

**City of Ryde
Local Planning Panel Supplementary Report**

DA Number	LDA2018/0385
Site Address & Ward	8 Grove Lane, Eastwood West Ward
Zoning	R2 Low Density Residential
Proposal	New multi-dwelling housing development comprising three (3) x two (2) storey, three (3) bedroom dwellings, 1.0 metre high front fence, associated car parking and tree removal.
Property Owner	Xiao Chun Yan
Applicant	Steve Wu
Report Author	Hussein Bazzi – Assessment Officer
Lodgement Date	4 October 2018
Recommendation	Approval
Attachments	Attachment 1 – Conditions of Consent Attachment 2 – Amended Plans Attachment 3 – Original DA report Attachment 4 – Submission from Mr Francis Wiffen dated 9 September 2019 Attachment 5 – Submission from My James Ryan dated 12 September 2019

1. EXECUTIVE SUMMARY

The purpose of this report is the determination of Local Development Application No. LDA2018/0385 for the construction of a new multi-dwelling housing development comprising three (3) x two (2) storey, three (3) bedroom dwellings fronting Grove Lane, including a 1.0 metre high front fence, associated car parking and tree removal. The application was considered by the Ryde Local Planning Panel on 12 September 2019 which has deferred the decision as follows:

“The Panel determined to defer LDA2018/0385 for 8 Grove Lane, Eastwood to request a supplementary report from Council.

The supplementary report is to provide further information in respect of the shadow diagrams and the issues raised in the submission from Francis Wiffen. It is also for Council's General Counsel to consider the issues raised in the submissions from James Ryan and provide further advice in relation to parking provisions.

The Panel will determine this application electronically.”

This supplementary assessment has determined that the amended proposal demonstrates an acceptable form of development and is recommended for approval subject to the amended conditions provided in **Attachment 1**.

2. HISTORY

The following table below is a sequence of events following the deferment of the application.

18 September 2019	A meeting was held between Council and the applicant to discuss the deferred of determination by the RLPP.
26 September 2019	Additional information was submitted to Council from the applicant. The information included amended shadow diagrams, revised levels, additional sections and amendments to the car parking arrangements of Unit's 1 and 2. The amended plans were also accompanied with updated Landscape and Stormwater Plans.
3 October 2019	A site inspection of 5 Lilac Place was conducted by the Assessment Officer and Senior Coordinator.
21 October 2019	The applicant was advised there were concerns with the submitted shadow diagrams.
23 October 2019	The applicant submitted amended shadow diagrams with additional dimensions.
29 October 2019	An additional submission by James Ryan was provided on behalf of the owner of 5 Lilac Place. This submission raised concerns about overlooking of the front and rear yard by neighbouring developments.
21 November 2019	A meeting was held with Council's General Counsel to discuss the matters raised in the additional submission. It was recommended an Access Consultant be engaged to

	review the public works condition and provide additional information and/or a recommendation.
27 November 2019	Council sought advice from Morris Goding Access Consultants and a fee proposal was provided.
30 January 2020	The Access Consultant provided an assessment which concluded that a 1.2 metre wide footpath is required along Grove Lane frontage. The assessment also presented alternatives such as conversion of Grove Lane into a shared zone or provide for one (1) way vehicular movements.
24 February 2020	A meeting was held with Council's Public Domain and Traffic Department to discuss the advice and recommendations. The outcomes of the meeting were: <ul style="list-style-type: none"> • Grove Lane would not be suitable for a shared zone nor for one (1) way vehicular movements. • The developments at 8 Grove Lane and 2 Orange Street provide a 1.2 metre wide footpath across their respective frontages. • In order to achieve the footpath it would necessitate a width of 600mm external to the site's boundaries and 600mm be provided within the site's boundaries. A pedestrian right of way would be required for both properties pursuant to Section 88B of the <i>Conveyancing Act 1919</i>.
5 March 2020	Council met with the applicant to outline the recommendations.
9 April 2020	The applicant submits the amended plans.
29 April 2020	Council's Senior Development Engineer advised that the amended plans demonstrated compliance with the parking dimensions of AS2890.1, however insufficient space was provided to manoeuvre around the parked vehicles without leaving the property and provided further recommendations.
1 May 2020	The applicant submits amended plans in response to the concerns raised by Council.

3. AMENDED PLANS

Amended plans and further information was received in response to the reasons for the deferral and in addition to matters arising as a result of further information and consideration of the submissions received.

26 September 2019:

The amended plans included design changes which addressed recommended draft conditions, reflected car parking arrangements as recommended by the panel and also provided additional shadow diagrams. The amendments are as follows:

- Revised architectural plans increasing the landscape strip along southern boundary to 1.2 metres reflecting Condition 29 and deletion of fill within the private open space's of Dwellings 1 and 2;
- Additional Sections were provided in accordance with Condition 32, providing privacy screens along the southern elevation of the alfresco's;
- The parking arrangement was modified by deleting the tandem hard stand parking spaces associated with Dwellings 1 and 2 as recommended by the panel;
- Shadow diagrams representing 5 Lilac Place's rear yard at RL89.90, with existing shadows generated by the boundary fence in addition to proposed shadow cast of the development; and,
- Revised stormwater and landscape plans reflecting the amendments.

In accordance with Section 2.9, Control (a)(i) and (ii) of RDCP2014: Part 2.1 – Notification of Development Applications. The amended plans were not required to be renotified, given that the extent of amendments did not significantly differ from the initial proposal and did not increase impact upon adjoining or neighboring properties or cause material impact on the environment.

9 April 2020

- Amended architectural plans providing for 600mm of footpath within the northern boundaries of the site to create 1200mm wide footpath presenting to Grove Lane.

