

**Meeting Date:** Thursday 14 March 2019  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 5.00pm

*City of Ryde Local Planning Panel Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. City of Ryde Local Planning Panel Meetings will also be webcast.*

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## **DEVELOPMENT APPLICATIONS**

### **2 17 SHUMACK STREET, NORTH RYDE - DEMOLITION OF STRUCTURES AND CONSTRUCTION OF AN ATTACHED DUAL OCCUPANCY WITH PARKING - LDA2018/0348**

**Report prepared by:** Senior Town Planner

**Report approved by:** Senior Coordinator - Major Development; Manager - Development Assessment; Director - City Planning and Environment

**Report dated:** 7 March 2019

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

<b>DA Number</b>	<b>LDA2018/348</b>
<b>Site Address &amp; Ward</b>	<b>17 Schumack Street, North Ryde – East Ward</b>
<b>Zoning</b>	<b>R2 Low Density Residential</b>
<b>Proposal</b>	<b>Demolition of structures and construction of an attached dual occupancy with parking</b>
<b>Property Owner</b>	<b>Limin Li</b>
<b>Applicant</b>	<b>ARC Homes</b>
<b>Report Author</b>	<b>Natalie Camilleri – Senior Town Planner</b>
<b>Lodgement Date</b>	<b>4 September 2018</b>
<b>No. of Submissions</b>	<b>Five (5) submissions</b>
<b>Cost of Works</b>	<b>\$800,000.00</b>
<b>Reason for Referral to LPP</b>	Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

## ITEM 2 (continued)

Recommendation	Refusal
Attachments	<p><b>Attachment 1:</b> Compliance Table</p> <p><b>Attachment 2:</b> Clause 4.6 written variation in respect to Clause 4.1B(2)(b) of the RLEP 2014</p> <p><b>Attachment 3:</b> Plans submitted with the application</p>

### 1. Executive Summary

Application is made to demolish the existing building on the site, removal of four trees and to construct two storey attached dual occupancy, each containing 4 bedrooms, and a single garage.

Five submissions were received objecting to the application during the notification period, with the most common concerns relating to excessive site coverage, unsuitable location at the head of the cul-de-sac, lack of off-street parking, overshadowing, privacy concerns and the development being out of character.

Given the site has an arc frontage of only 11.5 metres, compliance with the minimum site frontage requirements in accordance with the Ryde Local Environmental Plan 2014 is unachievable. The applicant's written request pursuant to clause 4.6 of the Ryde LEP 2014 seeking to justify the breach of the road frontage development standard set out in clause 4.1B(2) of the RLEP 2014 has been considered. The existing road frontage represents a contravention of 8.5 metres less than the development standard of 20 metres, which equates to a 42.5% variation. In accordance with clause 4.6(3)(a) and (b) of the RLEP 2014 it is considered that the written request does not adequately prove that the development standard is unreasonable or unnecessary nor does it establish sufficient environmental planning grounds that justify the breach in the road frontage development standard. For this reason it is considered that the site is not suitable for the development of an attached dual occupancy as approval of the DA would set a poor precedent, and not be in the public interest.

The proposed design is also considered to be unacceptable due to:

- Inadequate front/side/rear setbacks.
- Unable to achieve a design that is compatible with the existing and desired streetscape.
- Inadequate public domain amenity.
- Unacceptable streetscape and impacts from garage dominance.

## ITEM 2 (continued)

- Inadequate Waste Management Plan.
- Inadequate measures to protect the privacy of adjoining property at No. 19 Schumack Street.
- Inadequate information addressing of solar impacts upon the neighbouring property at No. 19 Schumack Street.
- Inadequate garage dimensions and driveway requirements in accordance with RDCP 2014 and the Australian Standards.

It is noted that due to the substantive concern that the site is not a suitable site for the construction of an attached dual occupancy due to the site width, the applicant was not requested to amend the design to address these concerns.

The development application is recommended for refusal.

## 2. The Site and Locality

The site is known as 17 Schumack Street, North Ryde and is a single allotment with a legal description of Lot 4 in DP 30295. The site is located on the eastern side of Schumack Street, on the northern side of the cul-de-sac head (see Figure 1).



**Figure 1: Aerial photograph of site in context**



**ITEM 2 (continued)**

The site is an irregular shaped allotment with an arc frontage to Schumack Street of 11.5 metres, a rear boundary dimension of 36.13m, side boundary dimensions of 32.15m (north-western) and 39.015m (south-eastern) and a site area of 613.4m<sup>2</sup>. The site has a fall to the street from the rear eastern corner of approximately 1.91 metres.

The site currently consists of a single storey dwelling house with a separate garage. Existing vegetation on the site consists of semi-mature, mature endemic and non-locally indigenous species. Trees present on the site include three Lemon Scented Gums, one Himanlayan Cedar, one Photinia, and one Golden Honey Myrtle. Three trees (numbered 4, 5 & 6 as shown in Figure 12) are proposed to be removed and subsequently replaced. It is noted that there are several neighbouring trees which need to be retained and protected. Comments regarding the removal of trees are provided under the heading "Referrals" further along in this report.



**Figure 2: Subject site as viewed from driveway**

The site is burdened by an easement for electricity purposes, 1.829m wide which runs along the south-eastern side boundary. There is a sewer line connected to the northern corner of the site.

The building occupies the rear half of the site and has a front setback of approximately 12 metres. The front of the site predominantly consists of a grassed yard with six trees, four of which are proposed to be removed. The site currently has vehicular access from Schumack Street, via a concrete strip driveway which runs along the eastern side boundary as shown in Figure 2.

**ITEM 2 (continued)**



**Figure 3: View of site from head of cul-de-sac**

The site is within a low density residential setting, mainly consisting of single and two storey dwellings. On the northern side (No. 15) of the subject site is a single storey dwelling house with associated structures, while on the eastern side (No. 19) is a part single/part two storey house as shown in Figures 4 and 5.



**Figure 4: Single dwelling located at 15 Schumack Street**



**ITEM 2 (continued)**



**Figure 5: Part one/part two dwelling located at 19 Schumack Street**

To the rear of the site is a two storey dwelling and outbuilding located at 22 Cutler Parade, which can be viewed from the rear yard of the subject site, and is shown in Figure 6.



**Figure 6: Two storey dwelling located at 22 Cutler Parade as viewed from rear of subject site**

**ITEM 2 (continued)**

On the opposite side of Schumack Street are other single and two storey dwellings. As such the development is in the vicinity of a typical low density residential development. The other dwellings in the street are generally characterised by generous front setbacks from Schumack Street, with significant landscape settings.

**3. The Proposal**

Application is made to demolish the existing structures on the site, remove three trees and to construct a two storey attached dual occupancy, as is described below and illustrated in Figures 7 and 8:

Dwelling 1

- Ground: The patio leads into the foyer and off to the left is the study/bedroom, bathroom, and laundry. The dwelling then goes up two steps into the living areas including the kitchen, dining and living rooms. The staircase leading the first floor is also located in this area. The living room provides access out to the private open space area. The single garage is located off the hallway to the right.
- First: The staircase leads to the first floor which contains two bedrooms and the master with ensuite, bathroom, walk-in storage, sitting room and void area. There is a balcony off the master bedroom, which is orientated predominately to the street, however does wrap around along the northwest elevation. This portion of the balcony is provided with a privacy screen.

Dwelling 2

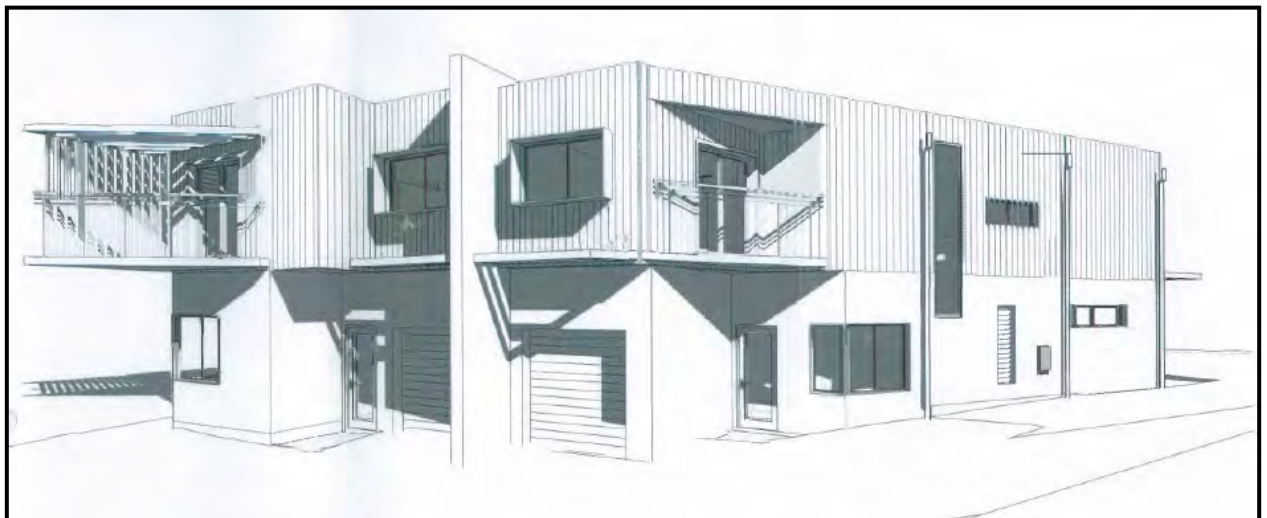
- Ground: The patio leads into the foyer and off to the right is the laundry. The single garage is located off the hallway to the left. The dwelling then goes up three steps onto a landing where you will find the staircase leading to the first floor, access into the garage, storage under the stairs and the study/bedroom. This landing also leads into the living areas consisting of the kitchen, living and dining rooms. The living room provides access out to the private open space area.
- First: The staircase leads to the first floor which contains two bedrooms and the master with ensuite, bathroom, storage cupboard, sitting area and void looking below to the living areas. There is a balcony off the master bedroom, which is orientated predominately to the south eastern boundary – no privacy screen is provided.



**ITEM 2 (continued)**



**Figure 7: Proposed ground and first floor plans (Source: ARC Homes)**



**Figure 8: 3D view of proposed development (Source: ARC Homes)**

## **ITEM 2 (continued)**

The Statement of Environmental Effects indicates that no subdivision approval is sought at this time, however in the future strata subdivision will apply to the development in accordance with the LEP provisions.

The design of the building is modern, with a flat roof and is to be constructed of a combination of DecoWood cladding, quartz zinc cladding, and white render. Fixed DecoWood Aluminum battens are proposed to the front balcony of Dwelling 1.

Each of the front balconies will be provided with laminated glass balustrades.

## **4. Background**

The development application was submitted to Council on 4 September 2018. It was brought to the applicant's attention at the time of lodgment that the application was unlikely to be supported in its current form due to the significant departure from Council's frontage development standard.

Once the notification period ended on 25 September 2018, the applicant was contacted verbally advising of the number of submissions received. At that time the applicant was reminded again that the significant variation to Council's frontage development standard was unlikely to be supported. In response the applicant requested a meeting with Council staff to be given an opportunity of how the design was developed.

A meeting was held on 17 October 2018 whereby the applicant explained the approach taken in designing the proposed dual occupancy. The applicant's consultant town planner also attended to outline variation points made in the written Clause 4.6 variation. It was once again highlighted to the applicant that such a significant variation was unlikely to be supported, however once a full and proper assessment was undertaken, a recommendation could be provided.

On 10 January 2019 the applicant was advised that a the draft report was prepared recommending refusal and that the matter would be scheduled for the next available Local Planning Panel meeting.

## **5. Planning Assessment**

### **5.1 State Environmental Planning Instruments**

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

The application is accompanied by a BASIX certificate. It is noted that the BASIX Certificate notes the property being in an unregistered DP. This is an error and requires amendment.

## **ITEM 2 (continued)**

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

In accordance with clause 7 of the SEPP 55, a consent authority must give consideration to the contamination of the land and its suitability for its intended use before providing consent to the carrying out of any development on the land.

Council's records indicate that the subject site has historically been used for residential use and is not located in close proximity to any known contaminated land.

In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for continued residential land use.

### **SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the whole of the Ryde local government area.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above SREP. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development.

The objective of improved water quality is satisfied through compliance with the provisions of Council's Development Control Plan 2014 Part 8.2.

The proposed development raises no other issues and otherwise satisfies the aims and objectives of the SREP.

## **5.2 Ryde LEP 2014**

### Permissibility

Under the provisions of Ryde LEP 2014 the site is zoned R2 Low Density Residential and the proposed attached dual occupancy is a permissible use with consent in that zone.

The objectives of the R2 zone are addressed following:

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



**ITEM 2 (continued)**

**Comment:** The first and third objectives of the R2 zone are applicable to this development. In this regard, this development does not satisfy these objectives. The frontage of the site is only 11.5m which represents a variation of 42.5% to the 20m frontage required by the LEP. The development as proposed results in a poor design outcome, does not maintain the local character, and would set an undesirable precedent for future development.

Clause 4.1A(2)

*Development consent may only be granted to the strata subdivision of a dual occupancy (attached) on land in Zone R2 Low Density Residential if the land has an area of at least 580 square metres.*

**Comment:** As noted above, no subdivision is sought as part of this application.

Clause 4.1B – Minimum lot sizes for dual occupancies and multi dwelling housing  
Clause 4.1B(2) of RLEP 2014 states that:

- (2) *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.*

**Column 1**

*Dual occupancy (attached)*  
*Multi dwelling housing*

**Column 2**

*580 square metres*  
*900 square metres*

**Comment:** As stated earlier in this report, the site has an area of 613.4m<sup>2</sup>, which complies with the minimum of 580m<sup>2</sup>. In terms of the lot width, the subject site only has a width of 11.5m which results in a 42.5% variation to this control. In this regard, the applicant has submitted a Clause 4.6 written request to vary the development standard. This variation is not supported as approval of the DA would set a poor precedent and not be in the public interest. A comprehensive discussion regarding this matter is included below under the heading “Exceptions to development standards”.

## ITEM 2 (continued)



Figure 9: Snippet of Survey showing site width at arc (Source: PS Pang Surveyors)

### Clause 4.3 - Height of Buildings

Clause 4.3 prescribes a maximum height control of 9.5 metres for the site. The proposal satisfies this control with a maximum height of 8.15m at the front portion and 8.87 m at the rear portion as shown in Figure 9.



Figure 10: Southeast elevation demonstrating proposed dual occupancy will be under the 9.5m max building height (Source: ARC Homes)

## **ITEM 2 (continued)**

### Clause 4.4 - Floor Space Ratio (FSR)

Clause 4.4 sets a maximum FSR for the site of 0.5:1. The applicant states that the proposed development achieves a gross floor area (GFA) of 306.70m<sup>2</sup> which equates to a FSR of 0.48:1. The proposed FSR complies with the maximum allowable under clause 4.4 of the RLEP.

### Clause 4.6 - Exceptions to development standards

Clause 4.6 in RLEP is in standard form and provides that:

#### **4.6 Exceptions to development standards**

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *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 of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*



**ITEM 2 (continued)**

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all of these zones.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4,*
  - (ca) *clause 4.3, to the extent that it applies to the land identified as "Town Core" on the Ryde Town Centre Precincts Map*
  - (cb) *clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),*
  - (cc) *clause 6.9.*

## ITEM 2 (continued)

In order to determine if consent shall be granted to the proposal, clause 4.6(a) requires that Council is satisfied that:-

- “(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the [R2 Low] Density Residential Zone (cl 4.6(4)(a)(ii))”*

The applicant submitted a written request prepared by DDC Planning and addresses the minimum frontage development standard in clause 4.1(b) in RLEP. This clause requires a 20m site frontage, however the site only provides for 11.5m, which represents a variation of 42.5% to the development standard.

As explained by Adam SC in *Falamaki v Council of the City of Ryde [2019] NSWLEC 1007* (“*Falamaki*”), there are four “gates” through which a variation request must successfully pass before there can be a decision that compliance with the development standard for lot width is deemed satisfactory. The four gates are considered below:-

- 1. *The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)***

**Comment:** In *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827*, ways in which the applicant can demonstrate the development standard is unreasonable and unnecessary are summarised below:-

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;*
- Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;*
- The development standard has been abandoned by the council; or*
- The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).*

**ITEM 2 (continued)**

The applicant's request has been prepared seeking to justify that the compliance is unreasonable and unnecessary by referencing these approaches provided in *Wehbe*. The applicant states *"the only reason that could be given for refusal is that numeric compliance simply must be adhered to. This would contravene the very intent of flexible planning provisions and fail to acknowledge the merits of the variation. It also contravenes the findings in Wehbe v Pittwater Council (2007) where it notes that compliance must not be considered an end in its own right but a means to an end. For this reason, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 is available to Council in this instance."*

In this regard, it is considered that the applicant's written request fails to satisfy clause 4.6(4)(a)(i) because compliance with the standard is considered to be reasonable and necessary on the basis that compliance with the minimum site frontage is necessary to result in an improved built outcome, which will maintain the character of the locality.

The applicant has detailed that minor variations to the control have been permitted by Council. The variation being sought with this application is not minor. The frontage of the site is 11.5m which represents a variation of 42.5%. Such a variation leads to the development having an inappropriate design that is not consistent with the intended character of the locality.

**2. *The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i))***

**Comment:** The applicant's request does not include adequate analysis demonstrating that there are sufficient environmental planning grounds to justify not complying with the lot width standard. Instead, the request states *"Yes. Sufficient environmental planning grounds exist to justify contravening the development standard. The following points support this:*

- 1. The minimum lot size is complied with.*
- 2. The site has an easement along the south-eastern boundary meaning that a 1.8m setback is provided along this entire boundary.*
- 3. The requirements within the DCP are complied with.*
- 4. The impact on adjoining sites is similar to a dwelling house on a conventional housing lot.*
- 5. The site has a much larger rear boundary length of 36.13m giving it a significant building footprint area in the middle of the site.*



## ITEM 2 (continued)

*A development proposal that was forced to be compliant with the standard fails to recognise that:*

- *buildings can still be appropriately sited on odd-shaped allotments;*
- *housing juxtaposition in a suburb is what is important and this is not necessarily reliant on the invisible subdivision boundaries that lies beneath;*
- *compliant setbacks and yard areas have a far greater effect on mitigating impacts on neighbouring homes;*
- *unique street curves can create irregular frontages without necessarily damaging the development capacity of a site.*

*In terms of character and impact, there are no significant environmental benefits that would result from strict compliance. For this reason, the minor variation is justifiable."*

As stated above, this variation is not considered minor. Furthermore, the proposed design provides for inadequate front, side and rear setbacks, which all reduce the amenity benefits to the site and adjoining properties, and makes inadequate provision for the protection of privacy of adjoining properties, with the balcony of Dwelling 2 overlooking windows of the adjoining property at No. 19 Schumack Street which results in unacceptable privacy impacts upon that property. Accordingly, the applicant's request does not include sufficient analysis to demonstrate that there are sufficient environmental planning grounds to justify not complying with the lot width standard and fails in this regard.

### **3. *The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii))***

**Comment:** The objective of the lot width development standard is to achieve planned residential density in certain zones. Density in this context relates to the density of elements of built form and not to population density. By doing so, the local character of the area is able to be maintained. According to the applicant, the intent of this control is to ensure that "lots are of sufficient size to allow for functional dwellings that have appropriate setbacks, private open space, landscape areas, driveways and vehicle manoeuvring area". The character of the locality is guided by these matters outlined by the applicant, and in essence all contribute to maintaining the character of this low density area, therefore making it essential to enforce the 20m frontage development standard. In this regard, the applicant's written request fails to provide sufficient evidence to demonstrate how the development proposed will comply with the objective of the lot width development standard.

## ITEM 2 (continued)

### **4. The proposed development will be in the public interest because it is consistent with the objectives of the [R2 Low] Density Residential Zone (cl 4.6(4)(a)(ii))**

**Comment:** In regard to cl 4.6(4)(a)(ii), the applicant states that the proposal is consistent with the objectives of the R2 zone being:

#### **R2 zone objectives**

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

The applicant provides the following comments with regard to how the proposed development is consistent with the R2 zone objectives:

*“The proposal supports the objectives for the zone as explained below.*

- *To provide for the housing needs of the community within a low density residential environment.*

*Dual occupancy homes on smaller lots creates a more efficient and affordable housing product that still has traditional advantages such as larger rear yards. Attached homes provide a tremendous housing product that supports the needs of first home buys and small families without creating the character of a medium density environment. They have a different character to a larger town houses development which is appropriate in this location.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

*Achieved without compromise.*

- *To provide for a variety of housing types.*

*Refer to comments in relation to Objective 1. Amalgamated sites tend to result in town houses. Dual occupancies on sites larger than 600m<sup>2</sup> allow for some smaller housing models in a conventional low density setting. The consistency with the character is demonstrated by the two dwellings at No. 18.”*

## ITEM 2 (continued)

Whilst it is acknowledged that dual occupancy homes create opportunity to provide housing needs to support the needs of small families and first time home buyers, it is not considered that the development proposed is compatible with the streetscape and character of the local area. The site is unsuitable for the proposed attached dual occupancy as it is unable to satisfy the key development standards for dual occupancy (attached) sites under the relevant planning controls. The written request fails to respond to local character issues, which have not been addressed.

### Conclusion

On consideration of these matters, all of the gates must be opened for the variation request to succeed, however as the applicant has failed to satisfy all four matters for consideration, therefore clause 4.6 variation request cannot be supported.

It is important to note that approval of such a development would create an undesirable precedent, and this is recognised by Adam SC in the *Falamaki* judgment. In paragraphs 149-151 of this judgement Adam SC states *"Some aspects of the public interest were raised in the cl 4.6 variation request, but a major additional aspect was the precedent which would be set if the proposal were approved. This was a concern to the Council.... In a Class 1 matter, the outcome will depend on the facts and circumstances of each particular case. Nevertheless it is long been recognised that decisions will be seized upon as if they were formal precedents, and as a consequence, councils will come under pressure to apply the decision made in one case to others perceived by the public to be similar... Were I required to formally assess the competing arguments for Contention 10, the question of precedent is likely to have been of considerable weight."*

### Clause 5.10 - Heritage

The site does not contain a heritage item, nor is it within a conservation area, or located to any heritage listed items.

### Clause 6.2 - Earthworks

Clause 6.2 requires consideration of the impact of earthworks in relation to environmental functions, processes, neighbouring uses, cultural and heritage items and features of the surrounding land. The following matters are required to be considered:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

The site is not located within the 1% AEP Storm Event and Council's stormwater engineer does not raise any stormwater objections to the proposal.



**ITEM 2 (continued)**

- (b) *the effect of the development on the likely future use or redevelopment of the land,*

There will be minor excavation and is required to facilitate the future development of the site.

- (c) *the quality of the fill or the soil to be excavated, or both,*

The site has not been identified as contaminated.

- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*

There is unlikely to be any potential impact to adjoining structures as a result of minor excavation.

- (e) *the source of any fill material and the destination of any excavated material,*

The site has not been identified as contaminated. The Waste Management Plan submitted with the development application provides no details or information relating to excavated materials or its disposal.

- (f) *the likelihood of disturbing relics,*

Given the location of the site and its previous development, it is considered unlikely that any relics would be disturbed.

- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The proposal is unlikely to impact any waterway and it will not impact any drinking water catchment or environmentally sensitive area.

- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Appropriate construction measure would be required to be implemented to avoid and minimize impacts upon adjoining structures.

**Clause 6.3 - Flood Planning**

Clause 6.3 is applicable to sites with land at or below the flood planning level and the site is located within the 1% AEP Storm Event. This clause is not applicable to the subject site. It is noted that there is no objection to the proposed point of drainage discharge.

## **ITEM 2 (continued)**

### **5.3 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

There are no draft environmental planning instruments of relevance to the assessment of the application.

### **5.4 DEVELOPMENT CONTROL PLANS**

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

The applicable provisions of DCP 2014 are:-

- Part 2.1 Notification of Development Applications
- Part 3.3 Dwelling Houses and Dual Occupancy
- Part 7.1 Energy Smart, Water Wise
- Part 7.2 Waste Minimisation and Management
- Part 8.1 Construction Activities
- Part 8.2 Stormwater and Floodplain Management
- Part 8.3 Driveways
- Part 9.3 Parking Controls
- Part 9.5 Tree Preservation

The application was notified in accordance with DCP 2014 and during this time five (5) submissions were received, and are addressed later in this report.

Construction Activities, Stormwater, Driveways and Parking are addressed in the engineer's comments later in this report.

The requirements for energy and water savings are addressed by the BASIX Certificate provided with the application. However, the BASIX Certificate provided is unsatisfactory as it states that the DP is unregistered, however this is incorrect. The DP is registered, being DP 30295.

The operational waste requirements are not satisfactorily addressed by the waste management plan submitted with the application. In this regard, no details have been provided with regard to the demolition stage of the proposed development, and no information has been provided relating to excavated materials or its disposal during the construction phase.

A full assessment of the proposal under the Ryde DCP 2014 is illustrated in the compliance table at **ATTACHMENT 1**.

## **ITEM 2 (continued)**

The non-compliances identified in the table in respect to Part 3.3 Dwelling Houses and Dual Occupancy, are assessed in detail below:

### **1. Part 3.3, Section 2.1 – Desired Future Character**

Section 2.1 within Part 3.3 of the RDCP 2014 requires developments to be consistent with the desired future character of low density residential areas, which is outlined as having:

- A limited number of dual occupancy (attached) buildings, and that these buildings are to look similar to detached dwellings;
- Buildings with a high degree of amenity;
- Garages and other structures which are not prominent elements in the streetscape and which are compatible with the character of the dwelling;
- Minimal disturbance to the natural topography, meaning excavation is minimised; and
- Allotments with large deep soil areas which allow rainwater to be absorbed and trees to be planted.

The proposal fails to comply with this control for the following reasons:

- Due to the narrow lot width, garages are considered to be visually prominent.
- Windows and doors of all dwellings shall be clearly apparent from the street, however this is not the case for dwelling 2 due to the narrowness of the site.
- The garage of both dwellings encroach the front setback, which is inconsistent with existing streetscape.

### **2. Part 3.3, Section 2.9.1 – Front Setbacks**

In accordance with Section 2.9.1, within Part 3.3 of the RDCP 2014, the setback from the front boundary:

- establishes the location of the building's front façade;
- helps unify streetscapes by providing a consistent street front alignment for buildings; and
- creates a transition between the public space of the street and the private space of the dwelling.

The garage of both dwellings and the bedrooms above, the garages encroach the front 6m setback as illustrated in Figures 11 and 11A. In the cul-de-sac, dwellings are generally well setback from the street, greater than the 7m required by the DCP. The non-compliance with the 6m front setback control will be incompatible with the character of the street, as well as reduce the opportunity for landscaping. This contributes to the development being inconsistent with the character of the area.

## ITEM 2 (continued)

It should also be noted that the design of the development would prevent a car parking on the driveway in front of either dwelling as this would prevent another car being able to access the garage of the adjoining dwelling.



Figure 11: Plan showing garage encroachment (6m line shown in red).

## ITEM 2 (continued)



Figure 11A: Plan showing first floor bedroom encroachment (6m line shown in red).

### 3. Part 3.3, Section 2.9.2 – Side Setbacks

Side setbacks are crucial in ensuring suitable separation between dwellings is provided for fire safety, privacy, light and air. The RDCP 2014 stipulates that the outside walls of a two storey dwelling are to be set back from side boundaries not less than 1.5 metres. Setbacks are measured at 90 degrees to the allotment boundary and are measured to the outer most edge of the building elevation including balconies, terraces and porches. In this regard, Dwelling 1 provides a side setback of 1.5m to the outer wall, but only 900mm to the 1<sup>st</sup> floor balcony, which is located off the main bedroom which is shown in Figure 12. It is considered that as the balcony only services a bedroom, its size is excessive, and there is no reason why it cannot comply. If the application was to be recommended for approval, a condition of consent would be required to ensure the balcony was setback 1.5m from the side boundary.



## ITEM 2 (continued)

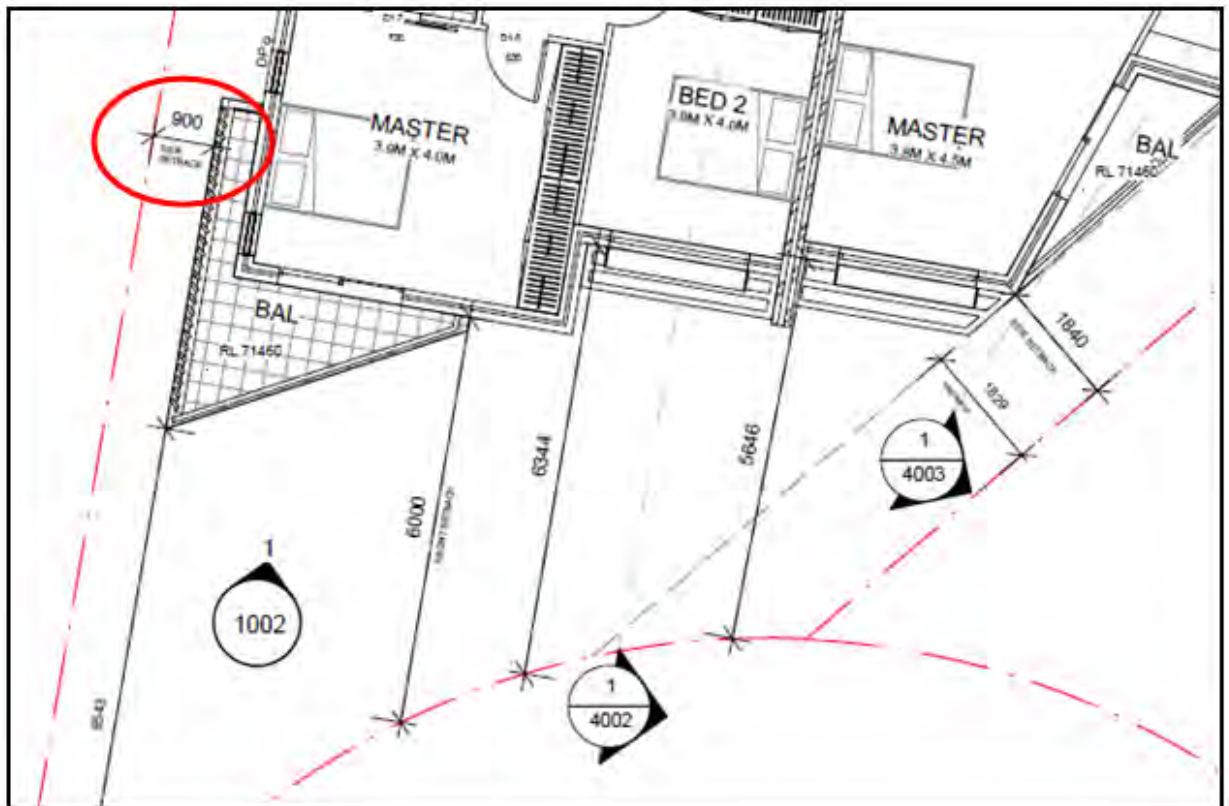


Figure 12: Dwelling 1 first floor balcony side setback encroachment

### 4. Part 3.3, Section 2.9.3 – Rear Setbacks

As stated in Part 3.3, Section 2.9.3 of RDCP 2014, setbacks provide open space to the rear of a dwelling to allow for mature tree growth, as well as creating private areas for recreational purposes. Furthermore, rear setbacks provide for separation distances between neighbouring dwellings to ensure visual and acoustic privacy is achieved for all dwellings. In this regard, the development is required to provide an 8 metre rear setback, however dwelling 1 provides a rear setback of 7.372m (min) and Dwelling 2 provides a rear setback of 6.281m (min). It is considered that the non-compliance is acceptable as there is sufficient space to accommodate recreational activities. It is also considered that visual and acoustic privacy will be maintained between neighbouring dwellings.

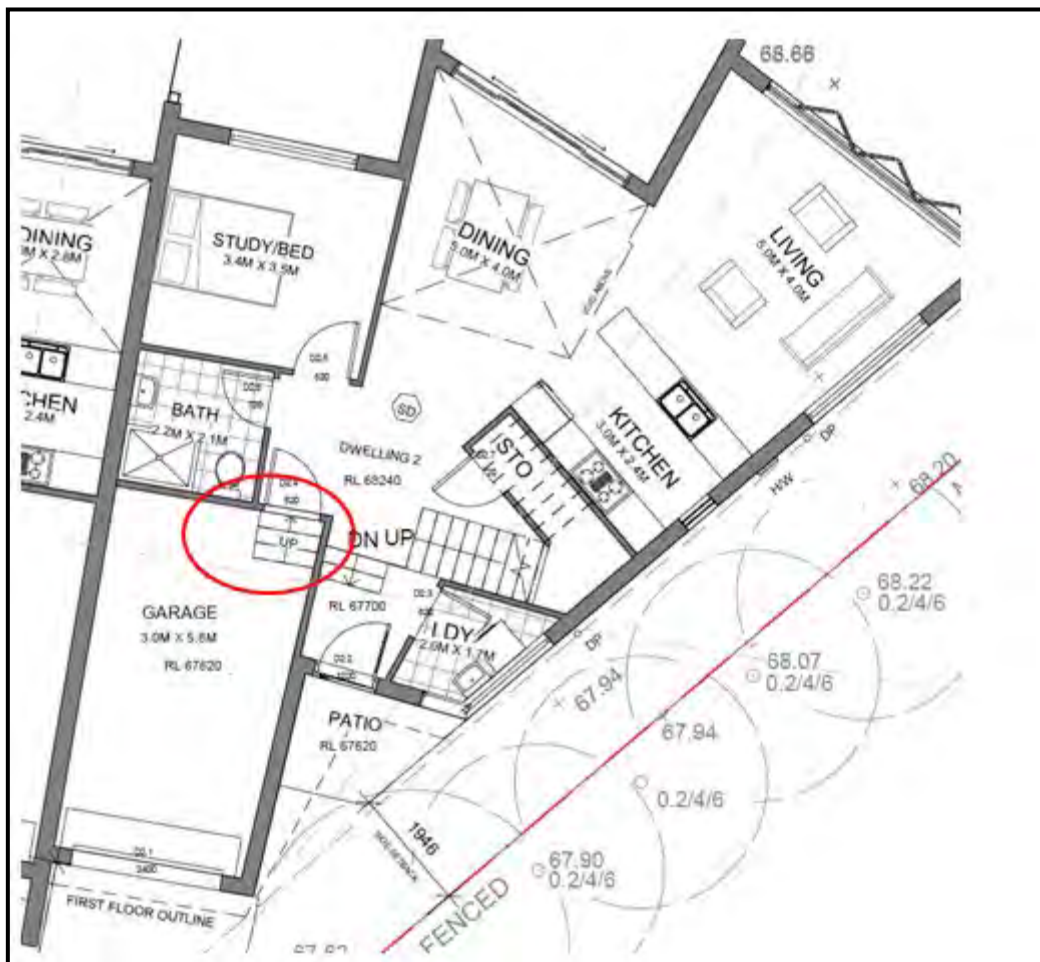
The deep soil zone of 8m x 8m is also not achieved, however this non-compliance is considered satisfactory in this instance because it is considered that the area provided, being 6.24m x 8m will still allow for suitable deep soil planting and landscaping.

## ITEM 2 (continued)

### 5. Part 3.3, Section 2.11 – Car Parking & Access

There are a number of car parking controls which do not comply due to the narrowness of the site. These controls include:

- The maximum width of the garage is 6 metres or 50% of the frontage. The external width is 6.24m.
- Garages must be located behind the building line and be setback 1m from the facade, however the garage of Dwelling 2 projects forward of the building line.
- The minimum internal garage dimensions do not comply. In this regard, the minimum single garage dimensions are 3m x 5.4m. The garage of dwelling 2 provides the minimum dimensions, however the internal stairs leading into the dwelling encroaches the minimum parking area as shown in Figure 13.



**Figure 13: Stair encroachment into the garage of Dwelling 2**

It is considered that these non-compliances are unacceptable because the projection of the garages does not allow them to be integrated with the overall design, and as a result, the visual impacts of car parking structures within the streetscape are unacceptable.

