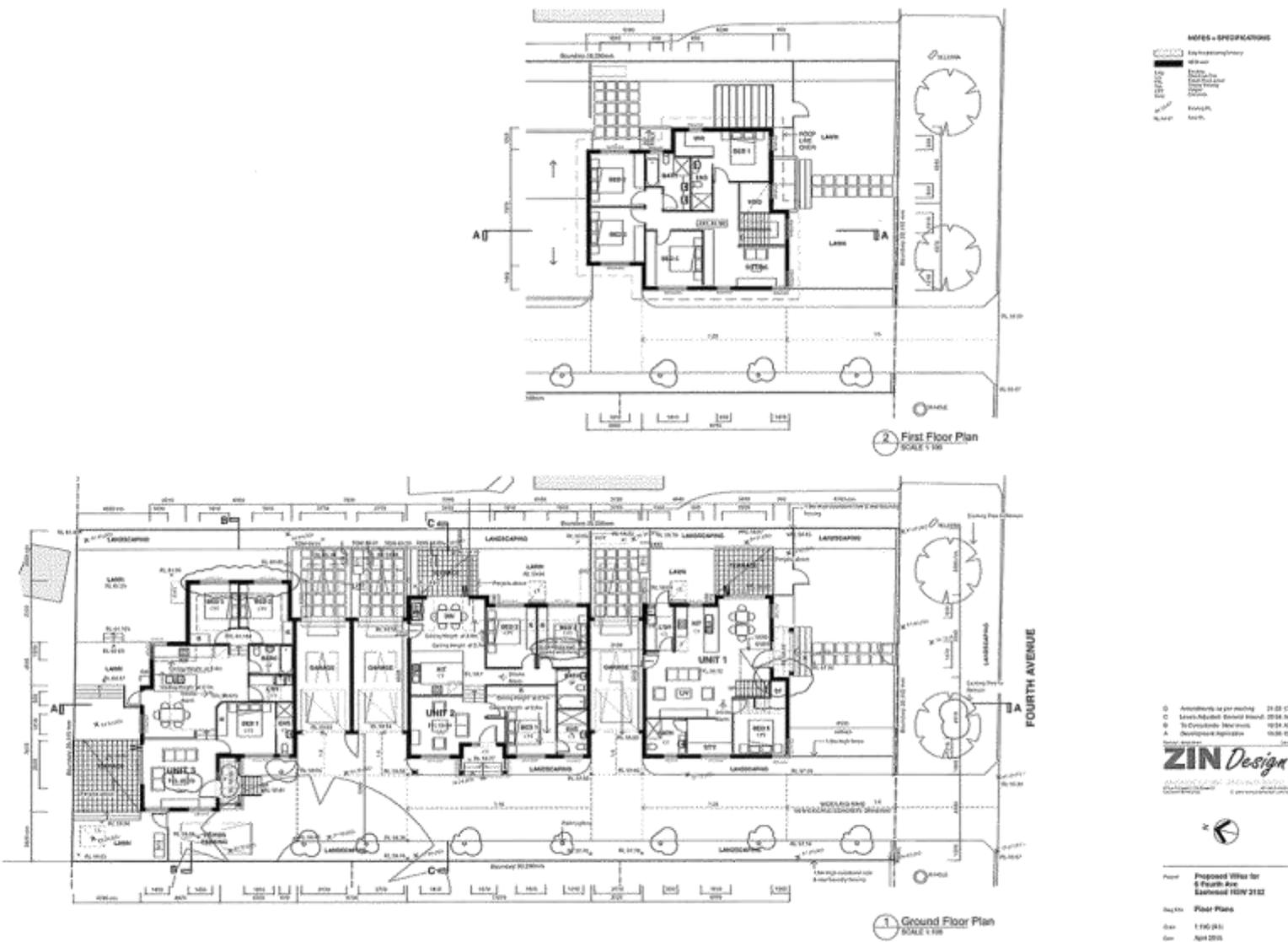
The development proposes more than 300mm cut and fill outside building envelope:

- The extent of cut outside the building envelope is generally between 300mm and 600m. This occurs within the private open space areas of Dwellings 2 & 3.
- The extent of fill outside the building envelope is generally between 300mm and 800mm. This occurs within the common driveway area.



**ITEM 3 (continued)**

**ATTACHMENT 3**



- 
- 4 8 FOURTH AVENUE, EASTWOOD - LOT 129 IN DP4648. Local Development Application – Construction of a multi dwelling housing development containing three (3) dwellings, including a two-storey five-bedroom dwelling at the front of the site, and two single-storey three bedroom dwellings to the rear. Includes strata subdivision. LDA2015/0652.**
- 

**Report prepared by:** Creative Planning Solutions; Senior Coordinator - Development Assessment

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

**File Number:** GRP/09/5/6/2 - BP17/561

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## 1. Report Summary

**Applicant:** Aimee Ng

**Owners:** Aimee Ng

**Date lodged:** 15 December 2015 (latest amended plans received 21 March 2017)

This report considers a development application (DA) for the construction of a multi dwelling housing development containing three (3) dwellings (two-storey five-bedroom dwelling at the front of the site, and two (2) single-storey three-bedroom dwellings to the rear). The proposal also includes ancillary stormwater and landscape works and strata subdivision.

The original DA was advertised and notified in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014), and a total of 26 submissions were received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents).

Most of those submissions also referred to another DA lodged by the same applicant for the adjoining property – LDA2015/651 at No 6 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper). The issues of concern raised in the submissions were:

- Density;
- Environmental hazards (bush fire prone land, flooding, land slip and vegetation);
- Noise impacts;
- Parking and traffic;
- Stormwater; and
- Visual privacy.

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

The assessment of the originally submitted DA identified the following issues which warranted a request for additional information from the applicant. A number of these issues coincided with concerns raised by objectors.

- Height of dwellings to the rear;
- Density;
- BASIX Certificate included incorrect details;
- Cut and fill;
- Visitor parking not provided;
- Arboricultural report not provided for adjoining vegetation; and
- Geotechnical assessment needed additional commentary on potential risks.

Revised plans and supporting documentation was provided to Council for consideration. These revised plans included modifications to the proposal's design addressing the majority of concerns raised by Council officers.

The revised plans were re-notified to adjoining property owners with a further 18 submissions received maintaining an objection to the amended plans (as above, most of these were submissions to both this DA and LDA2015/651).

The submissions objected to the proposal principally on the following grounds:

- Bulk and scale
- Cross fall
- Density
- Excavation
- Noise impacts
- Parking and traffic
- Setbacks
- Solar Access
- Vegetation
- Visual privacy

Prior to presenting this report to the Planning and Environment Committee, further amended plans were requested from the applicant to reduce the number of non-compliances with Ryde DCP 2014 (in particular to ensure compliance with the front setback and rear setback requirements, to provide acoustic treatment where the garage of one unit adjoins the bedroom of another unit within the development, and also to provide details of bollard lighting of common driveway).

These further amended plans were received 21 March 2017, and were re-notified to neighbours and previous objectors. A further eight (8) submissions were received – again maintaining an objection to the amended plans. Also, the submissions to the amended plans mostly related to both this DA and LDA 2015/651.

#### ITEM 4 (continued)

The revised plans have been assessed against the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act), the *Ryde Local Environmental Plan 2014* (LEP2014), and the DCP2014. The areas of non-compliance that relate to the LEP2014 can be summarised as follows:

The areas of non-compliance that relate to Ryde LEP 2014 are:

- **Clause 4.3A (2) Height of buildings (maximum 5m).** The proposed height of Dwelling 2 is 5.5m. A clause 4.6 written request has been submitted by the applicant to vary the building height development standard.

The areas of non-compliance that relate to Ryde DCP 2014 are:

- **Section 2.3: Non – preferred locations.** The subject site is within a non-preferred location, as outlined in Schedule 2 in Part 3.4, for the following reasons:
  - Land includes Urban Bushland;
  - Land affected by overland flow;
  - Land where the slope is greater than that described in Section 3.1 of DCP2014 – note the central portion of the site experiences a cross fall greater than 1:14.
- **Section 3.2: Altering the levels of the site** (levels of the site outside the building envelope should not be altered by more than 300mm).
  - The extent of cut outside the building envelope is up to 440mm for Dwelling 1. Dwelling 2 and 3 are up 1m of cut.
  - This non-compliance results in part of the private open space area being below natural ground level.

Despite the non-compliances outlined above and the issues of concern raised in the submissions, overall the proposal is generally satisfactory for approval as discussed in the body of the report. For this reason, the subject DA is recommended for approval subject to conditions.

**Reason for Referral to Planning and Environment Committee:** Number of submissions received, nature of the proposed development.

#### Public Submissions:

- (a) Original DA plans – 26 submissions received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents);
- (b) Amended DA plans (August 2016 re-notification) – 18 submissions received;
- (c) Amended DA plans (April 2017 re-notification) – 8 submissions received.

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

Note: Most of the submissions referred to both this DA (LDA2015/652) and another DA lodged by the same applicant for the adjoining property – LDA2015/651 at No 6 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper).

**SEPP 1 (or clause 4.6 RLEP 2014) objection required?** Yes. A clause 4.6 written request has been submitted regarding non-compliance with the 5m height limit for dwellings which do not front the street in a multi-dwelling housing development – refer clause 4.3A(2) of LEP2014.

**Value of works \$880,000**

#### **RECOMMENDATION:**

- (a) That Local Development Application No. LDA2015/652 at 8 Fourth Avenue, Eastwood be approved subject to the **ATTACHED** conditions – see **Attachment 1**.
- (b) That the persons who made submissions be advised of Council's decision.

#### **ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Compliance Table LEP 2014 and DCP 2014
- 3 A4 Plans
- 4 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Ben Tesoriero Planning Consultant  
Creative Planning Solutions**

**Chris Young  
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Report Approved By:

**Vince Galletto  
Acting Manager - Assessment**

**Liz Coad  
Acting Director - City Planning and Development**

**ITEM 4 (continued)****2. Site** (*Refer to attached map overleaf*)

- Address** : 8 Fourth Avenue, Eastwood  
(LOT 129 in Deposited Plan 4684)
- Site Area** : 1,012m<sup>2</sup>  
Site frontage to Fourth Avenue of 20.115m  
Eastern side boundary of 50.29m  
Western side boundary 50.29m  
Rear boundary of 20.115m  
*Note: All areas and dimensions obtained from Deposited Plan.*
- Topography and Vegetation** : The subject site falls 4.94m from a height of RL63.48 in the rear north-east portion of the site to a height of RL58.54 in the front south-western portion. This fall towards the street occurs over a distance of approximately 53m for an average gradient of 1:10.73. No significant vegetation has been identified on the site, (there are a number of trees on neighbouring land or within the street verge which may be impacted upon by the proposal).
- Existing Buildings** : Single storey dwelling (to be demolished under separate application if this development proceeds).
- Planning Controls Zoning** : R2 – Low Density Residential under *Ryde Local Environmental Plan 2014* (LEP2014)
- Other** : *Ryde Development Control Plan 2014* (DCP2014)

**ITEM 4 (continued)**



**Aerial Image of subject site, including an annotation of the properties which objected to the proposed development by way of submission to Council as part of the notification of the DA.  
Source: [www.six.nsw.gov.au](http://www.six.nsw.gov.au) – edited by CPS**



**Photograph from the Fourth Avenue frontage showing the existing dwelling house located on the subject site.  
Source: [www.google.com.au](http://www.google.com.au)**

**ITEM 4 (continued)**

**3. Councillor Representations**

Name of Councillor: Councillor Chung (former Councillor)

Nature of the representation: General Enquiry regarding DA and number of submissions received.

Date: 9 February 2016

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

On behalf of applicant or objectors? Unknown

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

**4. Political Donations or Gifts**

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

**5. Proposal**

The proposal is for the construction of a multi dwelling housing development containing three (3) dwellings at 8 Fourth Avenue, Eastwood. Dwelling 1 located at the front of the site is two-storeys in height and includes five (5) bedrooms. Dwelling 2 and Dwelling 3 to the rear of the site are to be single storey and include three (3) bedrooms each.

The development also includes strata subdivision.

## ITEM 4 (continued)



Elevation of the proposed development as viewed from Fourth Avenue. Highlighted in red is the outline of the existing dwelling house to be demolished on the site. It is noted the subject DA does not include demolition which would be subject to separate approval.

*Source: Applicant's submitted plans.*

## 7. Background

The subject DA was received by Council on 17 December 2015.

The application was notified to adjoining land owners and advertised within the Northern District Times in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014) from 13 January 2016 to 10 February 2016, and referred to a number of internal and external departments.

In response to the notification of the original DA plans, some 26 submissions received (9 individual submissions + pro-forma copies of the same submission signed by 17 local residents). Note: Most of the submissions referred to both this DA (LDA2015/652) and another DA lodged by the same applicant for the adjoining property – LDA2015/651 at No 6 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper).

**ITEM 4 (continued)**

Following a preliminary assessment, a letter was sent to the applicant on 14 March 2016 requesting them to address the following matters via amended plans or written submission. It is noted a number of these issues coincide with concerns raised by objectors:

- *Height of buildings* – the proposal identified dwellings which do not have a frontage to the street having a height of up to 6m, and therefore not complying with Council's 5m limit under clause 4.3A(2) of the *Ryde Local Environmental Plan 2014* (LEP2014).
- *Density* – the proposal was identified as failing to achieve compliance with Council's density standards under clause 4.5A of the LEP2014. This was because to accommodate the number of dwellings/bedrooms within the development, a minimum site area of 1,030m<sup>2</sup> was required. The subject site only has a site area of 1,012m<sup>2</sup>
- *BASIX* – the description of the project within the submitted BASIX Certificate indicated Dwelling 3 as including three (3) bedrooms, however this dwelling was taken to include four (4) bedrooms as the room labelled 'study' was capable of being used as a bedroom. As such, the proposal was not considered to achieve compliance with the provisions of Regulation 164A of the Regulations which require consistency between the BASIX Certificate and the submitted plans.
- *Altering site levels* – The proposal cut was identified as being up to 1.5m in the private open space areas of the dwellings, and fill of up to 900mm in the common driveway area. This was considerably in excess of the 300mm prescribed under DCP2014 and not supported.
- *Visitor parking* – no visitor parking space had been provided for the development despite the provisions of the DCP2014 necessitating one (1) visitor parking space.
- *Landscape* – concern was raised in relation to the potential impact on adjoining vegetation as a result of the proposed development. Accordingly, an aboricultural report was required to assess this vegetation and make recommendations where necessary to ensure the health of the vegetation was not compromised.
- *Geotechnical* – Additional information was required by Council's Consultant Structural Engineer in relation to the proposed development, to ensure the applicant's submitted documentation had appropriately taken into consideration potential geotechnical risks.

**ITEM 4 (continued)**

On 2 May 2016, preliminary amended plans were received, including architectural plans and drainage plans. The drainage plans were referred to Council's Senior Co-ordinator - Development Engineering Services for assessment (and found to be satisfactory as discussed in the Referrals section of this report below). However the architectural plans were not satisfactory in relation to the non-compliance with the height controls (for units without frontage to the street). A clause 4.6 request for variation was required to be submitted. A further additional information request was sent to the applicant on 25 July 2016.

Formal amended plans (including revised geotechnical report, arborist report, architectural plans and a written request for variation under Clause 4.6 Ryde LEP 2014) were submitted 2 August 2016. These were re-notified to neighbours for a period from 8 to 25 August 2016 – and a further 18 submissions were received (most of which also referred to LDA2015/651 at 6 Fourth Ave).

- *Height of buildings* – The overall height of Dwelling 2 and Dwelling 3 has been reduced to 5.5m, however the proposal remains at variance with the 5m building height limit under clause 4.3A(2) of the LEP2014. (clause 4.6 request for variation received in relation to this issue).
- *Density* – the revised plans submitted by the applicant have reconfigured the layout of Dwelling 3 so this it is a three (3) bedroom dwelling only, and there is able to comply with the density requirements under clause 4.5A of LEP2014.
- *BASIX* – by undertaking the aforementioned revisions to Dwelling 3, the proposal is now consistent with the description of the development under the submitted BASIX Certificate.
- *Altering site levels* – the applicant's revised plans have introduced split levels to Dwelling 2 and Dwelling 3, and also terraced the private open space area of Dwelling 3 so as to reduce the overall level of cut and fill across the site. In addition, steps leading up to the front porches of all dwellings has now been included to reduce the level of fill required for the common driveway.
- *Parking* – the applicant has made adjustments to the design to include a visitor parking space in line with the requirements of the DCP2014. The visitor parking space is to be located adjacent to the western elevation of Dwelling 3 at the end of the common driveway.
- *Landscape* – An Arboricultural Impact Assessment prepared by a suitably qualified arborist has been submitted to Council which takes into consideration not only vegetation on site, but also on adjoining land.

**ITEM 4 (continued)**

- *Geotechnical* – A Supplementary DA-Stage Geotechnical Assessment was submitted by the applicant for consideration by Council’s consultant structural engineer.

Prior to submitting this report to Planning & Environment Committee, a meeting was held between Council’s Acting Manager Assessment and Senior Co-ordinator – Assessment and the applicant on 21 March 2017, to seek to reduce the number of non-compliances with the controls in Ryde DCP 2014. In this regard, the previous amended plans contained a number of minor areas of non-compliance in relation to controls regarding front setbacks, side and rear setbacks, visual and acoustic privacy, and lighting (of common areas) – and the amended plans have now addressed these particular areas of non-compliance.

These amended plans were re-notified to neighbours and previous objectors as discussed in the Submissions section of this report below.

**8. Submissions**

- (a) Original Notification: The application was originally notified to adjoining land owners and advertised within the Northern District Times in accordance with the provisions of the *Ryde Development Control Plan 2014* (DCP2014) from 13 January 2016 to 10 February 2016. In response to the original DA plan notification, 26 submissions were received (9 individual submissions + 17 pro-forma copies of the same submission signed by local residents).
- (b) Amended Plan Notification (August 2016): When amended plans were received, these were re-notified to adjoining property owners on 8 to 25 August 2016. In response to the re-notification, a further 18 submissions of objection were received.
- (c) Amended Plan Notification (April 2017): Further amended plans were received from the applicant on 21 March 2017, following a meeting between Council officers and the applicant. These were re-notified to neighbours for a period from 13 April to 1 May 2017, and a further 8 submissions of objection were received.