1 May 2020

- Amended architectural plans increasing the front setback of garages associated with Dwellings 1 and 2 to 5.7 metres to enable tandem parking of a secondary vehicle within driveway. To ensure there were no changes to the rear setback of the garages, the internal length of the garages was reduced to 5.8 metres and 6.1 metres respectively.
- The amended plans also reduced the driveway cross over width associated with Dwelling 3 to 4.0 metres.

Pursuant to Section 3.2 – Exemptions of the City of Ryde's Community Participation Plan that came into effect November 2019, at the opinion of Council, notification was waived for the amended plans received on 9 April 2020 and 1 May 2020 as the changes were minor design changes that did not increase the impact upon adjoining or neighbouring land or cause material impact on the environment.

4. ASSESSMENT

4.1 Submission received by Francis Wiffen on behalf of the owner of 5 Lilac Place regarding overshadowing to the southern property at 5 Lilac Place, Eastwood.

The submission received from Francis Wiffen dated 9 September 2019 raised concerns with the assessment of the shadow impact between the times of 12pm to 3pm on 21 June. Concern was raised that the shadow diagrams did not correctly consider the existing private open space level of RL89.90 of the adjoining property at

5 Lilac Place and the proposal was non-compliant with Section 3.9 (b) Overshadowing and Access to Sunlight. This section of the DCP states:

b. Sunlight to at least 50% of each courtyard within the development and the principal area of ground level private open space of adjacent properties must not be reduced to less than two hours between 9 am and 3 pm on June 21. Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.

The submission included shadow diagrams as shown in **Figure 1**.

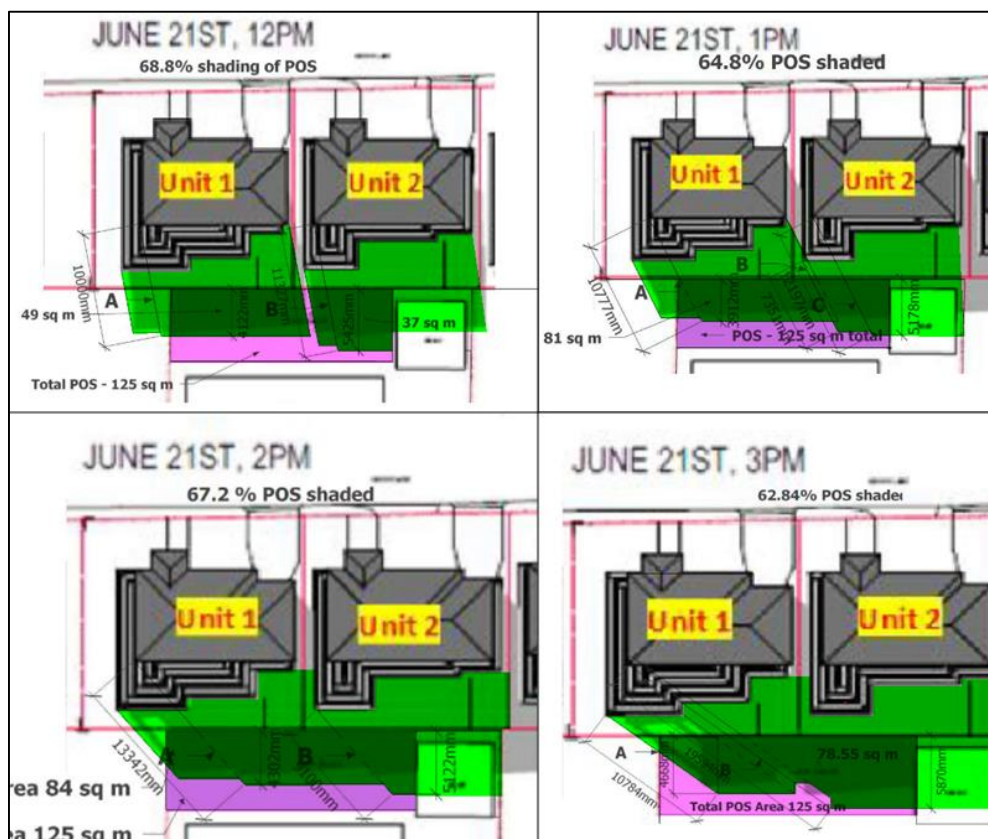


Figure 1: Shadow diagrams provided by Francis Wiffen. Note: Green shading indicates shadow cast and purple/pink is the usable area contained within the private open space of 5 Lilac Place.

The amended shadow diagrams provided by the applicant in **Figure 2** include the nominated level for the private open space of 5 Lilac Place of RL89.90. The shadow diagrams also include the shadow cast by the southern boundary fence.



Figure 2: Amended shadow diagrams

The shadow diagrams submitted by the applicant are consistent with those prepared by Mr Wiffen.

The adjoining property benefits from two (2) areas which can be utilised for private open space. This includes the area at the rear of the site (**Figure 3**) and a paved area within the front setback adjacent to the swimming pool (**Figure 4**) which is directly accessible via an internal living area. The proposed development will not impact the area adjacent to the swimming pool and this assessment will primarily focus on the area located at the rear.



Figure 3: Principle area for private open space at 5 Lilac Place



Figure 4: Paved area within the front setback of 5 Lilac Place.

The total area of usable POS located at the rear of 5 Lilac Place is 125m², this area was determined in the submission by Francis Wiffen and confirmed with Council's measurements on the amended shadow diagrams. An analysis of the diagrams provided by the applicant and Mr Wiffen's submission indicates that the rear private open space of 5 Lilac Place (**Figure 3**) will not receive two (2) hours solar access between 9am and 3pm. The following table below is a comparative analysis between the existing shadow cast of the boundary fence, the proposed development and the change in solar access received.