## ITEM 2 (continued)

### 6. Part 3.3, Section 2.14 – Dwelling Amenity

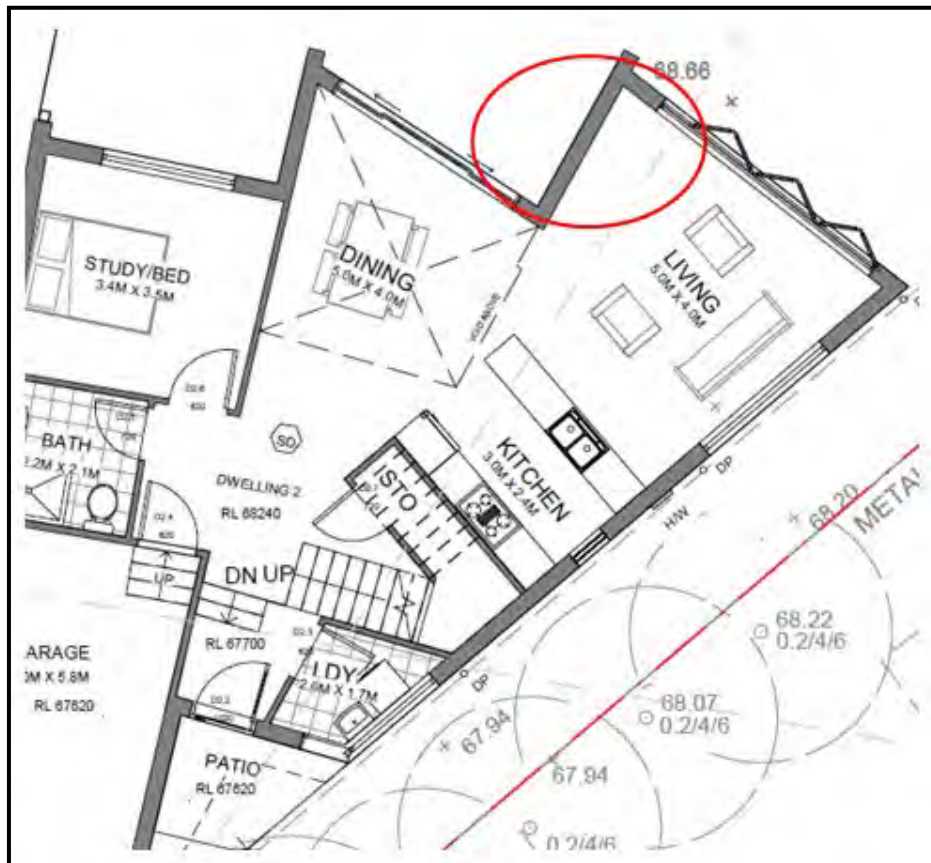
As stated in Part 3.3, Section 2.14 of RDCP 2014, the aspects of building amenity included:

- daylight and sunlight access;
- visual privacy;
- acoustic privacy;
- cross ventilation; and
- view sharing.

The development fails to address amenity controls in regard to solar access within the RDCP 2014, and these include:

- *Living areas are to face north where the orientation make this possible.*

The living area of Dwelling 2 has windows facing both east and south, however there is the potential for a north facing window to be provided as shown in Figure 14. This could be addressed as a condition of consent if the application was to be approved.



**Figure 14: Living area within Dwelling 2 – potential for north facing window circled in red**

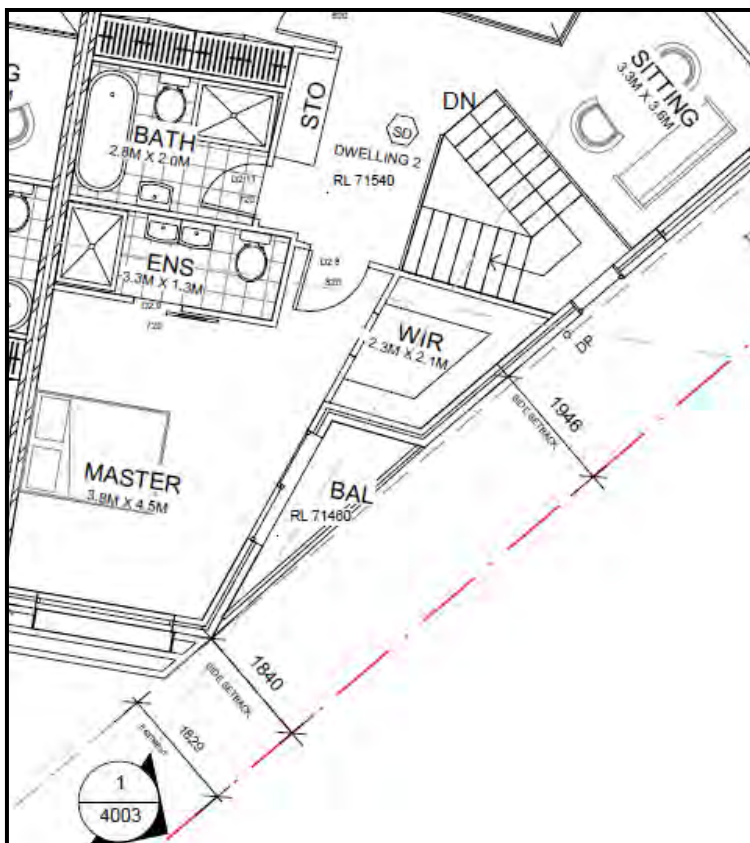
## ITEM 2 (continued)

- *At least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows between 9am and 3pm on June 21.*

The property at 19 Schmack Street has a north facing window which may be impacted, however insufficient information has been submitted with the development application to determine if this control has been complied with. Furthermore, the owners of No. 19 have lodged an objection to the proposed development, and have specifically raised concerns with overshadowing.

- *Orientate windows of living areas, balconies and outdoor living areas to the front and rear of dwelling.*

The balcony off the master bedroom within Dwelling 2 faces the eastern side boundary, which poses privacy and overlooking concerns to the adjoining site along the southern boundary (see Figure 15), therefore this balcony not supported.



**Figure 15: Dwelling 2 – Master bedroom balcony posing overlooking concerns to adjoining site.**

## **ITEM 2 (continued)**

### **Conclusion**

The proposed development has resulted in a number of non-compliances with the development controls contained in Part 3.3 of RDCP 2014. These non-compliances are a consequence of the narrow site frontage, which prevents the proposal from being capable of providing the a greater landscaping area within the front setback area, consistent with the character with the existing streetscape.

It is also acknowledged that whilst there are some non-compliances that can be resolved by the imposition of conditions of consent, overall the proposed development does not enhance the existing streetscape character, nor does it respect the key elements of the desired future character of the local area. Accordingly, the narrowness of the site causes it to be unsuitable for the construction of a dual occupancy, and results in the development having adverse effects on the local built environment within Schumack Street.

### **7. Part 7.2, Waste Minimisation & Management**

Insufficient information has been provided in the SWMMP for it to be satisfactorily assessed. In this regard, no demolition information has been provided, and no information has been provided relating to excavated materials or its disposal during the construction phase.

It is noted that due to site constraints, it will be difficult to place the four bins on along for kerbside for collection.

### **5.5 Planning Agreements OR Draft Planning Agreements**

The application is not the subject of any planning agreements or draft planning agreements.

### **5.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)**

Council's current Section 7.11 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 contributions 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:



**ITEM 2 (continued)**

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	\$4,227.74
Open Space & Recreation Facilities	\$10,407.85
Civic & Urban Improvements	\$3,539.91
Roads & Traffic Management facilities	\$482.86
Cycleways	\$301.62
Stormwater Management Facilities	\$958.70
Plan Administration	\$81.32
<b>The total contribution is</b>	<b>\$20,000.00</b>

**5.7 Any matters prescribed by the regulations**

All matters prescribed by the regulations have been considered in the assessment of the application.

**6. The likely impacts of the development**

The impacts of the development have been considered throughout this report.

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

Given the inability of the site to make provision for the minimum frontage required under RYDE LEP 2014 due to its position within the cul-de-sac head, it is not considered that the site is a suitable one for the form of development proposed. Furthermore, sufficient information has not been provided to demonstrate that the proposed development does not affect the amenity of the neighbouring properties as a result of overshadowing, nor has the submitted sufficient information about waste disposal.

**8. The Public Interest**

Given the above assessment, it is not considered that approval of the application would be in the public interest as the site is not suitable for an attached dual occupancy.

**9. Submissions**

The application was notified between 10 September 2018 and 25 September 2018. In response to the notification, five (5) submissions were received. The concerns raised in the submissions are summarised and addressed following.

## **ITEM 2 (continued)**

**The proposed development does not meet the Ryde City building codes/regulations for dual occupancies – minimum 20m frontage.**

*Comment:* Noted. The application fails in regard to this matter and as such is not supported.

**The previous land owners had building a fence and access gate, to Cutler Parade and placed a shed on DP28915 Energy Australia land which is not their land, and this still remains.**

*Comment:* This is a matter for the owners of the land (Ausgrid) to manage, and is a separate matter which is unable to be dealt with under this development applicant process.

**Council should note that running underground along the southern boundary fence line of this property are Aus. Grid high voltage 11 KV mains from the transformer in Cutler Parade.**

*Comment:* Comments have been sought from Ausgrid in relation to the proposed development, who advised Council of the following:

*“Ausgrid consents to the development provided no buildings are built on top of the easement (allowing 24/7 access) and existing cable depths are maintained. Special care should also be taken to ensure that any construction activities within the area do not interfere with the existing cables. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables.”*

**The coverage of the site appears excessive**

*Comment:* The site is required to achieve a gross floor area of 0.5:1. As stated earlier in this report it is considered that the proposed development is not compliant in this regard.

## **ITEM 2 (continued)**

**No. 17 is at the end of a cul-de-sac. There is no safe street parking for properties 17, 19, 22, 18A and 18 which are also at the end of the cul-de-sac. Vehicles do not currently park outside these properties. Vehicles frequently turn in this area and Council garbage trucks have considerable difficulty turning here.**

*Comment:* The proposed development complies with the required on-site parking controls. There is no evidence to suggest that the proposed development will impact the safe street parking for the properties at the end of the cul-de-sac

**No. 17 could currently accommodate about 5 vehicles off street, but the proposed development will have two garages using a common driveway. It is highly likely that the proposed development would have four or more (usually large) vehicles as evidenced by similar developments in our area. The result would be more traffic and excessive, dangerous parking in the street.**

*Comment:* The proposed dual occupancy is likely to exacerbate the on street parking situation and the number of cars will potentially lead to more traffic in Schumack Street, however there is no evidence to suggest that the proposed development will result in dangerous parking in the street. It is noted that the proposed development complies with the required parking controls.

**The plans indicate that there will be significant shadowing problems for some residents**

*Comment:* Solar access has been discussed elsewhere in this report. It is noted that the applicant has submitted insufficient information to determine if the proposed development complies with the solar access controls.

**The proposed building design and materials are out of character with the rest of street**

*Comment:* The provisions of the RDCP in terms of building materials have been met. However in terms of building design, it is agreed that the proposed design, especially the front elevation, is not well proportioned as it creates garage dominance. It is also agreed that due to the narrow lot width, the proposed development is unable to achieve a design that is compatible with the existing and desired streetscape, and hence the proposed development is being recommended for refusal.

**The Duplex Application would set a poor precedent and not be in the public interest due to ignorance of City of Ryde Planning Control.**

*Comment:* As has been raised in this report, the application fails to achieve full compliance with the development standards set out in the RLEP, and as such is not supported.

## ITEM 2 (continued)

**According to the NSW Low Rise Medium Density Housing Code, the minimum road frontage must be over 12 metres**

*Comment:* Noted. It is acknowledged that the Low Rise Medium Density Housing Code currently does not apply to the City of Ryde.

**Our concerns lie mainly with dwelling 2. There is a significant lack of privacy from the dwelling's windows and balcony. The windows and in particular the balcony provide our property with little to no privacy. It also provides limited privacy to the owners/residents of dwelling 2 as we will have access to seeing into their homes as is the current issue with two of our other neighbours.**

*Comment:* These concerns are acknowledged, and as such the proposed development is not supported.

**Another concern is the increased amount of shadow across our property especially during the winter months and how the lack of sunlight will affect the long-term existing trees and plants.**

*Comment:* Solar access has been discussed elsewhere in this report. It is noted that the applicant has submitted insufficient information to determine if the proposed development complies with the solar access controls. The application fails in regard to this matter and as such is not supported.

**Another concern is the lack of parking within the street in particular the cul-de-sac. The street is currently used by people using public transport into the city along with the many residents whom have multiple cars. Based on the site plans made available there appears to be little consideration for parking on the driveway for both properties which increases the cars within the street especially the cul-de-sac.**

*Comment:* It is agreed that there is minimal opportunity for parking to be provided on the communal driveway of the proposed dual occupancy; however a compliant width of the site would prevent this occurring.

## 10. Referrals

**Landscaping Officer** - the following comments were provided in respect of the development application:

*This assessment considers the proposed tree removal, tree retention, impact on existing trees and landscaping as part of a development application for the construction of a new dual occupancy development at the subject site being 17 Schumack Street, North Ryde.*

## ITEM 2 (continued)

The removal of three (3) trees (**Trees 4, 5 & 6 – see Figure 16**) located on the subject site has been supported. The removal of these trees will result in a low to moderate impact to the landscape character of the site, however the impact is considered to be satisfactorily offset by the proposed landscape scheme including new tree plantings.

The submitted landscape plan is generally considered to be satisfactory with regards to overall layout, design, plantings and areas dedicated to private open space and deep soil.

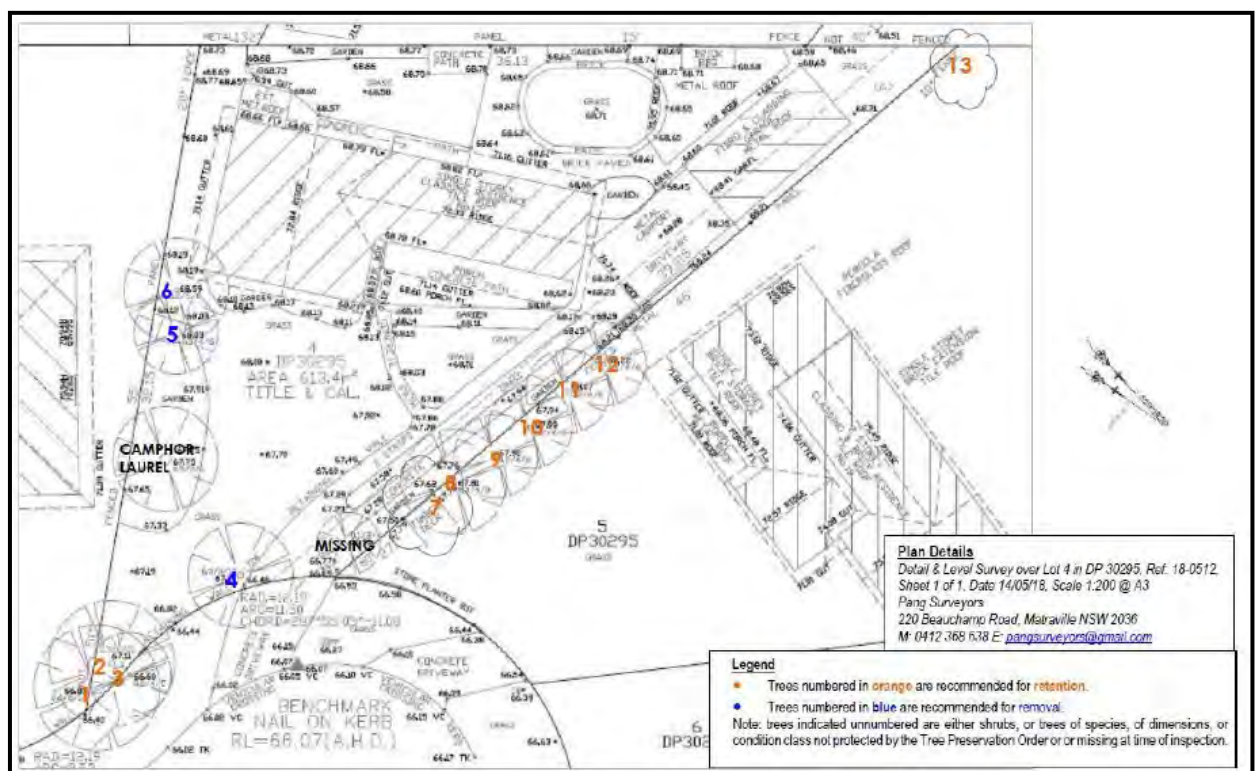


Figure 16: Tree Location Plan (Source: Redgum Horticultural 2018)

**Senior Coordinator Development Services** - the following comments were provided in respect of the development application:

*Proposed stormwater management system for the development discharges to the kerb in Schumack Street and incorporates an onsite detention system.*

*The proposal provided one garage for each unit which complies with Council's DCP 2014 Part 8.2 for Dual Occupancy.*

*The subject property is located within the cul-de-sac of Schumack Street with a street frontage of 11.50m along the arc. This does not comply with the 20m minimum street frontage requirement for dual occupancies as specified in Council's LEP 2014 Clause 4.1B.*



**ITEM 2 (continued)**

*A review of the plan has noted the following matters which do not comply with Council's DCP and relevant Australian Standards and need to be addressed;*

- 1. Site is affected by 1.82m wide easement for electricity purposes along the southern boundary. The building is proposed with a minimum setback of 1.84m to the side boundary. The stormwater drainage lines are proposed to run within this easement. It is not clear if the electricity authority who has the benefit of this easement is OK for the stormwater lines/pits to be within the easement. (It appears that plans have been referred to Ausgrid and yet to receive a response).*
- 2. The access to the garages is proposed via a 4.2m wide angled non-standard driveway across the footpath. Chapter S2.3 of Council's DCP Part 8.2 for Driveways, (technical Part) requires all driveways across the footpath to be perpendicular to the kerb. Due to the existing power pole on the footpath, this will be difficult to achieve unless the power pole is relocated. The driveway can be narrowed to 3.5m at the boundary with a crossover of similar width across the footpath. An internal transition of the driveway to the garages will be required.*
- 3. The proposed wall protruding beyond the front of the garages will interfere with vehicular access to the garage of dwelling 2. This part of the protruding party wall should be removed to allow vehicular access to the garage of Dwelling 2.*
- 4. The garage of Dwelling 2 is shown with dimensions of 3.0m x 5.8m. There is a level difference of 620mm between the garage and the living areas which requires 4 steps. With 200mm going, the steps will extend 600mm into the garage reducing the garage length to 5.2m. The minimum garage length required as per AS 2890.1 is 5.4m.*
- 5. The proposed floor levels indicate cut at the rear of the dwelling up to about 600mm. The landscape plan shows retaining walls and rear levels. These ground levels do not comply with BCA requirements for minimum freeboard to the dwelling.*
- 6. The landscape plan is not consistent with the architectural & drainage plans and shows additional paved/deck areas.*

*The application as submitted cannot be supported unless the plans are amended to address the above issues.*

*Comment:* Given the concern with the suitability of the site to accommodate an attached dual occupancy due to the narrow site width, the request for additional information was not made to the applicant.

## **ITEM 2 (continued)**

### **11. Conclusion**

The development application is recommended for refusal for the following reasons:

- 1) Given the inability of the site to provide a 20 metre frontage in accordance with Clause 4.1B(2)(b) of the Ryde LEP 2014, it is not considered that the site is suitable for the proposed attached dual occupancy.
- 2) Given the inability of the site to provide a 20 metre frontage in accordance with Clause 4.1B(2)(b) of the Ryde LEP 2014, it is not considered that the development proposed complies with the objective of this development standard.
- 3) Further, the development proposed is unable to satisfy key development standards for dual occupancy (attached) sites under the relevant planning controls, such as:
  - Inadequate front/side/rear setbacks.
  - Unable to achieve a design that is compatible with the existing and desired streetscape.
  - Inadequate public domain amenity.
  - Unacceptable streetscape and impacts from garage dominance.
  - Inadequate Waste Management Plan.
  - Inadequate measures to protect the privacy of adjoining property at No. 19 Schumack Street.
  - Inadequate information addressing of solar impacts upon the neighbouring property at No. 19 Schumack Street.
  - Inadequate garage dimensions and driveway requirements in accordance with RDCP 2014 and the Australian Standards.
- 4) Approval of the development proposed would create an undesirable precedent.
- 5) The development is not considered to be in the public interest.

### **12. RECOMMENDATION:**

1. That Development Application LDA2018/348 for the demolition of the existing structures on the site, removal of four trees and construction of a two storey attached dual occupancy at 17 Schumack Street, Ryde, be refused for the following reasons.
  1. The proposed development provides an inadequate lot width and is inconsistent with the requirements of Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014.

**ITEM 2 (continued)**

2. The proposed development failed to submit a satisfactory written request to vary the lot width development standard which complies with Clause 4.6 Exceptions to development standards of the Ryde Local Environmental Plan 2014.
3. A BASIX Certificate has been provided which is unsatisfactory as it states that the DP is unregistered, however this is incorrect. The DP is registered, being DP 30295.
4. The proposed development is uncharacteristic of development in the vicinity of the site, having an inadequate front setback, garage dominance and as such the proposed development is unable to achieve a design that is compatible with the existing and desired streetscape in accordance with the provisions of the Ryde Development Control Plan 2018.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the development does not comply with the following provisions of the Ryde Development Control Plan 2014:
  - The proposed development inadequately addressed public domain amenity as the window and door of Dwelling 2 are not clearly apparent from the street due to the narrow lot width.
  - The proposed design fails to provide adequate front, side and rear setbacks, which all reduce the amenity benefits to the site and adjoining properties and streetscape benefits.
  - The Waste Management Plan lodged with the application does not provide adequate information as required by Part 7.2 of the DCP. The Waste Management Plan fails to provide details in regard to the demolition stage of the proposed development, and no information has been provided relating to excavated materials or its disposal during the construction phase.
  - The application provides inadequate vehicular access from *the* garages. Chapter S2.3 of Council's DCP Part 8.2 for Driveways, (technical Part) requires all driveways across the footpath to be perpendicular to the kerb. The driveway must be narrowed to 3.5m at the boundary with a crossover of similar width across the footpath.
  - The design of Dwelling 2's garage is unacceptable and does not comply with the minimum garage length required in accordance with Australian Standard 2890.1.
  - The design makes inadequate provision for the protection of privacy of adjoining properties, with the balcony of Dwelling 2 overlooking windows of adjoining property at No. 19 Schumack Street and will result in unacceptable privacy impacts upon that property.

**ITEM 2 (continued)**

- The shadow diagrams lodged with the application do not provide adequate information to demonstrate that at least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows at No. 19 Schumack Street between 9am and 3pm on June 21.
  - 6. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, that the proposed attached dual occupancy is not suitable for the site given the proposal does not meet key development standards for dual occupancy development under the relevant planning controls.
  - 7. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, in that the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.
  - 8. Approval of the development proposed would create an undesirable precedent.
2. That the objector be advised of the decision.

**ATTACHMENTS**

- 1 Compliance Table
- 2 Clause 4.6 variation
- 3 A3 Plans - subject to copyright provisions - CIRCULATE UNDER SEPARATE COVER

Report Prepared By:

**Natalie Camilleri**  
**Senior Town Planner**

Report Approved By:

**Tony Collier**  
**Senior Coordinator - Major Development**

**Sandra Bailey**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 2 (continued)**

**ATTACHMENT 1**

Compliance Table  
17 Schumack Street, North Ryde  
Dwelling Houses and Dual Occupancy

DCP 2014	Proposed	Compliance
<b>Part 3.3 - Dwelling Houses and Dual Occupancy (attached)</b>		
<b>Desired Future Character</b>		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is not consistent with the desired future character of the low residential area as detailed further in this table, which is associated with the fact that the minimum frontage requirement has not been met.	<b>No</b>
<b>Dwelling Houses</b>		
- To have a landscaped setting which includes significant deep soil areas at front and rear.	Front and rear gardens proposed.	Yes
- Maximum 2 storeys.	Two storey proposed.	Yes
- Dwellings to address street	Dwellings present to Schumack Street.	Yes
- Garage/carports not visually prominent features.	Due to the narrow lot width garages are considered to be visually prominent. The garage of dwelling 2 protrudes 1.5m forward of its building line.	<b>No</b>
<b>Public Domain Amenity</b>		
<b>Streetscape</b>		
- Front doors and windows are to face the street. Side entries to be clearly apparent.	Window and door of Dwelling 1 face street however front door window of Dwelling 2 are not clearly apparent from the street due to the narrow lot width.	<b>No</b>
- Single storey entrance porticos.	Single entrance portico not provided.	Yes
- Articulated street facades.	Articulated street façade.	Yes
<b>Public Views and Vistas</b>		
- A view corridor is to be provided along at least one side allotment boundary	No views will be impacted by proposal.	Yes



**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<p>where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Garages/carports and outbuildings are not to be located within view corridor if they obstruct view. Fence 70% open where height is &gt;900mm.</p>		
<p><b>Pedestrian &amp; Vehicle Safety</b></p> <ul style="list-style-type: none"> <li>- Car parking located to accommodate sightlines to footpath &amp; road in accordance with relevant Australian Standard.</li> <li>- Fencing that blocks sight lines is to be splayed.</li> </ul>	<p>Development Engineer has raised no issues in regard to pedestrian and vehicle safety.</p>	<p>Yes</p>
<b>Site Configuration</b>		
<p><b>Deep Soil Areas (DSA)</b></p> <ul style="list-style-type: none"> <li>- 35% of site area min.</li> <li>- Min 8x8m deep soil area in backyard.</li> <li>- Front yard to have deep soil area (only hard paved area to be driveway, pedestrian path and garden walls).</li> <li>- Dual occupancy developments only need 1 of 8 x 8m area (doesn't have to be shared equally).</li> </ul>	<p>Permeable (deep soil) area: 322.81m<sup>2</sup> approximately or 53% of site area.</p> <p>Rear DSA dimensions: 6.25m x 8m provided. See Landscaping Officer's comments in report.</p> <p>Front DSA: 100% permeable area in front yard = 55.8m<sup>2</sup> (72.62%). Hard surface areas have been kept to a minimum in the front yard.</p>	<p>Yes</p> <p><b>No, considered acceptable.</b></p> <p>Yes</p>

**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Topography &amp; Excavation</b>  Within building footprint: - Max cut: 1.2m - Max fill: 900mm  Outside building footprint: - Max cut: 900mm - Max fill: 500mm - No fill between side of building and boundary or close to rear boundary - Max ht retaining wall 900mm	Within BF Max cut: 500mm Max fill: 200m  Outside BF Max cut: 330mm Max fill: 100mm  Max retaining wall height 470mm	Yes
<b>Height</b>		
- 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL).	2 storeys maximum	Yes
- 1 storey maximum above attached garage incl semi-basement or at-grade garages.	N/A	N/A
Wall plate (Ceiling Height) - 7.5m max above FGL or - 8m max to top of parapet  <i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> <i>FGL = Finished Ground Level</i>	TOW RL: 74.240 FGL below RL: 67.55 TOW Height (max)= 6.69mm	Yes
9.5m Overall Height  <i>NB: EGL = Existing Ground Level</i>	Ridge RL= 76.499 Existing ground RL (lowest under ridge) = 68.14	Yes

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
	<b>Building height = 8.35m</b>	
Habitable rooms to have 2.4m floor to ceiling height (min).	2.7m min room height.	Yes
<b>Setbacks</b>		
<b>Front</b> <ul style="list-style-type: none"> <li>- 6m to façade (generally)</li> <li>- Garage setback 1m from the dwelling façade</li> <li>- Wall above is to align with outside face of garage below.</li> <li>- Front setback free of ancillary elements eg RWT, A/C</li> </ul>	<p>The garage of both dwellings encroach the front setback as illustrated in Figure 11, which is inconsistent with the control as the front setback is to be free of structures.</p> <p>Due to the insufficient lot width, the garage of dwelling 2 protrudes well forward of the front façade.</p>	<b>No</b>
<b>SIDE</b> <b>Single storey dwelling</b> <ul style="list-style-type: none"> <li>- 900mm to wall</li> <li>- Includes balconies etc</li> </ul>	N/A	N/A
<b>SIDE</b> <b>Two storey dwelling</b> <ul style="list-style-type: none"> <li>- 1500mm to wall</li> <li>- Includes balconies etc</li> </ul>	<p>Dwelling 1 – min 900mm to balcony and 1.5m to wall</p> <p>Dwelling 2 – min 1.829m to wall</p>	<p><b>No</b></p> <p>Yes</p>
<b>Rear</b> <ul style="list-style-type: none"> <li>- 8m to rear of dwelling <b>OR</b> 25% of the length of the site, whichever is greater.</li> </ul> <p><b>Required:</b>  <b>Dwelling 1 = 8.03m</b>  <b>Dwelling 2 = 9.75m</b></p>	<p>Dwelling 1 – 7.372m – 7.592m</p> <p>Dwelling 2 – 6.309m – 6.309m</p>	<b>No, considered acceptable.</b>

**ITEM 2 (continued)**

## ATTACHMENT 1

DCP 2014	Proposed	Compliance
<b>Outbuildings</b>		
Not within front setback.	No outbuildings proposed	N/A
Max area – 20m <sup>2</sup>		N/A
Max wall plate (ceiling) height 2.8m		N/A
Max O/A height 4.5m – Ridge to EGL		N/A
To be single storey.		N/A
Windows not less than 900mm from boundary.		N/A
Concrete dish drain if setback less than 900mm.		N/A
Design to complement new dwelling.		N/A
<b>Car Parking &amp; Access</b>		
<b>General</b> <ul style="list-style-type: none"> <li>- Dwelling: 2 spaces max, 1 space min.</li> <li>- Dual Occupancy (attached): 1 space max per dwelling.</li> <li>- Where possible access off secondary street frontages or laneways is preferable.</li> <li>- Max 6m wide or 50% of frontage, whichever is less.</li> <li>- Behind building façade.</li> </ul>	Number/location of car spaces: 2 (one single garage per unit)	Yes
	Access provided from: Schumack Street	
	External width: 6.24m	No
	Dwelling 2 garage is forward of the building facade	No
<b>Garages</b> <ul style="list-style-type: none"> <li>- Garages setback 1m from façade.</li> <li>- Total width of garage doors visible from public space must not exceed 5.7m and be setback not more than 300mm behind the outside face of the building element</li> </ul>	Dwelling 2 garage projects forward of the building facade	No
	Width of opening: 5.66m	Yes

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>- immediately above.</li> <li>- Garage windows are to be at least 900mm away from boundary.</li> <li>- Carport is not permitted to be enclosed.</li> </ul>	<p>N/A</p> <p>N/A</p>	<p>N/A</p> <p>N/A</p>
<p><b>Parking Space Sizes (AS)</b></p> <ul style="list-style-type: none"> <li>o Double garage: 5.4m wide (min)</li> <li>o Single garage: 3m wide (min)</li> <li>o Internal length: 5.4m (min)</li> </ul>	<p>Internal measurements: 3.0m x 5.80m, however the stairs encroach within dwelling 2's minimum required dimensions.</p>	<p><b>No</b></p>
<p><b>Driveways</b> Extent of driveways minimised</p>	<p>Achieved.</p>	<p>Yes</p>
<b>Landscaping</b>		
<p><b>Trees &amp; Landscaping</b></p> <ul style="list-style-type: none"> <li>- Major trees retained where practicable</li> <li>- Physical connection to be provided between dwelling and outdoor spaces where the ground floor is elevated above NGL eg. stairs, terraces.</li> <li>- Obstruction-free pathway on one side of dwelling (excl cnr allotments or rear lane access)</li> <li>- Front yard to have at least 1 tree with mature ht of 10m min and a spreading canopy.</li> <li>- Back yard to have at least 1 tree with mature ht of 15m min and a spreading</li> </ul>	<p>Four trees to be removed as part of this application.</p> <p>Step down provided from alfresco area to rear yard.</p> <p>Achieved.</p> <p>Achieved.</p> <p>Achieved.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
canopy. - Hedging or screen planting on boundary mature plants reaching no more than 2.7m. - OSD generally not to be located in front setback unless under driveway.	None proposed.  OSD in the form of rainwater tank.	N/A  Yes
- Landscaped front garden, with max 40% hard paving = 30.73m <sup>2</sup>	Hard Paving= 34.12m <sup>2</sup> or 44.4%	Yes
<b>Dwelling Amenity</b>		
<b>Daylight and Sunlight Access</b> - Living areas to face north where orientation makes this possible.  - 4m side setback for side living areas where north is to the side allotment boundary.  <u>Subject Dwelling:</u> - Subject dwelling north facing windows are to receive at least 3hrs of sunlight to a portion of their surface between 9am and 3pm on June 21. - Private Open space of subject dwelling is to receive at least 2 hours sunlight between 9am and 3pm on June 21.	Dwelling 1 living areas has windows facing both north and east.  Dwelling 2 living areas have windows facing both east and south.     N/A     North facing windows achieve at least 3 hours sunlight.    Achieved.	Yes  <b>No</b>     N/A    Yes   Yes



**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<u>Neighbouring properties are to receive:</u> <ul style="list-style-type: none"> <li>- 2 hours sunlight to at least 50% of adjoining principal ground level open space between 9am and 3pm on June 21.</li> <li>- At least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows between 9am and 3pm on June 21.</li> </ul>	<p>Achieved.</p> <p>The property at 19 Schmack Street has a north facing window which may be impacted, however insufficient information has been submitted with the development application to determine if this control has been complied with. Further the owners of No. 19 have lodged an objection to the proposed development, and have specifically raised concerns with overshadowing.</p>	<p><b>Insufficient Information submitted</b></p>
<p><b>Visual Privacy</b></p> <ul style="list-style-type: none"> <li>- Orientate windows of living areas, balconies and outdoor living areas to the front and rear of dwelling.</li> <li>- Windows of living, dining, family etc placed so there are no close or direct views to adjoining dwelling or open space.</li> <li>- Side windows offset from adjoining windows.</li> <li>- Terraces, balconies etc are not to overlook neighbouring dwellings/private open space.</li> </ul>	<p>Dwelling 1 – Achieved</p> <p>Dwelling 2 – The balcony off the master faces the eastern side boundary which poses privacy concerns to the adjoining site, and is not supported.</p> <p>Achieved</p> <p>Achieved</p> <p>See above.</p>	<p>Yes</p> <p><b>No</b></p> <p>Yes</p> <p>Yes</p> <p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>View Sharing</b> - The siting of development is to provide for view sharing.	No views are prevented for adjoining dwellings as a result of this development.	Yes
<b>Cross Ventilation</b> - Plan layout is to optimise access to prevailing breezes and to provide for cross ventilation.	Number and location of windows provide adequate ventilation for dwelling.	Yes
<b>External Building Elements</b>		
<b>Roof</b> - Articulated. - 450mm eaves overhang minimum to pitched roofs. - Not to be trafficable Terrace. - Skylights to be minimised and placed symmetrically. - Front roof plane is not to have both dormer windows and skylights.	Adequate roof articulation provided. No pitched roof proposed  No trafficable terraces proposed.  No skylights proposed	Yes   N/A  Yes
<b>Attic Dormer Windows</b> - Max 2 dormer windows with a max total width of 3m. - Highest point to be 500mm min below roof ridge and 1m min above the top of gutter. - Total roof area of attic dormer: 8m <sup>2</sup> - Front face to be setback 1m min back from external face of wall below. - Balconies set into roof not permitted.	No dormer windows proposed.	N/A

**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Fencing</b>		
<b>Front/return:</b> <ul style="list-style-type: none"> <li>- To reflect design of dwelling.</li> <li>- To reflect character &amp; height of neighbouring fences.</li> <li>- Max 900mm high for solid (picket can be 1m).</li> <li>- Max 1.8m high if 50% open (any solid base max 900mm).</li> <li>- Retaining walls on front bdy max 900mm.</li> <li>- No colorbond or paling</li> <li>- Max width of piers 350mm.</li> </ul>	No front fence proposed.	N/A
<b>Side/rear fencing:</b> <ul style="list-style-type: none"> <li>- 1.8m max o/a height.</li> </ul>	1.8m high fencing to be retained on side/rear boundaries.	Yes
<b>Part 7.1 - Energy Smart, Water Wise</b>		
<b>Insulation</b>		
Walls: R1.5 Ceiling: R3.0	Complies	Yes
<b>External Clothes Drying Area</b>		
External yard space or sheltered ventilated space for clothes drying	Can be conditioned.	Yes
<b>Water Efficient Labelling &amp; Standards (WELS)</b>		
Minimum WELS rating of 4.5 stars for new or replacement dishwashers & washing machines.	BASIX provided (however DP not noted), development required to comply with BASIX commitments.	Yes
<b>Part 7.2- Waste Minimisation &amp; Management</b>		
Submission of a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	<p>The applicant has submitted a Waste Management Plan which is not in accordance with Part 7.2 of DCP 2014. In this regard, the following is not satisfactory:</p> <ul style="list-style-type: none"> <li>- Insufficient information has been provided in the SWMMP</li> </ul>	<b>No</b>

**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
	including no demolition information has been provided, and no information has been provided relating to excavated materials or its disposal during the construction phase. - <b>It is noted that due to site constraints, it will be difficult to place the four bins on along for kerbside for collection.</b>	
<b>Part 8.2 - Stormwater Management</b>		
<b>Stormwater &amp; Floodplain Management</b>		
Drainage is to be piped in accordance with Part 8.2 - Stormwater & Floodplain Management.	Development Engineer has raised issues with the proposed development, see comments below.	<b>No</b>
<b>Part 9.2- Access for People with Disabilities</b>		
Accessible path required from the street to the front door, where the level of land permits.	Achieved.	Yes
<b>Part 9.3 – Parking Controls</b>		
<b><i>Residential Development - Low Density</i></b>  <i>Dwelling houses up to 2 spaces / dwelling</i>  <i>Dual occupancy 1 space / dwelling</i>	1 garage space per dwelling is provided	Yes

**ITEM 2 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Part 9.5 – Tree Preservation</b>		
<p><b><i>Where the removal of tree(s) is associated with the redevelopment of a site, or a neighbouring site, the applicant is required to demonstrate that an alternative design(s) is not feasible and retaining the tree(s) is not possible in order to provide adequate clearance between the tree(s) and the proposed building and the driveway.</i></b></p>	<p>Four (4) trees are sought to be removed as part of this development application. As such, the applicant has lodged an Arborist Report prepared by Redgum Horticultural dated 31 July 2018. There are no objections in this regard - refer to the comments provided by Council's Landscape Officer below.</p>	<p>Yes</p>

**ITEM 2 (continued)**

**ATTACHMENT 2**

Clause 4.6 Exception to Development Standard  
– Minimum Lot Width for Dual Occupancy

Ryde LEP 2014

Proposed dual occupancy development  
17 Schumack Street, North Ryde

August 2018



## ITEM 2 (continued)

## ATTACHMENT 2

### 1 Introduction

#### 1.1 The variation request & summary of justification

Summary of Proposed Variation	
Address:	17 Schumack Street, North Ryde
Proposal:	Dual Occupancy
EPI applicable:	Ryde Local Environmental Plan 2014
Zoning:	R2 – Low Density Residential
Standard being varied:	Minimum lot sizes for dual occupancies (Clause 4.1B)
Numeric measure of variation:	Minimum: 20m Provided: 11.5m
Variation:	8.5m 42.5%

The lot is a triangular shaped allotment with a smaller frontage and a much larger rear boundary. This justification demonstrates how this proposal meets the purpose of the control and is an appropriate building in the context.