Note: Most of the submissions referred to both this DA (LDA2015/652) and another DA lodged by the same applicant for the adjoining property – LDA2015/651 at No 6 Fourth Ave (a separate report has been prepared for the Planning & Environment Committee in this business paper).

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

The key planning objections/issues are outlined below followed by a response from the Assessing Officer to each objection.

**A – Bulk and Scale.** *Objections have been raised over the proposal's bulk and scale and negative impact on the streetscape. There have been claims the proposal does not provide architectural excellence or sufficient landscaping. Concerns have also been raised over the identical nature of the development proposed at 6 Fourth Avenue.*

**Assessing Officer Comments:** The key elements that control the bulk and scale of multi-dwelling housing developments are building heights, the number of storeys proposed, and setbacks.

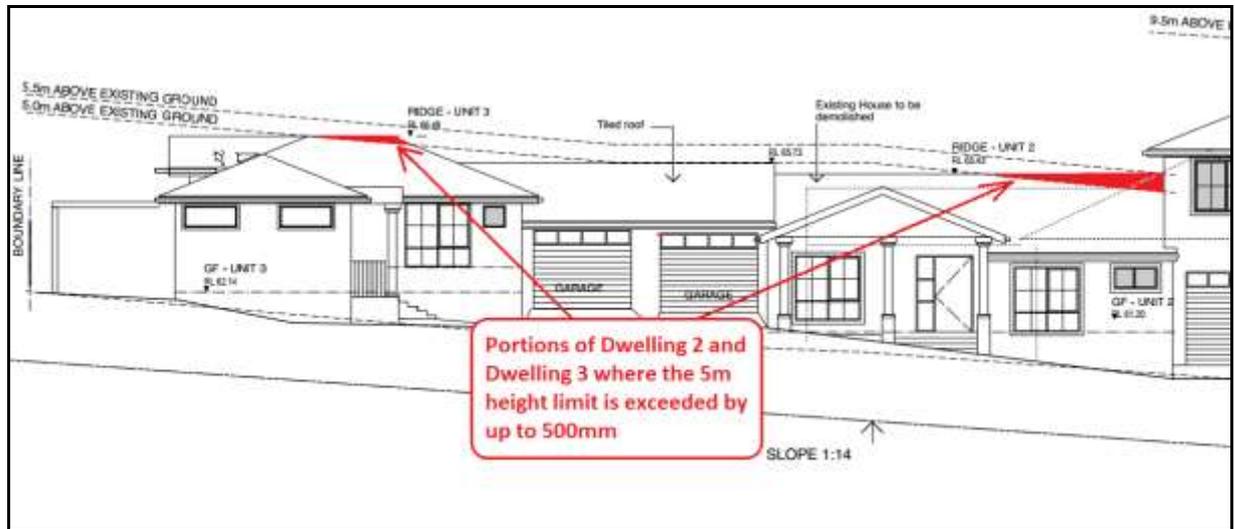
In this regard it is noted that Dwelling 1, which fronts Fourth Avenue and has frontage to the street, has a building height of 8.13m. Given the height limit for dwellings fronting the street under LEP2014 is 9.5m, the development is considered to present a satisfactory level of bulk and scale to the streetscape.

Dwelling 2 and Dwelling 3 to the rear of the site are limited to a maximum height of 5m under the provisions of LEP2014. Dwelling 2 is proposed to have a maximum building height of 5.5m, while Dwelling 3 has a maximum building height of 5.17m.

While Dwelling 3 exceeds the height limit by only 170mm, Dwelling 2 will breach the building height limit by 500mm largely due to the changing topography across the site. Despite this 10% variation to Council's development standard, the 500mm exceedance has been assessed as justifiable. This is because the height non-compliance will not result in any significant impacts on adjoining property by way of overshadowing or loss of visual privacy. Furthermore, given the non-compliance relates principally Dwelling 2 where it adjoins Dwelling 1, the 500mm exceedance will not be discernible from the street, and unlikely to result in a visual impact to adjoining property.

The following drawing is a diagrammatic explanation as to where the building height non-compliances occur at Dwelling 2 and Dwelling 3.

**ITEM 4 (continued)**



**Elevation of the proposed development as viewed from the common driveway showing the portions of Dwelling 2 and Dwelling 3 which exceed the 5m building height limit by up to 500mm. Given the small scale of the exceedances, and given they are confined to the roof ridges behind the two-storey dwelling at the front of the site, they will largely be indiscernible from the street.**

*Source: Applicant's submitted plans.*

With regard to the number of storeys in a development, the provisions of the DCP2014 prescribe that dwellings fronting the street may be two-storeys in height, with dwellings behind being no more than one-storey high. The proposal achieves compliance with these provisions by virtue of only Dwelling 1 fronting Fourth Avenue constituting two storeys, with Dwelling 2 and 3 behind comprising only one storey each.

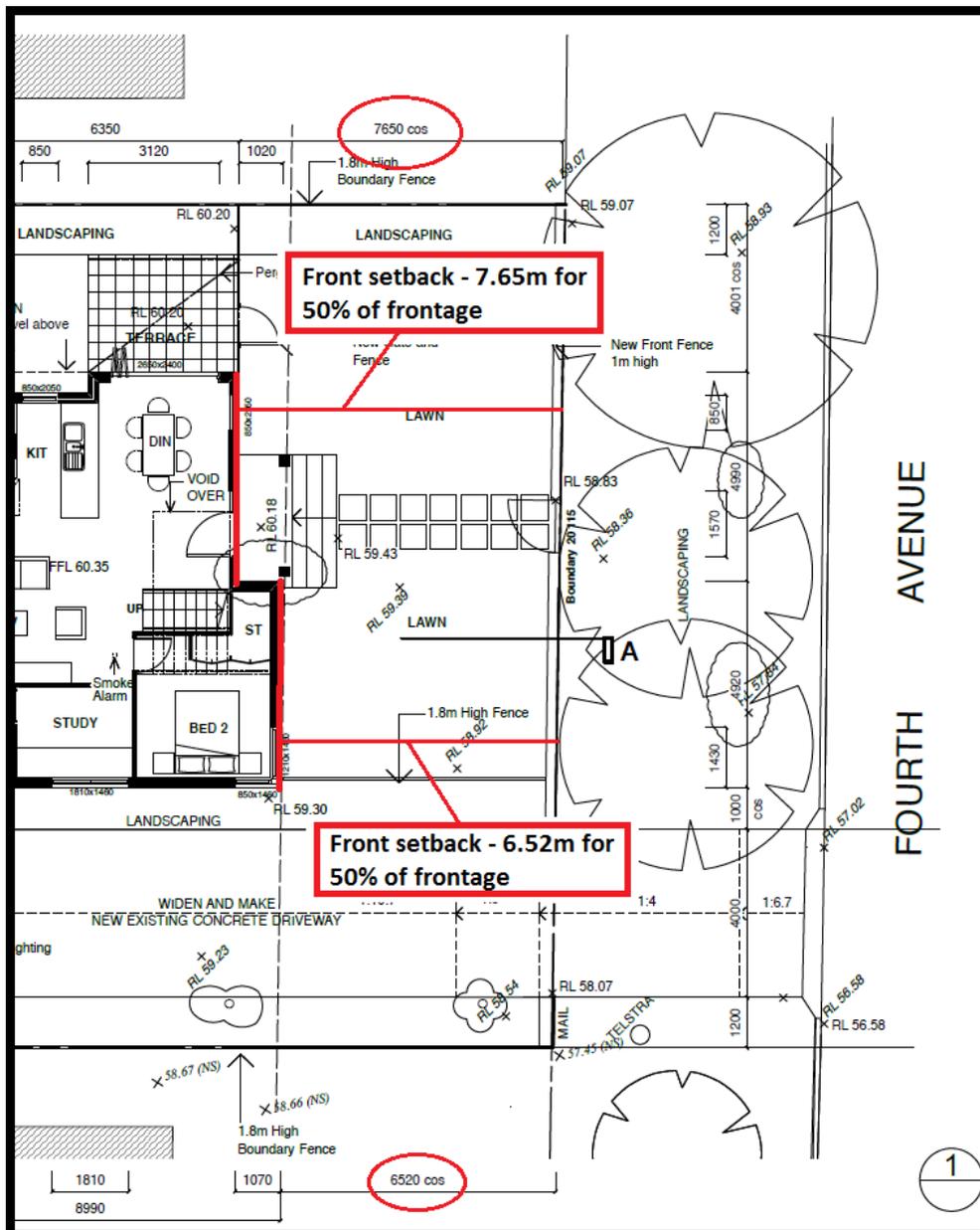
As discussed in the Background section of this report (above) prior to submitting this report to Planning & Environment Committee, the applicant has undertaken minor design amendments to achieve full compliance with the front setback, and side and rear setback requirements of Ryde DCP 2014.

The variation to Council's height controls for multi-dwelling housing buildings is not considered to result excessive bulk and scale when considering the built form. This is because the variations sought by the applicant are very minor, capable of achieving compliance with the objectives of the controls, and will largely be indiscernible from the street or adjoining development.

On this basis, objections to the bulk and scale of the development are not supported in this instance.

**ITEM 4 (continued)**

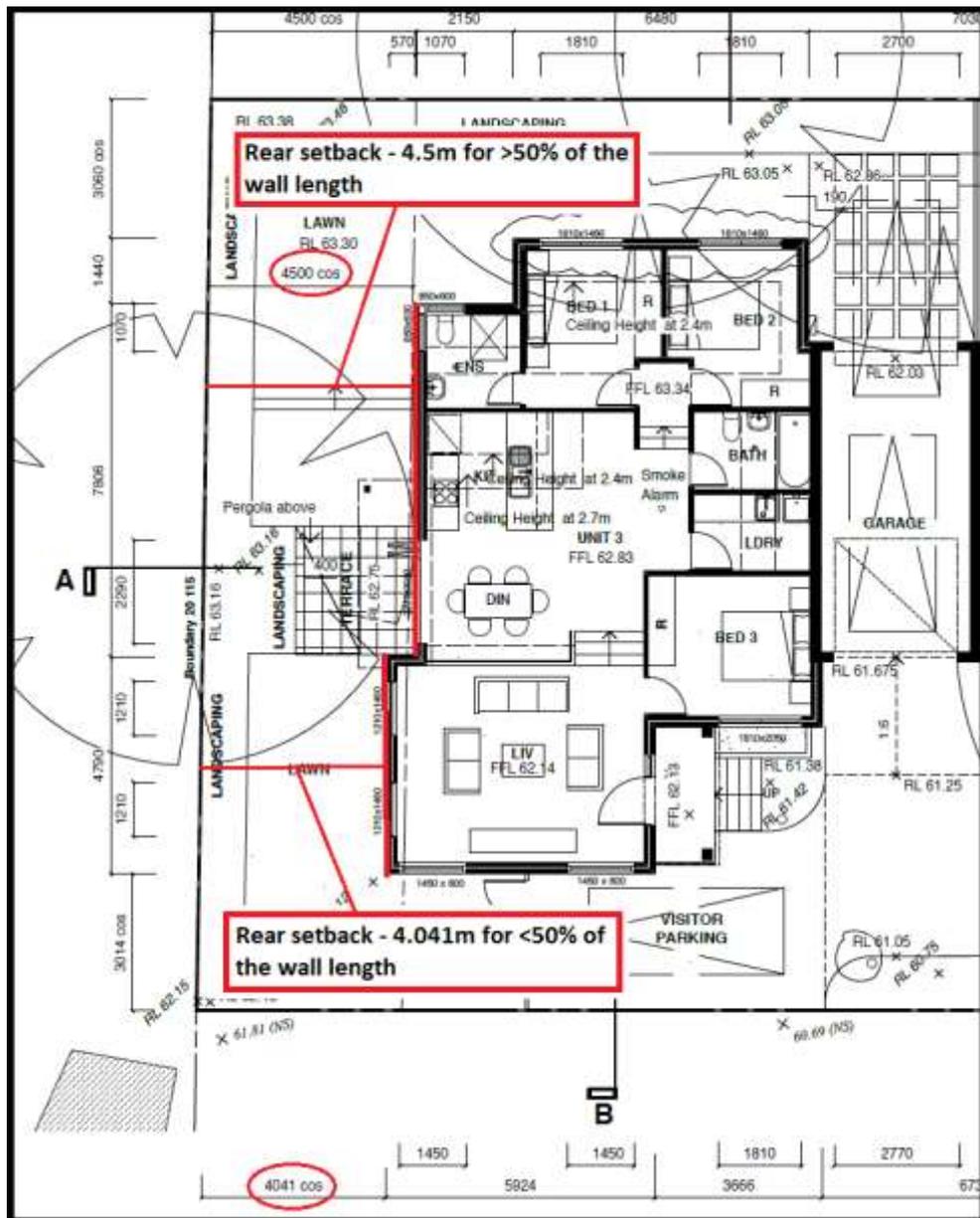
**Amended Plan re-notification:** In relation to the amended plans re-notification (April 2017), concern was raised that the amended plans still do not comply with the front setback requirements of Ryde DCP 2014. In this regard, the DCP states that where the streetscape is likely to change, the front setback shall be 7.5m for 50% of the frontage, and 6.5m for not less than 50% of the frontage. This was a minor issue of non-compliance in the previous plans, that has now been addressed in the amended plans – as shown in the following drawing:



**Extract of site plan showing front setbacks of Unit 1**  
Source: Applicant amended DA plans, marked up.

**ITEM 4 (continued)**

The amended plans have also achieved full compliance with the rear setback controls in Ryde DCP 2014, which are a 4.5m rear setback that can be reduced to 3m for 50% of the length of the wall of the unit. This is shown in the following drawing.



**Extract of site plan showing rear setbacks of Unit 3.  
Source: Applicant amended DA plans, marked up.**

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

**B – Cross Fall.** *Objectors have raised concern with the site cross fall and the development not being suitable when having regard to the provisions of DCP2014.*

**Assessing Officer Comments:** Section 3.1 of Part 3.4 of DCP2014 includes development controls to ensure multi-dwelling housing developments are compatible and sympathetic with surrounding development and the street, and also to prevent adverse privacy impacts to other properties.

To achieve these objectives, maximum gradients are provided for sites sloping up or down from the street, as well as maximum gradients for sites with a cross fall.

These gradients are 1:6 for sites sloping up or down from the street, and also a maximum cross fall of 1:14.

Council Officer's assessment of the proposed development has identified the site slope up from the street is an average of 1:9. While the cross fall is 1:18.8 at the front of the site, 1:11.5 in the central portion of the site, and 1:14.6 toward the rear of the site.

Accordingly, the subject site includes a non-compliant element in the central portion where the cross fall is 1:11.49 which is greater than 1:14.

The applicant's original submitted plans did not adequately respond to this site constraint, and as such a request for amended plans was issued. The revised plans subsequently received by Council now include a design whereby split levels are included to Dwelling 2 and Dwelling 3. These split levels allow for a development outcome which more appropriately responds to the change in the sites topography, and ensures the development remains sympathetic to surrounding development by minimising overlooking impacts and maintaining visual privacy.

It is acknowledged that Section 2.3 and Schedule 2 of Part 3.4 DCP2014 prescribes that land affected by slope greater than that described in Section 3.1 would be a non-preferred location for multi-dwelling housing development.

In this regard, reference is made to a recent Land and Environment Court decision (*Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*) whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014. Specifically, it was held that no weight be given to the non-preferred location controls under Section 2.3 of Part 3.4 of DCP2014 as the clause effectively seeks to prohibit a development that is permissible under LEP2014 (notwithstanding the use of the words "non-preferred").

Given the above, it is considered the applicant's revised plans have satisfactorily addressed the subject site's non-compliance with the cross fall controls to ensure the objectives are achieved.

#### ITEM 4 (continued)

Furthermore, given the Court's recent decision on the weight to be given to Council's 'Non-preferred locations' control, objections to the suitability of the site on the basis of the cross-fall non-compliance cannot be supported.

**Amended Plan re-notification:** In relation to the amended plans re-notification (April 2017), neighbours have raised concern that the amended plans now include a notation that the site slope has been amended to comply with Council's requirement of 1:14. This is not correct – the amended plans only include reference to the slope on the driveway gradients, however the slope of the site does not comply with the Ryde DCP 2014 requirement as discussed throughout this report.

**C - Density.** *Concerns have been raised by objectors over the proposal being overly dense with the number of dwellings and number of bedrooms proposed across the site;*

**Assessing Officer Comments:** Clause 4.5A of the LEP2014 states that:

*Development consent must not be granted to the erection of **multi dwelling housing** on land in Zone R2 Low Density Residential unless:*

- (a) the site area for the building is not less than:*
  - (i) for each 1, 2 or 3 bedroom dwelling—300 square metres, and*
  - (ii) for each 4 or more bedroom dwelling—365 square metres, and*

The objectives of this control are covered under clause 2.5 of Part 3.4 of DCP2014 and state:

- 1. To create a balanced relationship between the site area, dwelling size and residential population living on the site.*
- 2. To ensure the highest aesthetic Multi dwelling housing developments possible.*

With Dwelling 1 including five (5) bedrooms, and Dwelling 2 and Dwelling 3 including three (3) bedrooms each, a minimum site area of 965m<sup>2</sup> is required to satisfactorily achieve compliance with the development standard, and meet the aforementioned objectives.

The land at 8 Fourth Avenue includes a site area of 1,012m<sup>2</sup>. Given compliance is achieved, the density will create a balanced relationship between the site area, dwelling size and residential population living on the site.

In addition to the above, Section 2.6 of Part 3.4 of DCP2014 prescribes controls to ensure multi-dwelling housing developments are not the dominant form of development in an area and do not dramatically change the character of a location. To achieve this objective, DCP2014 prescribes that no development shall contain more than twelve (12) dwellings.

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

Given the proposal includes only three (3) dwellings, the development is considered to ensure the multi-dwelling housing proposal is not dominant in the local area.

Many of the submissions from neighbours have raised the concern regarding cumulative impacts (not only density but also increased traffic and parking impacts) – associated with having two concurrent development proposals on adjoining sites (namely No 6 and No 8 Fourth Ave Eastwood). In this regard, it is noted that the previous Ryde DCP 2010 contained a linear separation control which would have prevented two multi-dwelling housing proposals from being considered on immediately adjoining sites. However, Council resolved to remove these controls from the current Ryde DCP 2014, and therefore these controls no longer apply.