Time	Overshadowing from existing boundary fences	Overshadowing from proposal	Change in solar access.
9am	Boundary fence will completely overshadow the POS.	Development will completely overshadow the POS.	No change.
10am	75%.	92%	Increase - 17%

11am	70%.	81%	Increase - 11%
12pm	57%.	69%	Increase - 12%
1pm	60%.	67%	Increase - 7%
2pm	64%.	65%	Increase - 1%
3pm	72%.	65%	The boundary fence will overshadow greater than the development by 7%

As demonstrated above, the existing POS of 5 Lilac Place is already over shadowed by the existing boundary fence and the impact of overshadowing as a result of the proposed development will not be reduced greater than 20%. The proposed development therefore complies with the DCP requirements. Notwithstanding this, the additional shadow cast by the development can be considered acceptable for the following reasons:

- The sites have a north – south orientation and a sloping topography where 5 Lilac Place is located to the south on the lower side of the subject site;
- The adjoining dwelling at 5 Lilac Place has a modified ground level resulting in 5 Lilac Place being up to 1m lower than the subject site. The level difference contributes to the resultant shadow impacts;
- The proposal has been designed with an increased first floor setback of 6.0 metres from the southern boundary;
- The proposed buildings range between heights of 7.05 metres to 7.53 metres in height and comply with the 9.5 metre development standard;
- The proposal is generally consistent with the suite of built form controls contained within RDCP 2014. The non-compliances do not result in increased over shadowing;
- The proposal has been considered against the planning principles established in the Land and Environment Court relating to solar access in *Davies v Penrith City Council [2013] NSWLEC 114* and is consistent with those principles. The subject site is vacant and undeveloped and the shadow impact is not considered to occur as a result of poor design, but rather of the subdivision pattern; and,
- It is inevitable that any development on the subject site will result in a change in the solar amenity presently received to 5 Lilac Place. The extent of shadow impact is not unreasonable considering that the private open space of 5 Lilac Place is vulnerable to shadow impact.

4.2 Submission received from James Ryan on behalf of the owner of 5 Lilac Place on 12 September 2019.

The following below are the submissions raised by James Ryan including Council's response.

4.2.1 The submission states that there is a difference between RLEP and RDCP in terms of the definition of a road. RDCP 2014 - Part 3.4: Multi Dwelling Housing, Clause 3.3.1 requires that only dwellings with a

frontage to a street can be 2 storeys. The consent authority is required to consider a merit assessment of the development which is over 5.0 metres in height and whether or not the development is justified on a Lane and not a street. Council cannot simply replace the word “street” for “road”.

Response:

RLEP 2014, Clause 4.3A(2) “Exceptions to height of buildings states:

- (2) *Despite clause 4.3, the maximum height of a dual occupancy (attached) and a multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.*

RDCP 2014: Part 3.4 – Multi Dwelling Housing states, Section 3.3.1(a) states:

- a. *A Multi dwelling housing development must be contained within a single storey building. However, a dwelling with frontage to the street can be two storeys provided:*
- i. *The two storey dwelling is not attached to any other two storey dwelling; and*
 - ii. *Council is satisfied that a two storey dwelling is suitable in terms of the surrounding streetscape.*

The objection implies that the difference between the use of the word road within Clause 4.3A of RLEP and street within 3.3.1(a) of RDCP does not enable the built form to be two storeys. The definition of a road is outlined within the Definitions of the *Road Transport Act 2013*, which defines a road as:

“an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.”

The definition of a road under the *Local Government Act 1993* also includes both a ‘Street’ and a ‘Lane’ to fall within the category of a road. There is no clear indication contained within the definitions that draws a difference between a laneway and street as they both serve the same purpose. In this context Grove Lane is a local road and is primarily a secondary frontage for properties. The subject site has a single principal frontage to Grove Lane. The proposal consists of three (3) x two (2) storey dwellings presenting to Grove Lane.

In this circumstance, the geographical labelling of Grove Lane does not constitute as a non-compliance with Section 3.3.1 (a) as Grove Lane serves the same purpose as a ‘street’ and ‘road’ in providing vehicular access to the site. Council is satisfied that the proposed two (2) storey dwellings presenting to Grove Lane are suitable within the surrounding streetscape. The proposal is consistent with Section 3.3.1 (a).

4.2.2 The submission states that Council has not adequately considered the requirements for private open space under Section 4.15 of the Environmental Planning and Assessment Act 1979 in particular the

DCP requirements of Part 3.4 – Multi Dwelling Housing, Section 3.6. The submission stated that by not taking into account the DCP requirements, the development assessment process falls into legal error.

Response:

The submission provided by James Ryan states that Council did not take into account Section 3.6 (g), which states that private open spaces cannot be covered by a roof. The proposal included a roof over the outdoor seating areas and the concern primarily related to the objective of the control which is to achieve access to sunlight.

Whilst acknowledged that the roof over the seating areas results in a non-compliance with Section 3.6 (g), the roofed areas was supported on the basis that it did not detract from the function of those spaces. The roofing did not contribute to the overshadowing of these spaces as it was acknowledged that if the roof were removed, the outdoor seating areas will remain overshadowed by the buildings. This was due to the fact that the seating areas are located at the rear of the site and have a southern orientation. The location of the seating areas was considered to be a reasonable design response to satisfy the provisions of Section 3.6(h) which does not permit courtyards to be provided within the front setback.

This resulted in a restriction to the availability of sunlight obtained and given the sites constraint characteristics it was considered unreasonable to expect numerical compliance. The availability of sunlight was not a result of the roofed areas but rather the orientation of the land.

The submission further stated that the private open spaces were not sufficient and did not meet the minimum areas as required under Section 3.6(a). The areas for private open spaces are illustrated in the table and **Figure 5** below. The areas comply with Council’s requirements.