The *intent* of the frontage control is to prevent two dwellings on inappropriately narrow sites. I agree with such a control, however a site's frontage does not always tell the whole story about a site's capability or its size and dimensions. A large site can have a narrow frontage and a small site that narrows towards the rear can have a wide frontage. This obviously reality means that **a site frontage control must be wide open to variation where it can be shown that a sufficient building footprint exists on the site.**

This justification suggests that the width of the site at the location of the actual building is a better guide for determining site width. The other criteria in the DCP for performance also paint the picture as to overall capability. This site is capable. In this case, the building form is compliant with the site controls and meets all other setback controls. On this basis, the variation is supportable.

The LEP standard has a single objective which states: "...to achieve *planned residential density in certain zones*." This provides no clear performance objective but rather it is extremely general in its interpretation. It provides no attributes or merits that would assist in defining 'tangible successes' in achieving the objective. Indeed it refers only to "density". Frontage has no bearing on density unless the main body of the site affects its capacity to accommodate a building. This is a key insight and it illuminates a planning principle that underpins this justification. The consent authority can only argue that the resultant density is inappropriate or that the purpose of the frontage control is thwarted. Given the objective is unstated, I have gone to considerable lengths to recreate and interpret the purpose of the control to enable the appropriate assessment of this request for variation.

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It is helpful to look at *Jewel Rose Bay Developments Pty Ltd v Woollahra Municipal Council* [2016] NSWLEC 1421, where the Commissioner was assessing in the intent of a similar control and noted at [37] *"In regards to site area and frontage, the planners agree that the proposal: achieves compatibility with the scale, density, bulk and landscape character of the general built form in the area; provides setbacks which respond to the built form context of the site;"* This determination provides some insight into what considerations underpin a minimum site frontage control.

Additionally, *Stokes v Tweed Shire Council* [2017] NSWLEC 1542 noted that the frontage requirement was related to vehicular access. Where parking can meet the requirement and manoeuvring is satisfactory, the frontage compatibility is more justifiable.

Section 2.4 of Council's own DCP provides some further assistance in understanding the purpose of the lot width control. The objectives of Section 2.4 are:

1. *To retain streetscape, amenity, landscaped areas and private open space in residential zones.*
2. *To maintain a consistent density of development in low density residential areas.*
3. *To ensure that lot sizes enable sufficient areas of open space to be provided within each lot so as to enabling the retention and embellishment of green linkage corridors within residential zones.*

Beyond streetscape appropriateness, the DCP introduces the desired outcomes of suitable landscaping, private open space and green linkages.

**The absence of a meaningful objective for the standard allows for some flexibility in the interpretation of its intent.** I have suggested that the DCP provides some insight into the intent as does the numerous court cases that relate to this issue. This is not intended to diminish the desire for appropriate outcomes, however this proposal seeks to demonstrate that compliance is achieved notwithstanding the arc street frontage that is narrower than the 20m requirement.

Without labelling the point, it is reasonable to assert that the underlying intent of such a control is to ensure that lots are of sufficient size to allow for functional dwellings that have appropriate setbacks, private open space, landscaped areas, driveways and vehicle manoeuvring areas. This application demonstrates its performance in this regard.

This report argues that the amenity is appropriate to market expectations and there are no impacts that are so great that they warrant strict compliance with the control.

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines ("Varying development standards: A guide", published by the NSW Department of Planning and Infrastructure (DoPI) dated August 2011 and Circulars PS 08-003 & PS 18-003) and has incorporated relevant principles

## ITEM 2 (continued)

## ATTACHMENT 2

identified in recent Land and Environment Court decisions, some of which are noted in this report.

The absence of a stated purpose of the frontage control means that Council must now look at the merit of this case rather than relying on strict mathematical compliance. I have extrapolated the purpose of the control and demonstrated that it can only relate to site capability and appropriate character. Council's own assessment of another application clearly states that a site that widens out towards the rear is able to demonstrate merit in regard to a dual occupancy development. I agree with this assessment and I have constructed this justification in this submission.

### 1.2 Clause 4.6 Operation

The Objectives of Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and 4.6(3)(b) require 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 of the development standard by demonstrating:

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

Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

Clause 4.6(5) requires that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*

**ITEM 2 (continued)**

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- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

As set out in *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 (at [27-29]) clause 4.6 operates as follows:

27. Clause 4.6 of the CLEP 2012 [a standard instrument LEP] allows development standards to be applied flexibly in certain circumstances. In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, Preston CJ found that in applying the provisions of cl 4.6, the power to allow an exception to a development standard can be exercised where the Commissioner is satisfied that:
1. the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)) (at [7]),
  2. the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)) (at [7]),
  3. the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) (at [38]), and
  4. the written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)) (at [38]).
28. Clause 4.6(4)(a)(ii) presumes that if the proposed development is consistent with the objectives of the zone and of the standard (i.e. meets (1) and (2) above), then it is in the public interest. I also note that nothing in cl 4.6 requires the consistency with the objectives to be established in or by the written request.
29. Further, in outlining (3) and (4) above, regarding the requirements for the written request, Preston CJ stated that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather "only indirectly by being satisfied that the applicant's written request has adequately addressed" those matters.

The consent authority retains a broad discretion under clause 4.6 and there are no numerical limits placed upon the dispensing power, either by clause 4.6 or by the interpretation of clause 4.6 by the Courts.

In summary, clause 4.6 must demonstrate in writing (clause 4.6(3)):

1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))
2. sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))

**ITEM 2 (continued)**

**ATTACHMENT 2**

3. *that the exception is in the public interest because it is consistent (note Moskovich v Waverley Council [2016] below) with the objectives of the development standard and the objectives of the zone (clause 4.6(4)(a)(ii)), and*
4. *that the concurrence of the Director-General has been obtained (clause 4.6(4)(b)).*

Specifically, Moskovich v Waverley Council [2016] NSWLEC 1015 found:

53. *The threshold of "consistency" is different to that of "achievement". The term "consistent" has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (Dem Gillespies v Warringah Council [2002] 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council [1992] 77 LGRA 21). Whichever interpretation is adopted the test of "consistency" is less onerous than that of "achievement".*

This report adopts the methodology set out by the courts. While it is not essential to do so, comments will be made in relation to consistency with the objectives of the zone and the standard. This request is made on the basis that:

- compliance with the development standard is unreasonable and unnecessary in the circumstances of the case,
- that there are sufficient environmental planning grounds to justify contravening the development standard,
- it is consistent with the objectives of the particular standard and the zone in which the development is proposed to be carried out, and
- it is in the public interest to allow a departure from the numerical standard in this case.

## ITEM 2 (continued)

## ATTACHMENT 2

### 2 General Assessment of the Variation

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#### **2.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

The planning principle set out in *Wehbe v Pittwater Council (2007)* provides an accepted method for justifying that compliance with the development standard is unreasonable or unnecessary. This method is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. It essentially notes that "...development standards are not ends in themselves but means of achieving ends". Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These five ways are examined below.

##### **2.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

The sole objective is "to achieve planned residential density in certain zones". As already prefaced, the objective is very non-specific and lacks any substance that enables its success to be measured. It seems to relate more to the lot size in Clause 4.1B(2)(a) rather than the minimum lot frontage in sub-clause (2)(b).

Section 1.1 of this report summarises the justification and expands on what the underlying intent of this objective may be and how it is achieved.

The objective is addressed further in Section 3.1.

##### **2.1.2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The standard's purpose and objective remain relevant. It is general in nature and the only clear purpose relates to managing appropriate residential densities. This speaks more of the minimum site size, which is complied with in this instance.

The proposal does not compromise consistency with the purpose of this objective.

##### **2.1.3 The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

The *underlying* intent of the objective relates to site capability and retaining a "planned" density figure, thereby establishing appropriate buildings, yards and setbacks within the setting.

The proposal complies with all setbacks and landscaped areas required by the DCP. It also meets the minimum lot size area for a dual occupancy development.



## ITEM 2 (continued)

## ATTACHMENT 2

The purposes of the objectives are not compromised by this non-compliance.

**2.1.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

The standard has not been abandoned, however minor variations are being approved throughout Ryde. It must be noted that these variations are minor only.

**2.1.5 Compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The zoning is appropriate.

**2.2 Are there sufficient environmental grounds to justify contravening the development standard?**

Yes. Sufficient environmental planning grounds exist to justify contravening the development standard. The following points support this:

1. The minimum lot size is complied with.
2. The site has an easement along the south-eastern boundary meaning that a 1.8m setback is provided along this entire boundary.
3. The requirements within the DCP are complied with.
4. The impact on adjoining sites is similar to a dwelling house on a conventional housing lot.
5. The site has a much larger rear boundary length of 36.13m giving it a significant building footprint area in the middle of the site.

A development proposal that was forced to be compliant with the standard fails to recognise that:

- buildings can still be appropriately sited on odd-shaped allotments;
- housing juxtaposition in a suburb is what is important and this is not necessarily reliant on the invisible subdivision boundaries that lies beneath;
- compliant setbacks and yard areas have a far greater effect on mitigating impacts on neighbouring homes;
- unique street curves can create irregular frontages without necessarily damaging the development capacity of a site.

In terms of character and impact, there are no significant environmental benefits that would result from strict compliance. For this reason, the minor variation is justifiable.

ITEM 2 (continued)

ATTACHMENT 2

### 3 Assessment of Planning Grounds for Variation

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**3.1 The proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.**

**3.1.1 Objectives of the standard**

The objective for Clause 4.1B - Minimum lot sizes for dual occupancies and multi dwelling housing is:

*to achieve planned residential density in certain zones,*

Comment:

This objective was discussed at length in Section 1.1 in terms of determining the true purpose of the control. I have shown earlier that this objective speaks only of controlling density and this proposal complies with density. In this way the proposal meets the numeric requirement and therefore supports the objective. Lot frontage and density do not necessarily have any relationship, as I've demonstrated in Section 2.2 above.

In honouring the second requirement of minimum lot frontage, Section 1.1 outlines court cases and DCP clauses in an attempt to explore some established planning principles that may help to demonstrate whether the purpose of the frontage requirement has been satisfied. In summary, this relates to:

- Efficient vehicular access arrangements;
- Appropriate setbacks;
- Appropriate landscape areas and yard areas;
- Compatible scale and bulk in the context;

Vehicles can access the site easily via a single crossing and exit into a cul-de-sac with no through traffic. Car volumes are very minor and visibility is unrestricted. Setbacks comply with, and even exceed, all requirements. Landscaping areas all comply. Site coverage areas comply. FSR controls are compliant. Building height is compliant. Nearby houses are of a similar size to the dual occupancy proposed. Dual occupancy and town houses are all permissible in the zone. All these factors work to demonstrate that the proposed bulk and scale is compatible with the character of the area.

It is appropriate to revisit the legal framework for satisfying consistency with the objectives of the standard. Consistency has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council*

## ITEM 2 (continued)

## ATTACHMENT 2

(2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). **Consistency is less onerous than that of achievement.**

This section, along with Section 1.1, has demonstrated that the two dwellings have not worked to such an extent, where there is any impact that is obviously fatal. Indeed, the proposal complies with all numeric controls that logically underpin the purpose of a minimum site frontage control. On this basis, notwithstanding a numeric non-compliance because of the site shape, the development "exists in harmony" with the objective and is "compatible". It is therefore consistent.

### Comparable approval at 6 Dawes Crescent, Eastwood:

An identical approval has been recently issued by Council. The assessment went to great lengths to declare that the existing approval for a dual occupancy was the key reason this was approved. This is understandable but it illuminates something very critical. Removing a numeric control, forces the consent authority into examining the merits of the proposal. In this case Council determined that the proposal:

*"As highlighted earlier, although the proposal is 43.6% less than the required standard, the site widens out very quickly... An allotment of this shape is sufficient to support a dual occupancy development."*

I agree with this comment and it has nothing to do with a prior consent. Indeed, the prior consent also considered the appropriate merits of the proposal. This assessment shows that the shape of the site where the building is located is most critical. I have demonstrated why this is true elsewhere in this report. The frontage of the site is irrelevant to controlling density, as set out in the objective of the control.

This assessment tries to place weight on the existing approval. However this is a nonsense, if the merits of the proposal are not proven. **The Dawes Crescent assessment proves that the objective of the control can be met for a site with an 11m frontage provided that it widens out to allow for a meritorious building.** Notwithstanding Council's desire to avoid creating a precedent for such approvals, the assessment agrees with what is clearly evident: sites with a narrow frontage that widen out are capable of accommodating a dual occupancy development.

My assessment shows that a frontage control is irrelevant to site capability. The width of the site at the middle of the site would be a more effective measure. It is my opinion that the numeric frontage control was conceived of for rectangular sites, which would make more sense. Triangular sites can be considered on their merits, provided that they generally comply with other controls. This proposal does just that.

### **3.1.2 Meeting the Objectives of the Zone**

The objectives of the R2 zone are:

## ITEM 2 (continued)

## ATTACHMENT 2

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

The proposal supports the objectives for the zone as explained below.

- **To provide for the housing needs of the community within a low density residential environment.**

Dual occupancy homes on smaller lots creates a more efficient and affordable housing product that still has traditional advantages such as larger rear yards. Attached homes provide a tremendous housing product that supports the needs of first home buys and small families without creating the character of a medium density environment. They have a different character to a larger town houses development which is appropriate in this location.

- **To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

Achieved without compromise.

- **To provide for a variety of housing types.**

Refer to comments in relation to Objective 1. Amalgamated sites tend to result in town houses. Dual occupancies on sites larger than 600m<sup>2</sup> allow for some smaller housing models in a conventional low density setting. The consistency with the character is demonstrated by the two dwellings at No. 18.

### 3.1.3 Meeting the Objectives of the LEP

The objectives of the LEP are:

- (a) *to encourage a range of development, including housing, employment and recreation, that will accommodate the needs of the existing and future residents of Ryde,*
- (b) *to provide opportunities for a range of housing types that are consistent with adjoining development and the existing environmental character of the locality,*
- (c) *to foster the environmental, economic, social and physical development of Ryde so that it develops as an integrated, balanced and sustainable city,*
- (d) *to identify, conserve and promote Ryde's natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,*

## ITEM 2 (continued)

## ATTACHMENT 2

- (e) to improve access to the city, minimise vehicle kilometres travelled, facilitate the maximum use of public transport and encourage walking and cycling,*
- (f) to protect and enhance the natural environment, including areas of remnant bushland in Ryde, by incorporating principles of ecologically sustainable development into land use controls,*
- (g) to preserve and improve the existing character, amenity and environmental quality of the land to which this Plan applies,*
- (h) in relation to economic activities, to provide a hierarchy of retail, commercial and industrial activities that enable employment capacity targets to be met, provide employment diversity and are compatible with local amenity.*

The proposal supports the relevant LEP objectives and does not undermine those that relate to the natural environment, sensitive lands, cultural heritage or land quality. This proposal creates a minor increase in density without compromising the character of the street.

This proposal supports the objectives of the LEP.

### **3.2 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?**

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The flexibility with Clause 4.6 allows for Council to make decisions without the need to use the Planning Proposal processes under the Act.

### **3.3 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?**

The objects specified in Section 1.3(a)(i) and (ii) of the Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*

**ITEM 2 (continued)**

**ATTACHMENT 2**

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed development is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act.

**3.4 Is there public benefit in maintaining the development standard?**

Maintaining the standard would simply result in the removal of dwelling without a significant reduction in impact. A large house could be located within an identical building footprint.

The minor increase in density has no noticeable bearing on traffic and it is possible that the net increase in people on the site is similar to that of a large family home.

Given the absence of significant impact, no public benefit would result from strict compliance with the standard in this instance.

**3.5 Matters relating to concurrence?**

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained.

## ITEM 2 (continued)

## ATTACHMENT 2

### 4 Conclusion

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#### 4.1 Is the objection well founded?

The proposed variation from the minimum lot frontage is justified as the proposed development is consistent with the objectives of the development standard, the zone and the LEP. It complies with all other key controls that I have demonstrated contribute to the attainment of the purpose of the control.

A strictly compliant building achieves no greater outcome in terms of amenity or reduced impact when compared to a large family at home.

The objective of the control has no direct relevance to density. I have demonstrated that building juxtaposition is the key consideration, not the shape of invisible lots on the ground. I have demonstrated that the proposal performs in all relevant aspects, notwithstanding numeric non-compliance.

This application is well founded.

#### 4.2 Final remarks

Recent case law (Moskovich and Micaul) established that the consent authority has a broad discretion under clause 4.6(4) as to the degree of satisfaction required by that clause. It is unnecessary in this case to amend the LEP or enforce strict compliance just to get this building approved. Clause 4.6 is the appropriate tool to approve this variation.

Strict compliance would serve no environmental outcome and make no meaningful improvement to any outcome or improve the character of the area. Dual occupancies are permissible in the zone. **The lack of any clear purpose for the control leads the consent authority to focus on the merits of the proposal rather than on mathematical compliance.** This is good planning. This clears away the rubbish and allows a building to be assessed sensibly having regard for its merits and its impacts. The SEE has attended to these impacts and shown that the proposal is appropriate in its context.

Indeed, the only reason that could be given for refusal is that numeric compliance simply must be adhered to. This would contravene the very intent of flexible planning provisions and fail to acknowledge the merits of the variation. It also contravenes the findings in *Wehbe v Pittwater Council* (2007) where it notes that compliance must not be considered an end in its own right but a means to an end. For this reason, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 is available to Council in this instance.



**3 34 MAWARRA CRESCENT, MARSFIELD - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW TWO STOREY DUAL OCCUPANCY (ATTACHED) - LDA2018/0364**

**Report prepared by:** Assessment Officer - Town Planner

**Report approved by:** Senior Coordinator - Major Development; Manager - Development Assessment; Director - City Planning and Environment

**Report dated:** 6 March 2019

**City of Ryde  
Local Planning Panel Report**

<b>DA Number</b>	LDA2018/0364
<b>Site Address &amp; Ward</b>	34 Mawarra Crescent, Marsfield West Ward
<b>Zoning</b>	R2 Low Density Residential
<b>Proposal</b>	Demolition of existing structures & construction of a new 2 storey dual occupancy (attached)
<b>Property Owner</b>	Ivan Radovnikovich & Mary G Radovnikovic
<b>Applicant</b>	Sett Homes
<b>Report Author</b>	Madeline Thomas – Senior Town Planner
<b>Lodgement Date</b>	14 September 2018
<b>No. of Submissions</b>	1 submission
<b>Cost of Works</b>	\$876,760.00
<b>Reason for Referral to LPP</b>	Departure from development standard – 12.25% departure from minimum frontage (Clause 4.1B of the RLEP 2014)
<b>Recommendation</b>	<b>Refusal</b>

**ITEM 3 (continued)**

<p><b>Attachments</b></p>	<p><b>Attachment 1:</b> Compliance Table</p> <p><b>Attachment 2:</b> Clause 4.6 written variation in respect to Clause 4.1B of the RLEP 2014</p> <p><b>Attachment 3:</b> Plans submitted with the application</p>
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**1. Executive Summary**

Application is made to demolish the existing structures and construct a two storey dual occupancy (attached) at No. 34 Mawarra Crescent, Marsfield.

The notification of the application attracted one (1) submission objecting to the application, raising concerns relating to streetscape, overshadowing, visual and acoustic privacy and the level of excavation.

The proposal does not comply with the development standard imposed by Clause 4.1B of the Ryde Local Environmental Plan 2014 (RLEP 2014) in respect to the minimum 20m road frontage for dual occupancies. The site has a minimum road frontage to Mawarra Crescent of 17.55m, representing a 12.55% departure from the development standard. The applicant's written request under Clause 4.6 of the RLEP 2014 to justify the breach in the road frontage development standard has been considered in the assessment of this application.

In accordance with Clause 4.6(3) of the RLEP 2014 it is considered that the written Clause 4.6 request does not demonstrate that:

- the development standard of 20m frontage is unreasonable or unnecessary;
- there are sufficient environmental planning grounds that justify the departure from the standard.

The proposal is considered to be unacceptable due to:

- Inadequate written Clause 4.6 variation request;
- It will result in a design that is incompatible with the existing and future desired character of the area;
- The narrow frontage results in a shortfall in deep soil area within the front setback;
- The proposal has not demonstrated that adequate solar access is provided to the living areas of each dwelling. The orientation and resulting poor amenity of these living areas is considered to be a result of the narrowing of the site at the front; and
- The garage width exceeds the maximum 6m width required under the Ryde Development Control Plan 2014, resulting in unacceptable streetscape due to the visual dominance of the garages.

### ITEM 3 (continued)

Given the reasons detailed above, the development application is recommended for refusal.

#### 2. The site & locality



**Figure 1:** Aerial photograph of site.

The site is known as No. 34 Mawarra Crescent, Marsfield and is a single allotment with a legal description of Lot 10 in DP 260270.

The site is located on the eastern side of Mawarra Crescent, on the south eastern side of the cul-de-sac (see **Figure 1**).

The site is an irregularly shaped allotment with an arc frontage to Mawarra Crescent of 17.55m, a rear boundary dimension of 22.6m, side boundary dimensions of 37.355m and 32.855m and a site area of 677.9m<sup>2</sup>.

The site has a fall from the rear of the site to the street of approximately 2.5m.

The site is currently developed with a single storey brick residential dwelling (see **Figure 3** below).

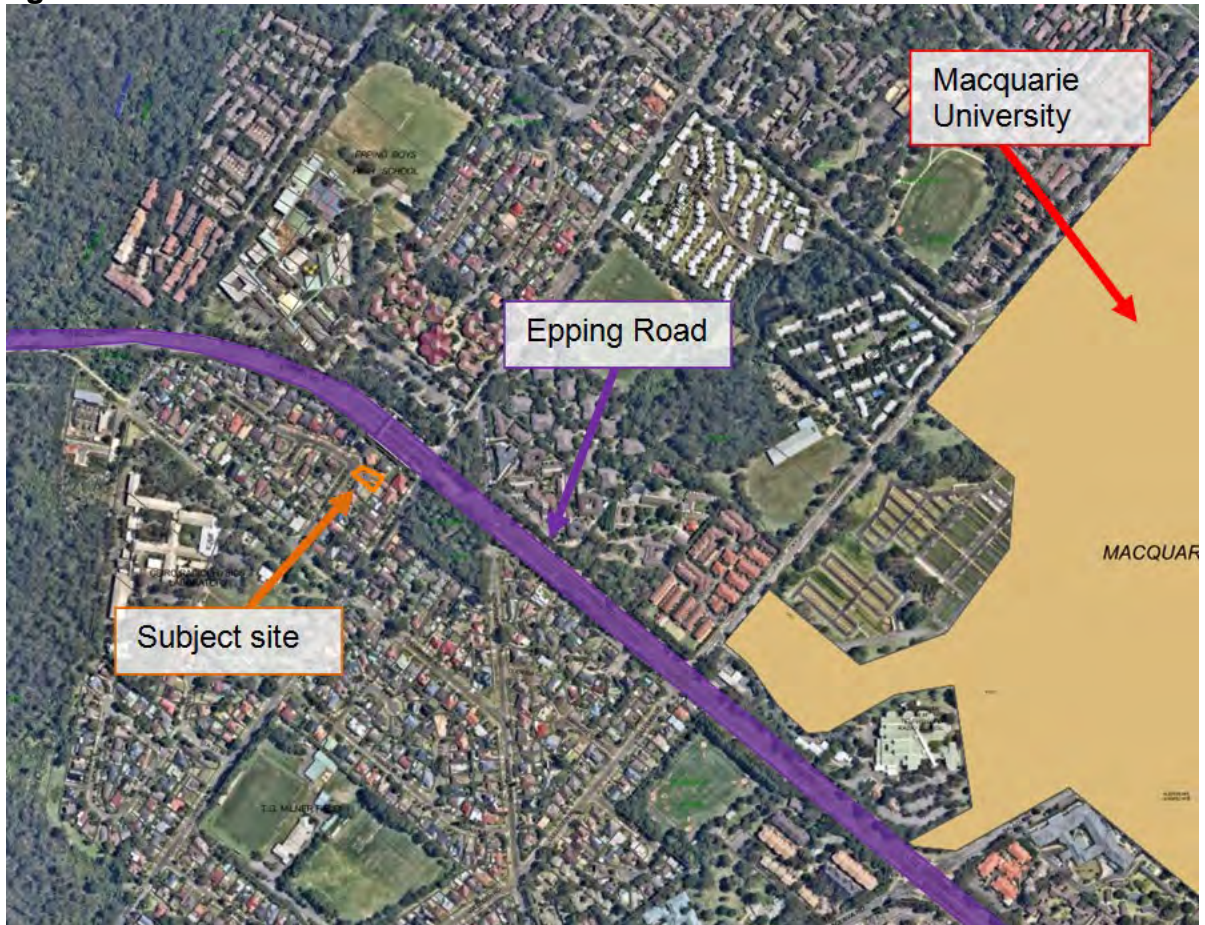


### ITEM 3 (continued)

The site currently has a driveway that slopes up to the garage of the existing dwelling, sloping consistently with the site's topography.

Landscaping consists of planted species within a domestic setting.

**Figure 2** below shows the site in its context.



**Figure 2:** Subject site's broader context.

The site is located within an established residential area, and is located to the south of Epping Road, as shown in **Figures 1** and **2** above.

The existing dwelling currently on the site is consistent with the established detached residential development in the area. The existing dwelling is not excavated into the site, with the front setback consisting of the steepest section of the site (see **Figure 3** below).

### ITEM 3 (continued)



**Figure 3:** Existing dwelling located on subject site.

Immediately adjoining the site to the north, at No. 32A Mawarra Crescent, is a two storey dwelling on a battle-axe lot.

The battle-axe handle separates the subject site and No. 32 Mawarra Crescent, which is the only dwelling within the immediate vicinity of the site which exhibits excavation to facilitate flat vehicular access, as shown in **Figure 4** below.

It is noted that No. 32 Mawarra Crescent is a single dwelling, and is situated on a lot with a frontage of approximately 10m.



**Figure 4:** Residential development at No. 32 and 32A Mawarra Crescent.

Generally, the remaining dwellings in the street are on levelled platforms, with sloping driveways to respond to the sloping topography of the area (see **Figures 5 and 6**).



### ITEM 3 (continued)



**Figure 5:** Residential development to the north west of the subject site



**Figure 6:** Residential development to the south west of the subject site.

It is noted that one other dual occupancy (attached) development is located within the local area (at 205 Vimiera Road Marsfield). This dual occupancy was approved 23 May 2017 (under LDA2016/0610) and included a total road frontage of 25.82m<sup>2</sup>.

### 3. The proposal

The applicant seeks consent to demolish the existing structures on the site and construct a new two storey attached dual occupancy, as described below and illustrated in **Figures 7** and **8**:

### ITEM 3 (continued)



**Figure 7:** Photomontage of proposed development as viewed from Mawarra Crescent.

#### **Dwelling A**

Dwelling A is proposed to be located on the northern side of the site, and contains the following:

##### Basement Floor

The basement level is excavated approximately 2.4m below the existing ground level, and contains a single garage space and basement storage.

A staircase is provided at the rear of the basement level to facilitate access to the ground floor.

##### Ground Floor

The ground floor is accessed from a raised patio, which leads into the foyer and open lounge room area.

A front balcony (2.4m deep) is proposed at the front of the lounge room above the garage below. The balcony is roofed and has a brick balustrade.

A study and ensuite is located on the other side of the foyer.

The dwelling continues through a hallway into the open kitchen/family area, with a laundry and guest bedroom accessed off the hallway.

The staircase to the first floor and a powder room are located on the opposite side of the hallway.



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

A small alfresco area is provided at the rear of the side and is orientated to the north-east.

#### **First Floor**

The first floor contains three bedrooms and two bathrooms, which are all accessed from the common hallway in the centre of the floor.

No balconies are proposed for the first floor.

### **Dwelling B**

Dwelling B is proposed to be located on the southern side of the site, and contains the following:

#### **Basement Floor**

The basement level is excavated approximately 2.4m below the existing ground level, being consistent with the basement level of Dwelling A, and contains a single garage space, lift, plant room and basement storage.

No staircase is provided from the basement level to access the ground floor.

Access to the ground floor will be provided by the proposed lift or externally.

#### **Ground Floor**

The ground floor is accessed from a raised patio, which leads into the foyer and open lounge room area.

A front balcony (2.4m deep) is proposed at the front of the lounge room above the garage below. The balcony is roofed and has a brick balustrade.

A study and powder room are located on the other side of the foyer, as is a small south-facing courtyard.

The dwelling continues through a hallway into the open kitchen/family area, with a laundry and guest bedroom accessed off the hallway.

The staircase to the first floor and a powder room are located on the opposite side of the hallway.

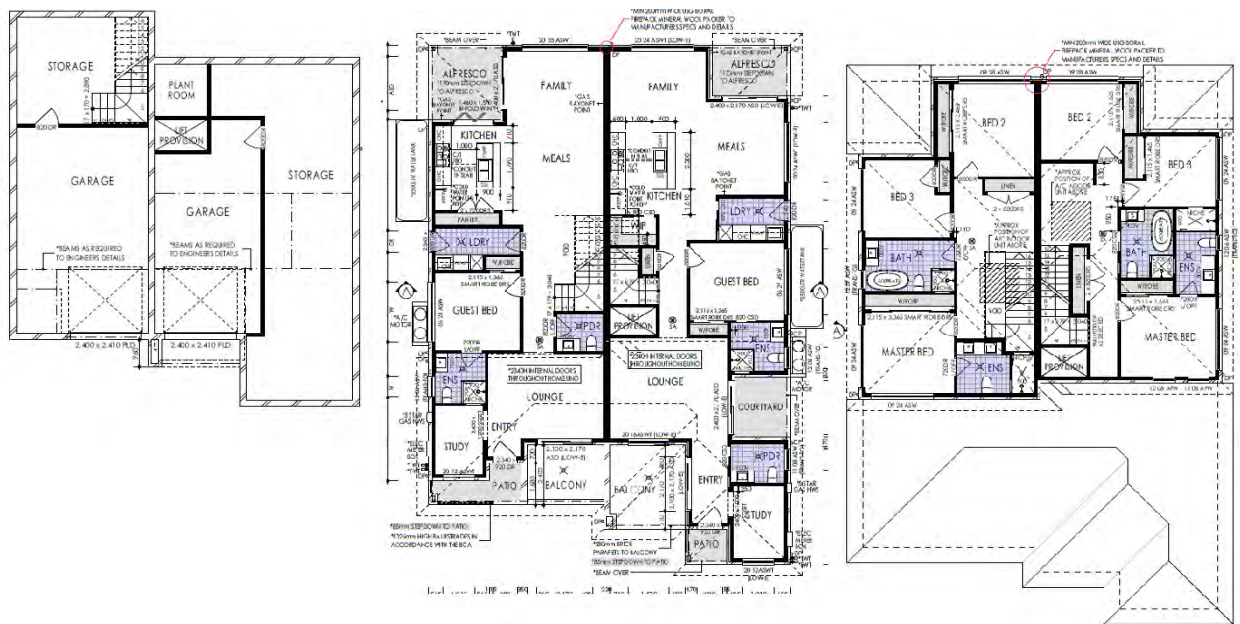
A small alfresco area is provided at the rear of the site and is orientated to the south west.

### ITEM 3 (continued)

#### First Floor

The first floor contains three bedrooms and two bathrooms, which are all accessed from the common hallway in the centre of the floor. No balconies are proposed for the first floor.