Ryde DCP 2014 does contain a maximum number of 12 dwellings in a multi-dwelling housing development. In this regard, the combined number of dwellings in both developments proposed at No 6 and No 8 Fourth Ave is six (6) units (ie three (3) units proposed in each development proposal), which is significantly less than the maximum of 12 prescribed in Ryde DCP 2014.

For these reasons outlined above, the objectors concerns relating to density are not supported in this instance.

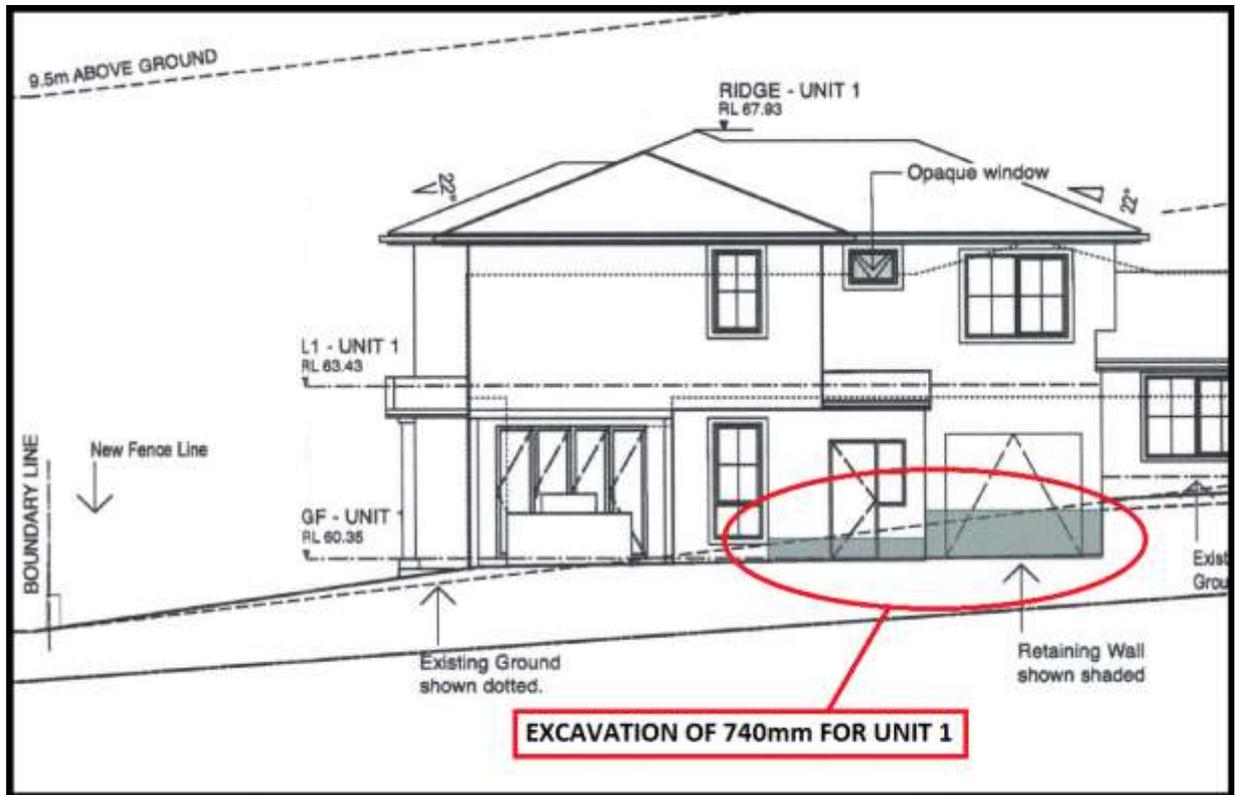
***D – Excavation.*** Concerns have been raised by objectors about the construction involving excavation adjacent to the boundary fence which may hinder the structural stability of the boundary fence which is otherwise in good condition.

**Assessing Officer Comments:** Ryde DCP 2014 states that the levels of the site (outside the building floor envelope) should not be altered by more than 300mm. An assessment of the proposal indicates minor areas of non-compliance, as the amount of excavation is proposed to be:

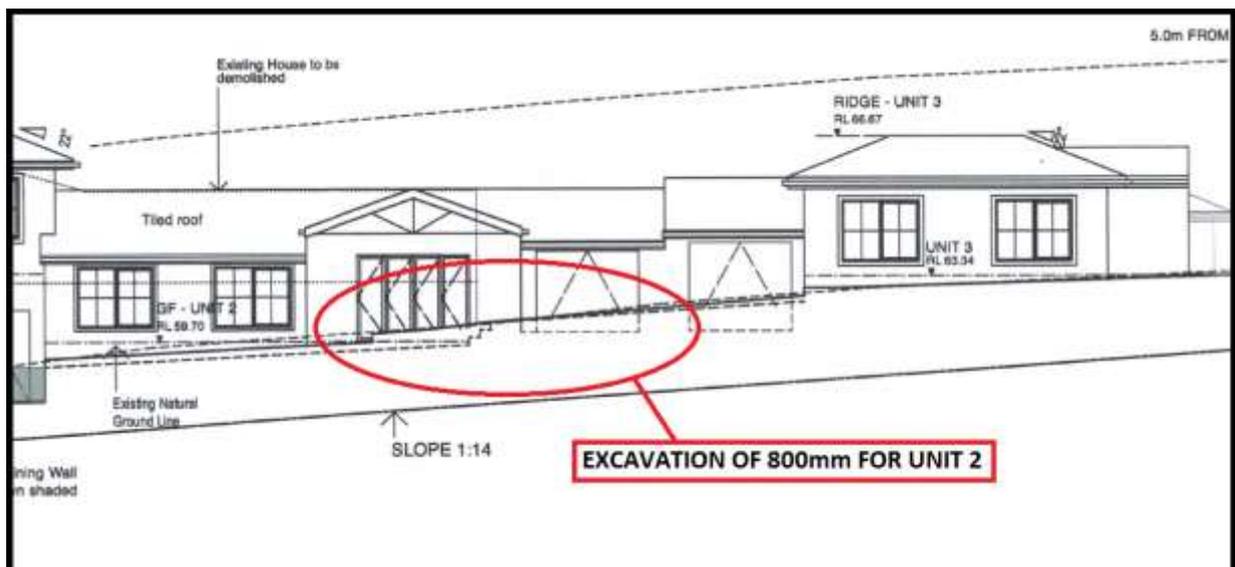
- 740mm for Dwelling 1;
- 800mm for Dwelling 2
- 1000mm for Dwelling 3; and
- around 500mm for the common driveway area.

This is shown in the following diagrams (the East and North Side elevations):

**ITEM 4 (continued)**

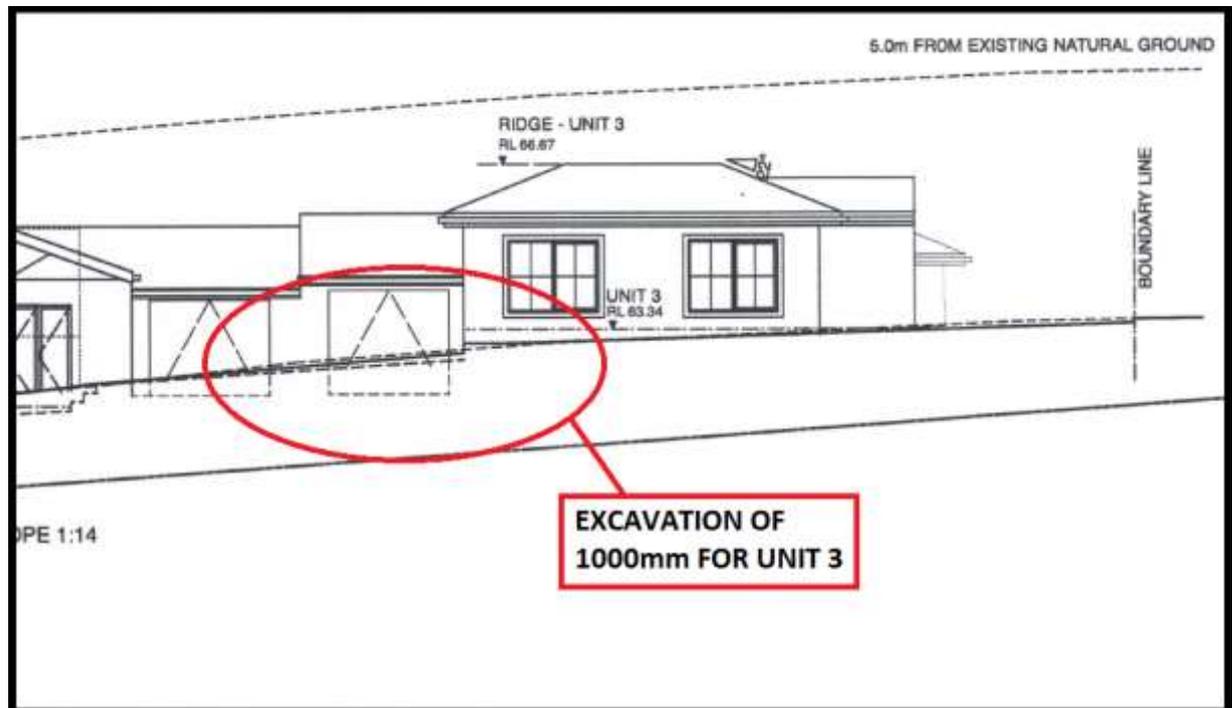


**East Elevation – showing location and extent of excavation for Unit 1.  
(Source: Applicant DA plans, marked up).**



**East Elevation – showing location and extent of excavation for Unit 2.  
(Source: Applicant DA plans, marked up).**

**ITEM 4 (continued)**



**East Elevation – showing location and extent of excavation for Unit 3.  
(Source: applicant DA plans, marked up).**

In certain areas, this will require excavation in close proximity to the property boundary, and may have the potential to impact on the structural stability of boundary fences.

To ensure new developments do not unduly impose on adjoining property boundaries, or the structural stability of adjoining developments Council will impose the following standard conditions of consent:

**Condition 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)****Condition 8:**

**Development to be within site boundaries.** *The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.*

**Condition 41:****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.*

In certain circumstances it can be pertinent to impose additional conditions of consent that require the applicant to prepare and submit dilapidation surveys, however this is generally restricted to major earthworks within close proximity to adjoining development – i.e. basements, and building's with common walls etc. Given the proposal includes a relatively modest level of excavation in comparison, conditions for dilapidation surveys have not been imposed.

With regard to boundary fences, it is noted the applicant's revised plans demonstrate a new 1.8m high boundary fence is proposed along the eastern side boundary where a greater level of excavation is to occur. To ensure any such replacement fencing complies with the provisions of DCP2014, the following standard condition of consent is to be imposed:

**Condition 30:**

**Fencing.** *Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**. All new and replacement fencing is to be at the full cost of the developer.*

With the imposition of the above conditions, and also the applicant's proposal to replace the eastern side boundary fence, it is considered the concerns relating to site excavation and the impact on boundary fencing by objectors has satisfactorily been addressed.

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

**E - Noise.** *Concern over acoustic impacts from the occupation of the multi-dwelling housing dwellings. In particular, noise from new families and their pets.*

**Assessing Officer Comments:** The proposal will replace an existing dwelling house with a new multi-dwelling housing development, and as such a residential land use is maintained for the site. Residential land uses are not considered to be noise generating developments in the same way child care centres, industries or commercial premises are.

While it is acknowledged that the proposal will result in an intensification of the site's residential land use, the proposal has been assessed as compliant with regard to the density provisions of Council's LEP2014 and DCP2014. For this reason, any noise created through general occupation of the dwellings is considered to be within expected limits.

Throughout the site, the dwellings and private open space areas have generally been located at the existing ground level. As such, noise from elevated terraces or balconies is not an issue with the applicant's revised design.

It is acknowledged no air-conditioning units are proposed on the submitted plans, however to ensure noise from any such air-conditioning or other plant equipment associated with the building is sympathetic to adjoining property, the following condition is recommended:

**Condition 74:**

**Air Conditioning/ Mechanical Plant – Noise.** *Any air-conditioning units or other mechanical plant must be enclosed in a suitable ventilated acoustic enclosure to ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.*

Concerns relating to other noise from residential occupation, such as pet noise, are subject to the provisions of the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*. As such, these are not particular matters for consideration in DA assessments under Section 79C of the *Environmental Planning and Assessment Act 1979*.

**F – Parking and traffic.** *Concerns have been raised over the proposal's use of tandem parking spaces, lack of manoeuvrability, on-street parking, and the tandem parking spaces being of inadequate dimension to accommodate a car.*

**Assessing Officer Comments:** Section 3.8 of Part 3.4 of DCP2014 provides car parking controls to ensure sufficient car parking on site to satisfy the needs of residents and visitors to the site.

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

To achieve this objective, this section also refers to Part 9.3 of DCP2014 which also includes parking controls for new developments.

For multi-dwelling housing developments, two (2) car parking spaces are required for each dwelling containing three (3) or more bedrooms. In addition, a least one space must be within a lockable garage, and at least one space is required per four (4) dwellings as visitor parking.

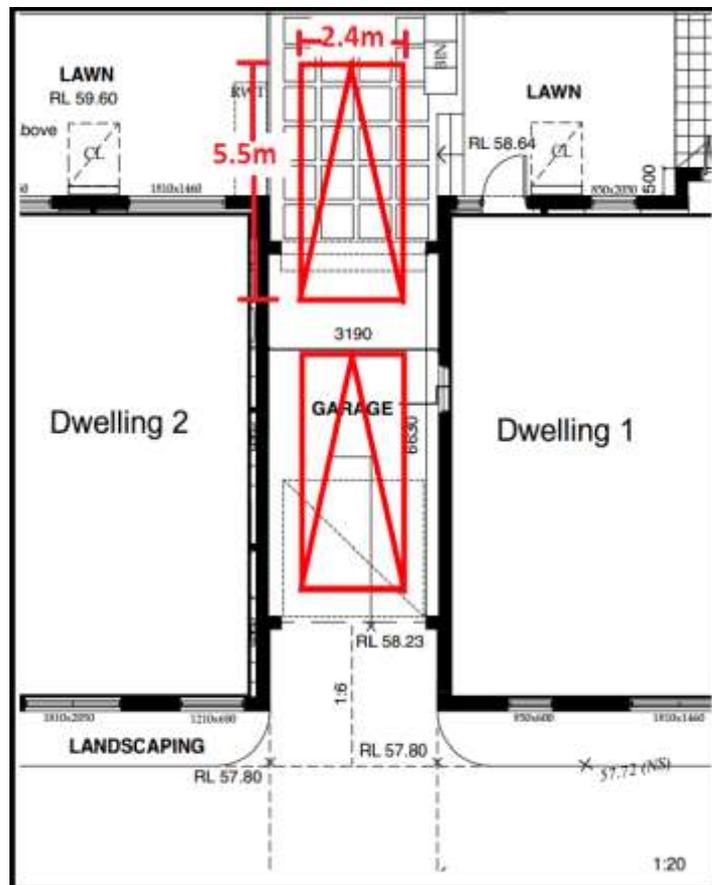
This means a total of six (6) resident parking spaces and one (1) visitor parking space is required to service the development.

The proposal achieves compliance with these minimum parking rates by including one lockable garage for each dwelling and one tandem car parking space. Furthermore, the applicant's amended plans include one (1) visitors parking space adjacent to Dwelling 3. Tandem parking spaces (ie one behind the other) are very common in multi-dwelling housing developments and have long been an accepted method of providing two parking spaces, and this form of parking provision is permitted under Ryde DCP 2014.

On this basis the proposal complies with the minimum parking provisions, and therefore achieves the objective of ensuring sufficient car parking to satisfy the needs of residents and visitors on-site.

As to the adequacy of the tandem parking space dimensions, it is noted these spaces are partly provided for in the garage, and partly outside of the garage adjacent to the private open space area. Given neighbours are not provided with internal floor plans for developments, it is understandable how one may incorrectly consider the tandem parking spaces to be of inadequate dimension if referring only to a notification plan – more detail is provided in the diagram below:

**ITEM 4 (continued)**



Extract of ground floor plan for the proposed development with the detail of the dwelling layout deleted for privacy purposes. Noted in red within this image are the typical layout for the two car parking spaces proposed. The tandem space is partly within the garage and hence why this space may be perceived to be inadequate if one were observing a notification site plan only.

*Source: Applicant's submitted plans.*

As part of the assessment of the subject DA, the proposal was referred to Council's Senior Co-ordinator - Development Engineering Services for comment. In the referral response, support has been provided to proposed parking arrangements, including dimensions and manoeuvrability. In addition, Council's Senior Co-ordinator - Development Engineering Services has raised no traffic issues with regard to the proposal.

Given the proposal is able to achieve compliance with Council's dwelling density and parking controls for multi-dwelling housing development, any minor increase in traffic generated by the proposed development would satisfactorily be accommodated within the existing road network.

Based on the above assessment, objections to the proposal on the grounds of traffic and parking are not supported in this instance.

**ITEM 4 (continued)**

**G - Setbacks.** *Objectors have raised concern over the front setback being forward of adjoining property, and also non-compliances with the rear and side setback controls;*

**Assessing Officer Comments:** As discussed previously, the proposal has now been amended to ensure full compliance with the front setback, and side and rear setback requirements of Ryde DCP 2014.