Unit No.	No. of bedrooms	DCP Requirement	Proposed POS
1	3	35m ²	63.4m ²
2	3	35m ²	55.3m ²
3	3	35m ²	38.5m ²

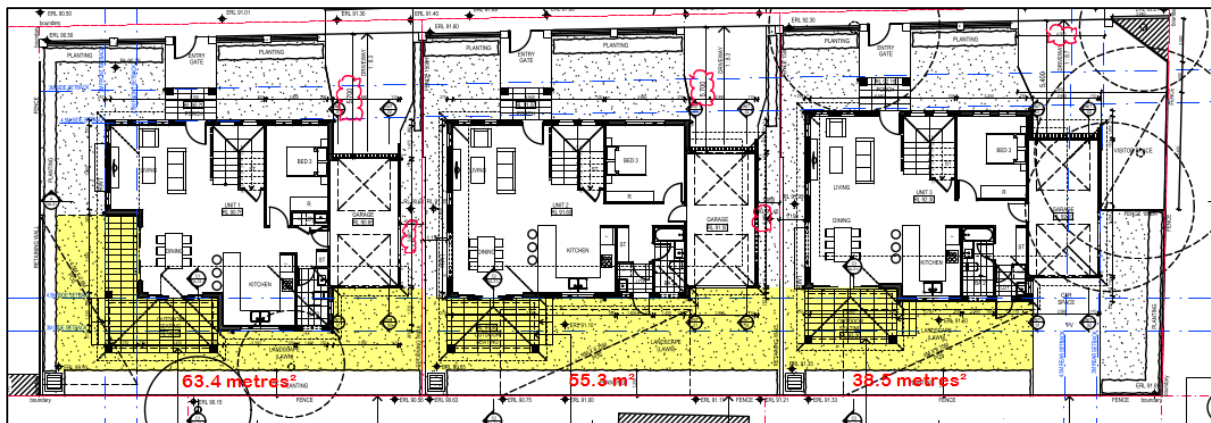


Figure 5: Total Areas of POS.

4.2.3 The submission stated that Condition 82 regarding car parking restrictions in Grove Lane, lacks certainty and finality.

Response:

Condition 82 states:

“Grove Lane Parking Restrictions. *To prevent the parking of vehicles in Grove Lane which may impose on vehicle access to properties accessed from the Lane and/or inhibit the passage of emergency vehicles, a written submission must be made to the Local Traffic Committee seeking the approval of “No Parking” parking restrictions in the Lane. The submission must be accompanied by a sign and line marking plan which is to locate the position of traffic and parking restrictions, which are to be positioned mindful of traffic flow and vehicle swept paths into all vehicle access points.*

The extent of the restrictions (ie possibly the full length of Grove Lane) is subject to the discretion of Council’s Traffic Section, may be altered by the consideration of the Local Traffic Committee and will likely require the consultation of residents fronting Grove Lane. The applicant is bear all costs of this exercise, including but not limited to, the consultation process with residents, any costs associated with the approval and the installation of the approved traffic and parking measures. The recommendations of the Local Traffic Committee must be implemented prior to the issue of any Occupation Certificate.

Note: The Local Traffic Committee meets on a schedule of every 6 weeks and therefore approval for these measures may take in the order of 3 months from the date of application.”

Response:

This condition was recommended by Council’s Traffic Department which places an onus on the developer to make an application to Ryde Local Traffic Committee to implement parking restrictions within Grove Lane.

At present there is no signage or line marking which restricts on street car parking within Grove Lane. The purpose of the condition is to restrict on street car parking as a result of the development to ensure that there is continued and uninterrupted vehicular access to properties along Norma Avenue utilising Grove lane as the primary point for vehicular access. The submission raises concern that this condition lacks certainty.

This matter was consulted with Council’s Traffic Department and it was advised that the developer is responsible for the car parking demand generated by the development. The development satisfies the DCP requirements and provides for sufficient on site car parking. The condition acknowledges that parking restrictions is subject to the discretion of Council’s Traffic Department and may be altered by the consideration of the Local Traffic Committee.

Therefore, in the event where the Local Traffic Committee does not support the implementation of parking restrictions for the entire width length of the laneway, alternative arrangements for restricting on street parking within Grove Lane will be considered. This may include the implementation on parking restrictions along the frontage of 8 Grove Lane only.

4.2.4 The submission raised an objection for the provision of a 600mm wide pedestrian path as required by Condition 37 to front the site in Grove Lane as it does not contain sufficient width to accommodate equitable access for those with a disability.

Response:

Condition 37 states:

“Public Infrastructure Works. *Public infrastructure works shall be designed and constructed as outlined in this condition of consent.*

Engineering drawings prepared by a Chartered Civil Engineer (registered on the NER of Engineers Australia) are to be submitted to, and approved by Council’s City Works Directorate prior to the issue of the Construction Certificate. The works shall be in accordance with City of Ryde DCP 2014 Part 8.5 - Public Civil Works, and DCP 2014 Part 8.2 - Stormwater Management, where applicable. The approved works must be completed to Council’s satisfaction at no cost to Council.

The drawings shall include plan views, sections, existing and proposed surface levels, drainage pit configurations (if applicable), kerb returns, existing and proposed signage and line-marking, and other relevant details for the new works. The drawings shall also demonstrate the smooth connection of the proposed works into the remaining street scape.

The Applicant must submit, for approval by Council as a Road Authority, full design civil engineering plans and applicable specifications for the following required infrastructure works:

- *The removal of redundant vehicular crossing in Grove Lane and replacement with a new footpath, kerb, gutter and road pavement.*
- *The reconstruction of the existing road pavement for the full width of Grove Lane and along the frontage of the development site, and adjacent to all new kerb & gutter and vehicular crossings.*
- *Provision of a 600mm wide footpath to front the site in Grove Lane which is comprised of a 450mm wide footpath pavement and a further 150mm wide top of standard kerb, such to provide a 600mm path width extending from the property boundary to the face of the kerb.*
- *Provision of a 300mm wide rolled kerb along the northern side of the lane (adjacent to the rear of properties facing Norma Avenue), this is to be measured from the boundary alignment to the back of the rolled kerb.*
- *Two single and one double vehicular access crossings along Grove Lane, in accordance with the DA approved plans. The vehicular access crossings shall be designed in accordance with City of Ryde Development Control Plan 2014*

Part 8.3 Driveways. The maximum length of each layback shall be determined by swept paths. The proposed garage floor level for each dwelling shall be elevated to achieve compliance with the relevant Australian standard.