**Figure 8** below details the layout of the development.



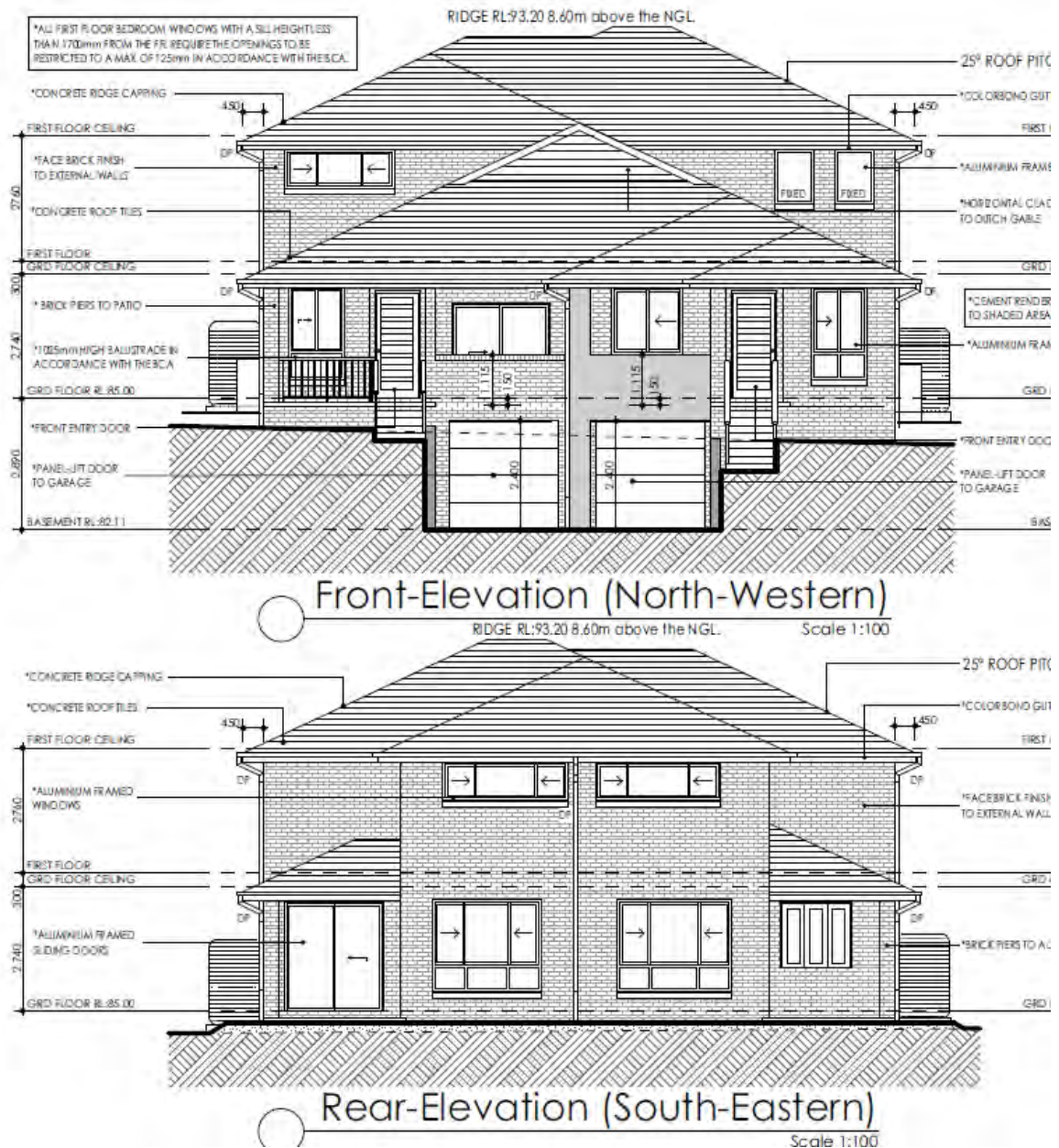
**Figure 8:** Proposed basement, ground and first floor plans

The design of the building includes a mixture of pitched and dutch-gable roof forms (see **Figure 7**).

The materials include a combination of face brick and concrete render with concrete roof tiles.

**ITEM 3 (continued)**

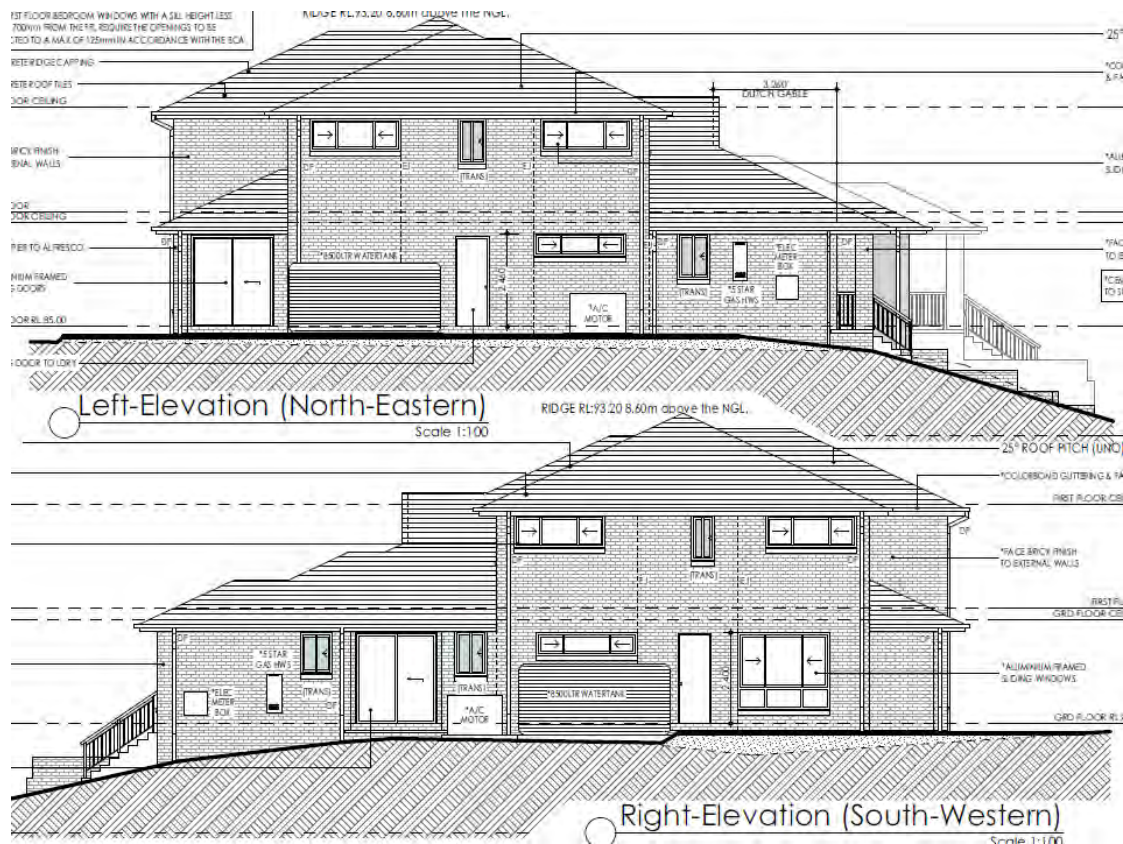
Figures 9 and 10 below show the elevations of the development.



**Figure 9:** Proposed front and rear elevations.



### ITEM 3 (continued)



**Figure 10:** Proposed side elevations.

## 4. Background

The development application was submitted to Council on 14 September 2018.

8 October 2018

A letter was sent to the applicant which advised of the following:

- The written Clause 4.6 variation request did not provide adequate justification for the departure from the standard specified in Clause 4.1B(2)(b) – ‘Minimum lot sizes for dual occupancies and multi dwelling housing’ of the RLEP 2014 which requires a minimum road frontage of 20m;
- The proposal did not comply with the Floor Space Ratio (FSR) specified in Clause 4.4 of the RLEP 2014, and no written Clause 4.6 variation request had been provided;
- The proposed garage was considered to be visually dominant;
- The hard paving in the front setback area was excessive;
- The front setback did not comply with the required 6m setback;
- The rear setback was 5.595m, and was to be increased to a minimum of 8m;
- The deep soil area provided did not meet the required area under the RDCP 2014;

### ITEM 3 (continued)

- The proposal failed to demonstrate that the proposed dwellings had sufficient solar access; and
- The excavation proposed was not compliant with the RDCP 2014.

#### 22 October 2018

A meeting was held between the owner and Council staff at the request of the owner. At that meeting the owner was advised of the following:

- The Clause 4.6 provided did not provide adequate justification to vary the minimum lot frontage for dual occupancy development, and that Council would not support the variation with the design currently proposed. The owner was also advised that Council has not recently supported a variation of this scale for a reduced lot frontage, and would be unlikely to changing this position.
- That proceedings were, at that time, underway in the NSW Land and Environment Court for an application which challenges the requirements of Clause 4.1B(2)(b) (i.e. *Sajjad Falamaki v City of Ryde Council LEC 2018* at No. 153 Cox's Road, North Ryde) and that the results of that court case may affect the outcome of this application.
- Amended plans, and an amended Clause 4.6 variation request, could be submitted. However, the owner was advised that Council were still unlikely to support the variation, and would likely recommend refusal to the Ryde Local Planning Panel, who would be the determining authority.

#### 31 October 2018

The applicant provided amended plans and documentation as follows:

- A revised written Clause 4.6 variation request. It is noted that the assessment of this written request is provided later in this report;
- A revised basement layout was provided so that the FSR was reduced and compliant with Clause 4.4 of the RLEP 2014;
- The front setback was increased to 6m;
- The rear setback was increased to 8m; and
- The deep soil area was increased to meet the required area.

#### 5 December 2018

A second letter requesting additional information was sent to the applicant as summarised below:

- The applicant was advised that the amended plans still did not demonstrate that the proposal complied with the solar access requirements of the RDCP 2014;
- The applicant was advised that the Clause 4.6 variation request was still under consideration in respect to the road frontage development standard;

### ITEM 3 (continued)

- Council's Development Engineer advised that the onsite detention calculations were incorrect and needed to be recalculated to be in accordance with the amended plans. Council's Development Engineer also advised that the vehicular access and garage did not allow for adequate manoeuvring, and requested swept path diagrams to be provided.

20 December 2018

The applicant provided amended plans that addressed a number of the issues raised above. A number of issues were not resolved by the amended plans and documentation, and assessment of these issues is provided in this report.

## 5. Planning Assessment

### 5.1 State Environmental Planning Instruments

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

A BASIX Certificate (see Certificate No. 960957M\_04 dated 30 October 2018) has been submitted with the application.

The Certificate confirms that the development will meet the NSW Government's requirements for sustainability, if it is built in accordance with the commitments set out below:

Commitment	Target	Proposed
Water	40	61
Thermal Comfort	Pass	Pass
Energy	50	52

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

In accordance with Clause 7 of the SEPP, a consent authority must give consideration to the contamination of the land and its suitability for its intended use before providing consent to the carrying out of any development on the land.

Council's records indicate that the subject site has historically been used for residential use and is not located in close proximity to any known contaminated land.

In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of the SEPP and the land is considered to be suitable for continued residential land use.

### ITEM 3 (continued)

#### **SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the whole of the Ryde local government area.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above SREP. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development.

The objective of improved water quality is satisfied through compliance with the provisions of Council's Development Control Plan 2014 Part 8.2.

The proposed development raises no other issues and otherwise satisfies the aims and objectives of the SREP.

### **5.2 Local Environmental Plans**

#### **Ryde Local Environmental Plan 2014 (RLEP 2014)**

##### Permissibility

Under the provisions of the RLEP 2014 the site is zoned R2 Low Density Residential and the proposed attached dual occupancy is a permissible use with consent in the zone.

##### Aims and objectives of the zone

The objectives of the R2 Low Density Residential zone are addressed following:

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

**Comment:** The first and third objectives of the R2 zone are applicable to this development. In this regard, this development does not satisfy these objectives. The frontage of the site does not meet the 20m development standard, representing a variation of 12.25% as required by the LEP. The development as proposed results in a poor design outcome, does not maintain the local character, and would set an undesirable precedent for future development.



### ITEM 3 (continued)

#### Part 4 – Principle Development Standards

Clause	Proposed	Compliance
4.3(2) Height of Buildings		
9.5m	8.9m	Yes
4.1(B) Minimum lot sizes for dual occupancies and multi dwelling housing		
(2)(a) 580m <sup>2</sup>	677.9m <sup>2</sup>	No
(2)(b) 20m frontage	17.55m	See discussion beneath this table
4.4(2) & 4.4A(1) Floor Space Ratio		
0.5:1 (338.95m <sup>2</sup> )	0.494:1 (335.1m <sup>2</sup> )	Yes

#### Clause 4.1B – Minimum lot sizes for dual occupancies and multi dwelling housing

Clause 4.1B(2) of RLEP 2014 requires that:

- (2) *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 (see below), and*
  - (b) *the road frontage of the lot is equal to or greater than 20 metres.*

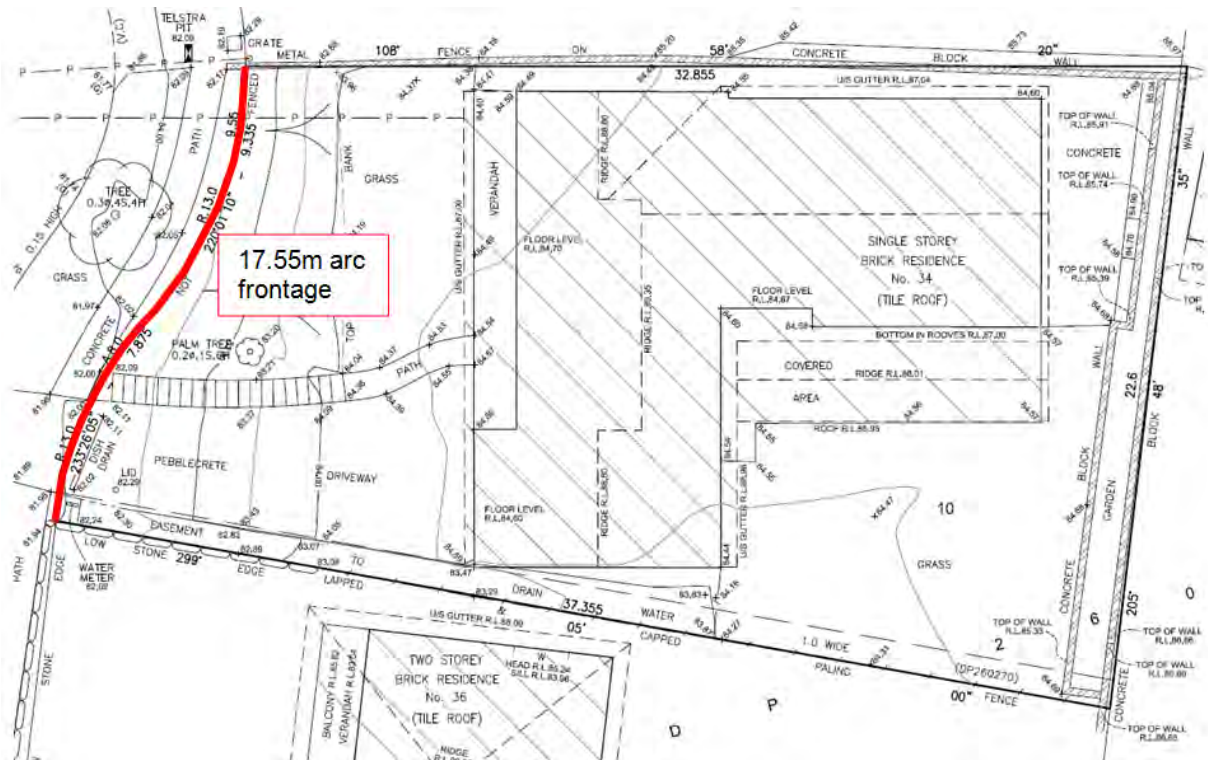
Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

The site has an area of 677.9m<sup>2</sup>, which complies with the minimum of 580m<sup>2</sup>.

However, in terms of the lot width the subject site only has a width of 17.55m which results in a 2.45m (12.25%) variation to this control. In this regard, the applicant has submitted a Clause 4.6 written request to vary the development standard.

### ITEM 3 (continued)

Figure 11 below details the lot frontage of the site.



**Figure 11:** Extract of Survey showing site width at arc (Source: Higgins Surveyors).

This variation is not supported as approval of the development would adversely impact upon the established character of the local area, would create an undesirable precedent for future development to occur within the LGA due to an erosion of the Standard and would therefore not be in the public interest.

A detailed discussion regarding this issue is included below.

#### Clause 4.6 - Exceptions to development standards

Clause 4.6 under the RLEP 2014 provides that:

#### **4.6 Exceptions to development standards**

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

**ITEM 3 (continued)**

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *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 of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Plan was made it did not include all of these zones.*

**ITEM 3 (continued)**

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*
  - (ca) clause 4.3, to the extent that it applies to the land identified as "Town Core" on the Ryde Town Centre Precincts Map*
  - (cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),*
  - (cc) clause 6.9.*

In order to determine if consent shall be granted to the proposal, clause 4.6(a) requires that Council is satisfied that:

- "(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the [R2 Low] Density Residential Zone (cl 4.6(4)(a)(ii))"*

The applicant submitted a written request prepared by Urbanesque Planning to address the minimum road frontage development standard in Clause 4.1B(2)(b) in the RLEP 2014. This clause requires a site to provide a 20m site frontage for dual occupancy development, however the site only provides for 17.55m which represents a variation of 2.45m (12.25%) to the development standard.

As established by Senior Commissioner Adam SC in *Falamaki v Council of the City of Ryde* [2019] NSWLEC 1007 ("*Falamaki*"), there are four "gates" through which a variation request must successfully pass before there can be a decision that compliance with the development standard for lot width is deemed satisfactory. The four gates are considered below:

### ITEM 3 (continued)

**1. *The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)***

Comment

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827, ways in which the applicant can demonstrate the development standard is unreasonable and unnecessary are summarised below:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;*
- *Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;*
- *The development standard has been abandoned by the council; or*
- *The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).*

The applicant's request has been prepared seeking to justify that the compliance is unreasonable and unnecessary by referencing these approaches provided in *Wehbe*.

The written request states:

*"In relation to the road frontage development standard, it should be noted that the control is a 'blunt instrument' in that it does not take into account other factors that may influence the site and its suitability for dual occupancy development. For example, the development standard does not contemplate the shape of an allotment in considering suitability. A Clause 4.6 variation allows such other factors to be taken into account in deciding the merits of the non-compliance with the numerical standard".*

Council contends that the standard does not need to contemplate the shape of an allotment in considering suitability. The shape and size of the allotment is addressed through various other applicable controls within the RLEP 2014 (i.e. site area under Clause 4.1B(2)(a)) and within the RDCP 2014 (Clause 2.6 – 'Site Configuration' and Clause 2.9 – 'Setbacks').

In prescribing a minimum road frontage, Clause 4.1B(2)(b) only needs to regulate one dimension of the site (i.e. the frontage) for the purpose of establishing an acceptable streetscape for dual occupancy development through the consistent provision of lot widths, building separations and landscaped settings commensurate with low density residential areas. To suggest otherwise would be to exaggerate this sole intent of the Standard.

### ITEM 3 (continued)

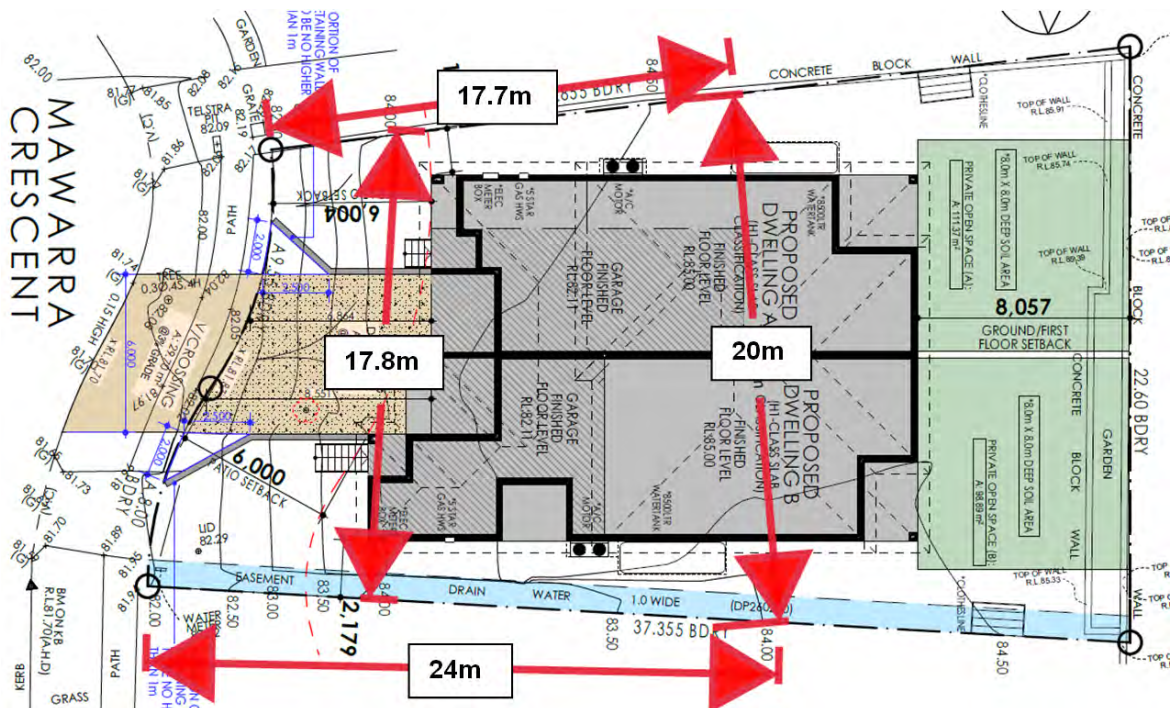
The request goes on to state:

*“the site is irregular in shape, having a curved road frontage of 17.55m to Mawarra Crescent however the site broadens gradually and has a rear width of 22.6m. The average site width is 20.075m. The site is 20m wide approximately mid-block.”*

Whilst it is noted that the site eventually broadens to 20m, this statement does not consider that the proposed dual occupancy is setback 6m from the front boundary, at which point the site width is approximately 17.8m, representing a variation of 11% from the development standard (see **Figure 13** below).

The applicant’s argument that the development standard is considered to be unreasonable and unnecessary because the site widens to 20m mid-block fails, as this approach does not take into account the impact of the proposal in regard to the local character. The variation to the development standard results in an inappropriate design that is not consistent with the intended character of the locality.

In this respect, the claim that the development standard is unreasonable and unnecessary is not supported and that the development standard is reasonable and necessary in order to maintain the local character.



**Figure 13:** Site plan with annotated site widths demonstrating width at building line.



**ITEM 3 (continued)****2. The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i))**Comment

The applicant's request does not include sufficient analysis to demonstrate that there are sufficient environmental planning grounds to justify not complying with the lot width standard. In this regard, the written request states:

*"The existing dwelling takes full advantage of the site width and presents minimal side setbacks along the northern and southern boundaries. The rear setback is also relatively close and non-compliant by present DCP standards.*

*By comparison, the proposal dual occupancy will have compliant front, rear and side setbacks and will therefore result in a better environmental planning outcome on the site compared to the existing development. The floor space ratio and height controls are complaint. The resulting built form is proportionate to the site area and the dimensions of the land. Therefore, the built form of the development properly relates to both the geometry of the site and the surrounding built environment."*

Notwithstanding the improvements made by the development with respect to setbacks and the like, these are not relevant to the question asked 'is there sufficient environmental planning grounds provided to justify contravening the development standard' as these compliances are an aspect of a new development which is to be expected *together with* compliance with the development standard. It is not relevant to compare the level of compliance of a new built form to an older built form which was constructed prior to the gazettal of the RLEP 2014 and RDCP 2014.

The written request fails to address the non-compliance with the RDCP 2014 with regard to the hardstand area within the front setback, as well as the external width of the garage. The narrow frontage, in conjunction with these two RDCP 2014 non-compliances, will result in a built form with a visually dominant garage, being incompatible with the streetscape.

In Paragraph 129 of *Falamaki*, Adam SC explains that whilst the external dimensions of the building may be consistent with that of the existing building, that does not mean that the local character is maintained. Senior Commissioner Adam goes on to say that the fact that this building will be viewed as including two separate residences must be taken into account when analysing whether the local character has been maintained.

Accordingly, the applicant's request does not include appropriate analysis to demonstrate why there are sufficient environmental planning grounds to justify not complying with the standard.

### ITEM 3 (continued)

**3. *The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii))***

Comment

The objective of the road frontage development standard is to achieve planned residential density in certain zones.

Density in this context relates to the density of elements of built form and not to population density. By doing so, the local character of the area is able to be maintained. The written request states that:

*The proposed development is demonstrated to achieve the desired residential density through appropriate site planning and built form, notwithstanding non-compliance with the numerical road frontage development standard. Therefore, the site is considered suitable to support the proposed development and the objective of the control is achieved."*

As mentioned above, the written request fails to demonstrate that the proposal does not impact the local character of the area, particularly in regard to the presentation of the development as two separate residences. The appearance of two separate residences will be reinforced by the two elevated porches, balconies and garages as presented to Mawarra Crescent.

Therefore, the applicant's written request fails to provide sufficient evidence to demonstrate how the development proposed will comply with the objective of the lot width development standard.

**4. *The proposed development will be in the public interest because it is consistent with the objectives of the [R2 Low] Density Residential Zone (cl 4.6(4)(a)(ii))***

Comment

In regard to cl 4.6(4)(a)(ii), the applicant states that the proposal is consistent with the objectives of the R2 zone being:

**R2 zone objectives**

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



### ITEM 3 (continued)

The applicant provides the following comments with regard to how the proposed development is consistent with the R2 zone objectives:

*“The development provides for the housing needs of the community in a low density residential environment through the supply of one additional dwelling on the land. As a dual occupancy, the development provides housing choice. The development thereby demonstrates compatibility with the relevant zone objectives.”*

Whilst it is acknowledged that dual occupancy development creates opportunity to provide for growing housing needs, it is not considered that the development is compatible with the streetscape and character of the local area.

As discussed earlier in this section, the site is considered to be unsuitable for the development as it is unable to provide comply with one of the key development standards for dual occupancy (attached) development under the RLEP 2014. The written request fails to respond to local character issues, which have not been addressed.

#### Conclusion

On consideration of these matters, all of the gates must be opened for the variation request to succeed, however as the applicant has failed to satisfy all four matters for consideration, therefore, the C4.6 variation request cannot be supported.

In closing, it is important to note that approval of the request to vary Clause 4.1B(2)(b) would create an undesirable precedent whereby other similar developments would occur and the intent of the standard would be eroded. This is acknowledged by Senior Commissioner Adam in the *Falamaki* judgment where, in Paragraphs 149 to 151 of the judgement he states:

*“Some aspects of the public interest were raised in the cl 4.6 variation request, but a major additional aspect was the precedent which would be set if the proposal were approved. This was a concern to the Council. In a Class 1 matter, the outcome will depend on the facts and circumstances of each particular case. Nevertheless, it has long been recognised that decisions will be seized upon as if they were formal precedents, and as a consequence, councils will come under pressure to apply the decision made in one case to others perceived by the public to be similar. Where I required to formally assess the competing arguments for Contention 10, the question of precedent is likely to have been of considerable weight.”*

#### Clause 5.10 - Heritage

The site does not contain a heritage item, nor is it within a conservation area, or located to any heritage listed items.

### ITEM 3 (continued)

#### Clause 6.2 - Earthworks

Clause 6.2 requires consideration of the impact of earthworks in relation to environmental functions, processes, neighbouring uses, cultural and heritage items and features of the surrounding land. The following matters are required to be considered:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

The site is not located within the 1% AEP Storm Event and Council's stormwater engineer does not raise any stormwater objections to the proposal.

- (b) *the effect of the development on the likely future use or redevelopment of the land,*

The level of excavation exceeds the maximum level specified in Part 3.3 of the RDCP 2014, having a maximum excavation depth 2.3m. Whilst the level of excavation results in excessive retaining walls within the front setback, it is considered that the excavation proposed will not prevent the site from being redeveloped for residential purposes in the future.

- (c) *the quality of the fill or the soil to be excavated, or both,*

The site has not been identified as contaminated.

- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*

There is unlikely to be any potential impact to adjoining structures as a result of minor excavation.

- (e) *the source of any fill material and the destination of any excavated material,*

The site has not been identified as contaminated. The Waste Management Plan submitted is acceptable.

- (f) *the likelihood of disturbing relics,*

Given the location of the site and its previous development, it is considered unlikely that any relics would be disturbed.

- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

### ITEM 3 (continued)

The proposal is unlikely to impact any waterway and it will not impact any drinking water catchment or environmentally sensitive area.

(h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Appropriate construction measure would be required to be implemented to avoid and minimize impacts upon adjoining structures.

#### Clause 6.3 - Flood Planning

Clause 6.3 is applicable to sites with land at or below the flood planning level and the site is located within the 1% AEP Storm Event. This clause is not applicable to the subject site. It is noted that there is no objection to the proposed point of drainage discharge.

### 5.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft environmental planning instruments of relevance to the assessment of the application.

### 5.3 DEVELOPMENT CONTROL PLANS

#### **Ryde Development Control Plan 2014 (RDCP 2014)**

The applicable provisions of the RDCP 2014 are:

- Part 2.1 Notification of Development Applications.
- Part 3.3 Dwelling Houses and Dual Occupancy (attached).
- Part 7.1 Energy Smart, Water Wise.
- Part 7.2 Waste Minimisation and Management.
- Part 8.1 Construction Activities.
- Part 8.2 Stormwater and Floodplain Management.
- Part 8.3 Driveways.
- Part 9.3 Parking Controls.
- Part 9.5 Tree Preservation.

A full assessment of the proposal under the Ryde DCP 2014 is illustrated in the compliance table at **ATTACHMENT 1**.

### ITEM 3 (continued)

The non-compliances identified in the table are assessed in detail below:

#### 1. Part 3.3, Section 2.1 – Desired Future Character

Section 2.1 of the RDCP 2014 requires developments to be consistent with the desired future character of low density residential areas, which is outlined as having:

- A limited number of dual occupancy (attached) buildings, and that these buildings are to look similar to detached dwellings;
- Buildings with a high degree of amenity;
- Garages and other structures which are not prominent elements in the streetscape and which are compatible with the character of the dwelling;
- Minimal disturbance to the natural topography, meaning excavation is minimised; and
- Allotments with large deep soil areas which allow rainwater to be absorbed and trees to be planted.

The proposal fails to comply with this control for the following reasons:

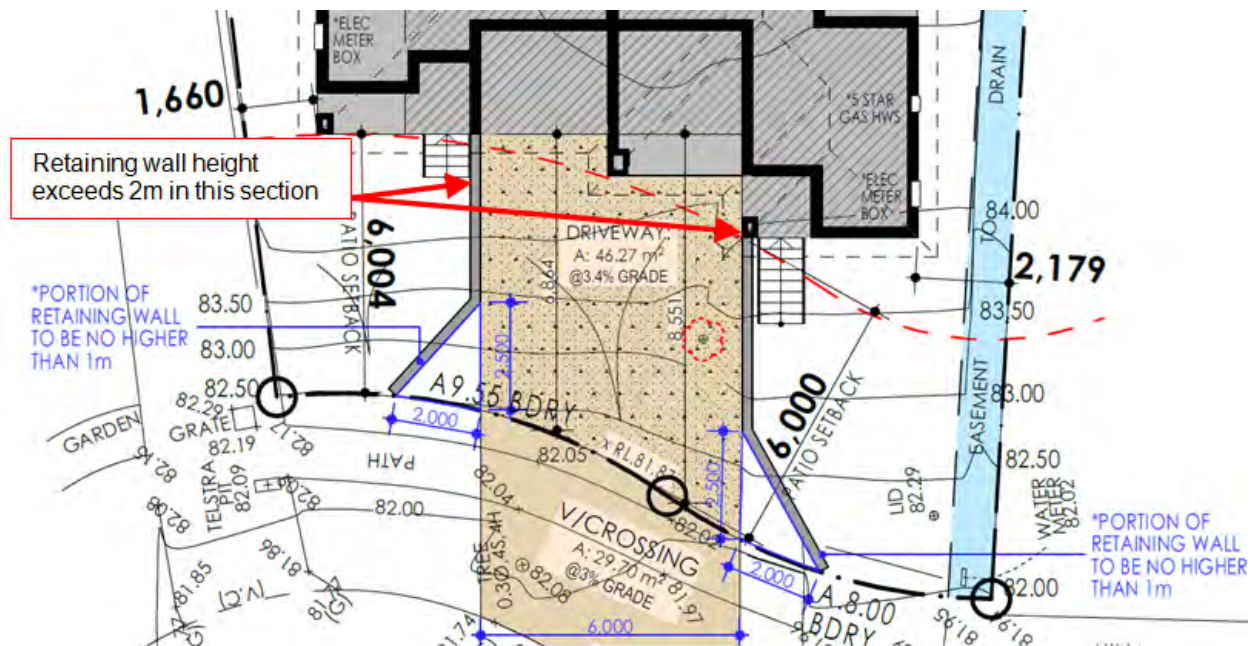
- It has not been demonstrated that the main living room windows of each proposed dwelling receive sufficient sunlight. As a result, the amenity of the proposed dwellings is considered to be inadequate;
- The garages are visually dominant, particularly given the narrow frontage;
- The excessive excavation in the front setback, and related retaining walls which measure to a height of approximately 2.3m, is not considered to be consistent with the future desired character of the area; and
- The proposal provides insufficient deep soil areas within the front setback.

#### 2. Part 3.3, Section 2.6.2 – Topography and Excavation

Section 2.6.2 (b and c) of the RDCP 2014 requires that the maximum excavation within the proposed building footprint is not to exceed 1.2m, and outside the building footprint is to be a maximum of 900mm.

The application proposes excavation of approximately 2.3m within the building footprint to facilitate the semi-basement garage. In order to achieve a driveway with an appropriate grade and design to the garages, excavation within the front setback (i.e. outside the building footprint) appears to be approximately 2m. Retaining walls with a height of up to 2.3m are required to facilitate the proposed excavation, as shown in **Figure 14** below.

### ITEM 3 (continued)



**Figure 14:** Extract from site plan showing extent of retaining walls in front setback.

The excavation and resulting retaining walls create inconsistency along the streetscape.

It is noted that No. 32 Mawarra Crescent is excavated for a semi-basement garage and vehicular access, the scale of this excavation is less than the proposed development, as the width of the driveway is approximately 4m, being 2m less than the proposed development due to the fact the development at No. 32 Mawarra Crescent is a single dwelling.

It is further noted that No. 32 Mawarra Crescent is the only dwelling within close proximity of the site that has this configuration.

### 3. Part 3.3, Section 2.9.3 – Rear Setbacks

Section 2.9.3(a) requires dwellings to have a minimum rear setback of 25% of the length of the site or 8m, whichever is the greater. Given the average site length is 35.12m, the required rear setback is 8.78m. Given the proposal has a minimum rear setback of 8.057m, the proposal does not comply with this control.

The non-compliance is considered acceptable in this instance for the following reasons:

- The setback is considered to be minor, being 723mm, and would not create any privacy impacts for the adjoining properties;
- An 8m x 8m deep soil area is still achieved in the backyard; and
- Sufficient space for outdoor recreation and landscaping is still provided.



### ITEM 3 (continued)

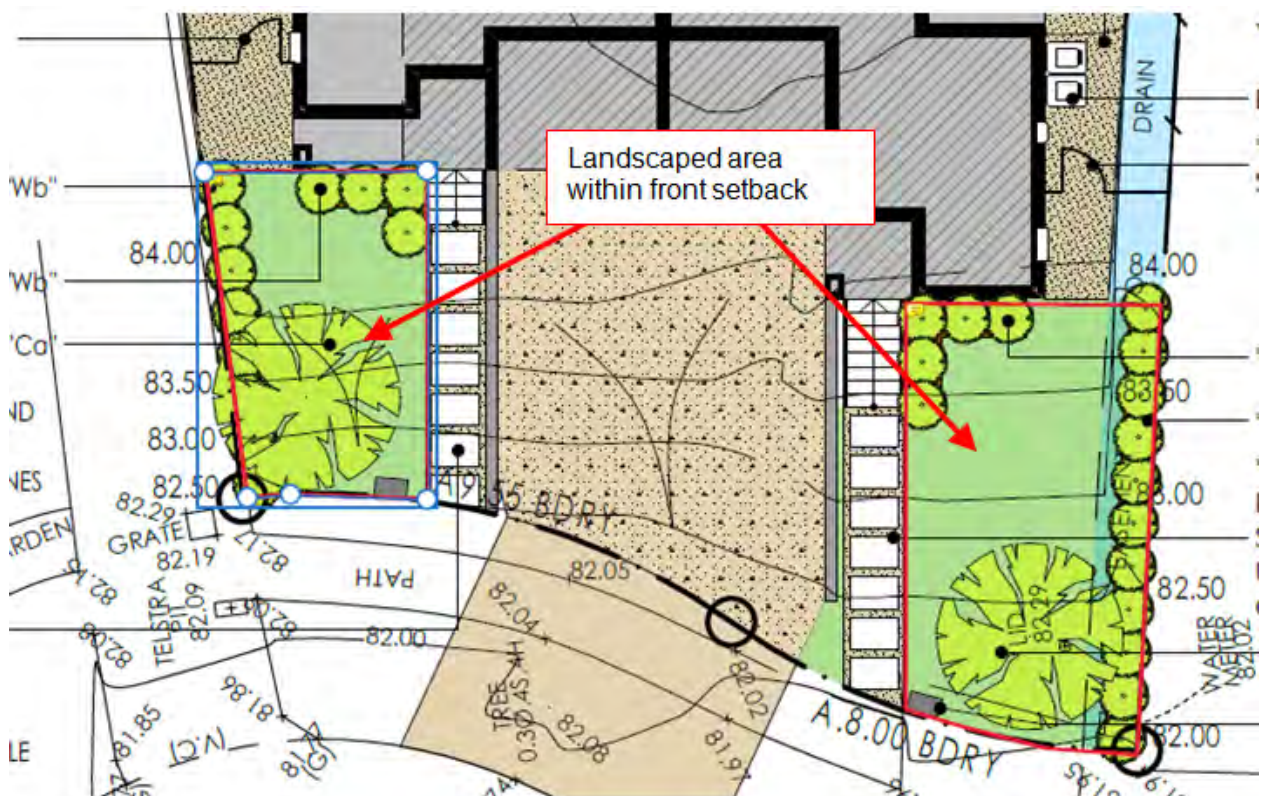
#### 4. Part 3.3, Section 2.11.1 – Car Parking

Section 2.11.1(i & j) requires garages facing the street to have a maximum width of 6m and a maximum garage door width of 5.7m. The proposal has an external garage width of 6.2m and a maximum garage door width of 5.8m, and therefore does not comply with these controls.