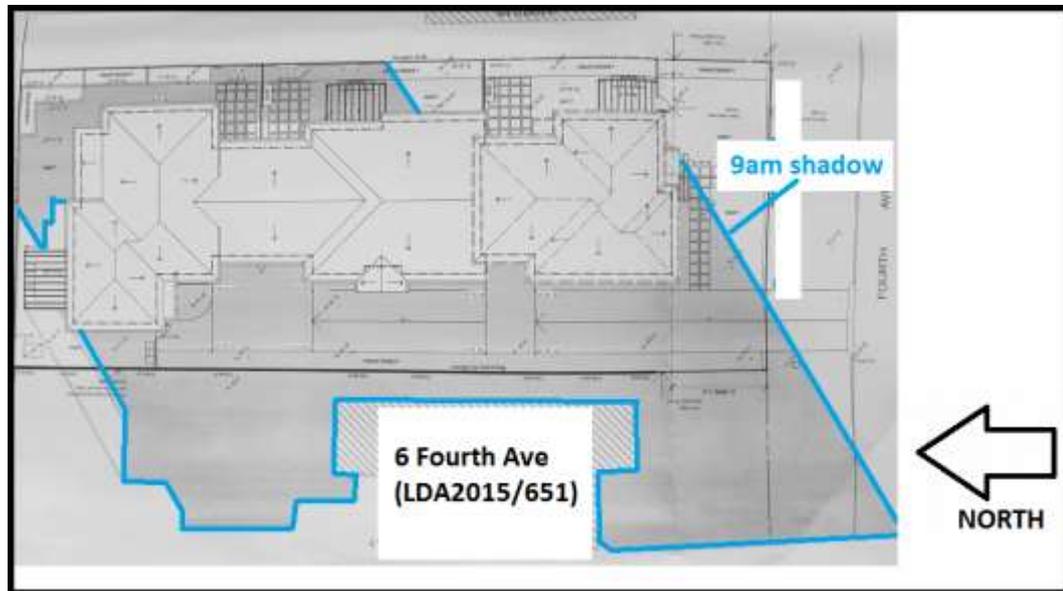
**H – Solar Access.** *Concern is raised that the proposal will cause overshadowing of neighbouring properties.*

The subject site enjoys a favourable orientation whereby the front setback and Fourth Avenue are generally located to the south of the development. Additionally, the distribution of the building's bulk, with the two-storey component being located to the south, means shadows cast by the multi-dwelling housing development are predominantly over the front setback, towards Fourth Avenue, and also over the common driveway area.

A compliant level of solar access is maintained to adjoining properties in line with the provisions of Section 3.9 of Part 3.4 of DCP2014. This effectively means that sunlight to at least 50% of the principal ground level private open space area of adjoining properties is not reduced to less than two hours between 9am and 3pm on June 21.

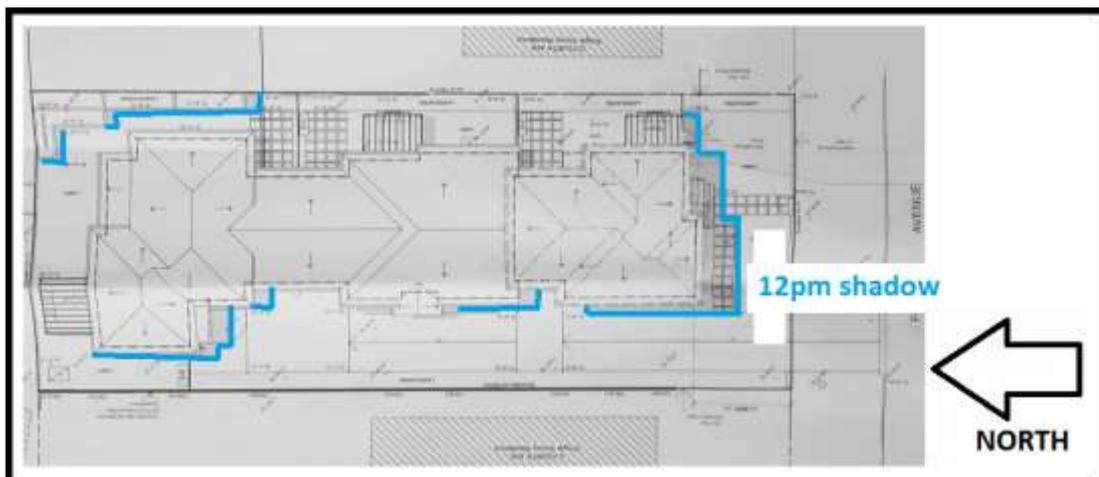
**ITEM 4 (continued)**

Provided below are extracts of the solar access diagrams submitted with the DA.



Extract of the 9am shadow diagram for the proposed development showing the shadow being cast to the west over the adjoining property at 6 Fourth Avenue, Eastwood. Despite this shadowing being cast at 9am, the adjoining property will maintain a level of solar access compliant with the minimum provisions of DCP2014 due to the favourable site orientation. Further, it is noted these shadow diagrams are based on the applicant's originally submitted plans, and given the revised plans have reduced the overall building height and minimised the level of fill proposed, the resultant impact would be a reduced level of overshadowing than that depicted above.

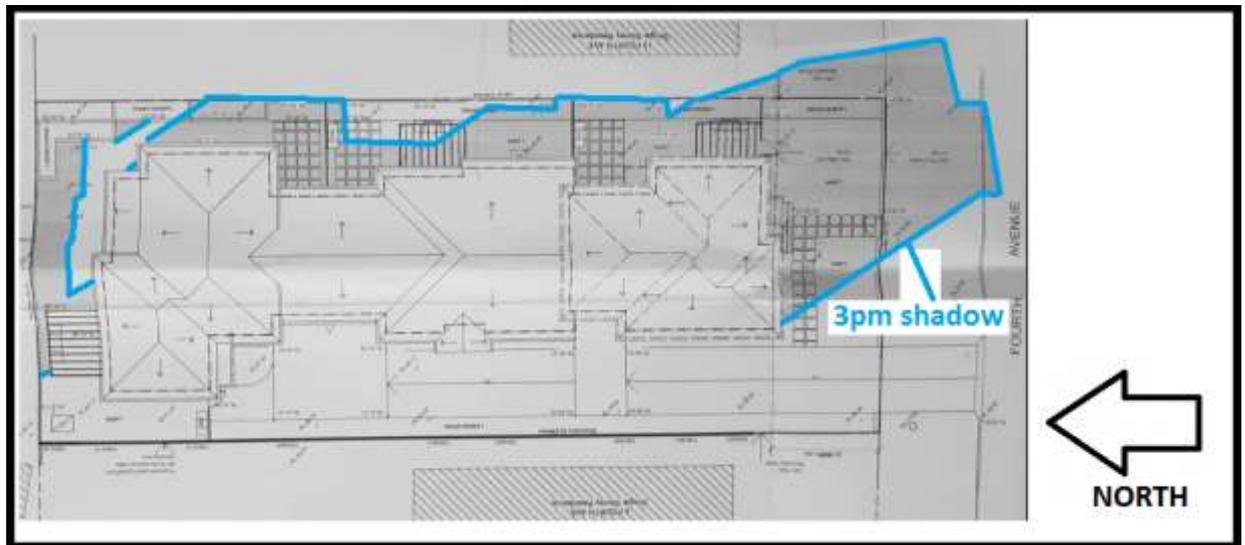
*Source: Applicant's submitted plans.*



Extract of the 12pm shadow diagram for the proposed development showing the small shadow being cast over the subject site only due to the favourable site orientation. It is noted these shadow diagrams are based on the applicant's originally submitted plans, and given the revised plans have reduced the overall building height and minimised the level of fill proposed, the resultant impact would be a reduced level of overshadowing than that depicted above.

*Source: Applicant's submitted plans.*

**ITEM 4 (continued)**



Extract of the 3pm shadow diagram for the proposed development showing the shadow being cast over the adjacent property to the east at 10-12 Fourth Avenue, Eastwood. Despite this shadowing being cast at 3pm, the adjoining property will maintain a level of solar access compliant with the minimum provisions of DCP2014 due to the favourable site orientation. Further, it is noted these shadow diagrams are based on the applicant's originally submitted plans, and given the revised plans have reduced the overall building height and minimised the level of fill proposed, the resultant impact would be a reduced level of overshadowing than that depicted above.

*Source: Applicant's submitted plans.*

*I - Vegetation. Concerns over the level of impact on adjoining vegetation were raised, particularly vegetation adjoining the site to the east at 10-12 Fourth Avenue;*

**Assessing Officer Comments:** As part of the assessment of the subject DA, the proposal was referred to Council's consultant arborist and landscape architect for assessment. The referral response from the consultant determined the applicant had not taken into consideration the proposed development's impact on the adjoining vegetation, and as such, an arboricultural impact assessment was required to be submitted to Council for review. This assessment was to look at the likely impact of the development on all vegetation, and make recommendations where necessary to ensure significant vegetation is appropriately retained and protected.

An arboricultural impact assessment was prepared by a suitably qualified consultant and submitted to Council. This report has indicated the proposal has the potential to impact on adjoining vegetation, and as such has recommended design amendments to ensure the continued viability of this adjoining vegetation.

**ITEM 4 (continued)**

The arboricultural assessment was referred to Council's Consultant Landscape Architect for review. The referral response generally outlines the design amendments made by the applicant have reduced the level of impact to adjoining vegetation, and combined with the recommendations outlined within the arboricultural assessment and conditions of consent, the proposal should be satisfactory from an arboricultural perspective.

Note: The recommended conditions by the consultant arborist/landscape architect include a requirement for permeable paving at those hard surface areas within the tree protection zone (TPZ), arborist supervision while excavation is taking place within the TPZ, and hand digging only within the TPZ.

***J – Visual Privacy.** Concerns have been raised by objectors at 10-12 Fourth Avenue regarding the location of the proposal's private open space areas adjacent to their boundary and subsequent loss of privacy. Concerns have also been raised by residents at 10-12 Fourth Avenue over the windows on the proposed development adjoining and opposite their windows and thus resulting in overlooking opportunities.*

**Assessing Officer Comments:** The principal living areas for Dwelling 1, 2 and 3 include orientations to the eastern side setback. To a lesser extent Dwelling 1 includes a partial orientation to the front setback, and Dwelling 3 to the rear setback area.

Accordingly it is important to consider whether any potential overlooking opportunities occur from these living areas, and whether a subsequent loss of privacy results.

With regard to Dwelling 1 at the front of the site, the ground floor living areas have a finished floor level of RL60.35. This places the floor level at the eastern side facing living area window at or within 100mm of the existing ground level. The floor level at the kitchen window, which also faces the eastern side boundary to 10-12 Fourth Avenue, is also at or within 100mm of the existing ground level. Both of these windows are offset from windows of the adjoining building at 10-12 Fourth Avenue, and as such, no overlooking opportunities occur when taking into consideration the screening effects of the side boundary fence.

No other side facing living room windows are included on the ground floor of Dwelling 1. On the first floor of Dwelling 1 only bedroom or bathroom windows face the eastern side boundary, and as per the provisions of the DCP2014 no unacceptable overlooking opportunities present as these rooms are not the principal activity areas of the dwelling. Although a retreat area is provided on the first floor of Dwelling 1, the windows for this room are orientated to the street, front setback and common driveway area only.

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

As outlined earlier within this assessment report, the private open space area for Dwelling 1 is located at or below existing ground level, and as such no overlooking opportunities would present to 10-12 Fourth Avenue when taking into consideration the screening effects of the 1.8m high boundary fence and proposed landscaping strip adjacent to the fence.

Dwelling 2 and Dwelling 3 are single storey dwellings only, and as such opportunities for overlooking are inherently reduced. However, it is important to consider whether any fill would give rise to potential overlooking.

Dwelling 2 includes a finished floor level at the eastern side boundary of RL61.798, which is almost 300mm lower than the existing ground level at the eastern side boundary. This means a 1.8m high fence on the boundary provides a satisfactorily effective screening height of 2.1m.

Dwelling 3 includes no east facing living room windows toward 10-12 Fourth Avenue. However, living rooms windows do face the northern rear boundary, and also the western side boundary. Due to the split level arrangement for Dwelling 3, the finished floor level for the living room is RL62.14 and the dining room is RL62.83. The west facing living room windows on the bifold doors are essentially at or within 100mm of the existing ground level, while the north facing living room windows are approximately 400mm below existing ground level. The dining room windows are located between existing ground level, and approximately 200mm above ground level.

In all of the above circumstances, the retaining walls on the boundary with the fences atop will ensure overlooking opportunities are minimised, and visual privacy maintained to acceptable levels on adjoining property.

The private open space areas for both Dwelling 2 and Dwelling 3 are located at or below the existing ground level. Furthermore, landscape strips are provided along the perimeter of the boundary which will assist in the maintenance of privacy, and softening of the buildings appearance.

Although vegetation screening should not be relied upon to achieve visual privacy, it is pertinent to note significant vegetation buffers the subject site from much of the private open space areas and buildings on adjoining allotments – see air photo earlier in this report and also the photos below:

**ITEM 4 (continued)**



**Photo from rear yard of No 8 Fourth Ave, looking north towards adjoining property at No 3A Third Avenue. Source: Assessment Officer Site Inspection Photo.**



**Photo from rear yard of No 8 Fourth Ave, looking east towards adjoining property at No 10 Fourth Avenue. Source: Assessment Officer Site Inspection Photo.**

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

Based on the above assessment, the proposal's split level and terraced design has ensured the multi-dwelling housing development appropriately responds to site topography and minimises opportunities for overlooking.

For this reason, objections based on unacceptable overlooking and loss of visual privacy are not supported. Such concerns held by Council with the originally submitted plans have since been overcome with the applicant's revised design.

***K – Change in applicant details.*** Neighbours have noted that the applicant's name appears to have changed on the amended plan re-notification letter.

Comment: The listed applicant for LDA2015/651 is Colin & Ellen Ng, and for LDA2015/652 it is Aimee Ng. A single neighbour notification letter was sent for both DAs which included only the applicant name for LDA2015/652 (Aimee Ng), however there has been no change in applicant during the DA process.

#### **9. SEPP1 (or clause 4.6 RLEP 2014) objection required?**

A clause 4.6 written request has been submitted for a 500mm variance to the 5m height limit for dwellings which do not front the street in a multi-dwelling housing development – refer clause 4.3A(2) of LEP2014 and the detailed assessment provided below for further details.

#### **10. Policy Implications**

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

##### **(a) Ryde Local Environmental Plan 2014**

##### **Zoning**

Under the Ryde Local Environmental Plan 2014 (LEP2014) the zoning of the subject site is R2 Low Density Residential. The proposed development, being for 'multi dwelling housing', is identified as being permissible with consent under the R2 zoning.

The proposal is considered capable of satisfying the objectives for residential development as it will provide for the housing needs of the community within a low density residential environment.

The proposal maintains the existing general low density nature of the zone as the built form will not be incompatible with the character of the local area which includes a variety of housing types, i.e. single dwelling houses, multi dwelling housing, and dual occupancies.

## ITEM 4 (continued)

### Principal Development Standards

A full assessment of the proposal against the relevant principal development standards contained within LEP2014 is illustrated in the Compliance Check table attached – see **Attachment 2**. The following outlines the relevant development standards applying to the proposed development, along with a comment as to how the proposal performs against these development standards:

Clause 4.1B – Minimum lot size for multi-dwelling housing. Clause 4.1B(2) of the LEP2014 prescribes that 'development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:

- (a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
- (b) the road frontage of the lot is equal to or greater than 20 metres.

<b>Column 1</b>	<b>Column 2</b>
<i>Multi dwelling housing</i>	<i>900 square metres</i>

The proposal also includes multi-dwelling housing development with strata subdivision on a site which has an area of 1,012m<sup>2</sup> and a total road frontage of 20.115m. Accordingly, the subject site meets the minimum lot size and frontage width for a multi-dwelling housing development, as prescribed by the LEP2014.

Clause 4.3(2) – Height of Buildings. Clause 4.3(2) prescribes that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. A review of the height of buildings map reveals the maximum height shown for the subject site is 9.5m.

Dwelling 1 has been assessed as having a maximum building height of 8.13m, while Dwelling 2 and Dwelling 3 have building heights of 5.5m and 5.17m respectively. Accordingly, the proposed development achieves compliance with the building height limits prescribed under clause 4.3(2) of LEP2014.

Clause 4.3A(2) – Exceptions to height of buildings. Clause 4.3(2) prescribes that the maximum height of multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.

As outlined above, Dwelling 2 and Dwelling 3 have maximum building heights of 5.5m and 5.17m respectively.

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

Accordingly these dwellings exceed the building height limit for dwellings which do not have a frontage to the street by 170mm to 500mm.

A clause 4.6 written request has been submitted by the applicant in an attempt to justify why it is unreasonable or unnecessary to comply with this development standard in the circumstances of the case. This is assessed in detail below.

Clause 4.5A(2) – Density controls for Zone R2 Low Density Residential. Clause 4.3(2) prescribes that development consent must not be granted to the erection of multi dwelling housing on land in Zone R2 Low Density Residential unless:

- (a) *the site area for the building is not less than:*
  - (i) *for each 1, 2 or 3 bedroom dwelling—300 square metres, and*
  - (ii) *for each 4 or more bedroom dwelling—365 square metres, and*
- (b) *each dwelling will have its own contiguous private open space.*

Given the proposal includes a single five-bedroom dwelling and two (2) three-bedroom dwellings, a minimum site area of 965m<sup>2</sup> is required to achieve compliance with clause 4.5A(2)(a) of the above development standard. Given the subject site includes an area of 1,012m<sup>2</sup>, compliance with this development standard is achieved.

With regard to clause 4.5A(2)(b), each dwelling will be provided with its own contiguous private open space which is separately accessible other than through the dwelling – i.e. through garages or side gates. In this regard, compliance is achieved with this component of the development standard.

Clause 4.6 – Exceptions to development standards. Clause 4.6 of the LEP2014 includes exceptions to development standards where a written request from the applicant seeks to justify the contravention of the development standard.

Clause 4.6(3) indicates that development 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.

A Clause 4.6 written request has been submitted by the applicant, which has adequately justified the contravention of the development standard. In particular, the applicant has reasonably justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as well as demonstrated there are sufficient environmental planning grounds to justify contravening the development standard, in accordance with clause 4.6(3) of the LEP2014.

**ITEM 4 (continued)**

Further to the above, the submitted written request has appropriately demonstrated that the proposed development will be in the public interest because it remains consistent with the objectives for development within the R2 zone.