- *Stormwater drainage installations in the public domain in accordance with the DA approved plans.*
- *Signage and line-marking details.*
- *Staging of the public civil works, if any, and transitions between the stages shall be clearly indicated on a separate plan.*
- *The relocation/adjustment of all public utility services affected by the proposed works shall be acknowledged by the Developer and all costs associated with the relocation/adjustment of the services will be borne by the Developer. Written approval from the applicable Public Authority shall be submitted to Council along with submission for the public domain design plans. All the requirements of the Public Authority shall be complied with.*

Section 6.2 of RDCP 2014: Part 3.4 – Multi Dwelling housing requires the construction of kerb and gutter, paved road shoulder, foot paving and landscaping where such facilities do not exist across the entire frontage of the land adjacent to the proposed development will be requested to be undertaken as part of the development. The subject site has primary access via Grove Lane and at present there is no footpath to provide access to the site. The condition above would only permit a 600mm wide footpath along the frontage of the site.

Council sought advice from Morris Goding Access Consulting regarding the draft condition. The advice recommended that a 1200mm wide footpath be provided along the frontage of Grove Lane or alternatively Grove Lane be converted to a shared zone or provide for only one (1) way vehicular movements. Council's Public Domain and Traffic Department advised that that Grove Lane would not be suitable for a shared zone or for one (1) way vehicular movement. The preferred option was for the provision of a 1200mm wide footpath.

In order to achieve the footpath width without impacting the two (2) way vehicular movements within Grove Lane, the proposal has been amended to provide for part of the footpath within the subject site in addition to the 600mm wide footpath required by the condition. This will ensure a 1200mm wide footpath is provided to facilitate equitable access within Grove Lane.

As a result of the creation of the footpath partially within the subject site, Condition 89 is recommended requiring the creation of a pedestrian right of way pursuant to Section 88B of the *Conveyancing Act 1919*. Condition 37 has also been amended to reflect the design change. Condition 89 reads as follows:

89. Public Access Right of Way. *Prior to the issue of any Occupation Certificate, a Pedestrian Right of Way (ROW) shall be created over the portion of footpath contained within No. 8 Grove Lane along the Grove Lane frontage of the development site, in favour of Council for public access. Terms regarding the creation of the ROW are to be submitted to and approved by Council prior to the lodgement at the Lands and Property Information Office. Evidence regarding effective registration of the ROW*

shall be submitted to Council and the PCA prior to the issue of the Occupation Certificate.

- a. *The terms of the Right of Way must ensure that:*
- b. *The portion of the footpath on private property is to be accessible at all times to the Public;*
- c. *The portion of the footpath on private property will be adequately maintained by the occupier/ owner of the site at all times;*

The Council is the only authority empowered to release, vary or modify the terms of the Public Access.

4.2.5 The submission drew concern to the overshadowing impact at 5 Lilac Place.

Response:

This matter is discussed in detail above in Section 4.1 of this report.

4.2.6 The submission raised additional concerns that the development results in privacy and overlooking impacts to 5 Lilac Place from all openings along the southern elevation of the development.

Response:

The proposal achieves satisfactory levels of separation in relation to the northern elevation windows of 5 Lilac Place. The windows are not sited within the 9.0 metre privacy sensitive zone. The draft consent considered by the Panel included the following conditions relating to privacy. The amended plans have incorporated the recommendations of Conditions 29, 32, 33 and 71. These amendments are detailed below:

- **Condition 29 – Retaining walls.** *Amended plans and specifications shall be submitted to the Private Certifier demonstrating the proposed retaining walls associated with all units along the southern and western boundaries shall be setback 1.2 metres from the boundaries and the natural ground levels retained within the provided setback. Landscaping is required to be provided within the setback as per **Condition 71**.*

The amended plans have removed fill within the private open space of Units 1 and 2 and the natural ground levels are retained. The landscape strip along the southern boundary has increased from 800mm to 1.2 metres. These amendments are consistent with the recommendations of Condition 29 and this condition is no longer required.

- **Condition 32 - Obscure Glazing.** *The kitchen windows of all dwellings are to engage the use of fixed obscure glazing from a minimum height of 1.6m above FFL. Details demonstrating compliance with this condition are to be provided in the plans for the **Construction Certificate**.*

The amended plans provide for the kitchen windows to be fixed obscure glazing to a minimum height of 1.6m above the finished floor level (FFL) of all dwellings (**Figure 6**). This design change addresses the recommendation of Condition 32 and this condition is no longer required.