Particularly given the narrow frontage of the site, this non-compliance is considered unacceptable, as it results in the garages being visually prominent features, and detracts from the streetscape.

#### 5. Part 3.3, Section 2.13 – Landscaping

Section 2.13 (e) requires hard paving areas in the front setback to be minimised, being no more than 40% of the front setback area. This application proposes hard paving of approximately 62m<sup>2</sup> within the front setback (see **Figure 15** below), which has a total area of 121m<sup>2</sup> (i.e. 51% hard paving).



**Figure 15:** Extract from landscape plan showing extent of hard paving within front setback

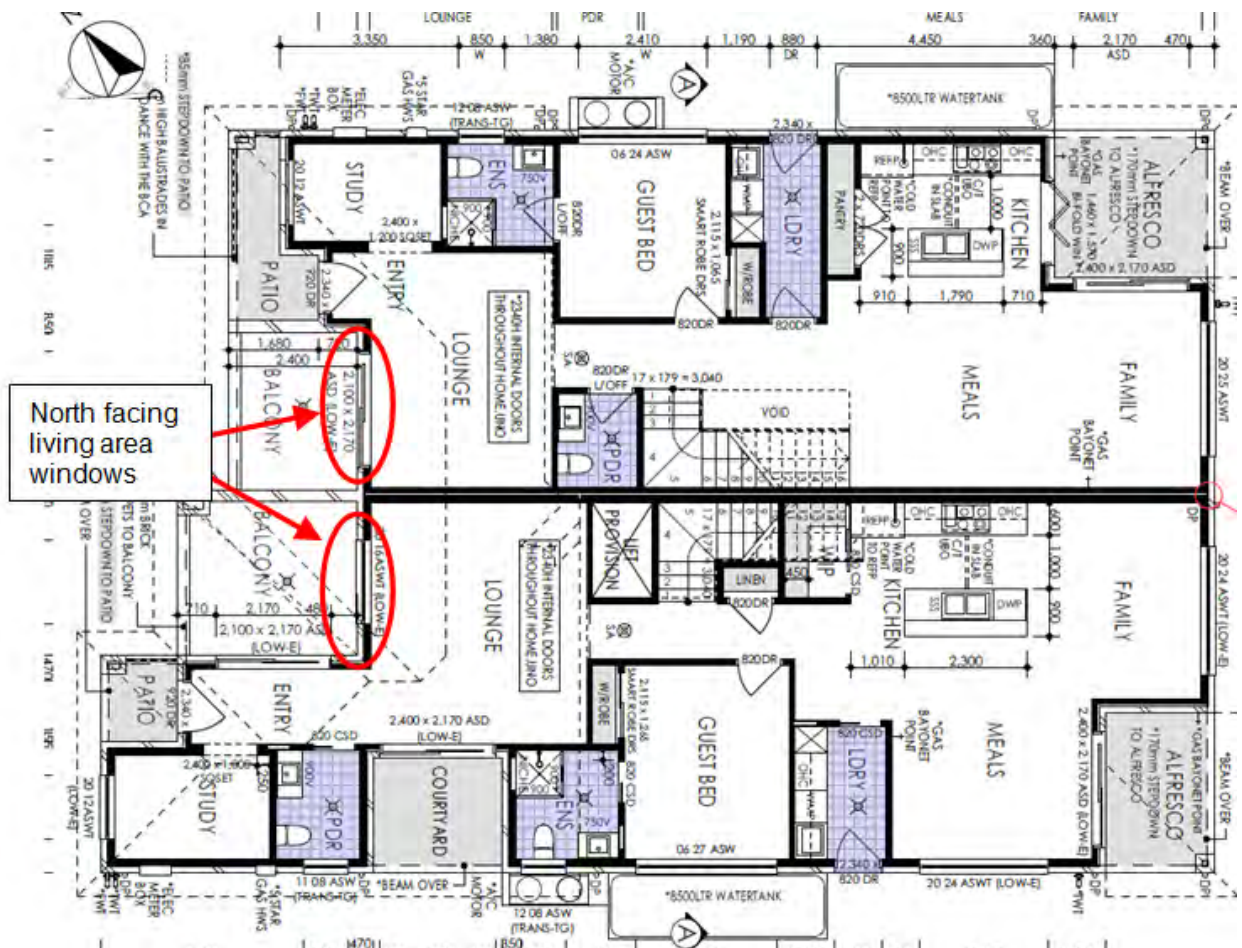
The landscape plan (see **Figure 15**) is also not consistent with the amended architectural plans, which have a splay in the retaining walls to provide sight distances for vehicular access. The splay would further reduce the amount of landscaped area provided in the front setback.

### ITEM 3 (continued)

This non-compliance is unacceptable as, given the narrow street frontage, the excessive hardstand area adversely impacts the appearance and amenity of the development.

#### 5. Section 2.14.1 – Daylight and Sunlight Access

Section 2.14.1 (c) of the RDCP 2014 requires windows of north-facing living areas of subject dwellings to receive at least 3 hours sunlight between 9am and 3pm on June 21. **Figure 16** shows the north facing windows of the front lounge room being recessed due to the proposed balconies on the front elevation.



**Figure 16:** Extract of Ground Floor Plan showing north western facing living area windows.

Given the orientation of the family/living area at the rear of the site is south-facing, the importance of adequate solar access to the front lounge/living room is significant to ensure the dwellings have sufficient amenity. The applicant has failed to demonstrate that three hours sunlight is provided to a portion of the surface of these windows on June 21, and therefore, the dwellings are considered to have poor amenity for future occupants.



### ITEM 3 (continued)

Section 2.14.1(e) of the RDCP 2014 also requires developments to ensure:

- (i) North facing living room windows of neighbouring dwellings are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface, where this can be reasonably maintained given the orientation topography of the subject and neighbouring sites; and
- (ii) Sunlight to at least 50% of the principal area of ground level private open space is not to be reduced to less than two hours sunlight between 9am and 3pm on June 21 for adjacent neighbouring properties.

The shadow diagrams provided by the applicant do not provide sufficient information to demonstrate that the north-facing window of No. 36 Mawarra Crescent receive 3 hours sunlight on 21 June to a portion of its surface (see **Figure 17** below). This non-compliance would result in the amenity of the adjoining neighbour being adversely impacted by the development.



**Figure 17:** Extract from shadow diagrams identifying north-facing adjoining window.

Therefore, this non-compliance is considered unacceptable.



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

#### **5.4 Planning Agreements or Draft Planning Agreements**

The application is not the subject of any planning agreements or draft planning agreements.

#### **5.5 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)**

Council's current Section 7.11 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 contributions 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 & Cultural Facilities	\$4,227.74
Open Space & Recreation Facilities	\$10,407.85
Civic & Urban Improvements	\$3,539.91
Roads & Traffic Management facilities	\$482.86
Cycleways	\$301.62
Stormwater Management Facilities	\$958.70
Plan Administration	\$81.32
<b>The total contribution is</b>	<b>\$20,000.00</b>

#### **5.6 Any matters prescribed by the regulations**

All matters prescribed by the regulations have been considered in the assessment of the application.

#### **6. The likely impacts of the development**

The impacts of the development have been considered throughout this report.

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

Given the inability of the site to make provision for the minimum frontage required under Ryde LEP 2014, it is not considered that the site is a suitable one for the form of development proposed.

### ITEM 3 (continued)

#### 8. The Public Interest

Given the above assessment, it is not considered that approval of the application would be in the public interest as the site is not suitable for an attached dual occupancy.

#### 9. Submissions

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the application was notified between 20 September 2018 and 5 October 2018, in which one (1) submission objecting to the development was received from the owner of No. 36 Mawarra Crescent.

The amended plans received were renotified between 31 October 2018 and 16 November 2018, in which no submission were received.

The concerns raised in the submission are summarised and addressed following:

- ***Non-compliance with 20m road frontage development standard.***

##### Comment

This concern is concurred with. The proposal does not comply with this development standard, and has not provided sufficient justification for the departure from this standard.

Therefore, this forms a reason for refusal of the application.

- ***The new dwelling will be 2m in front of house at No. 36 Mawarra Crescent, being inconsistent with buildings in the street and obstructing sunlight to front garden of No. 36 Mawarra Crescent.***

##### Comment

This comment was received in respect to the plans originally submitted. It is noted that amended plans provide a 6m front setback, which is compliant with the RDCP 2014.

Therefore, this concern has been addressed by the amended plans.

### ITEM 3 (continued)

- ***Overshadowing of backyard and north facing windows of No. 36 Mawarra Crescent.***

#### Comment

The private open space of No. 36 Mawarra Crescent receives the required 2 hours sunlight between 9am and 3pm of June 21. The shadow diagrams provided do not provide sufficient information to demonstrate that the north-facing window of No. 36 Mawarra Crescent receives the required 3 hours sunlight (as per Section 2.14.1e of the RDCP 2014).

Therefore, this concern is concurred with, and forms a reason for refusal of this application.

- ***Acoustic privacy impact on No. 36 Mawarra Crescent.***

#### Comment

Compliant side setbacks have been provided, and the proposal is considered to achieve sufficient acoustic privacy for the adjoining properties.

- ***Non-compliant rear setback.***

#### Comment

The rear setback is required to be 8m or 25% of the average site length, whichever is greater. Given the average site length is 35.12m, the required rear setback under the RDCP 2014 is 8.78m. The proposed rear setback is 8.057m, and therefore does not comply with this control. This non-compliance is considered acceptable in this instance, given the minor nature of the non-compliance, and that the proposal can provide the required 8m x 8m deep soil area.

- ***Scale of development not compatible with street.***

#### Comment

This concern is concurred with. Given the narrow road frontage, the site is not considered suitable for the proposed dual occupancy.

Therefore, this concern forms a reason for refusal of this application.

- ***Level of excavation is excessive.***

#### Comment

This concern is concurred with. The level of excavation in the front setback is considered excessive and would not be consistent with the streetscape.

Therefore, this concern forms a reason for refusal of this application.

### ITEM 3 (continued)

- ***Location and extent of driveway will prevent on-street parking.***

#### Comment

The location and width of the driveway is considered acceptable. The proposal complies with Part 9.3 of the RDCP 2014 in respect to the vehicular access and parking arrangements.

### 10. Referrals

#### Development Engineer

A referral was made to Council's Development Engineer, who has raised no issues with the proposal subject to conditions which are to be imposed should this application be approved.

### 11. Conclusion

The development application is recommended for refusal for the following reasons:

1. Given the inability of the site to provide a 20 metre frontage in accordance with Clause 4.1B(2)(b) of the Ryde LEP 2014, it is considered that the site is not suitable for the proposed attached dual occupancy.
2. Given the inability of the site to provide a 20 metre frontage in accordance with Clause 4.1B(2)(b) of the Ryde LEP 2014, it is not considered that the development proposed complies with the objective of this development standard.
3. Further, the development proposed is unable to satisfy key development standards for dual occupancy (attached) sites under the relevant planning controls, such as:
  - Inadequate landscape setting in the front setback.
  - Unable to achieve a design that is compatible with the existing and desired streetscape.
  - Excessive and unacceptable level of excavation in front setback.
  - Unacceptable streetscape and impacts from garage dominance.
  - Inadequate information addressing of solar impacts upon the neighbouring property at No. 36 Mawarra Crescent.
  - Inadequate information to demonstrate that the proposed dwellings received sufficient solar access to north facing living room windows.
4. Approval of the development proposed would create an undesirable precedent.
5. The development is not considered to be in the public interest.

### ITEM 3 (continued)

#### 12. RECOMMENDATION:

1. That Development Application LDA2018/0364 for the demolition existing structures & construction of a new 2 storey dual occupancy (attached) at No. 34 Mawarra Crescent Marsfield, be refused for the following reasons.
  - a) The proposed development provides an inadequate lot width and is inconsistent with the requirements of Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014.
  - b) The proposed development failed to submit a satisfactory written request to vary the lot width development standard which complies with Clause 4.6 Exceptions to development standards of the Ryde Local Environmental Plan 2014.
  - c) Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *Ryde Development Control Plan 2014*:

#### Part 3.3 – Dwelling houses and Dual Occupancy (attached)

- *Section Clause 2.1 – Desired Future Character* in that the proposal:
  - does not demonstrate that amenity for the subject dwellings or neighbouring properties will be provided; and
  - is inconsistent with the streetscape.
- *Section 2.6.2 – Topography and Excavation* in that
  - the level of excavation exceeds the required level;
  - the height of the retaining walls in the front setback exceed the maximum, height; and
  - the level of excavation is not consistent with the streetscape.
- *Section 2.11.1 – Car Parking* in that
  - the external garage width exceeds the maximum width;
  - the garage door width exceeds the maximum width; and
  - the non-compliance results in a visually dominant garage.
- *Section 2.13 – Landscaping* in that the hard paving in the front setback exceeds the maximum requirement and results in an unacceptable landscaped setting.
- *Section 2.14.1 – Daylight and Sunlight Access* in that:
  - the proposal provides insufficient information to demonstrate that the adjoining property receives sufficient solar access to its north facing living rooms windows to maintain amenity; and

**ITEM 3 (continued)**

- the proposal provides insufficient information to demonstrate adequate solar access is provided to the subject dwellings' north facing living room window in order to provide amenity.
  - d) Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, that the proposed attached dual occupancy is not suitable for the site given the proposal does not meet key development standards for dual occupancy development under the relevant planning controls.
  - e) Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, in that the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.
  - f) Approval of the development proposed would create an undesirable precedent.
2. The objector be advised of the decision.

**ATTACHMENTS**

- 1 Compliance Check
- 2 Clause 4.6 variation
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Madeline Thomas**  
**Assessment Officer - Town Planner**

Report Approved By:

**Tony Collier**  
**Senior Coordinator - Major Development**

**Sandra Bailey**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

ITEM 3 (continued)

ATTACHMENT 1

## Compliance Check - Quality Certification

### Assessment of a Dual Occupancy (attached), Single Dwelling House, Alterations & Additions to a Dwelling House and ancillary development.

<b>LDA No:</b>	<b>LDA2018/0364</b>	<b>Date Plans Rec'd:</b>
<b>Address:</b>	<b>34 Mawarra Cr Marsfield</b>	
<b>Proposal:</b>	<b>Demolition of existing structures &amp; construction of a new 2 storey dual occupancy (attached)</b>	
<b>Constraints Identified:</b>		

### COMPLIANCE CHECK

<b>Ryde LEP 2014</b>	<b>Proposal</b>	<b>Compliance</b>
<b>4.3(2) Height</b>		
9.5m	Roof RL (highest): RL 93.2 EGL (lowest) under: RL 84.3 Height of Building = 8.9m	Yes
<b>4.4(2) &amp; 4.4A(1) FSR</b>		
0.5:1 (338.95m <sup>2</sup> )	Ground Floor: 207.3m <sup>2</sup> First Floor: 127.8m <sup>2</sup> Total GFA: 335.1m <sup>2</sup> FSR = <b>0.494: 1</b>	Yes

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b><i>Part 3.3 - Dwelling Houses and Dual Occupancy (attached)</i></b>		
<b>Desired Future Character</b>		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is not considered to be consistent with the future desired character of the area as: - The garage is considered a prominent structure due to	<b>No</b>



**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
	the narrow width of the allotment - The proposed dwelling is not compatible with the streetscape in that the bulk and scale of the dual occupancy is excessive.	
<b>Dwelling Houses</b>		
<ul style="list-style-type: none"> <li>- To have a landscaped setting which includes significant deep soil areas at front and rear.</li> <li>- Maximum 2 storeys.</li> <li>- Dwellings to address street</li> <li>- Garage/carports not visually prominent features.</li> </ul>	Front and rear gardens proposed.	Yes
	Two storeys are proposed (stepped up the site).	Yes
	Dwelling presents to Mawarra Crescent.	Yes
	Garage not prominent feature as setback in front elevation of building.	Yes
<b>Public Domain Amenity</b>		
<b>Streetscape</b>		
<ul style="list-style-type: none"> <li>- Front doors and windows are to face the street. Side entries to be clearly apparent.</li> <li>- Single storey entrance porticos.</li> <li>- Articulated street facades.</li> </ul>	Front doors and windows face street.	Yes
	Single entrance portico.	Yes
	Articulated street façade.	Yes
<b>Public Views and Vistas</b>		
<ul style="list-style-type: none"> <li>- A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Garages/carports and outbuildings are not to be located within view corridor if they obstruct view. Fence 70% open where height is &gt;900mm.</li> </ul>	No views are impeded by the proposed development.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Pedestrian &amp; Vehicle Safety</b> <ul style="list-style-type: none"> <li>- Car parking located to accommodate sightlines to footpath &amp; road in accordance with relevant Australian Standard.</li> <li>- Fencing that blocks sight lines is to be splayed.</li> </ul>	No objection has been raised by Council's Senior Development Engineer in this regard.	Yes
<b>Site Configuration</b>		
<b>Deep Soil Areas</b> <ul style="list-style-type: none"> <li>- 35% of site area min.</li> <li>- Min 8x8m deep soil area in backyard.</li> <li>- Front yard to have deep soil area (only hard paved area to be driveway, pedestrian path and garden walls).</li> <li>- Dual occupancy developments only need 1 of 8 x 8m area (doesn't have to be shared equally).</li> </ul>	Permeable (deep soil) area: 285.9m <sup>2</sup> approx (42% of site area).  Rear DSA dimensions: 8m x 8m provided.  Front DSA: 100% permeable area in front yard= 52.6m <sup>2</sup> , being 42.9% of the site area. Hardstand area within front setback is considered excessive due to the narrow width of the site.	Yes  Yes  <b>No</b>
<b>Topography &amp; Excavation</b> <p>Within building footprint:</p> <ul style="list-style-type: none"> <li>- Max cut: 1.2m</li> <li>- Max fill: 900mm</li> </ul> <p>Outside building footprint:</p> <ul style="list-style-type: none"> <li>- Max cut: 900mm</li> <li>- Max fill: 500mm</li> <li>- No fill between side of building and boundary or close to rear boundary</li> <li>- Max ht retaining wall 900mm</li> </ul>	<p>Within BF</p> <p>Max cut: 2.3m Max fill: 600mm</p> <p>Outside BF</p> <p>Max cut: nil Max fill: 500mm</p> <p>Retaining wall height = 2.3m to facilitate excavation for driveway</p>	<b>No</b>  Yes  <b>No</b>

**ITEM 3 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Height</b>		
- 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL).	Maximum 2 storeys proposed	Yes
- 1 storey maximum above attached garage incl semi-basement or at-grade garages.	1 storey above semi-basement garage	Yes
Wall plate (Ceiling Height) - 7.5m max above FGL or - 8m max to top of parapet <i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> <i>FGL = Finished Ground Level</i>	TOW RL: 90.8 EGL below: RL 84.15 TOW Height = 6.65m	Yes
9.5m Overall Height <i>NB:</i> <i>EGL = Existing Ground Level</i>	Roof RL (highest): RL 93.2 EGL (lowest) under: RL 84.3 Height of Building = 8.9m	Yes
Habitable rooms to have 2.4m floor to ceiling height (min).	2.74m min room height.	Yes
<b>Setbacks</b>		
<b>SIDE</b> <b>Two storey dwelling</b> - 1500mm to wall - Includes balconies etc	To wall min 1.66m	Yes
<b>Front</b> - 6m to façade (generally) - Garage setback 1m from the dwelling façade - Wall above is to align with outside face of garage below. - Front setback free of ancillary elements eg RWT, A/C	6m front setback achieved	Yes

**ITEM 3 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Rear</b> - 8m to rear of dwelling <b>OR</b> 25% of the length of the site, whichever is greater. <b>Note: 8.78m is 25% of site length.</b>	8.057m	<b>No (justifiable)</b>
<b>Car Parking &amp; Access</b>		
<b>General</b> - Dwelling: 2 spaces max, 1 space min. - Dual Occupancy (attached): 1 space max per dwelling. - Where possible access off secondary street frontages or laneways is preferable. - Max 6m wide or 50% of frontage, whichever is less. - Behind building façade.	Number/location of car spaces: 2  Access from: Mawarra Crescent  External width: 6.2m	Yes  Yes  <b>No</b>
<b>Garages</b> - Garages setback 1m from façade. - Total width of garage doors visible from public space must not exceed 5.7m and be setback not more than 300mm behind the outside face of the building element immediately above. - Garage windows are to be at least 900mm away from boundary. - Free standing garages are to have a max GFA of 36m <sup>2</sup> - Materials in keeping or complimentary to dwelling.	Setback from façade: 1.3m  Width of opening: 5.8m  No garage windows	Yes  <b>No</b>  Yes
<b>Parking Space Sizes (AS)</b> o Double garage: 5.4m wide (min) o Single garage: 3m w(min) o Internal length: 5.4m (min)	Internal measurements: 7.44m x 4.465m (Dwelling A) 6.48m x 3.610m (Dwelling B)	Yes

**ITEM 3 (continued)**

## ATTACHMENT 1

DCP 2014	Proposed	Compliance
<b>Driveways</b> Extent of driveways minimised	Driveway is limited to width of double garage opening.	Yes
<b>Semi-basement Car Parking</b> <ul style="list-style-type: none"> <li>- Ramps must start 2m from the boundary (not on public land).</li> <li>- Walls are not to extend beyond walls of dwelling above.</li> </ul>	Achieved.	Yes
<b>Landscaping</b>		
<b>Trees &amp; Landscaping</b> <ul style="list-style-type: none"> <li>- Major trees retained where practicable</li> <li>- Physical connection to be provided between dwelling and outdoor spaces where the ground floor is elevated above NGL eg. stairs, terraces.</li> <li>- Obstruction-free pathway on one side of dwelling (excl cnr allotments or rear lane access)</li> <li>- Front yard to have at least 1 tree with mature ht of 10m min and a spreading canopy.</li> <li>- Back yard to have at least 1 tree with mature ht of 15m min and a spreading canopy.</li> <li>- Hedging or screen planting on boundary mature plants reaching no more than 2.7m.</li> <li>- OSD generally not to be located in front setback unless under driveway.</li> </ul>	<p>One small street tree is proposed to be removed, and could be replaced as per draft TMO conditions.</p> <p>Stairs are provided to the rear alfresco area and the front porch.</p> <p>Pathway provided for each dwelling.</p> <p>Tree species proposed for front setback does not meet required height.</p> <p>Tree species proposed for rear yard is not sufficient.</p> <p>Achieved.</p> <p>No OSD in front setback.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>- Landscaped front garden, with max 40% hard paving</li> </ul>	Hard Paving: 57%	<b>No</b>
<b>Landscaping for lots with Urban Bushland or Overland Flow constraints</b> <ul style="list-style-type: none"> <li>- Where lot is adjoining bushland protect, retain and use only native indigenous vegetation for distance of 10m from bdy adjoining bushland.</li> <li>- No fill allowed in overland flow areas.</li> <li>- Fences in Overland Flow areas must be of open construction so it doesn't impede the flow of water.</li> </ul>	Not applicable.	Yes
<b>Dwelling Amenity</b>		
<b>Daylight and Sunlight Access</b> <ul style="list-style-type: none"> <li>- Living areas to face north where orientation makes this possible.</li> <li>- 4m side setback for side living areas where north is to the side allotment boundary.</li> </ul>	Lounge areas face north east/east. Family/meals area face south/south east.	<b>In Part</b>
<u>Subject Dwelling:</u> <ul style="list-style-type: none"> <li>- Subject dwelling north facing windows are to receive at least 3hrs of sunlight to a portion of their surface between 9am and 3pm on June 21.</li> <li>- Private Open space of subject dwelling is to receive at least 2 hours sunlight between 9am and 3pm on June 21.</li> </ul>	<p>It is not clear that the north facing living room receive the required solar access. Applicant needs to demonstrate with elevational shadow diagrams.</p> <p>POS: Ground level POS for each dwelling receives adequate solar access.</p>	<p><b>No</b></p> <p>Yes</p>

**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<p><u>Neighbouring properties are to receive:</u></p> <ul style="list-style-type: none"> <li>- 2 hours sunlight to at least 50% of adjoining principal ground level open space between 9am and 3pm on June 21.</li> <li>- At least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows between 9am and 3pm on June 21.</li> </ul>	<p>Hours of sunlight to adjoining principal open space: Minimum 2 hours achieved.</p> <p>Hours of sunlight to adjoining living area windows: <b>Not clear that 3 hours is achieved to north facing windows.</b></p>	<p>Yes</p> <p><b>No</b></p>
<p><b>Visual Privacy</b></p> <ul style="list-style-type: none"> <li>- Orientate windows of living areas, balconies and outdoor living areas to the front and rear of dwelling.</li> <li>- Windows of living, dining, family etc placed so there are no close or direct views to adjoining dwelling or open space.</li> <li>- Side windows offset from adjoining windows.</li> <li>- Terraces, balconies etc are not to overlook neighbouring dwellings/private open space.</li> </ul>	<p>Windows and alfresco areas are designed to mitigate any overlooking.</p>	
<p><b>Acoustic Privacy</b></p> <p>Layout of rooms in dual occupancies (attached) are to minimise noise impacts between dwellings eg: place adjoining living areas near each other and adjoining bedrooms near each other.</p>	<p>Adequate acoustic privacy provided.</p>	<p>Yes</p>
<p><b>View Sharing</b></p> <ul style="list-style-type: none"> <li>- The siting of development is to provide for view sharing.</li> </ul>	<p>No views are impeded by the proposed development.</p>	<p>Yes</p>



**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Cross Ventilation</b> - Plan layout is to optimise access to prevailing breezes and to provide for cross ventilation.	Achieved.	Yes
<b>External Building Elements</b>		
<b>Roof</b> - Articulated. - 450mm eaves overhang minimum. - Not to be trafficable Terrace. - Skylights to be minimised and placed symmetrically. - Front roof plane is not to have both dormer windows and skylights. <b>Attic Dormer Windows</b> - Max 2 dormer windows with a max total width of 3m. - Highest point to be 500mm min below roof ridge and 1m min above the top of gutter. - Total roof area of attic dormer: 8m <sup>2</sup> - Front face to be setback 1m min back from external face of wall below. - Balconies set into roof not permitted.	No skylights or dormer windows are proposed. The roof is appropriately articulated.	Yes
<b>Fencing</b>		
<b>Front/return:</b> - To reflect design of dwelling. - To reflect character & height of neighbouring fences. - Max 900mm high for solid (picket can be 1m). - Max 1.8m high if 50% open (any solid base max	No front fence proposed.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
900mm). - Retaining walls on front bdy max 900mm. - No colorbond or paling Max width of piers 350mm.		
<b>Side/rear fencing:</b> - 1.8m max o/a height.	1.8m high side and rear fencing proposed.	Yes
<b>Part 7.1 - Energy Smart, Water Wise</b>		
<b>Insulation</b>		
Walls: R1.5 Ceiling: R3.0	Suitable BASIX Certificate supplied.	Yes
<b>Hot Water System</b>		
Any hot water system/s installed as part of a development or as a replacement must consider the most efficient option available to minimise greenhouse gas emissions.	Suitable BASIX Certificate supplied.	Yes
<b>Water Fixtures, Fitting and appliances</b>		
3 star shower heads; 4 star dual flush toilet; 4 star taps (other than bath outlets and garden taps); aerators to bathroom/kitchen taps.	Suitable BASIX Certificate supplied.	Yes
<b>External Clothes Drying Area</b>		
External yard space or sheltered ventilated space for clothes drying	External clothes drying area provided for each dwelling in appropriate location.	Yes
<b>Water Efficient Labelling &amp; Standards (WELS)</b>		
Minimum WELS rating of 4.5 stars for new or replacement dishwashers & washing machines.	Suitable BASIX Certificate supplied.	Yes
<b>Part 7.2- Waste Minimisation &amp; Management</b>		
Submission of a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	The applicant has submitted a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<b>Part 8.2 - Stormwater Management</b>		
<b>Stormwater &amp; Floodplain Management</b>		
Drainage is to be piped in accordance with Part 8.2 - Stormwater & Floodplain Management.	No objections have been raised by Council's Senior Development Engineer in this regard.	Yes
<b>Part 9.2- Access for People with Disabilities</b>		
Accessible path required from the street to the front door, where the level of land permits.	Not provided for each dwelling, given the topography of the site.	
<b>Part 9.5 – Tree Preservation</b>		
Where the removal of tree(s) is associated with the redevelopment of a site, or a neighbouring site, the applicant is required to demonstrate that an alternative design(s) is not feasible and retaining the tree(s) is not possible in order to provide adequate clearance between the tree(s) and the proposed building and the driveway.	One street tree is being removed to facilitate the development. Council's Tree Management Officer has raised no issues with the removal subject to replacement planting.	Yes
<b>BASIX</b>		
<p>All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans (list)</p> <p><b>BASIX Cert 960957M_04 dated 30 October 2018</b></p> <ul style="list-style-type: none"> <li>• RWT 5000L</li> <li>• Swimming Pool               <ol style="list-style-type: none"> <li>1. &lt;28kL</li> <li>2. outdoors</li> </ol> </li> <li>• Thermal Comfort Commitments – Construction.</li> <li>• TCC – Glazing.</li> </ul>	Suitable BASIX Certificate has been provided.	Yes

**ITEM 3 (continued)**

**ATTACHMENT 1**

DCP 2014	Proposed	Compliance
<ul style="list-style-type: none"> <li>Solar Gas Boosted HWS w/41-45 RECS+</li> <li>HWS Gas Instantaneous 5 star.</li> <li>Natural Lighting               <ol style="list-style-type: none"> <li>kitchen</li> <li>bathrooms ()</li> </ol> </li> </ul>		
Water Target 40 Energy Target 50	Water: 61 Energy: 52	Yes Yes
Correct description of property/proposal on 1 <sup>st</sup> page of Certificate.	No incorrect details.	Yes

Demolition		
Plan showing all structures to be removed	Provided.	Yes
Demolition Work Plan	Provided.	Yes
Waste Management Plan	Provided.	Yes

**Summary of Issues/Non compliances:**

- Desired future character;
- Landscaping – front setback deep soil area;
- Topography and excavation;
- Rear setback (justifiable) ;
- Tree planting in backyard;
- External garage width; and
- Solar access – sunlight to living room windows.

**Certification**

I certify that all of the above issues have been accurately and professionally examined by me.

Name: Madeline Thomas (Senior Town Planner)

## ITEM 3 (continued)

## ATTACHMENT 2



### CLAUSE 4.6 VARIATION

<b>Property:</b>	34 Mawarra Crescent Marsfield
<b>Proposal:</b>	Demolish existing dwelling and construct attached dual occupancy
<b>DA No.:</b>	LDA2018/0364
<b>Lot No. Plan:</b>	Lot 10 DP 260270
<b>Site Area:</b>	677.90sqm
<b>Zoning:</b>	R2 – Low Density Residential under the Ryde Local Environmental Plan 2014
<b>Development Standard:</b>	Road Frontage equal to or greater than 20m – Clause 4.1B(2)(b) RLEP 2014.

### BACKGROUND

Urbanesque Planning has been engaged by the applicant, Sett Homes Pty Ltd to prepare a written request pursuant to Clause 4.6(3) of the Ryde Local Environmental Plan 2014 (the LEP) to provide justification to vary a development standard concerning the specified road frontage to erect a dual occupancy. Development consent must not be granted for development that contravenes a development standard unless Council is satisfied as to the matters under Clause 4.6(4) of the LEP. It is the onus of the applicant to address the

It is proposed to demolish the existing single dwelling and to construct a two storey attached dual occupancy development with parking beneath. The site is irregular in shape due to the subdivision pattern and its location in a 90 degree bend in Mawarra Crescent (refer to Figure 1). The road frontage is curved and the physical frontage width is 17.55m. The allotment gradually widens towards the rear where the width is 22.6m. The site has a width of 20m approximately mid block. The frontage has a shortfall of 2.45m or 12.25% if expressed as a percentage.

### IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.1B(2)(b) under the Ryde Local Environmental Plan 2014 (the LEP) provides:-

- (2) 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.**

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

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## ITEM 3 (continued)

## ATTACHMENT 2

### CLAUSE 4.6 VARIATION

A development standard is defined in s 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The road frontage requirement falls under subsection (a), therefore the control is a development standard.

### CLAUSE 4.6 OF THE RYDE LOCAL ENVIRONMENTAL PLAN

Clause 4.6 of the Ryde LEP is a variations clause that is similar in effect to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1.

#### 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

ITEM 3 (continued)

ATTACHMENT 2

CLAUSE 4.6 VARIATION

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) 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 of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
  - (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
  - (c) clause 5.4,



## ITEM 3 (continued)

## ATTACHMENT 2

### CLAUSE 4.6 VARIATION

- (ca) clause 4.3, to the extent that it applies to the land identified as “Town Core” on the Ryde Town Centre Precincts Map,
- (cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),
- (cc) clause 6.9.

### THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate:-

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

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007). The five tests under *Wehbe* are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

TESTS UNDER WEHBE	COMMENTS
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The objective of the road frontage standard are expressed at Clause 4.1B(1):-</p> <p>“The objective of this clause is to achieve planned residential density in certain zones.”</p> <p>The two development standards contained in Clause 4.1B(2) are intended to work together to ensure lots sizes are sufficient in area and width to accommodate dual occupancy development, thereby achieving the desired residential density.</p> <p>To achieve numerical compliance, an allotment must have both an area of at least 580m<sup>2</sup> and a road frontage of at least 20m. Numerical compliance with these two development standards will achieve the objective of the control. In other words, numerical compliance is a means to an end, the end being the objective of the control.</p> <p>In the present case, the site area is 677.9m<sup>2</sup> which exceeds the minimum lot size for a dual occupancy by 97.9m<sup>2</sup>. The first of the two development standards is satisfied numerically.</p> <p>The nature of the road frontage control is to ensure a site has sufficient width to allow development of two dwellings resulting in development deemed to achieve the planned residential density. In one sense, the residential density is expressed as a floor space ratio. The floor space ratio applying to the land is 0.5:1. The controls intend that the desired residential density for dual occupancy development should only be achieved on sites with the specified area and road frontage. As the desired site area is achieved and the floor space ratio is compliant, the focus of this request is on the suitability of site and the proposed development having regard to the road frontage.</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

CLAUSE 4.6 VARIATION	
	<p>In relation to the road frontage development standard, it should be noted that the control is a 'blunt instrument' in that it does not take into account other factors that may influence the site and its suitability for dual occupancy development. For example, the development standard does not contemplate the shape of an allotment in considering suitability. A Clause 4.6 variation allows such other factors to be taken into account in deciding the merits of the non-compliance with the numerical standard.</p> <p>In the present case, the site is irregular in shape, having a curved road frontage of 17.55m to Mawarra Crescent however the site broadens gradually and has a rear width of 22.6m. The average site width is 20.075m. The site is 20m wide approximately mid block.</p> <p>The road frontage is a result of the configuration of the lot which is identified as an immutable physical environmental planning constraint which cannot be complied. As such the land requires site responsive design so that the objectives of the development standard may be satisfied.</p> <p>The existing dwelling takes full advantage of the site width and presents minimal side setbacks along the northern and southern boundaries. The rear setback is also relatively close and non-compliant by present DCP standards.</p> <p>By comparison, the proposed dual occupancy will have compliant front, rear and side setbacks and will therefore result in a better environmental planning outcome on the site compared to the existing development. The floor space ratio and height controls are compliant. The resulting built form is proportionate to the site area and the dimensions of the land. Therefore, the built form of the development properly relates to both the geometry of the site and the surrounding built environment.</p> <p>The proposed development is demonstrated to achieve the desired residential density through appropriate site planning and built form, notwithstanding non-compliance with the numerical road frontage development standard. Therefore, the site is considered suitable to support the proposed development and the objective of the control is achieved.</p> <p>Pursuant to Cl.4.6(4)(a)(i), compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case.</p> <p>Secondly, pursuant to Cl.4.6(4)(a)(ii), the matters preceding are considered to provide sufficient environmental planning grounds to justify contravening the development standard.</p> <p>It is worth pointing out that in <i>Four2Five Pty Ltd v Ashfield Council</i> (2015) Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.</p>

**ITEM 3 (continued)**

**ATTACHMENT 2**

CLAUSE 4.6 VARIATION	
	In a follow up judgement on further appeal, the Chief Judge, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	The objective of the standard would not be defeated or thwarted if compliance was required.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

**THE ONUS ON THE CONSENT AUTHORITY**

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to

## ITEM 3 (continued)

## ATTACHMENT 2

### CLAUSE 4.6 VARIATION

demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. Refer to *Initial Action Pty Ltd v Woollahra Municipal Council* (2018).