A review of the submitted written request has considered the applicant's reasoning for varying a development standard. As such, it is of the opinion of the assessing officer that it would be unreasonable and unnecessary to achieve compliance with the development standards in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard, for the following reasons:

- The proposed development is considered to satisfy the objectives for residential development within the R2 zone as it will provide for the needs of the community within a low density residential environment. It will also contribute to providing a variety of housing types through the provision of three (3) dwelling of varying size in the form of a multi-dwelling housing development.
- The non-compliance is considered to be acceptable representing a 10% (500mm) variance to the building height limit for Dwelling 2 and 3.4% variance to the building height limit for Dwelling 3. The plans adequately present a development that does not in this case hinder compliance with solar access, privacy, views to and from the site, and the density requirements of the DCP2014.
- The proposed development responds well to the site, despite the non-compliance with the development standards, and does so without compromising relationships with adjoining developments. Strict compliance with the development standards would render the application inconsistent with the objectives specified in section 5 (a) (i) and (ii) of the EPA Act as the site will remain under-developed and would not promote the economic welfare of the community through additional housing supply.
- The proposed development is capable of maintaining the low density nature of the R2 zone as it will largely present as a two-storey dwelling house when viewed from Fourth Avenue. The development will complement the existing streetscape through the provision of a built form that will be compatible with surrounding development, and satisfactorily compliant with Council's planning controls.

#### ITEM 4 (continued)

- Enforcing compliance with the development standard will restrict a development that would otherwise be appropriate on the site<sup>2</sup>. Through a skillful design, the proposal demonstrates the site is capable of being developed without unduly impacting on the adjoining properties. Overall the proposal maintains compliance with the relevant provisions and controls under the LEP2014 and DCP2014. Where compliance hasn't been achieved, the development has proved to be capable of achieving the objectives of the development controls and accordingly, flexibility has been recommended when having regard to the provisions of Section 79C(3A)(b) of the Act.
- The variation to the development standard under the circumstances will ensure that the site is able to be developed and result in better management of the site as well economic enhancement for the community.
- Council have varied the building height control for dwellings which do not front the street in multi-dwelling housing development to ensure appropriately pitched roof are included on undulating sites. In this regard, refusing consent on this basis would be inconsistent with Council's previous application of the development standard.

Having regard to the above, it is considered that enforcing compliance with the aforementioned development standard would be unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the contravention in the circumstances of the case.

#### **(b) Relevant State Environmental Planning Policies (SEPPs)**

##### State and Sydney Regional Environmental Planning Policies

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

*State Environmental Planning Policy No.55 – Remediation of Land* (SEPP55) applies to the entire state of New South Wales and includes planning controls for the remediation of contaminated land. It also requires an investigation to be made if land contamination is suspected.

A review of Council's environmentally sensitive land mapping, and historic air photos has identified that the land has only been used for residential purposes. Therefore the site is unlikely to be affected by site contamination, and therefore no further investigation is required in this regard.

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<sup>2</sup> Note - *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179* whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014.

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

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

A compliant BASIX Certificate (Cert. No. 693043M, dated 17 December 2015) has been submitted with the subject DA. A standard condition of consent will be imposed to ensure compliance with the BASIX Certificate.

Note: The description of the project within the submitted BASIX Certificate indicated Dwelling 3 as including three (3) bedrooms, however this dwelling was taken to include four (4) bedrooms as the room labelled 'study' was capable of being used as a bedroom. As such, the proposal was not considered to achieve compliance with the provisions of Regulation 164A of the Regulations which require consistency between the BASIX Certificate and the submitted plans.

By undertaking the aforementioned revisions to Dwelling 3, the proposal is now consistent with the description of the development under the submitted BASIX Certificate.

##### Other State Environmental Planning Policies

No other SEPPs have been identified as being applicable to the proposed development.

##### **(c) Any draft LEPs**

No draft environmental planning instruments that have been identified which are considered relevant for the proposed development on the subject site.

##### **(d) The provisions of any development control plan applying to the land**

##### **Ryde Development Control Plan 2014**

The proposal has been assessed using the development controls contained in the *Ryde Development Control Plan 2014* (DCP2014). The full assessment is detailed in the Compliance Check table attached – see **Attachment 2**.

The following outlines those non-compliances identified with the subject DA, and elaborates on how these non-compliances are either justifiable in the circumstances of the case, or are not justifiable and require amendment to the design or imposition of mitigation measures by way of conditions of consent.

## ITEM 4 (continued)

### Non-Compliances: Justifiable

As covered by Section 79C(3A)(b) of the *Environmental Planning and Assessment Act 1979* (the Act), if a development control plan contains provisions that relate to the development that is the subject of a DA, the consent authority is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

With the above in mind, the following outlines those aspects of the proposal which have been assessed as non-compliant with the applicable development controls under DCP2014, but nonetheless have been determined acceptable as they are able to achieve the objects of those standards.

- 1. Non – preferred locations:** Section 2.3 and Schedule 2 of Part 3.4 DCP2014 prescribes that land affected by slope greater than that described in Section 3.1 would be a non-preferred location for multi-dwelling housing development.

When looking at Section 3.1, the maximum gradient specified for multi-dwelling housing sites is 1:6 when looking at slopes up and down from the street. In addition, Section 3.1 also prescribes a maximum cross fall of 1:14 for multi-dwelling housing sites.

Council Officer's assessment of the proposed development has identified the site slope up from the street is an average of 1:9.12. While the cross fall is 1:18.79 at the front of the site, 1:11.49 in the central portion of the site, and 1:14.6 toward the rear of the site.

Accordingly, the subject site includes a non-compliant element in the central portion where the cross fall is 1:11.49 which is greater than 1:14.

Given the site fails to achieve compliance with this control in the central portion of the allotment, the provisions of Section 2.3 and Schedule 2 would therefore stipulate the site as being non-suitable for multi-dwelling housing development.

In this regard, reference is made to a recent Land and Environment Court decision (*Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*) whereby the Commissioner made a determination in relation to Council's non-preferred location controls under DCP2014. Specifically, it was held that no weight be given to the non-preferred location controls under Section 2.3 of Part 3.4 of DCP2014 as the clause effectively seeks to prohibit a development that is permissible under LEP2014 (notwithstanding the use of the words "non-preferred").

**ITEM 4 (continued)**

Given the above, it is the opinion of the Assessment Officer that non-compliance with the non-preferred location control under the DCP2014 should not surmount to grounds for refusal.

Nevertheless, it is prudent to assess how the proposal performs against the objectives of Council's site slope controls to ensure the proposed multi-dwelling housing development is compatible with the site and surrounding development by not unduly impacting on the amenity to neighbouring properties.

On this point reference is made to the detailed assessments on overshadowing, privacy, noise and visual impact provided when responding to concerns raised by objectors earlier in this report.

In addition, despite the slope of the site, Council's Senior Co-ordinator - Development Engineering Services has indicated the proposal is satisfactory from a stormwater perspective, subject to conditions. Additionally, despite the slope of the site and the land being subject to land slip, the proposal has also been assessed as being satisfactory from Council's Consultant Structural Engineer, subject to conditions.

Given the proposal has proven to be satisfactory when considering these impacts, it must be held that the development is compatible with the local area.

For the reasons outlined above, the proposal is considered supportable, despite it not achieving compliance with the provisions of Section 3.1, Section 2.3, and Schedule 2 of the DCP2014.

- 2. Altering the levels of the site:** Section 3.2 in Part 3.4 of the DCP2014 prescribes setback multi-dwelling housing development must not alter the levels of a site by more than 300mm outside of the building envelope.

An assessment of Dwelling 1 has revealed that the proposed ground level for the private open space area is to be excavated up to 740mm to accommodate the lawn and terrace area.

For Dwelling 2, the proposed ground level for the private open space area is to be terraced across different levels for the lawn, terrace and tandem parking space. To achieve this terracing, excavation up to 800mm is likely to be required based on the submitted plans.

**ITEM 4 (continued)**

For Dwelling 3, the proposed ground level is also to be terraced across different levels for the eastern and western lawn areas, as well as the terrace area in front of the dining room. To achieve this, excavation of up to 1m would be required.

For the western side setback, the common driveway is generally located at ground level, however some portions excavation up to 500mm is required or fill up to approximately 300mm is required.

Having regard to the above, it is evident the proposal will exceed the 300mm limit under DCP2014 by 440mm for Dwelling 1, 500mm for Dwelling 2, 700mm for Dwelling 3 and around 200mm for the common driveway area.

Despite the above variations to Council's cut and fill controls, the proposal is considered justifiable for the following reasons:

- The proposal has utilised terracing throughout the site, as well as split levels within the dwellings in order to maintain a built form outcome that respects the site topography.
- Despite the excavations proposed, the favourable orientation of the site ensures that a compliant level of solar access is achieved to the private open space and living areas of the dwelling. For example, the living room areas of all dwellings have at least two aspects so as to capture both morning and afternoon sun.
- As demonstrated earlier in this assessment report when responding to objector concerns, the proposed development satisfactorily minimises overlooking opportunities and maintains visual privacy to adjoining property. By virtue of the level alteration being cut as opposed to fill, the effective height of the boundary fences is increased and higher levels of privacy achieved.
- The proposal has been assessed by Council's Senior Co-ordinator - Development Engineering Services, and also Council's Consultant Structural Engineer. The referral responses do not raise impact on ground water as a concern for the development. Furthermore, Council's engineers have provided support for the proposed development despite the site being impacted upon by land slip.

For the reasons outlined above, the proposal is supported, despite it not achieving compliance with the provisions of Section 3.2 of Part 3.4 of DCP2014.

**ITEM 4 (continued)**

**Section 94 - Development Contributions Plan – 2007 Interim Update (2014)**

Council's current Section 94 Development Contributions Plan 2007 (Interim Update (2014) effective 10 December 2014) requires a contribution for the provision of various additional services required as a result of increased development density. The contribution is based on the number of additional dwellings there are in the development proposal. The contribution that are payable with respect to the increase housing density on the subject site (being for residential development outside the Macquarie Park Area) are as follows:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community and Cultural Facilities	\$7,056.38
Open Space & Recreation Facilities	\$17,371.38
Civic & Urban Improvements	\$5,908.34
Roads & Traffic Management facilities	\$805.94
Cycleway	\$503.44
Stormwater Management Facilities	\$1,600.14
Plan Administration	\$135.72
<b>The total contribution is</b>	<b>\$33,381.34</b>

**10. Likely impacts of the Development**

**(a) Built Environment**

A detailed assessment of the impacts of the proposed development on the built environment has been undertaken as part of the assessment of the proposed development. This has included a compliance check against all relevant planning controls, referral of the proposal to relevant technical officers within Council, and a detailed assessment report.

The assessment of the proposal has revealed that it is unlikely to adversely impact on the existing character of the locality in terms of bulk and scale. Whilst it is acknowledged that the scale and built form density of the subject site will increase as a result of the development, the proposed multi-dwelling housing development has been appropriately designed so that the building has a similar appearance to a large dwelling house from the street.

Having regard to the above, the proposed development is considered unlikely to significantly impact the streetscape or surrounding development.

## **ITEM 4 (continued)**

### **(b) Natural Environment**

The proposed development is located in an established urban area, and as such is not considered to result in any significant impacts on the natural environment. Imposition of Council's standard conditions of consent, relating to protection of the natural environment, are considered to satisfactorily mitigate any adverse impact the proposed demolition and construction of the proposed multi-dwelling housing development.

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

A review of Council's map of Environmentally Sensitive Areas (held on file) identifies the subject site is subject to the following constraints:

- Within 100m of a Heritage Item (see Heritage Officer's assessment in Referrals section of this report below).
- Slope Instability (see Consultant Structural Engineer's assessment in Referrals section of this report below).

Despite these environmental/planning hazards, it has been determined the proposal is suitable for the subject site as it will not unduly impact on the streetscape or adjoining development, nor give rise to potential risks associated with bush fire so long as the recommended conditions of consent are adhered to.

NOTE: It is noted that the adjoining property (No 6 Fourth Ave, LDA2015/651) also has site constraints of bushfire prone land and flood prone land affecting that property, and an assessment has been made by the applicable Council officers in relation to this adjoining DA. These constraints do not affect the subject DA (LDA2015/652) and so no assessment was required for this DA.

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

The proposed development is considered satisfactory having regard to the objectives and requirements of the LEP2014 and DCP2014. Key potential impacts on adjoining property have been considered and addressed within this report. As such it is considered that the proposed development is in the public interest.

The proposal contributes to the delivery of a variety of housing types to meet the needs of the community within the R2 zone through the provision of a multi-dwelling housing development in an area that is predominantly single dwelling houses.

## ITEM 4 (continued)

### 13. Consultation – Internal and External

#### Internal Referrals

**Senior Co-ordinator - Development Engineering Services:** The originally submitted proposal and revised plans were referred to Council's Senior Co-ordinator - Development Engineering Services for assessment. In the referral response the following comments were made:

#### Stormwater Management

*The proposed stormwater management system for the development discharges to the kerb in Fourth Avenue and incorporates an onsite detention system having detailed parameters complying with Councils requirements.*

*A review of the plan has noted the following matters which need to be addressed;*

- The onsite detention storage is located in a turfed area in the front setback. To maximise the effects of soft landscaping, the tank must be relocated under the driveway accessing the property.*
- The OSD calculations for the detention orifice diameter do not correlate with the plans however may be readily addressed.*

*These can be dealt within the standard condition of consent regarding stormwater management.*

#### Vehicle Access and Parking

*A review of the parking area with respect to the DCP and Australian Standard requirements notes the following;*

- The existing footpath/ verge is elevated well above the road carriageway and City Works may attempt to redress this as part of the development works (lowering the footpath slightly). Accordingly the boundary level may be slightly lower than existing.*
- The plans propose a driveway to grade at 16% directly up from the boundary level. AS 2890.1 requires a lesser grade over the property boundary alignment to ensure pedestrian safety and restricts the driveway grade to 12.5% for the first 6m. into the property. A review of the resulting driveway grades notes this could feasibly be achieved however it is warranted that a driveway profile be prepared to ensure that this matter is addressed.*

**ITEM 4 (continued)**

- *A review of the swept path access to the garage between Units 1 and 2 notes that the required swept path clearances are compromised. This could be addressed by widening the driveway access a further 500mm just opposite the garage entry and widening the separation between unit 1 and 2 by some 400mm and is then addressed by a condition of consent.*

*These matters have been addressed as a condition of consent.*

*It is noted that revised plans have been requested to make provision for a visitor car space which is likely to be located at the end of the driveway access. As noted in the development assessment for 6 Fourth Avenue, the car space will require a multipoint turn to enter/ exit. Whilst this is not ideal, the arrangement is typical for a villa development. It is advised that widening the driveway in this region would provide additional manoeuvring area, thereby facilitating this movement.*

*Recommendation*

*There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development.*

**Assessing Officer Comment:** The Senior Co-ordinator - Development Engineering Services has recommended twenty-two (22) conditions of consent. Of note from a planning perspective are the conditions recommending widening of the garage for Dwelling 1, and also widening of the common access driveway. A review of the plans reveals there is scope to narrow the vegetation buffers along select portions of the driveway to enable the Development Engineer comments. Furthermore there is considered to be scope to widen the garage for Dwelling 1 by encroaching on the adjacent living room/bathroom without unduly impacting on the internal dimensions of Dwelling 1, or requiring further encroachment into the front setback area.

**Consultant Structural Engineer:** The subject site is identified as being within an area subject to slope instability. Accordingly, the originally submitted proposal and revised plans were referred to Council's Consultant Structural Engineer for assessment. In the original referral response concerns were raised over the adequacy of the applicant's submitted geotechnical assessment. In particular:

*"... it would be prudent to obtain written assurance from Davies Geotechnical that the site filling of up to 1.3m in depth in conjunction with localised excavation up to a maximum depth of 2.9m below natural surface level for construction of the proposed stormwater detention tank will no change their risk assessment or recommendations."*

**ITEM 4 (continued)**

As such, this information was conveyed to the applicant and a supplementary geotechnical assessment has been provided to Council for assessment. This was referred back to Council's Consultant Structural Engineer, who has advised that it is now satisfactory for approval, subject to conditions of consent requiring compliance with the recommendations contained in the Davies Geotechnical Reports. Compliance with the Davies Geotechnical Reports is required by condition 1 of the consent.

**Heritage Officer:** The DA has been referred to Council's Heritage Officer who has made an assessment and provided the following comments:

*The development proposal seeks Council's approval for the demolition of the existing detached-style dwelling house on the site and construction of a part single storey part two-storey attached multi-dwelling units and strata subdivision.*

**Reason for the Heritage Referral:**

*The development proposal has been referred for heritage consideration as the subject site is within the vicinity of the following items of heritage significance listed under Schedule 5 of Ryde LEP 2014:*

- i) 'Seat' East Parade (outside 36A) (Item No.150)*
- ii) 'Open Space' Darvall Park, Chatham Road (Item No.126)*

**Consideration of the heritage impacts:**

*The subject site contains a single-storey, detached style dwelling house which displays the key characteristics attributed to the Post-War period of the late 1940s - 1950s and is an architectural style that is not considered rare or under threat in the locality. Demolition is supported accordingly.*

*The proposal then involves the site clearing, including the removal of trees followed by the construction of a part single-storey, part double-storey attached multi-dwelling units.*

*The subject site is within the vicinity of Darvall Park and a seat, both of which are listed items of local heritage significance and located within the vicinity of the site. While there is a partial visual relationship between the subject site and Darvall Park, there is no visual relationship to the seat which is situated in the road reserve in East Parade.*

*In considering the proposed development, there will be no material affectation to the heritage items in the vicinity nor will the redevelopment of the site result in any adverse visual impacts on the setting or visual relationship with Darvall Park.*

**Recommended conditions**

*There are no conditions recommended.*

**ITEM 4 (continued)**

**Consultant Landscape Architect:** The originally submitted proposal and revised plans were referred to Council's Consultant Landscape Architect/ Arborist for assessment. In the original referral response concerns were raised over the development's potential impact on adjoining significant vegetation. As such, it was requested that an arboricultural impact assessment prepared by a suitably qualified arborist be submitted to Council for assessment.

This arboricultural impact assessment dated 26 April 2016, along with revised plans, were submitted to Council as part of the additional information package from the applicant, and subsequently referred back to Council's Consultant landscape architect/ arborist for review and comment.