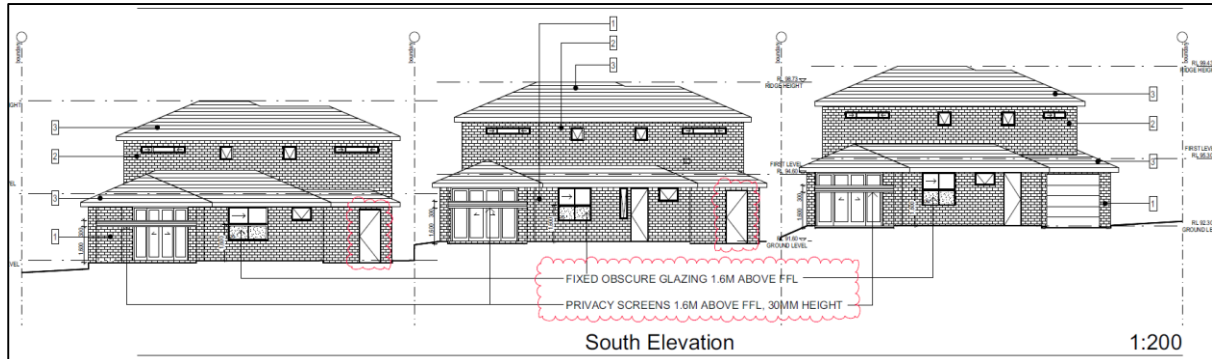


Figure 3: Southern elevation

- **Condition 33 - Privacy Screens.** *The provision of privacy screens are to be erected to the southern elevation of the alfresco's of each unit. The bottom of the privacy screens are to be erected in accordance with the following heights:*
 - Unit 1: RL92.25 (1.6m above FFL);
 - Unit 2: RL93.10 (1.6m above FFL); and,
 - Unit 3: RL93.80 (1.6m above FFL).

*Each screen is to be a minimum height of 300mm and must have; no individual opening more than 30mm wide, and a total area of all openings that is no more than 30% of the surface area of the screen or barrier. Details demonstrating compliance with this condition are to be provided in the plans for the **Construction Certificate**.*

The purpose of this condition was to ensure that there was no overlooking when an adult is standing in the alfresco areas. Further sections (**Figure 7**) of the proposed alfresco areas for all Units have been provided which incorporates a 300mm privacy screens to a height of 1.6 metres above the finished floor level. This is consistent with the recommendation of Condition 33. It is however recommended to amend Condition 33 for the privacy screens to be widened to a width of 500mm and be 1.4 metres above the finished floor level of the alfresco. This will ensure that adequate privacy is maintained between the development and private open space of 5 Lilac Place.

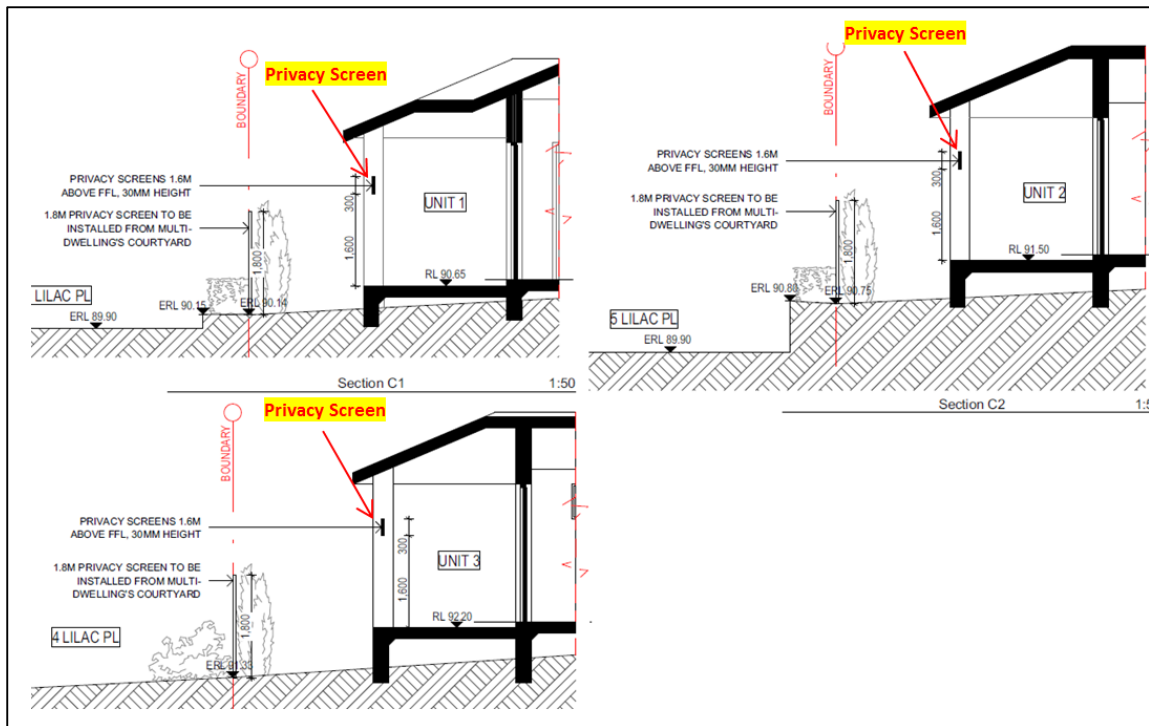


Figure 4: Sections (Note: Privacy screens are subject to a minimum width of 500mm as per amended **Condition 33**).

- **Condition 71 - Advanced Planting.** As shown on the approved Landscape Plan, the nominated species (*Viburnum Odoratissimum*, *Acmena smithii minor* including replacement species required by **Condition 31**) proposed to be planted along the southern boundary are to be planted with a minimum height of 1.8m.

The landscape strip maintains the same species proposed with a capable mature height at minimum 2.0 metres. Condition 71 is maintained in the recommendation to ensure the species planted along the southern boundary to be a minimum of 1.8 metres in height at the time of planting.

The remaining windows along the southern elevation consist of a sill height of 1.8 metres above the FFL and service bedrooms and/or bathrooms which are lower use rooms where occupants spend less waking time as opposed to living areas. Council is satisfied that the amended plans and recommended conditions address and mitigate impacts upon visual privacy to adjoining properties. The proposal is not considered to result in adverse privacy impacts upon 5 Lilac Place, Eastwood.