Figure 1: Aerial view of 34 Mawarra Crescent noting the shape of the site.

In assisting the consent authority in its satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), we refer to the objectives for development within the zone in which the development is proposed to be carried out.

The land is within the R2 Low Density Residential Zone. The zone objectives are:-

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

The development provides for the housing needs of the community in a low density residential environment through the supply of one additional dwelling on the land. As a dual occupancy, the development provides housing choice. The development thereby demonstrates compatibility with the relevant zone objectives.

### CONCLUSION

The proposal seeks a variance to the road frontage development standard to enable the development of the site with an attached dual occupancy. The development standard is strictly numerical in nature and fails to take into consideration any site constraints or qualitative aspects of the development or of the particular circumstances of a site that are environmental planning grounds to allow flexibility. Clause 4.6 of the Ryde LEP allows such an analysis to be carried out.

**ITEM 3 (continued)**

**ATTACHMENT 2**

**CLAUSE 4.6 VARIATION**

It has been demonstrated in this request that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to indirectly form the opinion that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



Eugene Sarich  
**Urbanesque Planning Pty Ltd**

Dated: 1 November 2018

**4 DEFERRED ITEM FROM 14 FEBRUARY 2019: 5 FARNELL STREET, WEST RYDE - DEMOLITION, NEW TWO STOREY DUAL OCCUPANCY (ATTACHED) - LDA2018/0107**

**Report prepared by:** Assessment Officer - Town Planner

**Report approved by:** Senior Coordinator - Major Development; Manager - Development Assessment; Director - City Planning and Environment

**Report dated:** 5 February 2019

**City of Ryde  
Local Planning Panel Report**

<b>DA Number</b>	LDA2018/0107
<b>Site Address &amp; Ward</b>	5 Farnell Street, West Ryde West Ward
<b>Zoning</b>	R2 Low Density Residential under RLEP 2014
<b>Proposal</b>	Demolition; new two storey dual occupancy (attached)
<b>Property Owner</b>	Robert Trovato & Melissa A Trovato
<b>Applicant</b>	Robert Trovato Melissa Antonetta Trovato
<b>Report Author</b>	Madeline Thomas – Assessment Officer
<b>Lodgement Date</b>	14 March 2018
<b>No. of Submission</b>	<ul style="list-style-type: none"> <li>One (1) submission and two (2) petitions containing 33 and 59 signatures respectively in the first public notification period.</li> <li>Fifteen (15) submissions received objecting to the development in the second public notification period.</li> </ul>
<b>Cost of Works</b>	\$837,000.00
<b>Reason for Referral to RLPP</b>	Contentious Development – Development is the subject of 10 or more unique submissions by way of objection.
<b>Recommendation</b>	Approval



**ITEM 4 (continued)**

<b>Attachments</b>	Attachment 1 – Draft Conditions of Consent Attachment 2 – Compliance Table Attachment 3 – Architectural Plans
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**1. Executive Summary**

The following report is an assessment of a development application for the demolition of the existing dwelling and the construction of a new two storey dual occupancy (attached) at No. 5 Farnell Street, West Ryde.

The application was lodged on the 14 March 2018. During the two separate notification periods, Council received one (1) submission and two (2) petitions containing 33 and 59 signatures respectively to the original notification period and fifteen (15) submissions for the second notification period. All of the submissions objected to the development. The issues raised in the submissions related to concerns with the rear setback, floor space ratio, building height and overshadowing. These matters are addressed in full detail in Section 9 of this report.

The proposal has been amended on several occasions since it was lodged in order to address a number of non-compliances with Council's controls and submissions raising concern in respect to the front setback and bulk of the proposed building.

The proposal does not result in unacceptable impacts to the surrounding properties in respect to their amenity.

The development has been assessed in respect of the relevant planning instruments and the application is non-compliant with the following:

**Ryde Development Control Plan 2014 (Part 3.3 – Dwelling Houses and Dual Occupancy (Attached))**

- The development fails to comply with the Ryde Development Control Plan (RDCP) 2014 in regard to the rear deep soil area, which requires an 8m x 8m area in the backyard. This is considered acceptable given the site is still capable of absorption of stormwater runoff and mature tree planting.
- The development fails to comply with the RDCP 2014 requirement in respect to the rear setback. The RDCP 2014 requires a rear setback of 8m or 25% of the average site length, whichever is greater. In this instance, the required setback is 8.89m, whereas the proposal has a rear setback of 6m. This is considered acceptable, as the site backs on to a reserve and does not create any adverse privacy impacts on adjoining properties. Additionally, the proposal is within the West Ryde Special Development Area, and is required to have a 12m front setback. Given the increased front setback, a reduced rear setback is considered to be a suitable design solution, as the proposal is of appropriate bulk and scale.



**ITEM 4 (continued)**

- The development results in a combined width of each single garage space of each dwelling being 6.5m. The RDCP 2014 requires the garages to have a maximum width of 6m, meaning the proposal is not compliant with this control. This is considered acceptable as the non-compliance is minor, and the proposed building has adequate articulation so that the garage is not a prominent feature.
- The development fails to comply with the RDCP 2014 requirement in respect to the size of the trees planted in the rear setback. The RDCP 2014 requires a tree with a minimum height of 15m to be planted in the rear yard. The application proposes two crepe myrtle trees with a mature height of 6m, and therefore does not comply with this control. This is considered acceptable given the site backs onto a Council reserve with several mature trees meeting the required height of 15m within close proximity of the site.
- The development fails to comply with the RDCP 2014 requirement in respect to overshadowing of the north facing window of the adjoining property to the south. This is considered acceptable given the minor non-compliance proposed, and that the amenity of adjoining neighbour will not be unreasonably compromised.

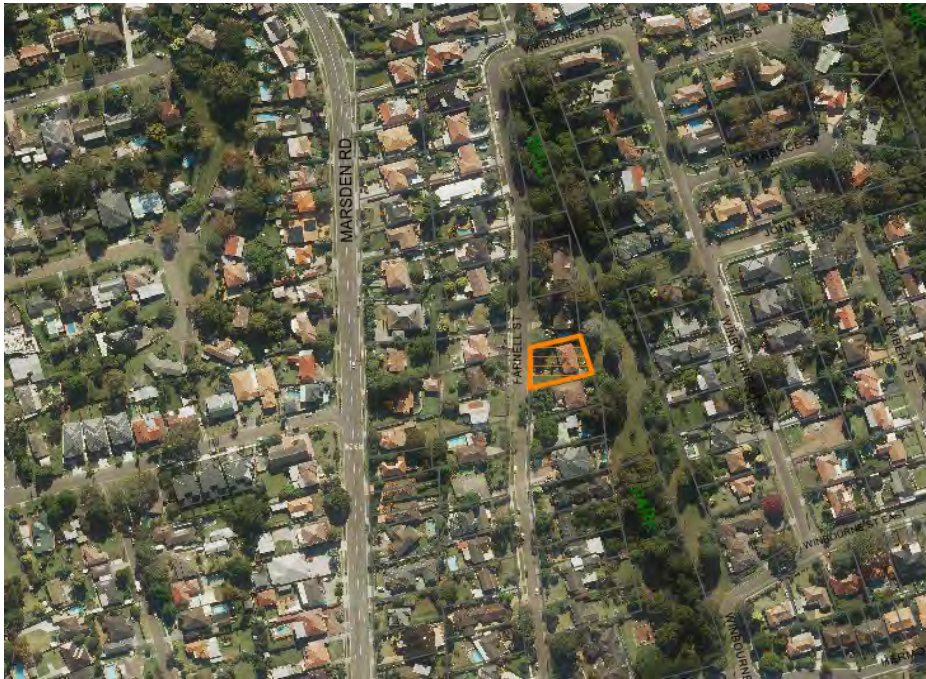
Following an assessment of the development application, it is considered that these non-compliances are acceptable on planning grounds.

The development is considered to be consistent with the desired future character of the precinct as identified in the relevant planning instruments.

The development application is therefore recommended for approval subject to appropriate conditions of consent provided in Attachment 1 of this report.

**ITEM 4 (continued)**

**2. The Site and Locality**



**Figure 1:** Aerial view of the subject site in its context



**Figure 2:** Aerial view of the subject site and immediate surrounds

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

The site is located on the eastern side of Farnell Street, West Ryde, and is legally known as Lot 8 in DP 618972, No. 5 Farnell Street, West Ryde.

The site is slightly irregular rectangular shape, with a splayed front boundary of 27.54m following the alignment of Farnell Street, and has an area of 941.9m<sup>2</sup>. The northern (side boundary) has a length of 31.46m and the southern boundary has a length of 39.625m, giving an average site length of 35.54m.

Currently, the site accommodates a part single/two storey brick dwelling and swimming pool. The existing dwelling is setback approximately 15m from the front boundary, and is similar to the prevailing 12m or greater front setback throughout Farnell Street and the West Ryde Special Development Area. Landscaping consists of planted species within a domestic setting.

The site adjoins Bell Park at the rear, as shown in **Figure 1**. Bell Park contains several mature trees scattered within close proximity of the subject site, as shown in **Figure 6**.

The site slopes from the western (front) and northern (side) boundary (RL 57.7 – RL 58.38) to the south east corner of the site (RL 55.41m) by approximately 3m.

Surrounding development includes detached dwellings varying in age, scale and architectural style. As noted above, the site is within the West Ryde Special Development Area, which consistently has dwellings with front setbacks of 12m or more.

**Figure 1** above shows the site in its context.

**Figures 3 to 8** show photographs of the subject site and surrounds.



**ITEM 4 (continued)**



**Figure 3:** View of existing dwelling from Farnell Street.



**Figure 4:** View at rear of existing dwelling.



**ITEM 4 (continued)**



**Figure 5:** View at rear of site towards No. 7 Farnell Street to the south.



**Figure 6:** View towards Bell Park at rear of subject site.



**ITEM 4 (continued)**



**Figure 7:** View of detached dwellings with large front setbacks on western side of Farnell Street

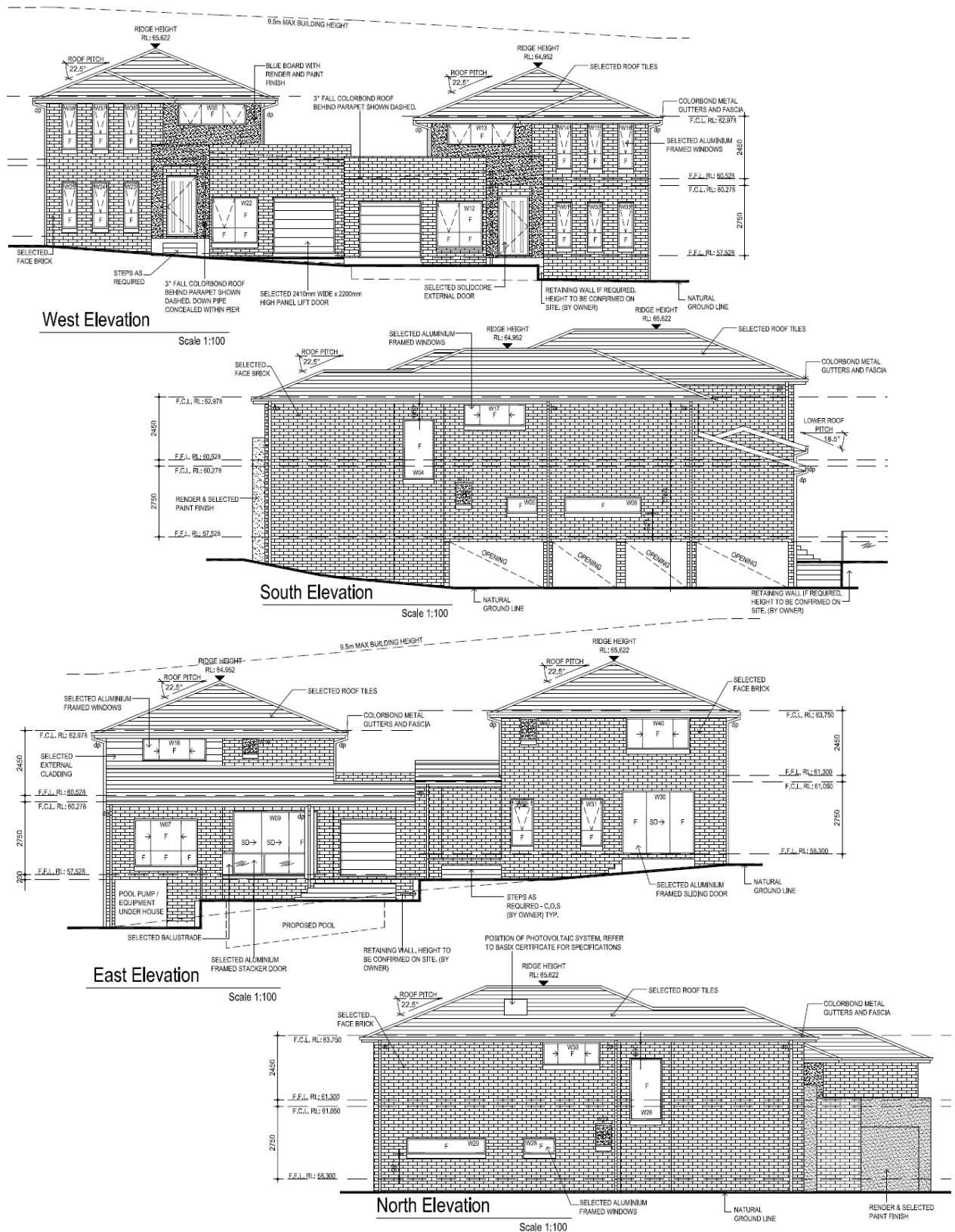


**Figure 8:** View of detached dwellings with large front setbacks on eastern side of Farnell Street

### **3. The Proposal**

The proposal is for the demolition of the existing dwelling and construction of a new two storey dual occupancy (attached).

**ITEM 4 (continued)**



**Figure 9:** Elevations of the original plans submitted with the application



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

**Figure 9** above shows the development as originally submitted to Council. It is noted that several design changes have occurred during the assessment of this application, and the proposed development in its current state is detailed as follows:

##### Unit 1

###### *Ground Floor*

Unit 1 is located on the southern side of the site, and is two storeys in height.

Unit 1 has a single garage, with additional storage, which is accessed from a separate driveway from Farnell Street.

The ground floor also contains a theatre room, bathroom, laundry and open living/dining/kitchen area. This area opens on to a raised alfresco area at the rear of the unit.

A sub-floor area is located at the southern side of the building and includes an open undercroft entertainment area. The remainder of the sub-floor area is enclosed and consists of sloping soil at natural ground level which rises to the northern side of the site (below Unit 2).

###### *First Floor*

The first floor of Unit 1 contains four bedrooms and two bathrooms. The first floor component is predominantly located on the northern side of the unit, so that the building height is reduced near the boundary.

##### Unit 2

###### *Ground Floor*

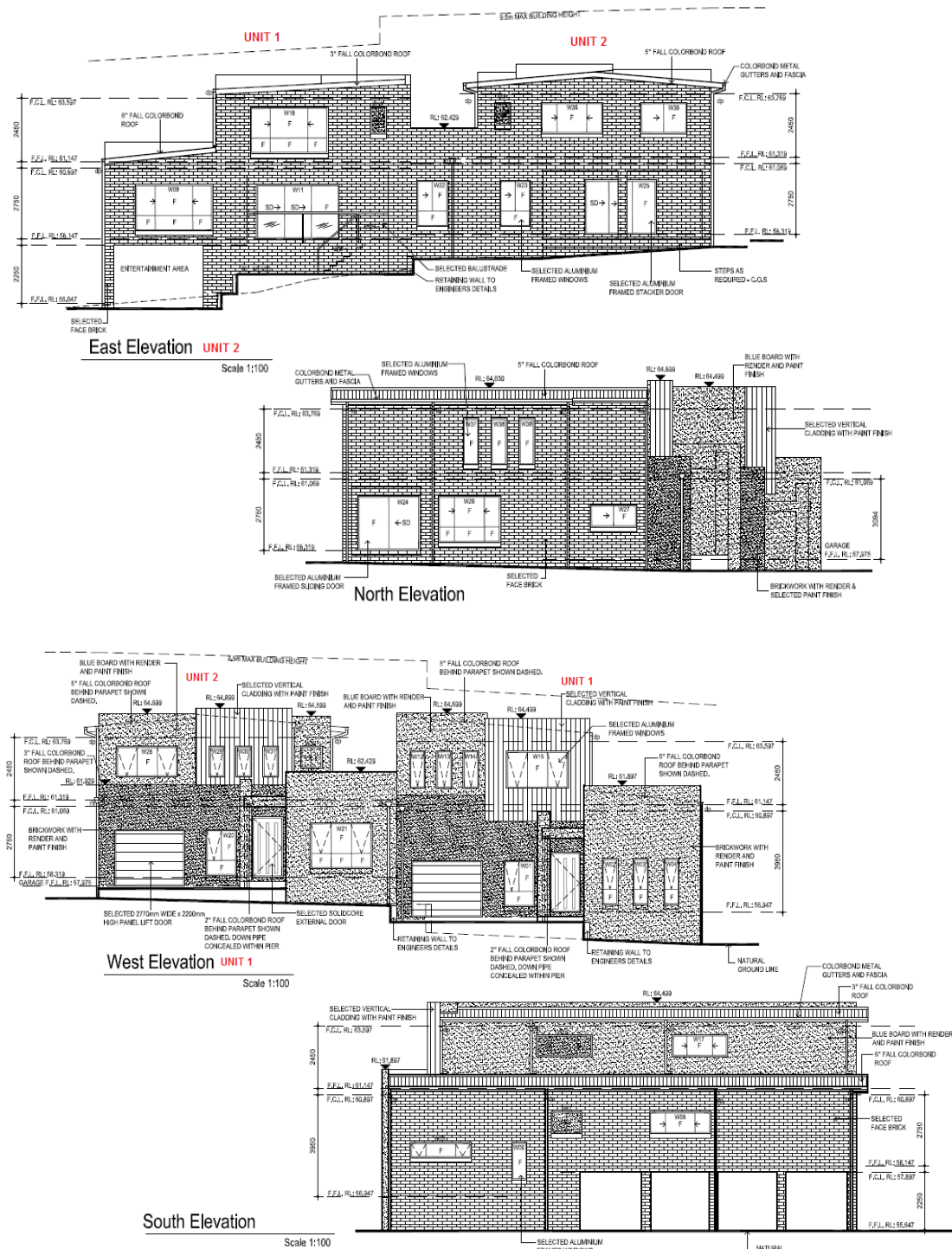
Unit 2 is located on the northern side of the site, and is two storeys in height. Unit 2 has a single garage, with additional storage, which is accessed from a separate driveway from Farnell Street. The ground floor also contains a theatre room, bathroom, laundry and open living/dining/kitchen area. This area opens on to a raised alfresco area at the rear of the unit.

###### *First Floor*

The first floor of Unit 2 contains four bedrooms and two bathrooms. The first storey component of Unit 2 is located on the northern side of the unit, creating a separation between the first floor components of the dual occupancy (attached).

**ITEM 4 (continued)**

Figure 10 below shows the elevations of the proposed development.



**Figure 10: Elevations of proposed dual occupancy.**

## **ITEM 4 (continued)**

### **4. Background**

The development application was submitted to Council on 14 March 2018.

#### 26 April 2018

A letter was sent to the applicant on 26 April 2018 which requested that a separate application be made to drain stormwater through the Council reserve at the rear of the property.

The applicant made this application following the receipt of this letter, and approval was granted by Council's City Works Department to allow the applicant to drain over Council Property. Council's Drainage Engineer has included the required conditions in their referral response to this application in regard to details of the design within Council land.

#### 21 May 2018

An additional letter was sent to the applicant on 21 May 2018 raising various issues with the application. These issues included:

- The site is within the West Ryde Special Development Area (as identified within Part 3.3 of the RDCP 2014) and therefore requires a minimum 12m front setback. The proposal originally proposed a 6m front setback, which was well forward of the established building line in Farnell Street, and was considered to be unsympathetic to the street character and would create an undesirable precedent for future development in the Development Area.
- The plans did not demonstrate that the proposal was compliant with Section 2.14.1 – Daylight and Sunlight Access – of the RDCP 2014 in regard to the adjoining north facing windows of No. 7 Farnell Street.
- The proposed building height exceeded the maximum building height of 9.5m for the site. The applicant was advised that the building height needed to be lowered or a Clause 4.6 variation request needed to be submitted.

#### 29 May 2018

The applicant was advised that insufficient information had been provided to demonstrate that the application complied with Ryde Council's Development Control Plan (RDCP) 2014 with regard to solar access the north facing living room window of the adjoining property at No. 7 Farnell Street.

#### 5 July 2018

A letter was sent to the applicant requesting an arborist report be provided to assess the impact the proposed stormwater design on the trees within the reserve at the rear of the site. This report was provided on the 14 August 2018.

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

##### 13 August 2018

Amended plans were provided by the applicant to address the non-compliant front setback and building height, as follows:

- Front setback was increased to a minimum of 12m to comply with the RDCP 2014.
- As a result, the rear setback was decreased to 6m.
- Other minor design changes were included to facilitate the increased front setback.

On 13 August 2018, the applicant was advised that the design of the amended building was not acceptable for the following reasons:

- Lack of building articulation;
- Inappropriate roof form; and
- Presentation of large blank wall on southern elevation.

Subsequently, the applicant was requested to amend the plans prior to their re-notification.

##### 17 August 2018

The applicant provided amended stormwater plans to reflect the changes made in the architectural plans.

##### 25 September 2018

A meeting was held with Council and the applicant to discuss the unresolved issues regarding the overshadowing of the adjoining property at No. 7 Farnell Street.

It was decided that amended plans were required to be submitted that substantially reduced the height of Unit 1 (closest to the southern boundary) in order to increase the solar access to the north facing windows of No. 7 Farnell Street.

##### 3 December 2018

Amended plans were received from the applicant to address the above. These changes included:

- The removal of the proposed pool;
- Change in roof pitch;
- Changes in materials and finishes to provide more articulation; and
- Changes in second storey configuration to reduce height of the building near the southern boundary.

#### ITEM 4 (continued)

These plans satisfactorily addressed the above requests for additional information, as outlined below:

- The reduction in the building height increased the sunlight received by the north facing living room window of No. 7 Farnell Street.
- Whilst the amended plans, which have a 6m rear setback, do not comply with the required 8m rear setback, the removal of the pool ensures adequate deep soil area and landscaping is provided, and is therefore considered acceptable.
- The changes to the building materials and finishes included more varied materials which satisfactorily provided more building articulation.

The amended plans had sufficient changes to justify re-notification to adjoining neighbours, and are the subject of this report.

#### 5. Planning Assessment

An assessment of the development in respect to Section 4.15 of the Environmental Planning and Assessment Act is detailed below.

##### 5.1 State Environmental Planning Instruments

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

An amended BASIX Certificate (see Certificate No. 909740M\_03 dated 08 August 2018) has been submitted with the application.

The Certificate confirms that the development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below:

Commitment	Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

An appropriate condition (See **Conditions 3** and **73**) is included in the draft conditions to ensure this is addressed.

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

In accordance with Clause 7 of SEPP 55, a consent authority must consider if the land is contaminated, the extent of the contamination, suitability of the proposed use and remediation to standards to ensure if the proposal is suitable.

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

The site has historically been used for a low density residential use and is not located in close proximity to any known contaminated land.

Therefore, it is considered that the subject site satisfies the requirements of SEPP 55 with regard to the proposed development.

#### **5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)**

RLEP 2014 commenced on 12 September 2014 as the new environmental planning instrument applicable to the City of Ryde.

Under RLEP 2014, the property is zoned R2 Low Density Residential, and the proposed development is permissible with Council's consent. The following is an assessment of the proposed development against the applicable provisions from the RLEP 2014.

##### Clause 2.3 - Zone Objectives and Land Use Table

The objectives of the zone include the following:

- *To provide for the housing needs of the community within a low density residential environment.*

##### Comment

The development will provide for the housing needs of the community within a low density residential development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

##### Comment

This objective is not applicable to the proposed development.

- *To provide for a variety of housing types.*

##### Comment

The provision of dual occupancy development will satisfy the objective for providing an additional dwelling on the site.

The proposal is considered to be consistent with the above objectives as the development contributes to the variety of housing within the West Ryde area.



## ITEM 4 (continued)

### Part 4 – Principle Development Standards

Clause	Proposed	Compliance
<b>4.3(2) Height of Buildings</b>		
9.5m	8.41m	Yes See discussion beneath this table
<b>4.1(B) Minimum lot sizes for dual occupancies and multi dwelling housing</b>		
580m <sup>2</sup> 20m frontage	941.9m <sup>2</sup> 27.54m	Yes See discussion beneath this table
<b>4.4(2) &amp; 4.4A(1) Floor Space Ratio</b>		
0.5:1 (470.95m <sup>2</sup> )	465.5m <sup>2</sup> 0.494:1	Yes See discussion beneath this table

#### Clause 4.1B – Minimum lot sizes for dual occupancies and multi dwelling housing

Clause 4.1B state that the minimum lot size for a site is required to be 580m<sup>2</sup> to permit a dual occupancy (attached) if it is land zoned R2 Low Density Residential. The clause also states that a minimum road frontage of 20m is required for sites proposing a dual occupancy (attached) development.

The subject site (No. 5 Farnell Street) has a lot size of 941.9m<sup>2</sup>, and a frontage of 27.54m to Farnell Street, and therefore satisfies this development standard.

#### Clause 4.3 - Height of Buildings

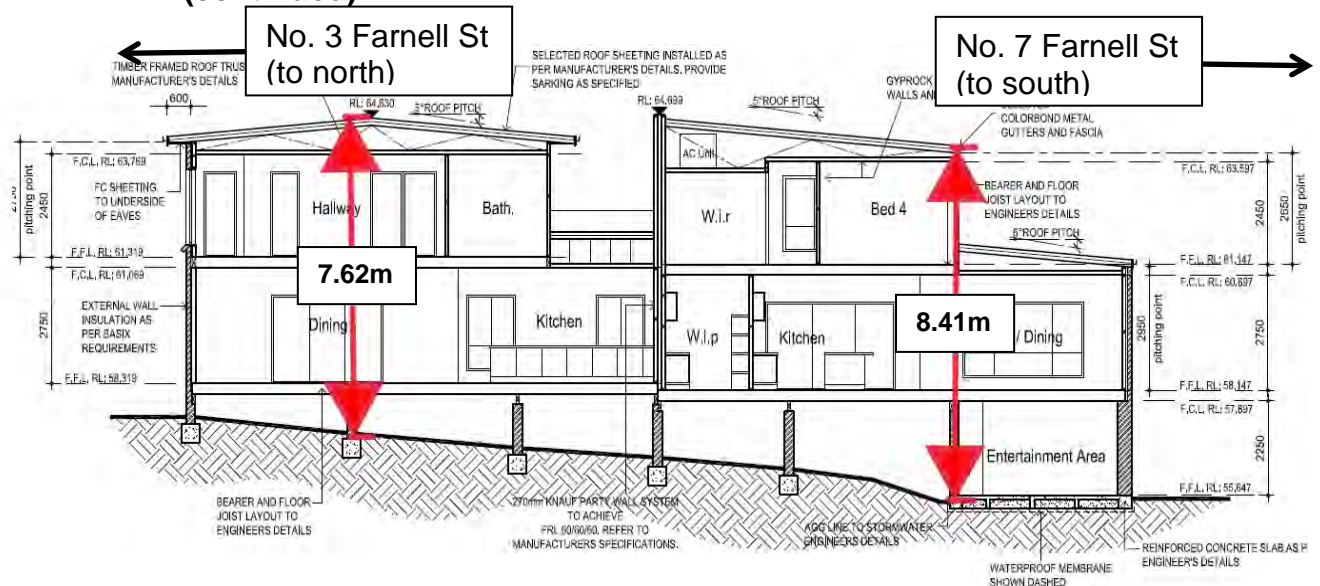
Clause 4.3(2) states that the height of a building on this site is not to exceed the maximum height shown on the Height of Buildings Map.

The map specifies the maximum height for any building on the site as 9.5m. Building height is defined in this planning instrument as meaning the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed development responds to the site's topography, which has a cross slope to the southern side, and is stepped down the site, as identified in **Figure 10** below.

Therefore, multiple measurements for the height of the building are assessed as part of this application.

**ITEM 4 (continued)**



**Figure 11:** Elevations of proposed development illustrating compliance with height control.

**Unit 2**

The proposed dual occupancy results in a building with a height of 7.82m from the ridge of the roof for Unit 2 on the northern side of the dwelling to the existing ground level as illustrated in **Figure 11**.

**Unit 1**

As mentioned previously in this report, the site slopes to the southern boundary. The roof above the lowest existing ground level for Unit 1 measures to a height of 8.41m. It is noted that the section of Unit 2 closest to the southern boundary is reduced in height by 3.05m from the highest point of the dwelling, having a building height of 5.63m.

Given the maximum height of the dual occupancy is 8.41m, the development complies with the maximum building height development standard under Clause 4.3 of the RLEP 2014.

**Clause 4.4 Floor Space Ratio**

Clause 4.4(2) states the floor space ratio (FSR) of a building is not to exceed the maximum specified on the FSR Map. The FSR Map specifies a maximum FSR of 0.5:1 for the site.

The site has an area of 941.9m<sup>2</sup>, and therefore, the maximum gross floor area permitted for the site is 470.95m<sup>2</sup>.

**ITEM 4 (continued)**

The RLEP 2014 defines *gross floor area* as the following:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
  - (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used for the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.

The proposed development results in the following gross floor area:

- Ground floor: 300.5m<sup>2</sup>
- First Floor: 201m<sup>2</sup>
- 501.5m<sup>2</sup> (minus) 36m<sup>2</sup> (garage)
- **Total GFA = 465.5m<sup>2</sup>**

Therefore, the proposed development has an FSR of 0.494:1, which, which complies with the maximum permitted FSR for the site under Clause 4.4(2).

## ITEM 4 (continued)

### Other provisions

The table below considers other provisions relevant to the evaluation of this proposal:

Provision	Comment
<b>Clause 6.2 - Earthworks</b>	The proposed development includes minor excavation within the building footprint to a maximum depth of 700mm. This level of excavation is compliant with the RDCP 2014. Council's Senior Development Engineer has reviewed the erosion control plan provided by the applicant, and has imposed a condition that the measures specified in this plan are to be complied with (see <b>Condition 68</b> ). Accordingly the development is considered satisfactory in respect of this clause.
<b>Clause 6.3 – Flood Planning</b>	The site is located within a "Flood Planning Area", and as such, a flood assessment was submitted with this application. Council's City Works Drainage Engineer has reviewed the application and is satisfied that the proposed floor levels address the flood constraint of the site.
<b>Clause 6.4 - Stormwater management</b>	The development has proposed the stormwater management system so that it drains through Council's Reserve (Bell Park) at the rear of the site. As a result, the applicant was required to make a separate application to Council in order to drain through Council's land. Council's Drainage and Senior Development Engineer have raised no issues in relation to the stormwater management system proposed, subject to conditions of consent relating to the realignment of the drainage infrastructure within the reserve (see <b>Condition 42</b> ) and the provision of an additional pit at the lowest point of the front yard of Unit 2 (see <b>Condition 42</b> ).

## 5.3 Draft Environmental Planning Instruments

There are no draft environmental planning instruments that affect the site.

## 5.4 Development Control Plans

### City of Ryde Development Control Plan 2014 (RDCP 2014)

The following sections of the RDCP 2014 are of relevance, being:

- **Part 3.3 – Dwelling Houses and Dual Occupancy (attached).**
- **Part 7.2 - Waste Minimisation and Management.**
- **Part 8.1 - Construction Activities.**
- **Part 8.2 - Stormwater Management.**
- **Part 9.3 - Car Parking.**

#### ITEM 4 (continued)

A full assessment of the proposal under the Ryde DCP 2014 is illustrated in the compliance table at **ATTACHMENT 2**.

The non-compliances identified in the table are assessed in detail below:

##### 1. Section 2.6.1 – Deep Soil Area (justifiable)

Section 2.6.1(a & b) of the RDCP 2014 has a requirement that the deep soil area of a site must be at least 35% of the total site area, and that this area must include an area with minimum dimensions of 8m x 8m in the backyard. The RDCP 2014 (Section 2.6.1c) also specifies that this area can be shared for a dual occupancy development.

The objectives of these controls are to ensure the land retains its ability to absorb rainwater and stormwater runoff, and that the site is capable of supporting mature trees and other vegetation.

The proposal has a deep soil area of 401.3m<sup>2</sup>, which is 42.6% of the total site area. However, given the rear setback of 6m, the proposal does not accommodate an 8m x 8m deep soil area in the backyard.

This non-compliance is considered acceptable in this instance for the following reasons:

- The site has significant deep soil areas within the front setback, given the 12m front setback required. The proposal includes two mature trees within the front setback, and thereby meets the objective to provide mature tree growth.
- Additionally, the site backs on to Bell Park Reserve, which contains a number of mature trees within close proximity of the site. Therefore, the reduction in the amount of deep soil area in the backyard will not adversely impact the amenity of the proposed dwellings or surrounding properties.
- The backyard has a total deep soil area of 149m<sup>2</sup>, which, whilst it does not comply with the minimum 8m dimension required, significantly exceeds the total area of deep soil required.
- The site provides adequate deep soil area to facilitate stormwater runoff.