The response from the consultant is the revised design's level of impact on adjoining vegetation is generally satisfactory, subject to the recommendations within the submitted arboricultural report, and also subject to the following conditions of consent:

**Rear Terrace.** *The rear terrace adjacent to the northern elevation of Dwelling 3 is to be reduced in depth by 500mm so as to avoid the Structural Root Zone (SRZ) for Tree 6, as identified within the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26 April 2016. In addition, the paving for the terrace is to be permeable, and the overhead pergola structure is to be open, so as to allow water to penetrate the ground surface below.*

**Tree Protection.** *All tree protection works including installation of any fencing is to be undertaken prior to any demolition or site clearing works on site.*

**Tree Protection Fencing.** *All protective fencing and signage around Tree Protection Zones must be located in accordance with AS4970: Protection of trees on development sites. In this regard, any fencing required to be constructed around the Tree Protection Zone is to be in accordance with AS4687 Temporary fencing and hoardings.*

**Project Arborist.** *A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on the subject site and neighbouring allotments in accordance with AS4970-2009 Protection of trees on development sites and the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26.04.2016. All trees are to be monitored to ensure adequate health throughout the construction period is maintained. Additionally, all work within the Tree Protection Zones is to be supervised by the Project Arborist throughout construction. Details of the Project Arborist are to be submitted to Council prior to the commencement of construction.*

**ITEM 4 (continued)**

**Stormwater Trench/Pit Locations.** *The location of stormwater infrastructure located along the western side boundary is to be located as far away from existing trees to be retained as practical. Should the excavation for the stormwater pits and trenches conflict with any major structural roots (greater than >25 mm diameter) of existing trees, their location and alignment is to be modified in consultation with the Project Arborist to avoid impact. Under no circumstances should roots be severed or cut without prior approval from the Project Arborist.*

**Underground Utilities.** *Any utility services to be located underground within the TPZ are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than >25 mm diameter). To prevent soil compaction and root damage these works should be conducted with non-motorised hand tools or directional drilling.*

**Fill Requirements.** *All fill to be placed within the Tree Protection Zones of neighbouring trees is to be gap graded structural soils which allows for gaseous exchange and future root growth. The Project Arborist is to confirm suitability of the proposed material prior to installation.*

**Excavation within TPZ.** *Any excavation or grading/re-grading within the identified TPZs of trees to be retained shall be carried out by hand using manual hand tools. Roots greater than 25mm are not to be damaged or severed without the prior written approval of the Project Arborist.*

**Retaining Wall Construction.** *Any retaining wall construction necessary within the Tree Protection Zones of trees to be retained is to utilise a construction technique which minimises the level of impact to existing tree roots such as pier and beam with a suspended beam, modular concrete sleepers with steel post supports or gravity wall. The design and method of construction is to be reviewed and approved by the Project Arborist as part of the Construction Certificate.*

**Soil Moisture within TPZ.** *Soil moisture levels within all TPZs are to be regularly monitored by the Project Arborist during construction. If temporary irrigation or watering is required within the TPZ, then any above-ground irrigation system is to be installed and maintained by a suitably qualified individual.*

## ITEM 4 (continued)

**Final Assessment of Trees.** At completion of all construction works the Project Arborist is to carry out an assessment of all trees that were required to be retained. This assessment is to be documented in writing, a copy of which is to be submitted to Council prior to the issue of any occupation certificate for the development. The documentation is also to specify any required on-going remedial care that is required to be undertaken to ensure the continuous health and retention of the specified trees.

### External Referrals

None required.

**NOTE:** The constraint of affectation by Bush Fire Risk affects No 6 Fourth Ave, and NOT No 8 Fourth Avenue. Accordingly, this DA (LDA2015/652) was not required to be referred to the NSW RFS for comment, but the DA for No 6 Fourth Ave (LDA2015/651) was required to be referred to the NSW RFS. See map below:



Land affected by bushfire risk (grey shading with broken red line), with subject site location shown. Subject Site is not affected by bushfire risk.  
Source: Ryde Council mapping system.

## 14. Critical Dates

There are no critical dates or deadlines to be met.

## **ITEM 4 (continued)**

### **15. Financial Impact**

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

### **16. Other Options**

The recommendation of this report is approval subject to conditions.

The only practical alternative to this recommendation of approval would be refusal. In this regard, the various issues of concern arising from assessment of this DA as discussed throughout this report (ie DCP non-compliances and concerns in submissions from neighbours) could form the basis for reasons for refusal.

However it is not considered that Council would be successful in defending an appeal in the Land and Environment Court based on these issues, because the development is generally considered to be satisfactory on merit despite these issues, as discussed throughout this report.

Many of the submissions from neighbours have raised the concern regarding cumulative impacts (not only density but also increased traffic and parking impacts) – associated with having two concurrent development proposals on adjoining sites (namely No 6 and No 8 Fourth Ave Eastwood). In this regard, it is noted that the previous Ryde DCP 2010 contained a linear separation control which would have prevented two multi-dwelling housing proposals from being considered on immediately adjoining sites. However, Council resolved to remove these controls from the current Ryde DCP 2014, and therefore these controls no longer apply.

Ryde DCP 2014 does contain a maximum number of 12 dwellings in a multi-dwelling housing development. In this regard, the combined number of dwellings in both developments proposed at No 6 and No 8 Fourth Ave is six (6) units (ie three (3) units proposed in each development proposal), which is significantly less than the maximum of 12 prescribed in Ryde DCP 2014.

### **17. Conclusion**

The proposed development has been assessed using the heads of consideration listed in Section 79C of the Act and is generally considered to be satisfactory for approval.

Although areas of non-compliance with LEP2014 and DCP2014 were identified, these were either considered to be justifiable given the circumstances of the subject site and the development proposed, or alternatively addressed via imposition of consent conditions.

**ITEM 4 (continued)**

The proposed multi-dwelling housing development is considered to result in a built form outcome that is consistent with the objectives of the R2 Low Density Residential zone. The proposal contributes to the delivery of a variety of housing types to meet the needs of the community within the R2 zone through the provision of a multi-dwelling housing development in an area that is predominantly single dwelling houses.

The proposal has attracted a number of submissions from the notification of the DA and subsequently amended plans. These submissions have raised issue with the proposal's density, traffic and parking impacts, and the general suitability of the site based on perceived amenity impacts to adjoining development. Each of the issues raised by objectors has been taken into consideration and addressed in detail within the Submissions section earlier in this report. The issues raised have been either dealt with via the applicant's amended plans, or mitigated to acceptable levels through the imposition of consent conditions.

The non-compliances or issues associated with the proposal are not considered sufficient to warrant further design amendments or justify refusal of the proposal.

Accordingly, LDA2015/0652 at 8 Fourth Avenue, Eastwood is recommended for approval, subject to conditions.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**DRAFT CONDITIONS OF CONSENT**  
**8 FOURTH AVE EASTWOOD**  
**LDA2016/652**

**GENERAL**

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

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

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Floor Plans	21.03.17	141010DA.02, Rev D
Elevations	21.03.17	141010DA.03, Rev C
Sections	22.04.16	141010DA.04, Rev B
Landscape Plan	16.04.16	ZIN003, Rev C
Arboricultural Impact Assessment	26.04.16	Prepared by New Leaf Arboriculture
DA-Stage Geotechnical Assessment, as amended by the Supplementary Da-Stage Geotechnical Assessment	09.06.15/ 27.04.16	Prepared by Davies Geotechnical – Ref No. 15-008.D
Site Waste Minimisation and Management Plan	17.07.15	Prepared by Glenn Wong

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

- a) To ensure safe and efficient vehicle access to the Unit 1 garage, the driveway opposite the garage entry is to be widened 500mm (coinciding with a vehicle swept path in) and the garage must be widened by 400mm. Refer to the condition “Vehicle Access and Accommodation”.
- b) To facilitate vehicle manoeuvring when entering/ exiting the visitor carspace, the driveway must be widened to adjoin the western boundary in the region fronting the garages to Units 2 & 3. Refer to the condition “Vehicle Access and Accommodation”

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

**ITEM 4 (continued)**

**ATTACHMENT 1**

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **BASIX.** Compliance with all commitments listed in BASIX Certificate(s) numbered 693043M, dated 17 December 2015.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.
5. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Hoardings.**
  - (a) An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
  - (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
7. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
8. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
9. **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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

10. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
11. **Roads Act.** Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.

Engineering Conditions

12. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with Council's 2014 DCP Part 8.5 (Public Domain Works), except otherwise as amended by conditions of this consent.
13. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
14. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
15. **Road Activity Permits.** To carry out work in, on or over a public road, the Consent of Council is required as per the Roads Act 1993. Prior to issue of a Construction Certificate and commencement of any work, permits for the following activities, as required and as specified in the form "Road Activity Permits Checklist" (available from Council's website) are to be obtained and copies submitted to Council with the Notice of Intention to Commence Work.
  - a) Road Use Permit - The applicant shall obtain a Road Use Permit where any area of the public road or footpath is to be occupied as construction workspace, other than activities covered by a Road Opening Permit or if a Work Zone Permit is not obtained. The permit does not grant exemption from parking regulations.

**ITEM 4 (continued)**

**ATTACHMENT 1**

- b) Work Zone Permit - The applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.
- c) Road Opening Permit - The applicant shall apply for a road-opening permit and pay the required fee where a new pipeline is to be constructed within or across the road pavement or footpath. Additional road opening permits and fees are required where there are connections to public utility services (e.g. telephone, telecommunications, electricity, sewer, water or gas) within the road reserve. No opening of the road or footpath surface shall be carried out without this permit being obtained and a copy kept on the site.
- d) Elevated Tower, Crane or Concrete Pump Permit - The applicant shall obtain an Elevated Tower, Crane or Concrete Pump Permit where any of these items of plant are placed on Council's roads or footpaths. This permit is in addition to either a Road Use Permit or a Work Zone Permit.
- e) Crane Airspace Permit - The applicant shall obtain a Crane Over Airspace Permit where a crane on private land is operating in the air space of a Council road or footpath. Approval from the Roads and Maritime Services for works on or near State Roads is required prior to lodgement of an application with Council. A separate application for a Work Zone Permit is required for any construction vehicles or plant on the adjoining road or footpath associated with use of the crane.
- f) Hoarding Permit - The applicant shall obtain a Hoarding Permit and pay the required fee where erection of protective hoarding along the street frontage of the property is required. The fee payable is for a minimum period of 6 months and should the period is extended an adjustment of the fee will be made on completion of the works. The site must be fenced to a minimum height of 1.8 metres prior to the commencement of construction and throughout demolition and/or excavation and must comply with WorkCover (New South Wales) requirements.
- g) Skip Bin on Nature Strip - The applicant shall obtain approval and pay the required fee to place a Skip Bin on the nature strip where it is not practical to locate the bin on private property. No permit will be issued to place skips within the carriageway of any public road.

**ITEM 4 (continued)**

**ATTACHMENT 1**

**General Landscape Architecture Conditions**

16. **Rear Terrace.** The rear terrace adjacent to the northern elevation of Dwelling 3 is to be reduced in depth by 500mm so as to avoid the Structural Root Zone (SRZ) for Tree 6, as identified within the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26 April 2016. In addition, the paving for the terrace is to be permeable, and the overhead pergola structure is to be open, so as to allow water to penetrate the ground surface below.
17. **Stormwater Trench/Pit Locations.** The location of stormwater infrastructure located along the western side boundary is to be located as far away from existing trees to be retained as practical. Should the excavation for the stormwater pits and trenches conflict with any major structural roots (greater than >25 mm diameter) of existing trees, their location and alignment is to be modified in consultation with the Project Arborist to avoid impact. Under no circumstances should roots be severed or cut without prior approval from the Project Arborist.
18. **Underground Utilities.** Any utility services to be located underground within the Tree Protection Zones are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than >25 mm diameter). To prevent soil compaction and root damage these works should be conducted with non-motorised hand tools or directional drilling.
19. **Fill Requirements.** All fill to be placed within the Tree Protection Zones of neighbouring trees is to be gap graded structural soils which allows for gaseous exchange and future root growth. The Project Arborist is to confirm suitability of the proposed material prior to installation.

**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**

20. **Section 94.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$7,056.38
Open Space & Recreation Facilities	\$17,371.38
Civic & Urban Improvements	\$5,908.34
Roads & Traffic Management Facilities	\$805.94
Cycleways	\$503.44
Stormwater Management Facilities	\$1,600.14
Plan Administration	\$135.72
<b>The total contribution is</b>	<b>\$33,381.34</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 Interim Update (2014), effective from 10 December 2014.

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

The contribution must be paid **prior to the issue of any Construction Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

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

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

**ITEM 4 (continued)**

**ATTACHMENT 1**

23. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation)
24. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
- (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
25. **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**.
26. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
27. **Sydney Water Tap in™.** The approved plans must be submitted to the Sydney Water Tap in™ on-line service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Sydney Water Sydney Water Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, eg relocating or moving an asset.

Sydney Water's Tap in™ online service is available at:  
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

**ITEM 4 (continued)**

**ATTACHMENT 1**

28. **Road and rail noise/vibration.** The development must be acoustically designed and constructed to meet the relevant provisions of Australian Standard AS 2107:2000 *Recommended design sound levels and reverberation times for building interiors*. Written endorsement of compliance with these requirements must be obtained from a suitably qualified person.
29. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
30. **Fencing.** Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**. All new and replacement fencing is to be at the full cost of the developer.
31. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
32. **Boundary Alignment Levels.** The applicant is to apply to Council for site specific boundary alignment levels prior to the issue of any Construction Certificate. The application would need to be accompanied by engineering plans of any civil works along the frontage of the development site. Fees are payable in accordance with Council's Schedule of Fees & Charges at the time of the application.
33. **Reconstruction of Footpath Crossing.** The existing footpath crossing must be reconstructed to coincide with the new vehicle entry width and comply with Council specifications. Accordingly the driveway crossover must be replaced with a crossing which conforms with Council's requirements in terms of design, materials and construction details. Finished levels shall conform with property alignment levels issued by Council's Public Works Division and all grades and gradient transitions must comply with AS 2890.1.
34. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

**ITEM 4 (continued)**

**ATTACHMENT 1**

With respect to this, the following revision(s) must be undertaken:

- a) All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. In this respect, the driveway ramp must be revised to have a grade no greater than 12.5% for the first 6m into the property and transition grades (no greater than 12.5% for crest's and 15% for sag's). To ensure compliance with the Standard, a driveway profile must be prepared, showing ramp lengths, grades and surface RL's taken from the Council issued boundary levels to the parking space area. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur.
- b) To ensure safe and efficient vehicle access to the Unit 1 garage, the driveway opposite the garage entry is to be widened 500mm (coinciding with a vehicle swept path in) and the garage must be widened by 400mm. To demonstrate the adequacies of these measures, the construction certificate plans are to depict a swept path analysis utilising the B85 turning template.
- c) To facilitate manoeuvrability into and out of the visitor carspace, the driveway fronting the garages to Units 2 & 3 is to be widened to adjoin the southern boundary.

These amendment(s) must be clearly marked on the plans submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

35. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to Fourth Avenue generally in accordance with the plans by JAS Consulting Engineers (Refer to Job Ref. J320615 Sheets 1 - 2 dated 10 November 2015) subject to the following variation(s);

- The onsite detention system is to be relocated under the driveway so as to maximise the degree of infiltration intended by the pervious landscaping.
- Based on the approved PSD of 16.94L/s and the tank water depth (1.25m), the required orifice diameter is determined to be 86mm. The plans to be submitted with the Construction Certificate are to clarify the final orifice diameter.

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and prepared by a chartered civil engineer and comply with the following;

**ITEM 4 (continued)**

**ATTACHMENT 1**

- The certification must state that the submitted design (including any associated components such as WSUD measures, pump/ sump, absorption, onsite dispersal, charged system) are in accordance with the requirements of AS 3500.3 (2003) and any further detail or variations to the design are in accordance with the requirements of Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.

36. **Erosion and Sediment Control Plan.** An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified consultant, detailing soil erosion control measures to be implemented during construction. The ESCP is to be submitted with the application for a Construction Certificate. The ESCP must be in accordance with the manual "Managing Urban Stormwater: Soils and Construction" by NSW Department – Office of Environment and Heritage and must contain the following information;

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

The ESCP must be submitted with the application for a Construction Certificate. This condition is imposed to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

37. **Retaining Wall Construction.** Any retaining wall construction necessary within the Tree Protection Zones of trees to be retained is to utilise a construction technique which minimises the level of impact to existing tree roots such as pier and beam with a suspended beam, modular concrete sleepers with steel post supports or gravity wall. The design and method of construction is to be reviewed and approved by the Project Arborist as part of the Construction Certificate.

**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.

**38. 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.

**39. 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.

**40. 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.

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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).

**41. 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.

**42. 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.

**43. Footpath Paving Construction.** The applicant shall, at no cost to Council, construct standard concrete footpath paving across the frontage of the property. Levels of the footpath paving shall conform with levels issued by Council's Engineering Services Division.

**44. Tree Protection.** All tree protection works including installation of any fencing is to be undertaken prior to any demolition or site clearing works on site.

**45. Tree Protection Fencing.** All protective fencing and signage around TPZs must be located in accordance with AS4970: Protection of trees on development sites. In this regard, any fencing required to be constructed around the TPZ is to be in accordance with AS4687 Temporary fencing and hoardings.

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46. **Project Arborist.** A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on the subject site and neighbouring allotments in accordance with AS4970-2009 Protection of trees on development sites and the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 26.04.2016. All trees are to be monitored to ensure adequate health throughout the construction period is maintained. Additionally, all work within the Tree Protection Zones is to be supervised by the Project Arborist throughout construction. Details of the Project Arborist are to be submitted to Council prior to the commencement of construction.

### 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.

47. **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*.
48. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.
49. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
50. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- (a) Fill is allowed under this consent;
  - (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
  - (c) the material is reused only to the extent that fill is allowed by the consent.
51. **Construction materials.** All materials associated with construction must be retained within the site.

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**52. 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.

**53. Site maintenance**

The applicant must ensure that:

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

**54. 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".

**55. Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.

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

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

**58. Tree works – provision of arborist details.** Council is to be notified, in writing, of the name, contact details and qualifications of the Consultant Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.

**59. Soil Moisture within Tree Protection Zones.** Soil moisture levels within all Tree Protection Zones are to be regularly monitored by the Project Arborist during construction. If temporary irrigation or watering is required within the Tree Protection Zones, then any above-ground irrigation system is to be installed and maintained by a suitably qualified individual.