4.2.7 The submission raised concern that the development is inconsistent with the determination of No. 2 Orange Street (LDA2018/0210) for an attached dual occupancy) and there should be a consistent approach with regard to the interpretation of policies. The submission references the conditions for the deletion of roller doors for the tandem arrangements at No. 2 Orange Street and public works conditions.

Response:

The developments of 2 Orange Street and 8 Grove Lane are different forms of development. The approved development at 2 Orange Street is a dual occupancy

(attached) and the proposed at 8 Grove Lane is a multi-dwelling housing development. Under the provisions of RLEP 2014, the controls differ between these forms of developments.

The determination of 2 Orange Street (LDA2018/0210) includes a condition requiring the deletion of roller doors located at the rear of the garages, to prevent the courtyard areas being used as tandem car parking spaces. This was in response to the requirements Section 2.2 of *RDCP 2014 - Part 9.3: Car Parking*, which limits a maximum of one (1) car parking space per dwelling for dual occupancy developments.

The amended plans for 8 Grove Lane has deleted the tandem car parking arrangements for Units 1 and 2 as discussed Section 4.3 of this report. However, the roller doors for Dwellings 1 and 2 remain to provide access to the private open spaces in compliance with Section 3.6 (e) where an alternative form of access to a width of is to be provided to the POS other than through the dwelling.

With further regard to the public works conditions, the development consent of for the dual occupancy at 2 Orange Street was modified on 8 May 2020 by Modification Application MOD2020/0056 to amend Condition 48 to enable the provision of a 1200mm wide footpath along the Grove Lane frontage. This will ensure consistency with the public domain requirements of Condition 37 as recommended by the subject application to facilitate equitable access along Grove Lane.

4.2.8 The submission stated that the development results in excessive not compliances and should be refused.

Assessment Officer's Comment:

The proposal is compliant with the principal development standards. The site meets the minimum frontage width of 20 metres and minimum site area of 900m² and is permissible within the zone.

The DCP provisions establish the general design requirements for different forms of development. The site dimension's in being wider than it is long is unusual and generally the subdivision pattern of Ryde does not include a prominence of sites with these dimensions. This has resulted in the proposal being non-compliant with some provisions of the DCP.

Pursuant to Section 4.15(3A)(b) of the *Environmental Planning and Assessment Act 1979* flexibility has been shown to determine that there is reasonable alternatives that achieves the objectives of the DCP. This form of development is site specific and does not result in any unreasonable adverse impacts to adjoining properties. For these reasons the proposal is acceptable and recommended for approval.

4.2.9 Review from Council's General Counsel

As per the recommendation of the Panel, Council's General Counsel has considered the issues raised in the submission from James Ryan. Council's General Counsel has reviewed the submission and is satisfied that the responses contained within this report are satisfactory. There is nothing preventing the Panel from making a decision in respect of this application.

4.3 Car Parking

In accordance with RDCP 2014: *Part 9.3 - Parking Controls*, the proposal is required to provide a total of two (2) spaces per dwelling inclusive of one (1) visitor space for off street car parking.

The proposal considered by the Panel provided for a single enclosed garage and a hard stand tandem parking space in the rear to provide for two (2) spaces. The proposal also accommodated a visitor parking space at the eastern end of the sites frontage. Concern was raised by the Panel regarding this arrangement.

The proposal was amended in response to concerns raised by the Panel. The amended plans (**Figure 8**) have deleted the tandem spaces for Units 1 and 2. The tandem space arrangement for Unit 3 is retained in order to provide sightlines to Grove Lane to enable vehicles to safely exit from the visitor parking space in accordance with AS 2890.1 and maintains unobstructed access to the visitor car space.

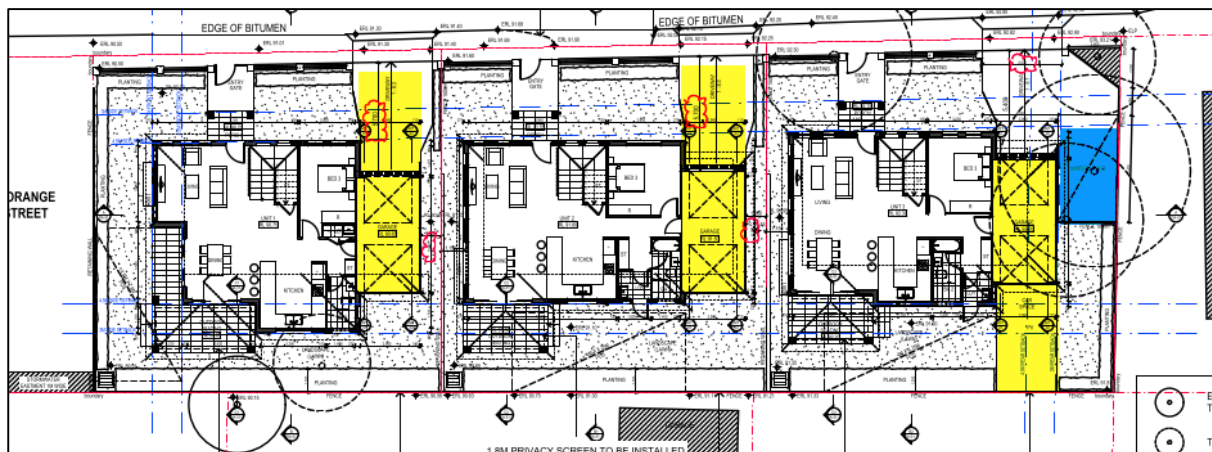


Figure 8: Amended car parking arrangements for each dwelling is shaded in yellow and visitor space is shaded in blue.

The amended proposal for Units 1 and 2, rely upon the driveway to accommodate the secondary parking space on site. This arrangement is non-compliant with Section 3.8.1 (e) and (h), which requires tandem arrangements and parking spaces not to be located between garages and the street. The use of the driveway for a secondary parking space does not result in a physical change to the development.