##### 2. Section 2.9.3 – Rear setback (justifiable)

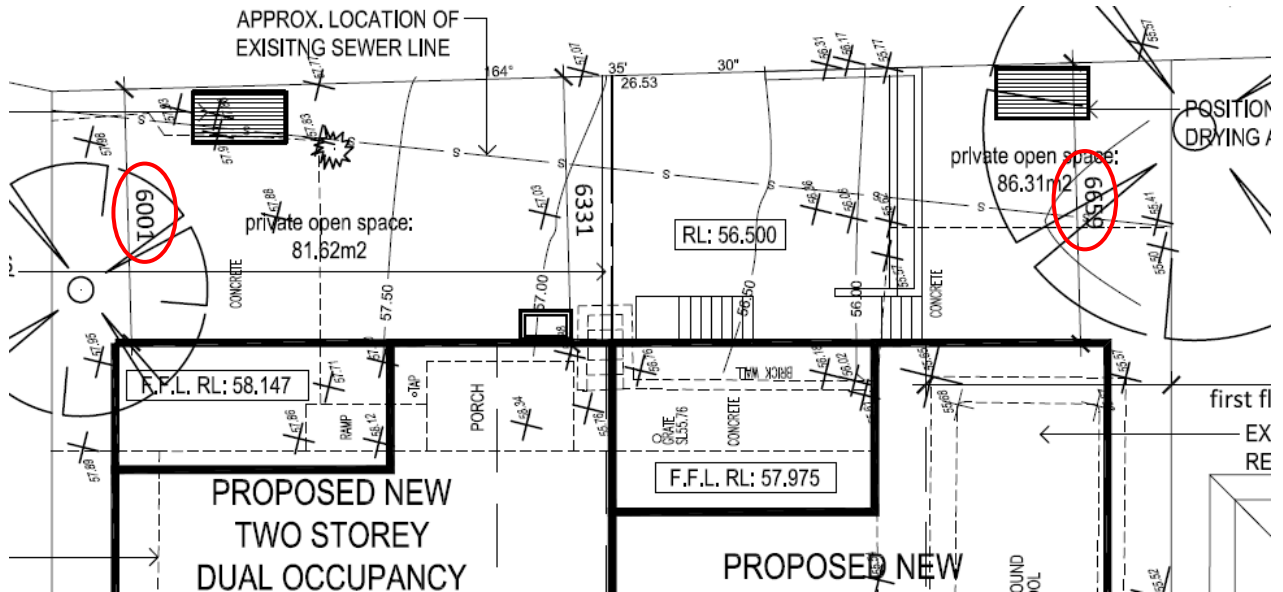
Section 2.9.3 (a) of the RDCP requires dual occupancy (attached) developments to have a minimum rear setback of 8m or 25% of the site length, whichever is greater. The objectives of this control are as follows:

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

#### ITEM 4 (continued)

The average site length for the subject site is 35.56m, and therefore, 25% of the site length, and the required rear setback, is 8.89m.

The proposal has a rear setback ranging between 6m and 6.659m, as shown in **Figure 12**.



**Figure 12:** Extract from Site Plan showing rear setback to eastern boundary.

The proposal is therefore non-compliant with this control, varying from the control by 2.89m (33%). This non-compliance is considered acceptable in this instance for the following reasons:

- The non-compliance does not result in any visual privacy issues, as the site backs on to Bell Park, and the alfresco areas or living room windows do not look into the residential properties to the north and south.
- As mentioned earlier in this report, the site has adequate deep soil area to allow for vegetation and mature trees.
- A contiguous vegetation corridor is still provided at the rear of the site in Bell Park Reserve (see **Figure 13**). No trees are to be removed within the rear setback.
- The architectural design includes a substantial alfresco area at the rear of each dwelling, which, in conjunction with the private open space proposed, provides an appropriate area for private outdoor recreation.
- As the site is within the West Ryde Special Development Area, a 12m front setback is proposed. The design of the proposal, in conjunction with the substantial front setback, has ensured the bulk and scale of the proposed building is not excessive, and is compatible with the streetscape.
- The reduced rear setback does not result in unacceptable impacts on the adjoining properties, as discussed in Section 9 of this report.



**ITEM 4 (continued)**



**Figure 13:** Aerial photo of subject site showing retention of vegetation corridor.

**3. Section 2.11.1 (i) – External garage width (justifiable)**

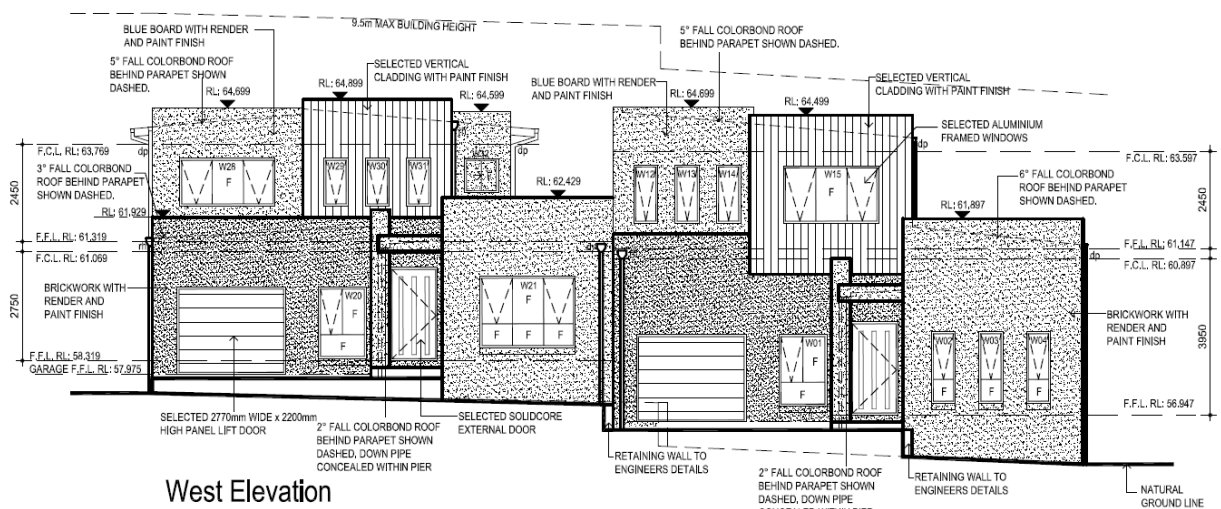
The Ryde DCP 2014 has a requirement that garages facing the street are to have a maximum width of 6m or 50% of the frontage, whichever is less. The subject site has a frontage of 27.54m, meaning that 50% of the frontage is 13.77m. Therefore the maximum width of the garage in this instance is required to be 6m.

The combined external width of the two garages is 6.5m, which does not meet the 6m requirement. This is considered acceptable in this instance for the following reasons:



#### ITEM 4 (continued)

- The garage is still less than 50% of site's frontage, and the articulation of the front façade, including the separation of each garage, ensures that the garage is not a prominent feature for either the individual lot or the streetscape (see **Figure 14**).
- The proposed width exceeds 6m by only 500mm.
- Compliant side and front setbacks are still achieved.
- The width of the garage has not resulted in excessively wide driveways, which have been kept to a minimum width where possible.



**Figure 14:** Front elevation of proposed building

#### 4. Section 2.13 – Landscaping

Section 2.13(i) of the RDCP 2014 requires developments, where the backyard does not have a mature tree at least 15m high, to have a tree with a minimum mature height of 15m with a spreading canopy in the 8m x 8m deep soil area in the backyard. The objective of this control is to enhance the appearance and amenity of development.

As previously discussed in this report, the proposed development does not contain an 8m x 8m deep soil area in the backyard. The subject site does not currently contain a tree in the rear setback that reaches the height of 15m, and the development does not propose the planting of such a tree. Therefore, the development fails to comply with this control.

This is considered acceptable in this instance for the following reasons:

- The site backs on to Bell Park Reserve, which contains several trees of substantial height and spreading canopies. These trees provide amenity to the subject site and adjoining dwellings. Additionally, two 6m Crepe Myrtle trees are planted within the rear setback to enhance the appearance of the proposed development.

**ITEM 4 (continued)**

- The proposal does not proposed excessive hardstand area within the rear setback.
- The proposal includes the planting of two Coastal Banksias within the front setback, which are capable of reaching a mature height of 15m, and contribute positively to the appearance of the development. The RDCP 2014 only requires the planting of one mature tree within the front setback, so the provision of two such trees compensates for the absence of such a tree in the rear setback.

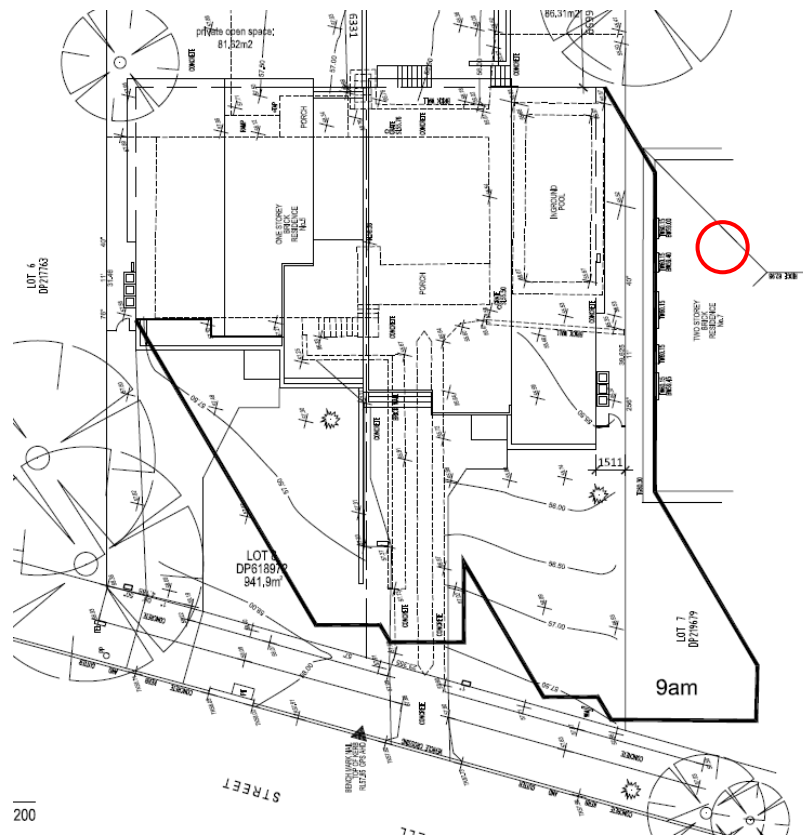
**5. Section 2.14.1 – Daylight and Sunlight Access**

Section 2.14.1 (e) of the RDCP 2014 requires developments to ensure:

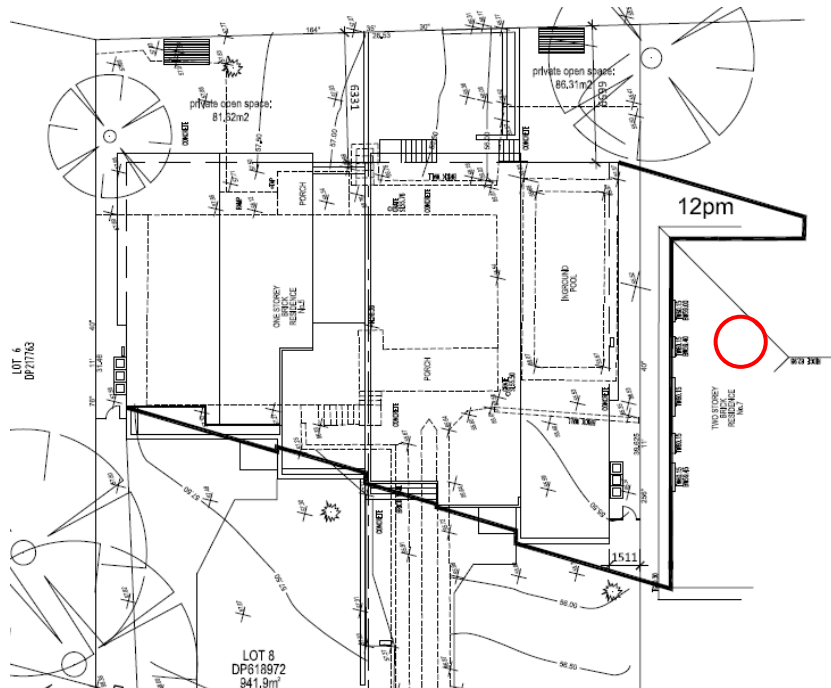
- i) North facing living room windows of neighbouring dwellings are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface, where this can be reasonably maintained given the orientation topography of the subject and neighbouring sites; and
- ii) Sunlight to at least 50% of the principal area of ground level private open space is not to be reduced to less than two hours sunlight between 9am and 3pm on June 21 for adjacent neighbouring properties.

Given the orientation of the site, and the close proximity of the north facing windows of No. 7 Farnell Street, the kitchen window (as identified in **Figure 15**) of No. 7 Farnell Street is affected by overshadowing.

**ITEM 4 (continued)**

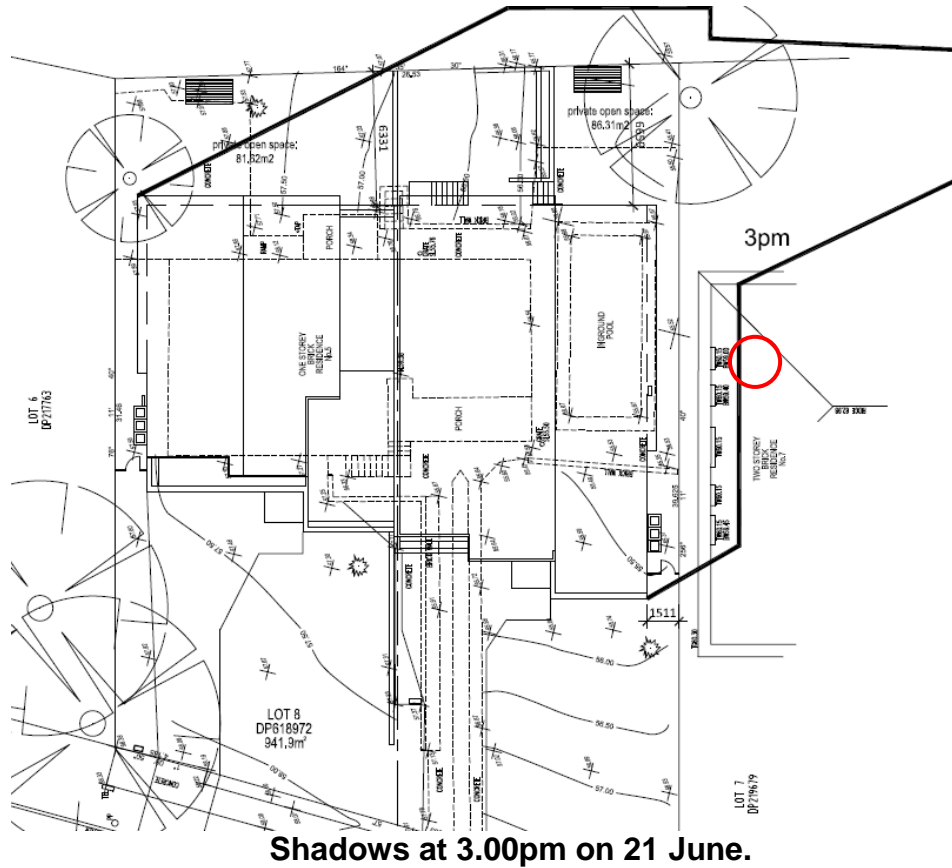


**Shadows at 9.00am on 21 June**



**Shadows at Noon on 21 June.**

**ITEM 4 (continued)**

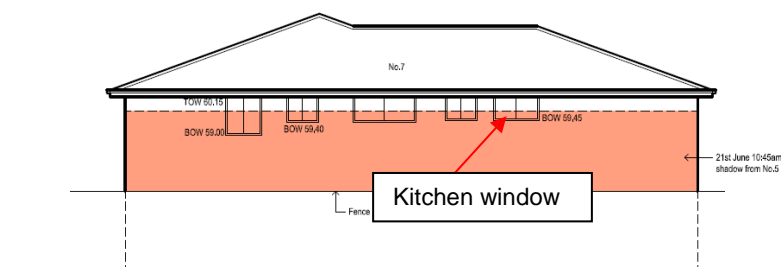


**Shadows at 3.00pm on 21 June.**

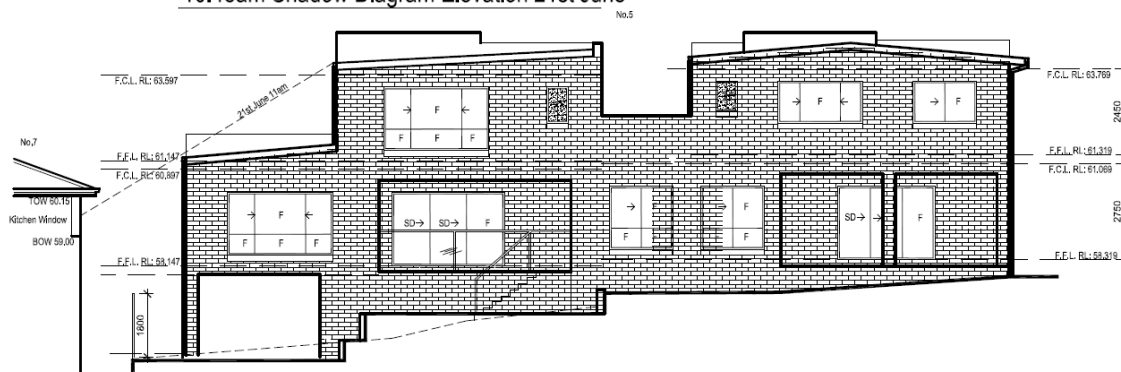
**Figure 15 – Shadows cast over No. 7 Farnell Street on 21 June.**

The proposal results in the kitchen window (as identified in red in **Figure 15**) receiving 2.5 hours of sunlight on June 21, as demonstrated in the elevational shadow diagrams in **Figure 16**. Therefore, the proposal does not provide the required 3 hours sunlight to the kitchen window of No. 7 Farnell Street, and does not comply with this control.

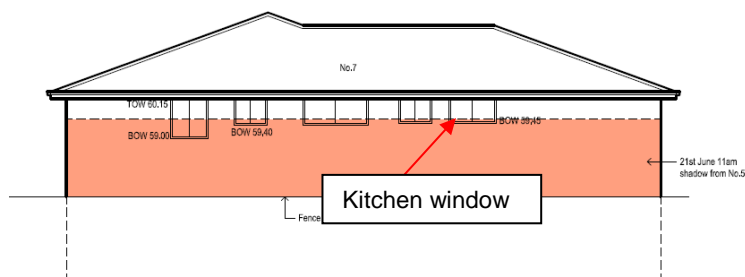
Scale 1:100



10:45am Shadow Diagram Elevation 21st June

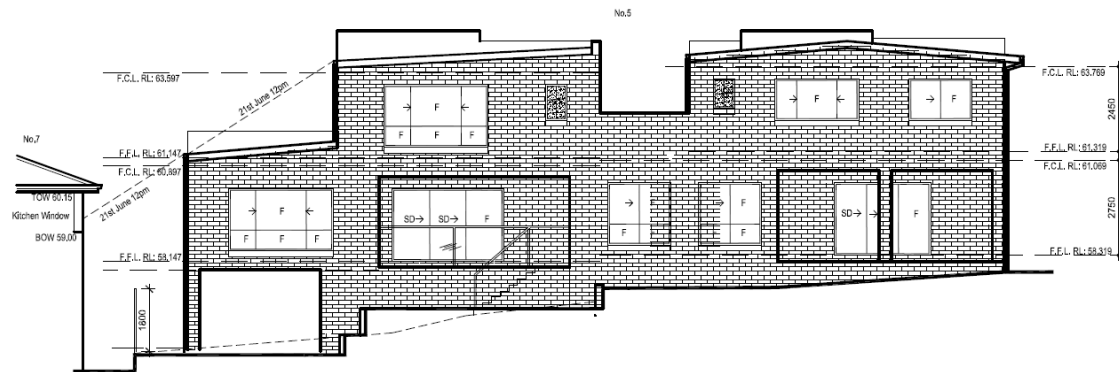


Scale 1:100



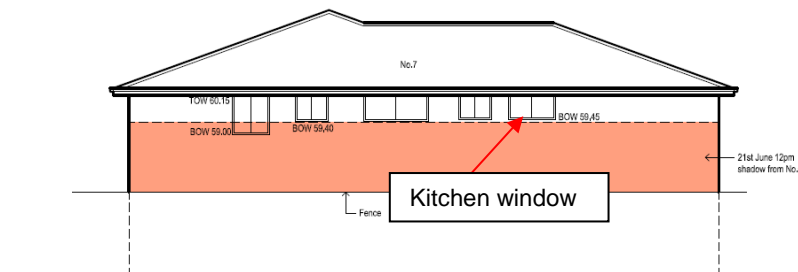
11am Shadow Diagram Elevation 21st June

**ITEM 4 (continued)**



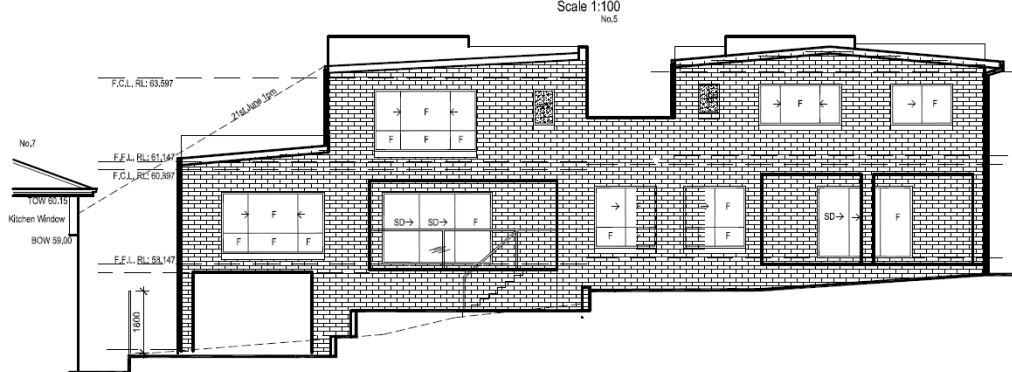
12pm Shadow Diagram  
21st June

Scale 1:100



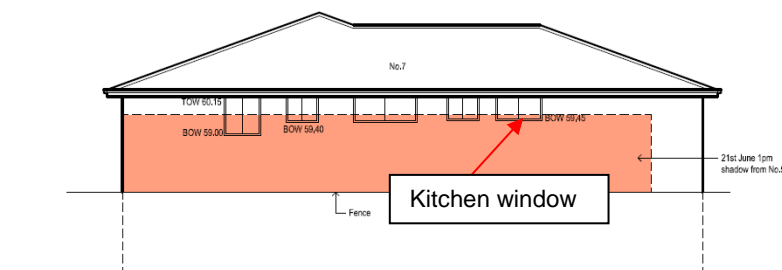
12pm Shadow Diagram Elevation 21st June

Scale 1:100



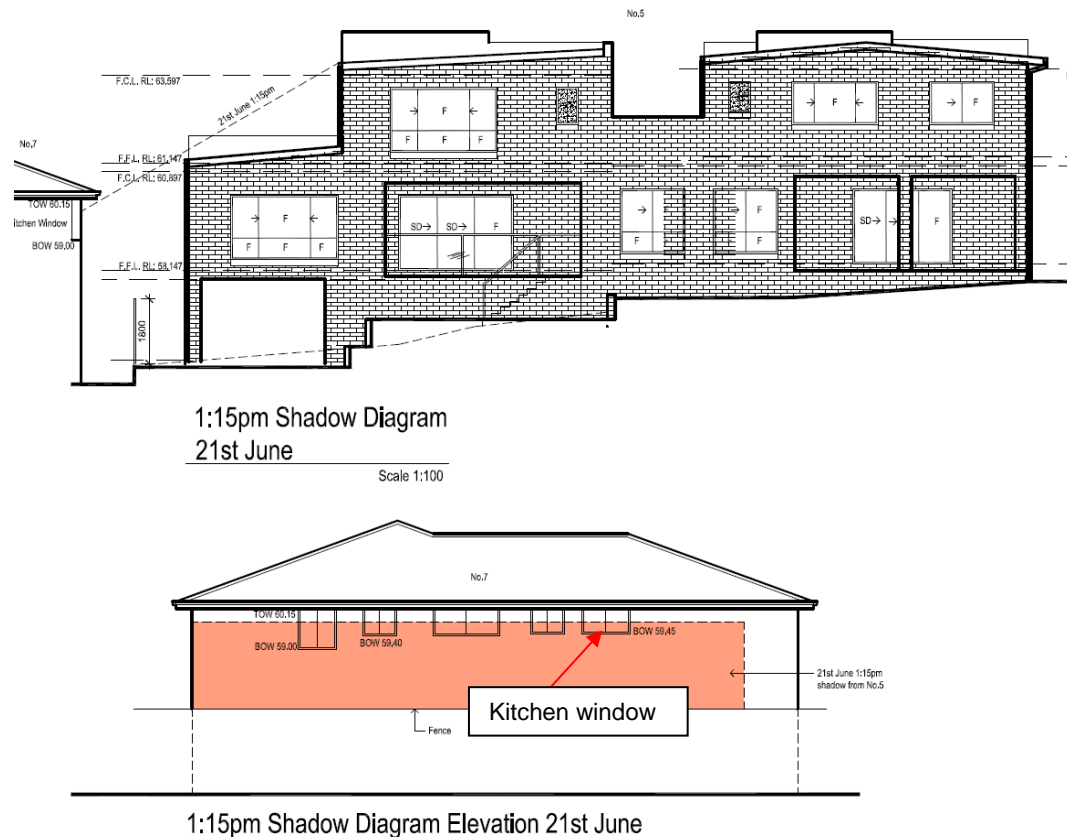
1pm Shadow Diagram  
21st June

Scale 1:100



1pm Shadow Diagram Elevation 21st June

**ITEM 4 (continued)**



**Figure 16:** Elevational shadow diagrams assessing impact on No. 7 Farnell Street

As shown in **Figure 16**, the kitchen window receives a total of 2.5 hours sunlight to a portion of its surface between the hours of 10:45am and 1:15pm.

This non-compliance is considered acceptable in this instance for the following reasons:

- The control states that this requirement applies where three hours sunlight can be reasonably maintained given the orientation topography of the subject and neighbouring sites. The kitchen window, which is north-facing, of No. 7 Farnell Street is located approximately 1.5m from the dividing boundary. Additionally, the level of No. 5 Farnell Street is significantly higher than that of No. 7 Farnell Street. Given the close setback of this window to the dividing boundary, and the topography of the site, it is not considered reasonable to maintain three hours sunlight to this window.
- The requirement for a 12m front setback has restricted the developable building footprint of the site. The proposed design has reduced the building height of Unit 1 near the southern boundary in an attempt to mitigate the overshadowing impact on the upstairs windows of No. 7 Farnell Street.



#### ITEM 4 (continued)

- Solar access is provided to the kitchen area of No. 7 Farnell Street by another window facing the rear (i.e. eastern elevation), as shown in **Figure 17**. Whilst this window is not north-facing, it still provides this area of the house with sunlight on June 21.
- A shortfall of 30 minutes of sunlight is not considered to be a significant impact on the amenity of the adjoining property.
- This window would be affected by overshadowing even if the proposal was compliant with the RDCP 2014 rear setback control.



**Figure 17:** Location of kitchen windows for No. 7 Farnell Street.

#### 5.5 Planning Agreements OR Draft Planning Agreements

There are no planning agreements or draft planning agreements for this development.

#### 5.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

Council's current Section 7.11 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:

#### ITEM 4 (continued)

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$4,227.74
Open Space & Recreation Facilities	\$10,407.85
Civic & Urban Improvements	\$3,539.91
Roads & Traffic Management facilities	\$482.86
Cycleways	\$301.62
Stormwater Management Facilities	\$958.70
Plan Administration	\$81.32
<b>The total contribution is</b>	<b>\$20,000.00</b>

Condition on the payment of Section 7.11 Contribution of **\$20,000.00** has been included in the Conditions of Consent (see **Condition 27**).

#### 5.7 Any matters prescribed by the regulations

As the development involves the demolition of the existing dwelling, Council must consider the provisions of *AS201-1991: The Demolition of Structures*.

Appropriate conditions of consent have been included to reflect this Australian Standard (see **Conditions 19 to 26**).

#### 6. The likely impacts of the development

Most of the impacts associated with the proposed development have already been addressed in the report.

The development is considered satisfactory in terms of environmental impacts.

#### 7. Suitability of the site for the development

The proposed development is considered to be a suitable development for the site, being permissible in the zone. As detailed earlier in this report, the development is consistent with the emerging character of the area and appropriately responds to the natural and built environmental assets and constraints of the site.

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

##### Landslip/Slope Instability

A satisfactory Geotechnical Report with suitable conditions has been provided to suitably address the landslip/slope instability. Council's Consultant Structural Engineer has raised no issues in relation to the application.

## ITEM 4 (continued)

### Overland Flow

The proposal has been designed so that the floor level is above the 100 year floor event, which varies between RL 55.84 and RL 57.80. Council's Senior Development Engineer and City Works (Drainage) department have raised no issues in relation to the application.

## 8. The Public Interest

The development is considered to be in the public interest as it is reasonably consistent with the relevant planning controls. Where variations to the planning controls occur in terms of the rear setback, deep soil area, external width of the garage and tree planting, the proposed variation is not considered to have any potential impact to adjoining properties. The development complies with the objectives of the planning controls.

## 9. Submissions

### Public Exhibition No. 1

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the owners of surrounding properties were given notice of the application between 21 March 2018 and 6 April 2018.

In response, one (1) individual submission and two (2) petitions with 33 and 59 signatures respectively were received over the notification period from the following properties:

Address	
7 Farnell Street, West Ryde (individual and petition)	6 Farnell Street, West Ryde (petition)
26 Farnell Street, West Ryde (petition)	14 Farnell Street, West Ryde (petition)
1/12 Farnell Street, West Ryde (petition)	24 Farnell Street, West Ryde (petition)
8 Farnell Street, West Ryde (petition)	11 Farnell Street, West Ryde (petition)
15 Farnell Street, West Ryde (petition)	17 Farnell Street, West Ryde (petition)
21 Farnell Street, West Ryde (petition)	1 Farnell Street, West Ryde (petition)
10 Farnell Street, West Ryde (petition)	2/38 Farnell Street, West Ryde (petition)
40 Farnell Street, West Ryde (petition)	32 Farnell Street, West Ryde (petition)
34 Farnell Street, West Ryde (petition)	36 Farnell Street, West Ryde (petition)
38 Farnell Street, West Ryde (petition)	56 Farnell Street, West Ryde (petition)
4 Bell Avenue, West Ryde (petition)	44 Farnell Street, West Ryde (petition)
54 Farnell Street, West Ryde (petition)	19 Farnell Street, West Ryde (petition)
33 Farnell Street, West Ryde (petition)	35 Farnell Street, West Ryde (petition)
42 Farnell Street, West Ryde (petition)	39 Farnell Street, West Ryde (petition)
60 Farnell Street, West Ryde (petition)	64 Farnell Street, West Ryde (petition)
31 Farnell Street, West Ryde (petition)	27 Winbourne Street, West Ryde (petition)

#### ITEM 4 (continued)

Address	
58 Farnell Street, West Ryde (petition)	18 Farnell Street, West Ryde (petition)
1/50 Farnell Street, West Ryde (petition)	4/50 Farnell Street, West Ryde (petition)
3/50 Farnell Street, West Ryde (petition)	37 Farnell Street, West Ryde (petition)

The submissions raised the following issues in respect to the original plans provided:

- **Front setback not compliant with West Ryde Special Development Area.**

##### Comment

As discussed previously in this report, the site is within the *West Ryde Special Development Area* as described in the Part 3.3 of the RDCP 2014 (Section 3.1).

As such, the proposal is required to have a minimum front setback of 12m in order to be consistent with the existing setbacks in the area.

Amended plans were received showing a minimum front setback of 12m, and therefore, the amended plans address this concern.

This issue does not warrant the refusal of the application.

- **Overshadowing of No. 7 Farnell Street**

Concern was raised by the adjoining neighbour to the south (No. 7 Farnell Street) in regard to the overshadowing on the north facing windows, stating that all the north facing windows of No. 7 Farnell Street would receive no sunlight between the hours of 9am and 3pm on June 21.

##### Comment

Due to the amended plans provided, this issue has been discussed in detail later in this report under Public Exhibition No.2.

- **Location of drainage line through Bell Park and stormwater discharge onto No. 7 Farnell Street**

A submission raised concern that the drainage plan was restricted to roof water runoff. The submission was also concerned regarding the proximity of the drainage infrastructure to a number of mature trees in Bell Park.

##### Comment

Amended stormwater plans have been provided which adequately consider the roof area and hardstand areas for the proposed development.

#### ITEM 4 (continued)

In relation to the impact on the trees within the Bell Park Reserve, it is advised that a separate application was lodged for approval to drain through Council land (i.e. Bell Park). This application was considered by Council's City Works Department, as well as Council's Landscape Architect. The amended stormwater plans provided, in conjunction with conditions of consent imposed (see **Condition 18**), ensure the trees within the reserve will be preserved. It is further noted that these works will be constructed by Council.

Therefore, this issue does not warrant refusal of the application.

- **Building Height**

Concern was raised regarding the height of the proposed building, particularly in regard to the calculation of the building height.

The submission stated that the site had previously been filled some time ago, approximately 600mm above the existing ground level near the northern boundary of No. 7 Farnell Street, and that the building height should be measured from the previous ground level.

The submission also raised concern that the building was effectively three storeys at the rear of the dwellings.

#### Comment

It is noted that the maximum height of the proposed building has been reduced from the original plans submitted through design changes, and the following comments apply to the amended plans.

The Ryde Local Environmental Plan (RLEP) 2014 defines building height as the following:

***"building height** (or height of building) means:*

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

The existing ground level is considered to be the reduced level (RL) of the ground as it currently stands (or exists at the time). Therefore, whilst the site may have been subject to some excavation or fill at the time the existing dwelling was constructed, the calculation of the proposed building height for the current application considers the current existing ground level.

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

Using the above definition, the maximum height of the building, as proposed in the amended plans subject to this report, has been calculated to be 8.41m. Therefore, the proposed building is compliant with the maximum building height of 9.5m for the site.

The proposed design responds to the topography of the site, which steps down the site to towards the southern boundary.

The amended plans also reduced the building height at the lowest points of the site so that two storeys is achieved for the entire building.

Therefore, this issue does warrant refusal of the application.

- **Retaining wall on dividing (southern) boundary**

Concern was raised that the existing retaining wall located on the subject site adjoining the dividing boundary between No. 5 and No. 7 Farnell Street would be compromised as a result of the proposed construction, leading to structural issues for both properties.

#### Comment

Due to the amended plans provided, this issue has been discussed in detail later in this report under Public Exhibition No. 2.

- **Location of garbage bins and air conditioning unit**

Concern was raised in the submission in regard to the location of the garbage bins for Unit 1.

Suggestion was made in the submission that a bin storage area within the front setback be excavated into the site.

#### Comment

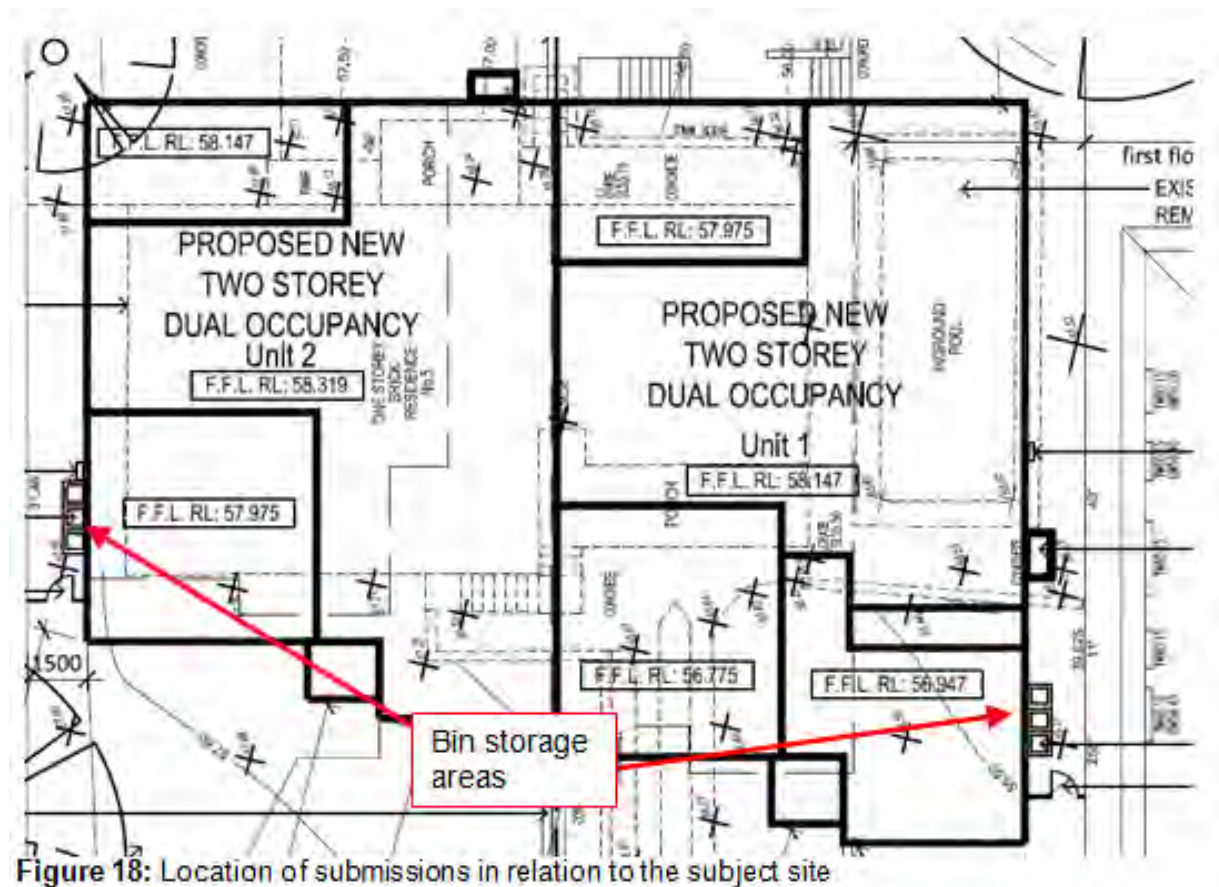
The proposed location of the bin storage area for Unit 2 is as depicted in the amended plans shown in **Figure 18**.