**60. Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

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61. **Traffic Management.** Any traffic management procedures and systems must be in accordance with AS 1742.3 1996 and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems
62. **Erosion and Sediment Control.** The applicant shall install erosion and sediment control measures in accordance with the approved plan at the commencement of works on the site. Suitable erosion control management procedures in accordance with the manual “Managing Urban Stormwater: Soils and Construction“ by the NSW Department – Office of Environment and Heritage, must be practiced at all times throughout the construction. Where construction works deviate from the plan, soil erosion and sediment control measures are to be implemented in accordance with the above referenced document.
63. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of the Stormwater Management Plan by JAS Consulting Engineers (Refer to Job Ref. J320615 Sheets 1 - 2 dated 10 November 2015) submitted in compliance to the condition labelled “Stormwater Management.” and the requirements of Council in relation to the connection to the public drainage system.
64. **Excavation within Tree Protection Zones.** Any excavation or grading/re-grading within the identified Tree Protection Zones of trees to be retained shall be carried out by hand using manual hand tools. Roots greater than 25mm are not to be damaged or severed without the prior written approval of the Project Arborist.

**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.

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65. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered 693043M, dated 17 December 2015.
66. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.
67. **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 Occupation Certificate.

68. **Public domain – work-as-executed plan.** A works as executed plan for works carried out in the public domain must be provided to and endorsed by Council prior to the issue of any **Occupation Certificate**.
69. **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.
70. **Stormwater Management - Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Occupation Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system (including any onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption system) and finished surface levels which convey stormwater runoff.

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**ATTACHMENT 1**

71. **Engineering Compliance Certificates.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate. All certification must be issued by a qualified and practising civil engineer having experience in the area respective of the certification unless stated otherwise.
- a) Confirming that all components of the parking areas contained inside the site comply with the relevant components of AS 2890 and Council's DCP 2014 Part 9.3 (Parking Controls).
  - b) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and has been constructed to function in accordance with all conditions of this consent relating to the discharge of stormwater from the site.
  - c) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual "Managing Urban Stormwater: Soils and Construction" by the NSW Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).
  - d) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.
72. **On-Site Stormwater Detention System - Marker Plate.** To ensure the constructed On-site detention will not be modified, a marker plate is to be fixed to each on-site detention system constructed on the site. The plate construction, wordings and installation shall be in accordance with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures. The plate may be purchased from Council's Customer Service Centre at Ryde Civic Centre (Devlin Street, Ryde).
73. **Final Assessment of Trees.** At completion of all construction works the Project Arborist is to carry out an assessment of all trees that were required to be retained. This assessment is to be documented in writing, a copy of which is to be submitted to Council prior to the issue of any occupation certificate for the development. The documentation is also to specify any required on-going remedial care that is required to be undertaken to ensure the continuous health and retention of the specified trees.
74. **Air Conditioning/ Mechanical Plant – Noise.** Any air-conditioning units or other mechanical plant must be enclosed in a suitable ventilated acoustic enclosure to ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.

**ITEM 4 (continued)**

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**PRIOR TO SUBDIVISION CERTIFICATE**

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

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

75. **Final plan of subdivision.** The submission of a final plan of subdivision plus 3 copies suitable for endorsement by the Authorised Officer of Council.
76. **Final plan of subdivision – title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land.
77. **Section 88B Instrument.** The submission of an Instrument under Section 88B of the Conveyancing Act 1919 plus 3 copies, creating Easements, Positive Covenants and Restrictions on Use. This Instrument shall nominate the City of Ryde as the authority empowered to release, vary or modify the terms of the Instrument.
78. **Section 73 Certificate.** 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 issue of the Subdivision Certificate.

79. **Utility provider – compliance.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc).
80. **Final Occupation Certificate.** The final occupation certificate associated with Development Consent LDA2015/652 and any related S96 applications, must be issued for the entire development prior to the release of the Strata Subdivision Certificate.

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81. **Registration of easements.** The registration of all necessary easements is required to ensure all proposed lots will have legal access to all utility services, drainage and vehicular access. Prior to release of the Subdivision Certificate, certification shall be obtained from a registered surveyor and submitted to Council confirming the above requirement will be met upon registration of the linen plan at the Land and Property Information.
  
82. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to the relevant section of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention components incorporated in the approved Stormwater Management system. This is to ensure that the drainage system will be maintained and operate as approved throughout the life of the development, by the owner of the site(s). The terms of the instrument are to be in accordance with the Council's terms for these systems as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7, and to the satisfaction of Council.

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**COMPLIANCE TABLE**

<b>LDA No:</b>	<b>LDA2015/0652</b>
<b>Date Plans Rec'd</b>	<b>15 December 2015, amended plans on 21 March 2017</b>
<b>Address:</b>	<b>8 Fourth Avenue, Eastwood</b>
<b>Proposal:</b>	<b>Multi dwelling housing development containing 3 dwellings – 1 x 2 storey (5 bedroom unit) at the front, 2 x single storey at the rear (2 x 3 bedroom). Includes strata subdivision.</b>
<b>Constraints Identified:</b>	<b>Landslip, within 100m of a heritage item</b>

<b>Ryde LEP 2014</b>	<b>Proposal</b>	<b>Compliance</b>
<b>4.1B Minimum lot size</b>		
<ul style="list-style-type: none"> <li>900 square metres</li> </ul>	<p>The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 129 DP 4684)</p> <p>Therefore satisfactorily complies with the minimum site area requirement.</p>	Yes
<ul style="list-style-type: none"> <li>Road frontage of the lot is equal to or greater than 20 metres.</li> </ul>	<p>The subject site has a total road frontage to Fourth Avenue of <b>20.115m</b> (Lot 129 DP 4684))</p> <p>Therefore complies with the road frontage requirement.</p>	Yes
<b>4.3(2) Height of buildings</b>		
9.5m – maximum building height	<p><u>Dwelling 1</u></p> <p>EGL RL 59.8</p> <p>Roof pitch RL 67.93</p> <p>The maximum height for Unit 1 is <b>8.13m</b>, which has been lowered by 450mm over the originally submitted plans.</p>	Yes

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<b>4.3A(2) Exceptions to height of buildings</b>		
Despite clause 4.3, the maximum height of multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	Dwelling 2 does not have a road frontage and has a height of <b>5.50m</b> .  Dwelling 3 does not have a road frontage and has a height of <b>5.17m</b> .	No – Clause 4.6 submitted

<b>4.5A Density controls for Zone R2 Low Density Residential</b>		
(a) the site area for the building is not less than: (i) for each 1, 2 or 3 bedroom dwelling—300 square metres, and (ii) for each 4 or more bedroom dwelling—365 square metres, and	(a) 1 x 5 bedroom, 2 x 3 bedroom dwellings are proposed, therefore 965m <sup>2</sup> site area required.  The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 129 DP 4684), thus and therefore complies with the density controls.	Yes
(b) each dwelling will have its own contiguous private open space	(b) Each dwelling has its own contiguous private open space.	Yes

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>2.1 Site Analysis</b>		
<ul style="list-style-type: none"> <li>○ Must have a SA</li> <li>○ SA should relate dwgs to surrounds + minimise amenity impacts</li> </ul>	Site analysis drawing has been submitted. Where specific details have not been provided, pursuant to Schedule 1 of the DCP2014, the information can generally be found elsewhere on other drawings submitted as part of this development application.	Yes

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DCP 2014	Proposed	Compliance
<b>2.2 Minimum allotment size</b>		
Area: (not <900m <sup>2</sup> )	The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 129 DP 4684).  Therefore satisfactorily complies with the minimum site area requirement.	Yes
Primary Frontage: (not <20m)	The subject site has a total road frontage to Fourth Avenue of <b>20.115m<sup>2</sup></b> .  Therefore complies with the road frontage requirement.	Yes
Not hatchet shaped	Allotment is not hatchet shaped	Yes
<b>2.3 Non-Preferred Locations</b>		
Is the proposed development within a non-preferred location?	Subject site is located within a non-preferred location for the following reasons: <ul style="list-style-type: none"> <li>• Land includes Urban Bushland;</li> <li>• Land affected by overland flow;</li> <li>• Land where the slope is greater than that described in Section 3.1 of DCP2014 – note the central portion of the site experiences a cross fall greater than 1:14.</li> </ul>	No
<b>2.4 Retention of existing dwellings</b>		
Retention of an existing dwelling as part of a new Multi dwelling housing development will not be approved.	No retention of existing dwelling proposed	Yes
<b>2.5 Density</b>		
As per clause 4.5A RLEP2014 – which state: (a) Site Area: <ul style="list-style-type: none"> <li>○ 300m<sup>2</sup> per 1,2,3br dwelling</li> <li>○ 365sqm per 4+ bedroom dwellings</li> </ul>	1 x 5 bedroom, 2 x 3 bedroom dwellings are proposed, therefore 965m <sup>2</sup> site area required.  The subject site has a total area of <b>1,012m<sup>2</sup></b> (Lot 129 DP 4684), thus and therefore complies with the density control.	Yes

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<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>2.6 Number of Dwellings</b>		
Not more than 12 Dwellings	3 dwellings proposed	N/A
<b>2.7 Type of Dwellings</b>		
(a) If 4 or more dwellings on site, <75% with same number of bedrooms (rounded down) e.g. 6 dwg = 4x3B + 2x2B	3 dwellings proposed	N/A
In any proposed Multi dwelling housing development the slope of the site, proposed levels, height of dwellings, site coverage, landscaping, setbacks, accessibility and overshadowing must be considered when assessing: i. Whether the development will complement and enhance the existing neighbourhood; and ii. Whether the development meets the needs of all householders including older persons and persons with disabilities.	Noted.	
<b>3.1 Slope of Site</b>		
At least one dwelling must present to the street	Dwelling 1 presents to Fourth Avenue.	Yes
Slope must be <1:6 either up or down from street frontage	The subject site has a fall of approximately 5.48m. This is measured from a height of RL 63.48 at the north-eastern corner of the site, to a height of RL 58 at the south western corner of the site. This fall of 5.48m occurs over a distance of 50m for an average gradient of 1:9.12  A 1:9.12 gradient is less than 1:6 and therefore complies with the minimum slope up or down from the street frontage.	Yes
Cross-fall >1:14	At the front of the site, a cross-fall of 1:18.79 is experienced. This is based on RL59.07 at the south eastern corner of the site,	Yes

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**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
	<p>and RL58.00 on the south western boundary that occurs over a distance of 20.115m.</p> <p>The gradient calculated at the front of the site is less than 1:14.</p> <p>In the central portion of the site, a cross-fall of 1:11.49 is experienced. This is based on RL61.65 on the eastern side boundary, and RL59.9 on the western side boundary that occurs over a distance of 20.115m.</p> <p>The gradient calculated at the centre of the site is greater than 1:14.</p> <p>At the rear of the site, a cross-fall of 1:14.57 is experienced. This is based on RL63.48 at the north eastern corner, and RL62 on the north western corner that occurs over a distance of 20.115m.</p> <p>The gradient calculated at the centre of the site is less than 1:14.</p>	<p>No</p> <p>Yes</p>
<b>3.2 Altering the Levels of the Site</b>		
No imported Fill	The proposal includes a relatively balanced approach to cut and fill, and as such would not appear to require the introduction of any imported fill to the site.	Yes
<300mm Cut or Fill outside building envelope.	The proposed ground level for the private open space area of Dwelling 1 is to be excavated up to 440mm.	

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DCP 2014	Proposed	Compliance
	<p>For Dwelling 2, the proposed ground level for the private open space area is to be terraced across different levels for the lawn, terrace and tandem parking space. To achieve this terracing, excavation up to 800mm is proposed</p> <p>For Dwelling 3, the proposed ground level is also to be terraced across different levels for the eastern and western lawn areas, as well as the terrace area. To achieve this excavation up to 1m would be required.</p> <p>For the western side setback, the common driveway is generally located at ground level, however some portions excavation up to 500mm is required or fill up to approximately 300mm is required.</p> <p>Having regard to the above, it is evident the proposal will exceed the 300mm limit under DCP2014 by 140mm for Dwelling 1, 500mm for Dwelling 2, 700mm for Dwelling 3 and around 200mm for the common driveway area.</p>	<p>No</p>
<p>No basement garages, minimal steps, minimal retaining walls</p>	<p>Revised plans with amended levels across the site are considered to satisfactorily minimise the amount of retaining walls.</p>	<p>Yes</p>

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**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
POS generally at NGL.	POS for Dwellings 1 is not entirely located at EGL. Dwelling 2 and 3 are within the acceptable 300mm limit.	No
<b>3.3 Storey and Height</b>		
<b>3.3.1 Storeys</b>		
Dwg with frontage to street can be 2 storeys provided: <ul style="list-style-type: none"> <li>○ 2 st dwg not attached to any other 2 st dwg</li> <li>○ 2 st dwg is suitable in regards streetscape</li> </ul>	The proposed development incorporates a 2 storey dwelling, which has a frontage to Fourth Avenue.  2 x single storey buildings are proposed to the rear. As such the proposed development is compliant with this control.	Yes
<b>3.3.2 Height</b>		
As per Clause 4.3(2a) – which state the <b>maximum</b> height is: (a) for dwgs in bldg with no frontage to street – 5m	<u>Dwelling 2</u> EGL RL 60.23 Roof pitch RL 65.73 Dwelling 2 does not have a road frontage and has a height of <b>5.50m</b> .	No
	<u>Dwelling 3</u> EGL RL 61.31 Roof pitch RL 66.48 Dwelling 3 does not have a road frontage and has a height of <b>5.17m</b> .	Yes
(b) for dwgs with a frontage to street is maximum 9.5m	<u>Dwelling 1</u> EGL RL 59.8 Roof pitch RL 67.93 The maximum height for Unit 1 is <b>8.13m</b> , which has been lowered by 450mm over the originally submitted plans.	Yes

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DCP 2014	Proposed	Compliance
<b>3.4 Site Coverage</b>		
Site coverage < 40%	Buildings on the site cover an area of 397m <sup>2</sup> , which equates to 38.8% of the site area.	Yes
Pervious area > 35%	358.2m <sup>2</sup> of the site is pervious. This equates to approx. 35% of the site.	Yes
<b>3.5 Setbacks</b>		
<b>3.5.1 Front Setbacks</b>		
<p><u>Front Setbacks:</u>            The same distance as one of the buildings on an adjoining allotment, if the difference between the setbacks of the building on the two adjoining allotments is not more than 2 m; or</p> <p>If the difference between the setbacks of the adjoining buildings is more than 2m the development must be setback the average of the front setback of the two adjoining developments.</p>	<p>The development on adjoining allotments are setback as follows:</p> <p>10 Fourth Avenue – 8m            6 Fourth Avenue – 9m</p> <p>As such, the setback for Dwelling 1 would need to be either 8m or 9m.</p> <p>Dwelling 1 proposes a front setback of between 6.52m and 7.59m, thus does not comply with this development control.</p> <p>N/A – refer above</p>	<p>See below (Section 3.5.1c)</p> <p>N/A</p>
Setback of 1m less than the above standard for not more than 50% of the front elevation for interest in the streetscape.	<p>In this instance, Dwelling 1 would need to propose a setback of 8m for 50% and a setback of 7m for 50% in order to comply. This is based on the front setback of the existing dwelling at 10 Fourth Avenue.</p> <p>Dwelling 1 proposes a front setback of between 6.52m and 7.59m, thus does not comply with this development control.</p>	See below (Section 3.5.1c)

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**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
Council may vary this requirement if streetscape is likely to change: >7.5m for 50% of frontage, >6.5m for 50% of frontage.	Dwelling 1 proposes the following front setback:  6.63m (for maximum 50%) to 7.65m	No
<b>3.5.4 Side and Rear Setbacks</b>		
Min 4.5m unless vehicular access is included in this area, then min 6m. To promote variation & interest up to 50% may be not less than 3m	<p><u>Dwelling 1:</u>            Side setbacks proposed to eastern boundary are as follows:             Total wall length = 11.16m            4m setback for 3.36m (30%)            4.5m setback for 4.4m (39.5%)            5.4m setback for 3.1m (27.7%)</p> <p><u>Dwelling 2:</u>            Side setbacks proposed to eastern boundary are as follows:             Total wall length = 14.57m            4m setback for 6.59m (45.2%)            4.5m setback for 4.68m (32.1%)            5.4m setback for 3.1m (21.3%)</p> <p><u>Dwelling 3:</u>            Side setbacks proposed to eastern boundary are as follows:             Total wall length = 14.88m            3.06m setback for 6.48m (43.5%)            4.5m setback or greater for 8.4m (56.5%)</p> <p>Rear setbacks proposed to rear northern boundary:            Total wall length = 16m            4.041m setback for 4.79m (29.9%)            4.5m setback or greater for 11.21m (70.1%)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

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DCP 2014	Proposed	Compliance
	Side setback proposed to the western side boundary – where vehicle access is provided:  A minimum setback of 6m is provided to all dwellings.	Yes
Must provide appropriate solar access.	All courtyards appropriately located to achieve compliant level of solar access when having regard to the provisions of the DCP 2014	Yes
Ensure existing substantial trees not within proposed courtyard areas.	No substantial trees are to be retained within the courtyard areas.	Yes
<b>3.5.5 Internal Setbacks</b>		
Habitable room windows don't overlook	Generally, the proposed development has been designed so that habitable room windows within the development do not overlook one another.	Yes
9m separation between facing dwellings habitable room windows?	The proposed multi dwelling housing development is included within one single unbroken building and thus there is no building separation proposed.	N/A
<b>3.6 Private Outdoor Space</b>		
Min 35m <sup>2</sup> for 3+B	Unit 1 (5B) – 37.55m <sup>2</sup> Unit 2 (3B) – 39m <sup>2</sup> Unit 3 (4B) – 98m <sup>2</sup>  Note: Excludes tandem car parking space area.	Yes
Min dimension 4m and generally at NGL	A minimum 4m x 4m dimension is achieved for all dwellings. However, not all POS is generally provided at NGL:  POS for Dwellings 1 is not located at EGL. This is due to the extent of cut proposed – i.e. up to 1m.	Yes