This can be considered acceptable given that the development will present as three (3) freestanding dwellings. The front setback allows for sufficient space to accommodate off street car parking and the length of the parking arrangements

remain compliant with AS 2890.1. (Note: This has also taken into consideration the additional 600mm setback required for the footpath).

The proposed arrangement does not result in car parking spaces being visually dominant and the proposal will remain consistent with the numerical standards for the provision of car parking and can be considered acceptable.

5. REFFERALS

5.1 City Works – Public Domain

The application was referred to Council's City Works Department – Public Domain Team for consideration. The comments provided are as follows:

“General comments

- *The application is for construction of three (3) new dwellings within the currently vacant block. All access to the development site – both pedestrian and vehicular - is via Grove Lane.*
- *The property location is within the **Ryde Local Area Precinct**, outside of the Eastwood Town Centre Precinct.*
- *As the access to the development is via Grove Lane only, Council has received objector submissions raising the issue of disabled access to the site. The laneway is of limited width and constructing a standard 1.20m width footpath extending from the existing development boundary line would adversely impact two-way vehicular movements within the laneway. Council's Transport Department has assessed the viability of converting Grove Lane to one-way access although this option is not considered preferable. In order to provide for adequate pedestrian access without impacting existing two-way vehicular movements it is proposed that a 600mm pedestrian Right of Way (ROW) is registered within the subject development site along the full laneway boundary line.*

A 1.2m width footpath is proposed to be constructed extending from within the proposed 600mm width ROW to 600mm outside the existing property boundary line. A 600mm trafficable roll kerb is proposed beyond the new footpath in order to maintain two-way vehicular access. The above arrangement has been recommended for the Grove lane frontage of the adjoining property at 2 Orange Street, Eastwood (LDA2018/210) via assessment comments for MOD20220/56.

- *While undergrounding of the existing overhead services/power lines would not be required due to the proposed development being outside of the area requiring undergrounding, it will be necessary to provide for unobstructed access along the proposed pedestrian footway on the development frontage. As the existing power poles would obstruct pedestrian access it is required that they are either overhead power undergrounded or relocated. Any*

proposed relocation or removal of the poles must be approved by the relevant utility authorities and Council.

- *Given the potential increase in vehicular and pedestrian usage of the laneway the existing lighting in the laneway shall be upgraded using the current Ausgrid standard LED luminaire. There are two existing power poles along the frontage of the development site. One has a street light, which will require upgrading, the other has no light but will require a new luminaire to be installed.*

As discussed above the poles will either need to be removed or relocated in order to provide for unobstructed pedestrian access along the proposed footway on the development frontage. In the case that overhead utilities are undergrounded and the existing poles removed, new lighting poles, positioned so as not to obstruct the footway, will need to be installed.

- *The surface of the existing road pavement along the development frontage is in poor condition. Part 8.5, Section 1.14 (page 7) specifies that half road reconstruction should be carried out in the case that new kerb and gutter is installed. As the laneway is of limited width, creating a joint down the middle of the road between new and poor quality pavement is not a preferable solution and would not provide Council with a durable, strong asset meeting an adequate service life.*

Furthermore if Council were to upgrade the lane in the future it is most likely that the portion of half road reconstructed would need to be redone for construction purposes. The best outcome could be achieved by requesting full width reconstruction and following testing of the sub base condition, incorporating the recommendations of a suitably qualified engineer in regards to reconstruction depth for the full laneway width.

- *Given that the scope of public domain works within the laneway will be significant due to the requirement to relocate or remove the existing power poles to provide for an unobstructed footway, the Defects Security Bond requested is \$40,000.*
- *Road Opening Permits will be required for any construction work on the road.*
- *There will be several hold points for inspections during the course of the construction in the public domain area.”*

5.2 Senior Development Engineer

The amended plans were referred to Council’s Senior Development Engineer for consideration. The following comments were made:

“Vehicle Access and Parking

The amended plans have been reviewed where the following is noted:

- Unit 1 and 2 garage have now provided a setback of 5.7m from the front fence. For an off-street parking space, the AS2890.1 requires a minimum length of 5.4m, thus this arrangement will permit a secondary space to be parked within the front setback whilst providing sufficient manoeuvring area around the parked vehicle. The internal dimensions of the garages still meet the requirements of AS2890.1 resulting in a fully compliant design.
- As highlighted by the previous assessing development engineer, the access to the visitor space adjacent to Unit 3 has been amended to ensure adequate sight distance is provided for drivers exiting the designated space.

There are no further objections to the proposal. The previous conditions provided have been updated to reflect the latest set of plans.

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.”

6. CONCLUSION

Upon consideration of the development against Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other relevant statutory provisions, the proposal is considered to be suitable for the site and is in the public interest.

Therefore the development is recommended to be approved for the following reasons:

- The development complies with the relevant provisions of RLEP 2014 with no unreasonable adverse impact to adjoining properties;
- The proposal provides the opportunity to redevelop the site to deliver a diverse choice of housing to meet the future needs of residents, which fulfils the objectives of R2 Low Density Residential Zone;
- The proposal is considered to respond to the existing and the desired future character of the area; and,
- Notwithstanding the variations outlined, the development generally complies with the relevant provisions outlined in RDCP 2014 Part 3.4: Multi Dwelling Housing which provides acceptable amenity for future occupants and adjoining properties.

7. RECOMMENDATION

Pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*, it is recommended that the Ryde Local Planning Panel, grant consent to LDA2018/0385 for a new multi-dwelling housing development comprising three (3) x two (2) storey, three (3) bedroom dwellings, 1.0 metre high front fence, associated car parking and tree removal on land at 8 Grove Lane, Eastwood subject to the conditions in the attached consent outlined in **Attachment 1**.

Supplementary report prepared by:

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