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<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
Solar access: 50% for ≥2hrs	The submitted shadow diagram indicates that the courtyards of all dwellings will achieve more than two hours sunlight to 50% of their area between 9am and 3pm on June 21.	Yes
Do not contain ex'g big trees	No substantial trees are to be retained within the courtyard areas.	Yes
Access to courtyard other than through dwg? Note:	Access to the POS of all dwellings is provided through the garage. This arrangement has been advised by Council as an acceptable solution.  Dwellings 3 also provides access via a gate.	Yes
Securely enclosed (not roofed) + visible from liv rms	Living areas face courtyards and are securely enclosed with fencing and gates.	Yes
Not within front setback	No area of POS is located within the front setback.	Yes
<b>3.7 Landscaping</b>		
Extent of landscaping, existing trees retained in common areas?	The submitted Landscape Plan shows that are no existing trees to be retained within the common area.  Council's Consultant Landscape Architect has reviewed the amended plans, and has indicated support for the proposal, subject to conditions.	Yes
If landscaping used for privacy: <ul style="list-style-type: none"> <li>• ≥1.2m landscaped strip</li> <li>• Shrub mature height 3-4m, if</li> </ul>	Landscape strips are provided within the common areas, where appropriate.	Yes

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DCP 2014	Proposed	Compliance
<p>possible small trees mature height 5-m in combination with screen planting</p>	<p>A 1200mm landscape strip is also proposed between the common driveway and the adjoining property, which will include plantings with a mature height of 1.8m.</p> <p>Landscaping is also provided along the eastern side boundary, adjacent the courtyard area of each dwelling.</p> <p>The submitted landscape plan shows that mature trees, which will reach a mature height up to 12m, will be planted within the courtyard of each dwelling.</p> <p>Council's Consultant Landscape Architect has reviewed the plans and recommended conditions to ensure the landscaping outcome for the site is appropriate, and will not unduly impact on the development or adjoining property. Reference should be made to the assessment report for further details.</p>	
<p>1m strip between driveway and wall of dwgs</p>	<p>A 1200mm wide landscape strip is proposed between the driveway and the wall of the dwellings where appropriate.</p>	<p>Yes</p>
<p>Nature Strips: Street trees retained and protected?</p>	<p>No street trees affected by proposed development</p>	<p>Yes</p>

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<b>3.8 Car Parking, Manoeuvrability and Driveway Crossings</b>		
<b>Car Parking</b>		
Number of Parking Spaces 1 space per 1 or 2 B dwelling 2 spaces per 3+B dwelling 1 visitor space per 4 dwgs (at least 1 space per dwg must be lockable garage)	Car parking provided as follows:  <u>Dwelling 1</u> – 5 bedrooms: 1 car parking space located within a lockable garage.	Yes
Total No of spaces req'd: 6 resident spaces 1 visitor spaces.	One (1) tandem parking space provided at rear.  <u>Dwelling 2</u> – 3 bedrooms: 1 car parking space located within a lockable garage.	Yes
	One (1) tandem parking space provided at rear.  <u>Dwelling 3</u> – 3 bedrooms: 1 car parking space located within a lockable garage.	Yes
	One (1) tandem parking space provided at rear.  One (1) visitor parking space is now shown to be included on the amended plans.	Yes
Garage location: - Not between dwelling and street frontage	No garages within the proposed development are located between the Dwellings and the street frontage.	Yes
- No tandem parking in front of garage	No tandem parking proposed in front of the garage.	Yes
- Conveniently located for occupants	Each garage is located adjacent to the corresponding dwelling with internal access provided to each garage from the respective dwellings.	Yes

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<p>- Located so they separate dwellings.</p>	<p>As mentioned above, the garages have been provided in an arrangement that will separate each of the dwellings within the development.</p>	<p>Yes</p>
<p>Manoeuvrability: Enter and leave garage/parking area with single 3pt turn, in a forward direction (unless safe to reverse - corner allotment only).</p>	<p>Sufficient on site turning/ manoeuvrability is considered to have been provided. Refer to Development Engineers comments.</p>	<p>Yes</p>
<p>Driveways Suitably paved, extent minimised, to avoid excessive amounts of hard paving.</p>	<p>The extent of pervious area meets the minimum requirement of 35% of the site.</p>	<p>Yes</p>
<p>Driveway Crossings Width: &lt;10 spaces, min 4m &gt;10 spaces, max 6m Driveways &lt;30% of frontage</p>	<p>4m proposed  19% of frontage width</p>	<p>Yes</p>
<p><b>3.9 Overshadowing and Access to Sunlight</b></p>		
<p>Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.</p>	<p>All habitable room windows face courtyard areas. Habitable room windows are no closer than 1.5m to a facing wall.</p>	<p>Yes</p>
<p>Sunlight to at least 50% of each courtyard, and principal ground level open space &gt;2hrs between 9am and 3pm on June 21 <b>or</b></p>	<p>The submitted shadow diagram demonstrates that courtyards of all units, within the development, will achieve more than two hours sunlight to at least 50% of their area between 9am and 3pm on June 21.</p> <p>The submitted diagram also demonstrates that the POS of the adjacent properties to the north east and north west of the subject site will not be reduced to less than 2 hours between 9am and 3pm</p>	<p>Yes</p>

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<p>Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%</p>	<p>Adjacent properties to the east and west of the subject site will not be reduced to less than 2 hours between 9am and 3pm.</p>	<p>N/A</p>
<p>Shadow diagrams must indicate extent of shadowing within development and adjoining properties.</p>	<p>Satisfactory shadows diagrams have been submitted which indicate the extent of shadowing within development and adjoining properties.</p>	<p>Yes</p>
<p><b>3.10 Visual and Acoustic Privacy</b></p>		
<p>Min 9m separation between facing habitable room windows</p>	<p>The proposed multi dwelling housing development is included within one single unbroken building and thus there is not building separation proposed.</p>	<p>N/A</p>
<p>No direct views between living area windows of adjacent dwellings (otherwise screening or obscuring necessary)</p>	<p>An assessment of the plans has demonstrated that the east facing living room windows of Dwelling 1 and Dwelling 2 would be within 9 metres of the existing windows located on the adjoining property at 10 Fourth Avenue (as per the submitted Survey Plan).</p> <p>However, it is anticipated that there will not be direct views from the living room windows of the proposed development to the adjacent dwelling. This is because the window sill height of the adjacent windows (at 10 Fourth Avenue) would be between approximately 1.5m and 2.1m above the eye level (1.6m above the FFL) of Dwelling 1 and Dwelling 2 as cut is being proposed onsite.</p>	<p>Yes</p>

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<p>Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius.</p>	<p>An assessment of the proposed development has revealed that views from living areas are not likely to extend to the private open space of the existing adjoining dwelling at 10 Fourth Avenue.</p> <p>This is largely due to the extent of excavation proposed within the eastern portion of the development, which would result in a FFL that is lower than that of the adjoining property, thus significantly reducing the potential for direct overlooking when considering the height of the boundary fence.</p> <p>Furthermore, the location of the west facing living room windows of Dwelling 3 will not result in direct views into the POS of 6 Fourth Avenue. This is because the proposed 1.8m high fence would provide sufficient screening when measured against the average eye level from within the proposed dwelling.</p>	<p>Yes</p>
<p>Balconies prohibited on all dwellings</p>	<p>No balconies proposed.</p>	<p>Yes</p>
<p>Elevated landings (or similar associated with stairs into courtyard) max 1m wide.</p>	<p>No elevated landings proposed.</p>	<p>Yes</p>
<p>Living and sleeping areas protected from high levels of external noise?</p>	<p>The layout of each unit of the development is generally considered to be acceptable in terms of protecting living and sleeping areas of high levels of external noise.</p>	<p>Yes</p>

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	Amended plans now provided showing a notation that walls are acoustically treated where the bedroom of one unit adjoins the garage of another unit	
Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A)	No air conditioning or pool pumps are shown on the plans as being proposed.  Address via standard condition	Yes
<b>3.11 Accessibility</b>		
<b>3.11.1 Pedestrian Access</b>		
All multi dwelling housing developments should be designed and constructed so that they are safe and accessible for pedestrians including children, people with disabilities and older people.	The proposed development has been designed to provide a reasonable level of access for pedestrians. This includes part of the common driveway but is considered acceptable given then proposal includes only three dwellings  A continuous accessible path of travel to all dwellings will be provided.	Yes
<b>3.11.2 Access for People with Disabilities – Developments of 6 or more dwellings</b>		
Developments of 6 or more dwellings must be designed so not <35% of the dwellings provide access to people with disabilities, in accordance with AS4299.	N/A Proposed development includes 3 dwellings only.	N/A
Dwellings which have been designed to AS4299 must be able to access the street, car parking and common areas using a continuous path of travel.	N/A Proposed development includes 3 dwellings only.	N/A
<b>3.11.3 Access Audits</b>		
Access audit submitted that has been conducted by a qualified and accredited access auditor.	N/A Proposed development includes 3 dwellings only.	N/A
<b>4.1 Appearance</b>		
Complement streetscape	Despite the proposal including a number of non-compliances with Council's planning controls, the development is	Yes

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	considered to satisfactorily complement the existing neighbourhood to an acceptable level – refer to discussion in assessment report.	
Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick	Pitched roofs, eaves, vertically orientated windows, porches and face brick are proposed.	Yes
At least 1 dwg must face street	Dwelling 1 has faces onto Fourth Avenue.	Yes
<b>4.2 Ceiling Height</b>		
Floor to Ceiling min 2.7m	Minimum 2.7m provided for all dwellings.	Yes
<b>4.3 Roofscape and Roof Materials</b>		
Pitch 22-30° (35° where 2 <sup>nd</sup> floor is within roof)	The development proposes a roof pitch of 22 degrees for each single a two storey dwelling.	Yes
Min 300mm eaves overhang for roofs & verandas	Minimum 300 provided eaves are provided.	Yes
Gables to street frontage?	A small gable is provided to the entrance portico for Dwelling 1.	Yes
Variation to roof line?	Roof has been broken up into smaller elements so as to create variation and reduce bulk.	Yes
Roof materials consistent with traditional ones in the street?	The tile roof, proposed for each dwelling, is consistent with existing dwellings on Fourth Avenue, which predominately consists of pitched tiled roofs.	Yes
<b>4.4 Building materials for Walls</b>		
In keeping with the traditional materials for the locality. Detailing to break up large areas of wall adding interest and individuality	Visual interest has been incorporated into the design through the addition of features, such as, front porticos, walls and roof lines which have been broken up into smaller elements to add articulation, and the use of a variety of colours and materials, which add create depth to the buildings.	Yes

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Proportion of windows and other openings consistent with character of locality. (windows generally 2:1 and 3:1 vertical proportion)	Proportion of windows is considered to be consistent with the surrounding area of development.	Yes
<b>4.5 Fences</b>		
<b>4.5.1 Front fence</b>		
Max ht 1m, and 70% visually permeable, return to be similar to front fence	The submitted plans indicate that front fencing is proposed to a maximum height of 1m.	Yes
Materials compliment dwelling e.g. wooden pickets, masonry with infill panels, wrought iron or similar etc	Materials to compliment dwelling.	Yes
<b>4.5.3 Other boundary fences</b>		
Min ht 1.8m	Side and rear boundary to be replaced with a 1.8m high fencing as indicated on the submitted Landscape Plan.	Yes
Lapped and capped timber	This is not required as boundary side boundaries are not facing another street	N/A
<b>4.6 Clotheslines and drying area</b>		
External clotheslines (not visible from adjoining properties or public areas)	The submitted SEE has indicated that external clothes drying areas will be located within the courtyard of each dwelling.	Yes
Each dwelling must have its own laundry	Laundries provided to each dwelling	Yes
<b>4.7 Lighting</b>		
Front yard lighting and lighting for the front of dwellings is to be provided	Details shown on DA plans	Yes
Location of external lighting must not have adverse effect on adjoining properties.	Details shown on DA plans	Yes

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<b>4.8 Garbage bin enclosures</b>		
For developments up to 5 dwellings on sites that are not steeply sloping and which have a wide road frontage: - Each dwelling must be provided with a storage area for Council's standard rubbish and recycling bins. - Storage area should be behind the dwelling, not visible from public spaces, common areas and habitable room windows	Garbage storage area capable of being accommodated within the courtyards of each dwelling within the development.	Yes
<b>Drainage</b>		
Refer to Part 8.2 Storm water Management DCP 2010	See Development Engineers comments	Yes
<b>Tree Removal</b>		
Refer to Part 9.6 Tree Preservation DCP 2010	See Landscape Officers comments.	Yes

<b>BASIX</b>	<b>Proposal</b>	<b>Compliance</b>
All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans <b>BASIX Cert 693042M dated 17/12/2015</b>	Correct details included.	Yes
• RWT 2000L per dwelling	Shown on plans	Yes
• Thermal Comfort Commitments: - Insulation as per schedule - Windows & glazing as per schedule - Construction as per schedule - TCC – Glazing as per schedule.	Shown on plans Shown on plans Shown on plans Shown on plans	Yes Yes Yes Yes
• Fixtures - 4 star taps - 3 star showerheads - Toilets Flushing system 4 star	Shown on plans Shown on plans	Yes Yes
• Lighting - 40% LED	Shown on CC plans	N/A
Water Target 40	Shown on plans	Yes
Energy Target 40	Shown on plans	Yes

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<b>BASIX</b>	<b>Proposal</b>	<b>Compliance</b>
Correct description of property/proposal on 1 <sup>st</sup> page of Certificate.	Correct description	Yes

Non-compliances – Justifiable

***Development Standards***

***Clause 4.3A (2) Exceptions to height of buildings***

Dwelling 2 does not have a road frontage and exceeds the 5m building height limit by 500mm. A clause 4.6 written request has been submitted by the applicant to vary the building height development standard.

*Note: This non-compliance is also reflected in the height controls under Section 3.3.2 of Part 3.4 of DCP2014.*

***Development Controls***

***Section 2.3: Non – preferred locations***

The subject site is within a non-preferred location, as outlined in Schedule 2 in Part 3.4 of the DCP2014, for the following reasons:

- Land includes Urban Bushland;
- Land affected by overland flow;
- Land where the slope is greater than that described in Section 3.1 of DCP2014 – note the central portion of the site experiences a cross fall greater than 1:14.

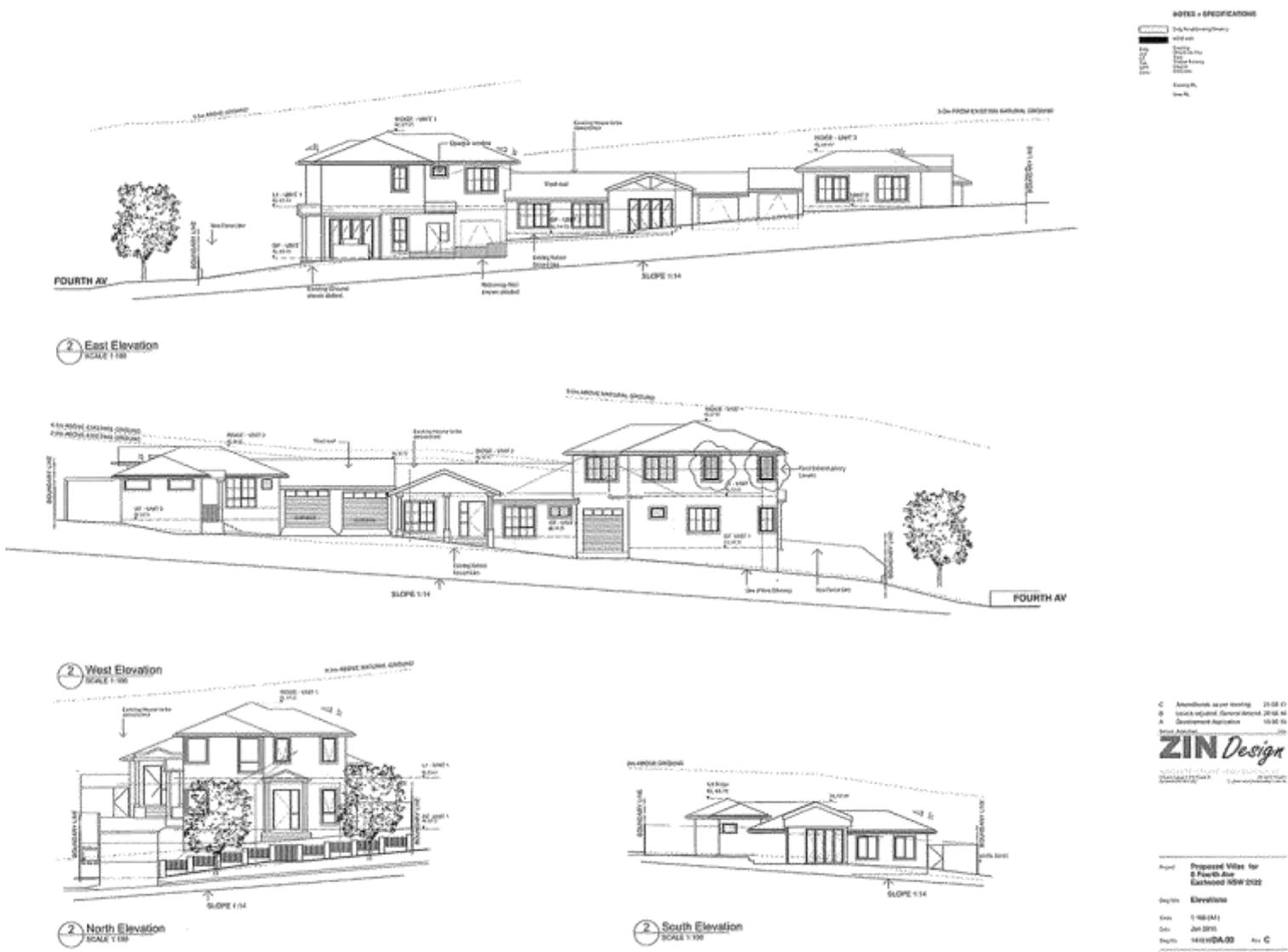
***Section 3.2: Altering the levels of the site.***

The development proposes more than 300mm cut and fill outside building envelope:

- The extent of cut outside the building envelope is up to 440mm for Dwelling 1. Dwelling 2 and 3 are up 1m of cut.
- This non-compliance results in part of the private open space area being below natural ground level.

**ITEM 4 (continued)**

**ATTACHMENT 3**



**ITEM 4 (continued)**

**ATTACHMENT 3**