Whilst this area is adjacent to some windows of No. 7 Farnell Street, the provision of an appropriate boundary fence along the southern boundary will mitigate the visual impact of these bins.

Furthermore, the suggestion of a bin storage area excavated into the front setback is not considered an appropriate alternative, as this structure would detract from the streetscape.

This issue does not warrant reason for refusal.

#### ITEM 4 (continued)



#### Public Exhibition No. 2

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Application*, owners of surrounding properties were given notice of the amended application between 5 December 2018 and 04 January 2019.

In response, fifteen (15) submissions were received over the notification period from the following properties:

Address	
7 Farnell Street, West Ryde	1 Farnell Street, West Ryde
26 Farnell Street, West Ryde	36 Farnell Street, West Ryde
15 Farnell Street, West Ryde	19 Farnell Street, West Ryde
21 Farnell Street, West Ryde	77 Winbourne Street East, West Ryde
34 Farnell Street, West Ryde	11a Farnell Street, West Ryde
31 Farnell Street, West Ryde	2/55-57 Winbourne Street East, West Ryde
63 Winbourne Street East, West Ryde	11b Farnell Street, West Ryde
79 Winbourne Street East, West Ryde	



#### ITEM 4 (continued)

**Figure 19** below details the location of submissions in relation to the subject site.



**Figure 19:** Location of submissions in relation to the subject site

The submissions in response to the amended plans raised the following issues:

- **Rear setback**

A number of submissions have identified the proposed rear setback as a concern. Particular concern was raised in regard to the impact of the proximity of the proposed building to Bell Park, and the amenity of the users of Bell Park.

Additionally, concern has been raised that the proposed building would block views of the park currently enjoyed by No. 1, 3, 7 and 21 Farnell Street.

#### ITEM 4 (continued)

##### Comment

Bell Park is predominately used as a walking path and an area for outdoor recreation for nearby residents. The reduced rear setback, being approximately 2.5m less than the existing setback, will not adversely impact the usability or amenity of the users of Bell Park.

The existing dwelling, as well as surrounding properties, currently has partial views of Bell Park (see **Figure 20** for context). The Ryde DCP 2014 has a requirement that the siting of new developments is to provide for view sharing. Given the proposed development is two storey, and has a rear setback of 6m, there is potential for the views of Bell Park from some surrounding properties to be affected.



Figure 20: Views analysis from No. 1, 3, 7 and 21 Farnell Street

#### ITEM 4 (continued)

The Land and Environment Court has established “planning principles” in relation to impacts on views from neighbouring properties. In *Tenacity Consulting P/L v Warringah Council (2004) NSWLEC 140* Roseth SC, states that “*the notion of view sharing is involved when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment*”.

(Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable). In deciding whether or not view sharing is reasonable, Commissioner Roseth set out a 4 step assessment in regards to ‘reasonable sharing of view’. The steps are as follows:

1. *Description and assessment of views to be affected by proposal and the value of these views*
2. *Ascertain whether view retention expectations are realistic. Consider from what part of the property the views are obtained.*
3. *Assess the extent of the impact for the whole property. The impact should be qualified on a scale from negligible to devastating.*
4. *Assess the reasonableness of the proposal that is causing the impact, taking into account any non-compliance that is causing the view loss. (A development that complies with all the planning controls would be more reasonable than one that breaches them).*

#### Planning Principles

##### The First Step

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons.*

*Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

##### View from rear windows/backyard of No. 7 Farnell Street towards North East

As demonstrated by **Figure 20**, the existing dwelling at No. 7 Farnell Street has views directly to Bell Park facing the north east, east and south east. The view to the east is slightly obscured given the vegetation at the rear of No. 7 Farnell Street (see **Figure 22**). It is noted that this view is not a water view, and is not considered an iconic view. Therefore, it would be considered that the view towards Bell Park are not highly valuable in accordance with *Tenacity Consulting P/L v Warringah Council (2004) NSWLEC 140*.



#### ITEM 4 (continued)

In regard to the views from No. 1, 3 and 21 Farnell Street, it is not considered that these views are affected by the proposed development, as demonstrated in **Figure 20**.

Therefore, this views analysis has been limited to the view from the rear of No. 7 Farnell Street.



**Figure 21** – View from rear of No. 5 Farnell Street looking North East along Bell Park



**Figure 22** – View of rear of No. 7 Farnell Street from the north east

#### The Second Step

*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.*

#### ITEM 4 (continued)

*In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

In this instance, the views that would be enjoyed by No. 7 Farnell Street, West Ryde, is limited to the rear first storey windows (as shown in **Figure 22**) for the following reasons:

- The remaining windows at the rear of the property are orientated towards the east and south east, and are therefore not affected by the proposed development.
- The vegetation at the rear of No. 7 Farnell Street already obscures views from the raised outdoor area of No. 7 Farnell Street, as shown in **Figure 22**.

#### The Third Step

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them).*

*The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

The views from No. 7 Farnell Street that have been assessed are from the rear window towards the north east perspective of Bell Park.

Factors taken into consideration in assessing the extent of the impact include the siting of the development, setbacks, proposed building heights and design of the dwelling house.

The setback of the proposed building is approximately 2.5 metres forward of the existing dwelling at No. 5 Farnell Street, as shown by the purple line in **Figure 20**.

The green arrows shown in **Figure 20** indicate that the majority of the views from the rear window of No. 7 Farnell Street will be maintained, and the decreased rear setback of the development at No. 5 Farnell Street will have a minor impact on this view.

## ITEM 4 (continued)

### The Fourth Step

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.*

*Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.*

*If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The proposed development generally complies with all planning controls that control the bulk and scale of new development under the Ryde LEP 2014 and Ryde DCP 2014, including floor space ratio and building height. Whilst the rear setback does not comply with the RDCP 2014, this non-compliance does not restrict all views from No. 7 Farnell Street. This non-compliance has been assessed and determined to be satisfactory when having regard to the objectives of the RDCP 2014, and the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

Given the significant front setback requirement for the site, the proposed rear setback is considered reasonable. In considering the question of whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours, the answer is no.

This is due to the following reasons:

- Unobstructed views of Bell Park have still been afforded to No.7 Farnell Street. Accordingly, the Ryde DCP 2014 control in relation to view sharing (the siting of development is to provide for view sharing) is considered to generally be met.
- Views lost from the first floor window are cross views. The expectation to retain cross views and side views is unrealistic. On balance, the view loss is considered to be acceptable considering the proposed development generally complies with relevant planning controls governing bulk, scale and siting of the development.
- The proposed development is considered reasonable when taking into account its substantial compliance with local planning controls.

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

- The design of the dwelling is considered to be consistent with the desired future character of the low density residential zone and that of the emerging character of the West Ryde Special Development Area.

In this instance the view impact is considered acceptable and the view sharing reasonable.

This issue does not warrant reason for refusal.

- **West Ryde Special Development Area**

The submission raised concern that the non-compliant rear setback would not comply with the character of the West Ryde Special Development Area.

Comment

The control within the Ryde DCP 2014 relates solely to the front setback of proposed dwellings within the area.

Therefore, the rear setback is not considered to impact the character of the West Ryde Special Development Area.

This issue does not warrant reason for refusal.

- **Number of storeys too close to rear boundary and Bell Park**

Concern has been raised that the proposed dual occupancy will be three storeys high too close to the rear boundary and Bell Park. The submission is concerned that there will be a loss of amenity for the users of the park and the properties adjoining the park.

Comment

The proposal has a maximum building height of 8.41m, and therefore complies with the maximum building height of 9.5m.

Amended plans have been provided which have reduced the building height at the lowest points of the site so that two storeys is achieved for the entire building.

Therefore, this issue does warrant refusal of the application.



#### ITEM 4 (continued)

- **Floor Space Ratio**

Concern in the calculation of the floor space ratio of the proposal was raised in a submission, stating that the total gross floor area is 720.52m<sup>2</sup>, including the following areas:

- Ground floor area
- First floor area
- Entertainment Area (under ground floor on south eastern corner of Unit 1)
- Garage/Gym
- Porch
- Alfresco and Verandah
- Sub-floor area

#### Comment

The RLEP 2014 (Clause 4.5 (2)) defines *Floor Space Ratio* as follows:

*“The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.”*

The RLEP 2014 also defines *Gross Floor Area* as follows:

*“gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.”*

#### ITEM 4 (continued)

The calculations provided in the submission do not reflect definition of gross floor area, with particular regard to the following:

1. The submission has incorporated areas for common vertical circulation, such as voids and stairs, in the calculation for the ground floor and first floor.
2. The definition of gross floor area excludes any car parking to meet the requirements of the RDCP 2014. In this instance, the required car parking area equates to 36m<sup>2</sup>.
3. The alfresco area, verandah and entertainment area are not included in the gross floor calculations as they are not enclosed with outer walls with a height above 1.4m.
4. The Macquarie Dictionary defines “floor” as follows:

*“that part of a room or the like which forms a lower enclosing surface, and upon which one walks”*

As such the area of the subfloor area is not considered to be a floor, as the subfloor area as a maximum floor to ceiling height of 2.25m, and does not meet the minimum floor to ceiling requirement for habitable rooms under the Building Code of Australia (BCA). As such, this area does not meet the included areas for the gross floor area as defined within the RLEP 2014.

During the assessment of this application, the floor space ratio has been calculated as follows:

- Ground floor: 300.5m<sup>2</sup>
- First Floor: 201m<sup>2</sup>
- 501.5m<sup>2</sup> (minus) 36m<sup>2</sup> (garage)
- **Total GFA = 465.5m<sup>2</sup>**

Therefore, the proposed development has an FSR of 0.494:1, which, which complies with the maximum permitted FSR for the site under Clause 4.4(2).

Therefore, this issue does not warrant refusal of the application.

- **Overshadowing**

Concerns have been raised that the overshadowing caused by the proposed building will excessively overshadow the north facing windows of No. 7 Farnell Street (to the south).

#### ITEM 4 (continued)

##### Comment

As detailed in Section 5.4 of this report, the RDCP 2014 requires north facing living room windows of adjoining properties receive three hours sunlight to a portion of their surface between 9am and 3pm on 21 June. It is noted that this control applies only to living room windows.

As detailed in Section 5.4 of this report, the north facing window that this control applies to is the kitchen window at the rear of No. 7 Farnell Street. It is noted that the proposal does not fully comply with Section 2.14.1 of the RDCP 2014 in respect to the overshadowing of this window, as the window only achieves 2.5 hours of sunlight between 9am and 3pm on 21 June.

As previously detailed in this report, this minor non-compliance is considered acceptable given the site's topographic orientation. The impact on the adjoining property is negligible given the small nature of the non-compliance and the additional window facing the street for this area of No. 7 Farnell Street.

It is noted that an increase in the rear setback (as requested by this submission), would not result in a reduction of the overshadowing of this window, unless the building was pushed forward so that a front setback of approximately 6m was achieved. As detailed previously in this report, given the application is within the West Ryde Special Development Area, a 12m front setback is required.

It is further noted that the submission's concern regarding the remaining north-facing windows does not breach the controls within the RDCP 2014, as these controls apply to living room windows.

Therefore, this issue does not warrant refusal of this application.

- **Location of air conditioning unit**

Concern has been raised regarding the location of the air conditioning units, and that the noise and hot air from the air conditioning unit will adversely impact the adjoining neighbour to the south.

##### Comment

A condition of consent (see **Condition 89**) has been imposed that the any noise emitted from ancillary elements such as air conditioning units or the like must not exceed 5dB(A) above the background noise level when measured from any affected residence.

Any air blown from the air conditioning unit would be mitigated by the dividing boundary fence.

This issue does not warrant refusal of this application.

#### ITEM 4 (continued)

- **Location of rear boundary fencing**

Concern has been raised that the existing boundary fencing at the rear of the subject site is located encroaches into Council land (i.e. Bell Park), and should be rectified.

Comment

A condition of consent has been imposed that all boundary fencing is to be located on the boundaries, as identified by a registered surveyor. This condition states that any encroaching fencing is to be rectified.

This issue has been resolved by a condition of consent (see **Condition 88**), and therefore does not warrant refusal of the application.

- **Retaining Wall**

Concern has been raised that the existing retaining wall located on the subject site adjoining the dividing boundary between No. 5 and No. 7 Farnell Street would be compromised as a result of the proposed construction, leading to structural issues for both properties.

Comment

Appropriate conditions have been included in the conditions of consent in regard to managing the structural integrity of the existing retaining wall, including a condition that a certified structural engineer must design and certify all engineering works (see **Condition 4** and **29**). Furthermore, a dilapidation report has been imposed by condition (**Condition 33 and 76**) in regard to the retaining wall.

Therefore, this does not warrant reason for refusal of this application.

- **Height of dividing fence on southern boundary**

Concern has been raised that a 1.8m high fence on top of the existing retaining wall on the southern boundary will lead to the amenity of the adjoining southern property being adversely impacted, as the combined structure (i.e. fence and retaining wall) will be approximately of 2.4m.

#### ITEM 4 (continued)

The existing retaining wall is shown in **Figure 23** below:



**Figure 23:** View of existing retaining wall from No. 7 Farnell Street

#### Comment

The existing retaining wall has a height of approximately 600mm from the existing ground level of No. 7 Farnell Street, which is lower than the subject site (as shown in **Figure 23**). The existing ground level of the subject site is roughly flush with the top of the retaining wall.

It is noted that the erection of new dividing fences is a matter covered in the *Dividing Fences Act 1991*. The determination of a “sufficient dividing fence” under the Dividing Fences Act must consider the relevant environmental planning instrument (EPI) relating to the land on which the fence is located. Part 3.3 of the RDCP 2014 (the relevant EPI) specifies that the maximum height for side and rear fences is to be 1.8m.

It is acknowledged that a side fence on the southern boundary of the subject site will result in a combined structure measured to approximately 2.4m from the existing ground level of No. 7 Farnell Street. It is further noted that the owner of No. 7 Farnell Street has indicated in a meeting with Council staff on 11 January 2019 of his preference of an open-style fence on top of the retaining wall.

#### ITEM 4 (continued)

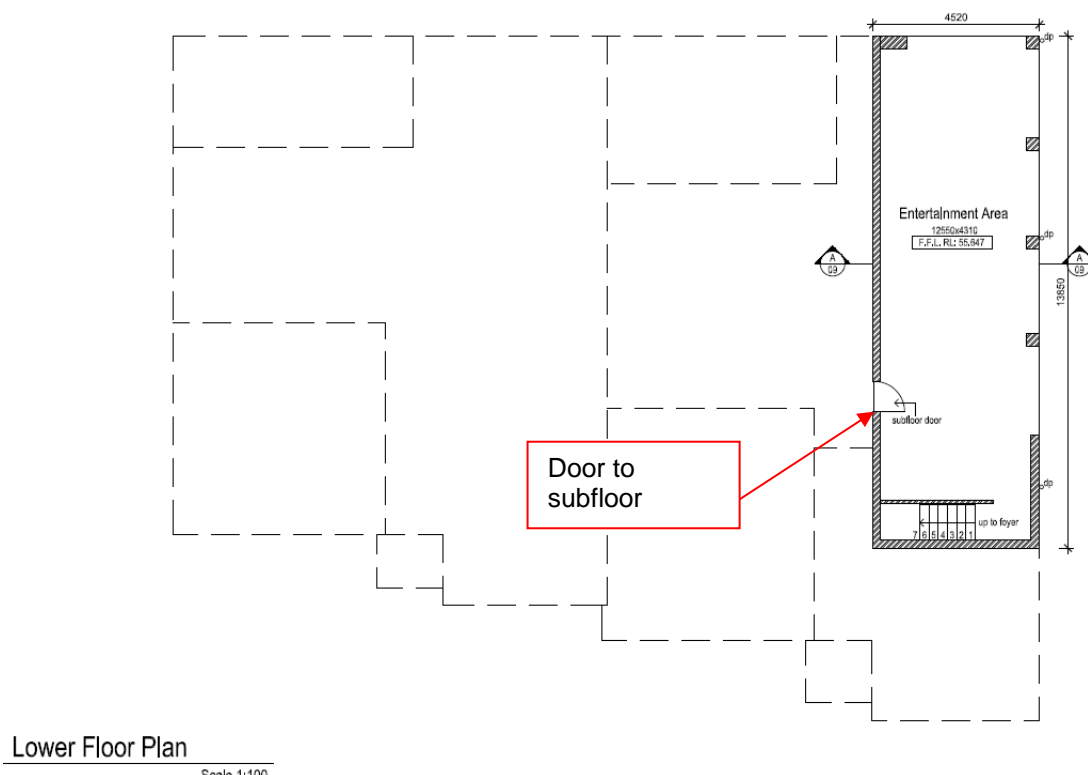
Whilst it is acknowledged that the privacy of each property must be considered, the erection of a dividing fence must occur under the provision of the Dividing Fences Act. As such, a condition of consent (**Condition 91**) has been included in **Attachment 1** with this directive.

If an agreement regarding the dividing fence cannot be reached between the owners, an application can be lodged to the NSW Civil and Administrative Tribunal (NCAT) to enable the parties to settle the dispute.

This issue does not warrant reason for refusal.

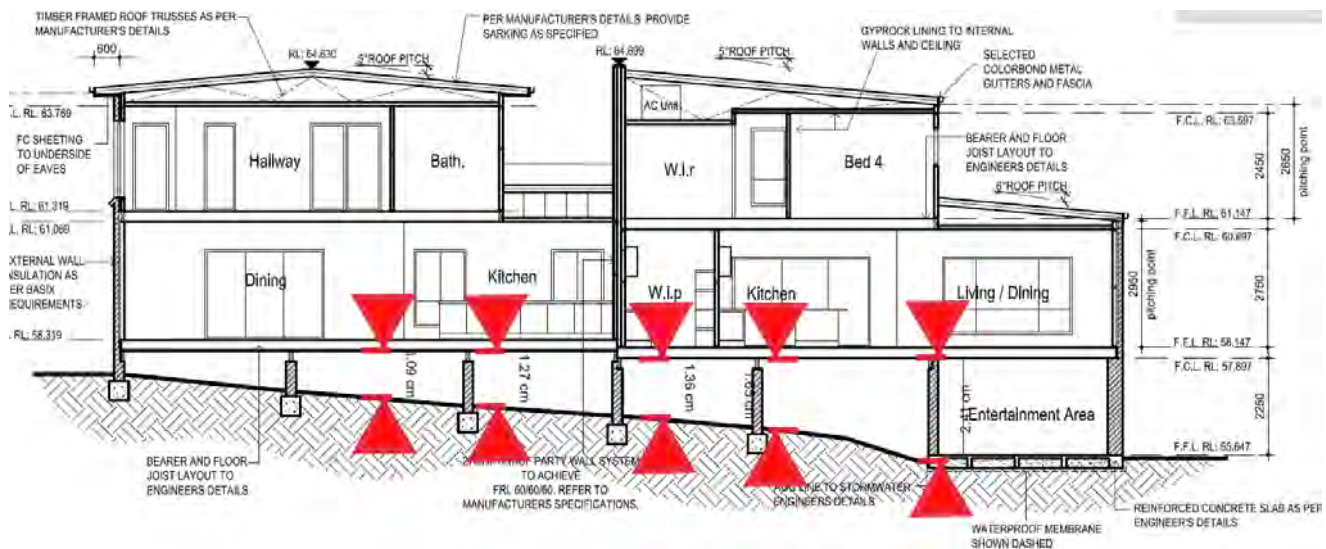
- **Sub-floor area contributing to gross floor area**

Concern was raised that the sub-floor area connecting to the entertaining area (as shown in **Figure 24** and **25**) has a height of 2.4m in some sections, and should be included within the gross floor area calculations. The submission raised concern that, given the height of the subfloor, this effectively would act as a third storey, and be used as an extension of the entertaining area.



**Figure 24:** Lower floor plan showing door from entertainment area to subfloor

## ITEM 4 (continued)



**Figure 25:** Section showing height of subfloor area

As per the definition of 'floor' and 'gross floor area' previously provided in this report, the area of the subfloor area is not considered to be a floor, as this area has a maximum floor to ceiling height of 2.25m, and does not meet the minimum floor to ceiling requirement for habitable rooms under the Building Code of Australia (BCA).

As such, this area does not meet the included areas for the gross floor area as defined within the RLEP 2014.

- **Dividing Party Wall**

Concern was raised that the party wall separating the two proposed units did not comply with the Building Code of Australia in relation to the fire safety separation, as the wall does not extend to the finished ground level below.

### Comment

A condition of consent has been imposed (**Condition 2**) specifying that the development must comply with the requirements of the BCA. As such, should approval be granted subject to these conditions, the party wall would be required to be extended to comply with the BCA.

Therefore, this issue is resolved by a condition of consent, and does not warrant reason for refusal of the application.

- **Stormwater**

The submission requested that the any damage to the existing drainage infrastructure on the site during construction be repaired and certified by a qualified engineer.



## ITEM 4 (continued)

### Comment

The proposal incorporates a new drainage system to facilitate the new building. Council's Senior Development Engineer has reviewed the proposed concept stormwater plan, and has raised no issue with the proposed stormwater design. The applicant will be responsible for the construction and maintenance of the drainage infrastructure within the site.

This does not warrant refusal of the application.

## 10. Referrals

### Internal Referrals

#### **Senior Development Engineer**

The amended plans were referred to Council's Senior Development Engineer for consideration.

The following comments have been provided:

#### *"Stormwater Management"*

*Review of the drainage plans show a combined OSD/water recycling system has been provided for each unit as underground tanks. These tanks are now relocated partially under the garage and under the driveway. Having OSD tanks under the garage is not ideal due to possible flooding within the garage if constructed with incorrect levels and the preferred location will be at rear as designed previously. However the amended design shows a grated drain located about 1.2m away from the garage entry with driveway sloping towards this drain. Any emergency overflows from the tank have been designed to be directed into this grated drain.*

*The lowest point within the front yard of Unit 2 should be connected to the drainage pit SP3. This has been marked in red on the plans and an appropriate condition of consent has been imposed.*

*The BASIX report requires 2000 litre water tank for each unit with 100m<sup>2</sup> of roof area connected to each. Details provided are satisfactory.*

*The architectural plan shows that there is no fill around the dwellings. A retaining wall is proposed between the boundaries of the two units at front. This wall should not exceed the height of the existing ground levels along this boundary within Unit 2.*

#### ITEM 4 (continued)

*The amended plans now show the open area under Unit 1(lower ground floor) as an entertainment area. The finished floor level of this entertainment area is same as the 100 year ARI flood level with only 27mm freeboard. The 100 year ARI flood level issued for this area is at RL 55.62. The flood assessment details on the attached plans D7 did not address the freeboard issue of the entertainment area. However the engineer has indicated in his assessment that overland flow flooding of the site could be unlikely.*

*I do tend to agree with the engineer here. There is some discrepancy between the flood maps available on Rydemaps and Council issue flood levels. Looking at the general site contours for this area and the topography, it is unlikely that any backflow effect from the overland flow would occur. The site could be affected by the general overland flow from the upstream properties. The entertainment area should not be used for any habitable purposes, and as such, a condition of consent has been imposed.*

*The ground floor levels have been set according to the levels issue by Council with 500mm freeboard and are satisfactory.*

*The outlet pipe from the internal drainage system which runs through the park has been relocated away from the boundary to protect the existing trees. This has been approved by Council's City Works & Open Space Sections. Their conditions are to be included.*

#### Recommendation

*There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions and above comments.*

Conditions have been imposed under **Conditions 36 to 44, Conditions 66 to 69, Conditions 77 to 84.**

#### **Consultant Structural Engineer (Cardno)**

A referral was made to Council's Consultant Structural Engineer (Cardno), and the following comments have been made:

*"As requested the amended documentation provided in relation to this matter has been reviewed and we advise as follows:*

- 1. The architectural layouts for both units have been changed substantially, the floor level of Unit 1 has been lowered by 238 mm, and the floor level of Unit 2 has been raised by 18 mm.*

#### ITEM 4 (continued)

*The ground floors in both units are now shown as being fully suspended, thus removing the filling that was previously proposed under Unit 2.*

2. *The revised stormwater drawings show the proposed rainwater and OSD tanks as being in revised locations, however the required excavations below existing ground level have not changed significantly in depths.*

*Discharge from both OSD tanks is still shown as discharging from the pit on the south-eastern corner of the lot and this it still drains to a new inter-allotment drainage line through Bell Park that connects to Council's box culvert in Ball Park.*

3. *The abovementioned changes slightly reduce the risks of slope instability, and accordingly do not change the recommendations contained in our report to Council dated 29 March 2018.*

*Those recommendations were "Should Council's officers decide to approve this application then Cardno recommends that this approval be conditioned requiring that all design works and all construction works be conducted in strict compliance with all of the recommendations as contained in the Ground Technologies report dated 9 November 2017."*

Conditions have been imposed under **Conditions 1 and 11.**

#### City Works – Drainage

A referral was made to Council's City Works Department, who have raised no issues with the proposal subject to conditions of consent.

These conditions have been imposed under **Conditions 17, 18, 42, 85, 86 and 87.**

#### Landscape Architect

A referral was made to Council's Landscape Architect, and the following comments have been provided:

*"Existing Trees*

*An Arborist Report has been submitted with the application prepared by Redgum Horticultural dated 8/09/2018.*

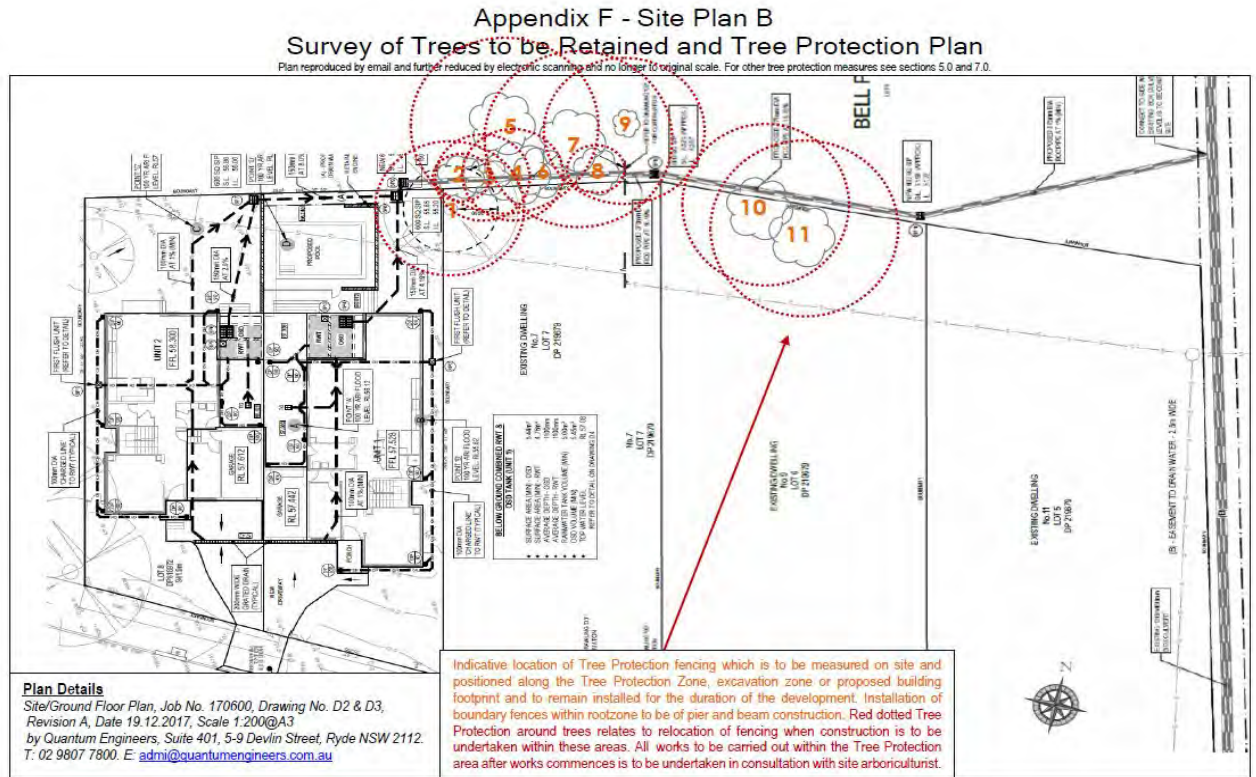
*A summary of the existing trees identified by the Arborist are show in the table below:*

**ITEM 4 (continued)**

<b>Tree No.</b>	<b>Location</b>	<b>Species "Common name"</b>	<b>Proposed recommendation by Arborist</b>	<b>Comment</b>
1	No. 7 Farnell St	<b>Jacaranda mimosifolia</b> Jacaranda	Retain	Agree
2	Bell Park	<b>Leptospermum petersonii</b> Jacaranda	Retain	Agree
3	Bell Park	<b>Leptospermum petersonii</b> Lemon-Scented Teatree	Retain	Agree
4	Bell Park	<b>Jacaranda mimosifolia</b> Lemon-Scented Teatree	Retain	Agree
5	Bell Park	<b>Eucalyptus microcorys</b> Tallowood	Retain	Agree
6	Bell Park	<b>Jacaranda mimosifolia</b> Jacaranda	Retain	Agree
7	Bell Park	<b>Schinus areira</b> Peppercom Tree	Retain	Agree
8	Bell Park	<b>Jacaranda mimosifolia</b> Jacaranda	Retain	Agree
9	Bell Park	<b>1.0 Syncarpia glomulifera</b> <b>2.0 Turpentine</b>	Retain	Agree
10	No. 9 Farnell St	<b>3.0 Melaleuca</b> <b>quinquenervia</b> <b>4.0 Broad Leafed Paperbark</b>	Retain	Agree
11	No. 9 Farnell St	<b>Macadamia tetraphylla</b> Macadamia Nut	Retain	Agree

Refer to **Figure 26** for location of trees

**ITEM 4 (continued)**



**Figure 26: Location of trees subject to assessment**



**Figure 27: Trees to be retained in Bell Park and adjoin property to the right**

**ITEM 4 (continued)**

*Council is to construct a stormwater pipeline from the back of the property, zig-zagging through Bell Park to avoid the existing trees, to an existing stormwater system in Bell Park. The pipeline is at the cost of the applicant. A protective fence will need to be constructed around the Tree Protection Zones (TPZs) as show on the Tree Protection Plan in Appendix F Arborist Report prepared by Redgum Horticultural dated 8/09/2018. Council will be responsible for this construction work.*

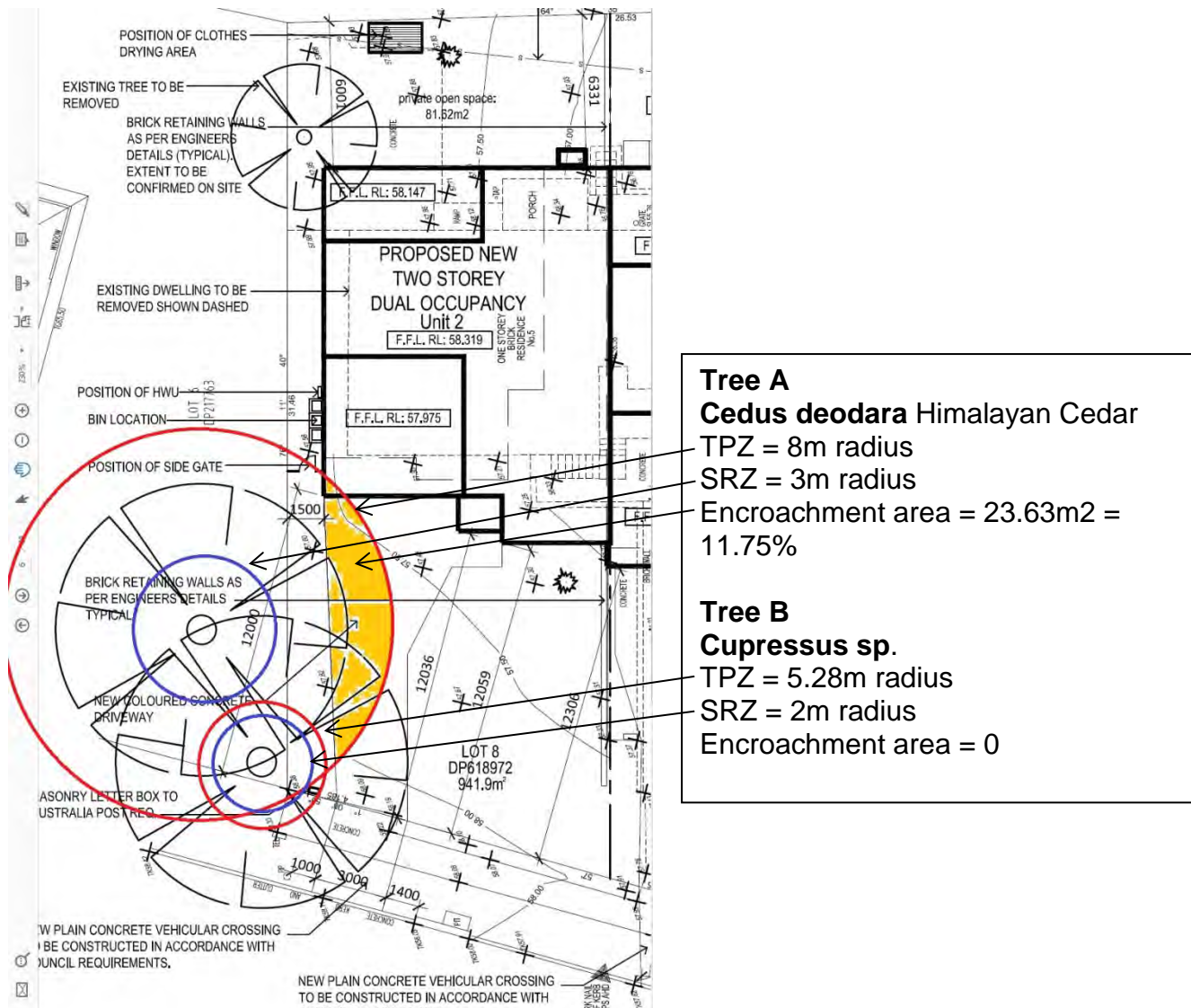
*The Arborist Report was prepared to an earlier stormwater plan which showed the pipeline inside the TPZs. The Arborist required “thrust boring or direct drilling of the pipeline”. The pipeline has since being repositioned outside the TPZs and these special excavation methods are no longer required.*

*The following comments have been made in relation to the two trees on the adjoining property (No. 3 Farnell Street):*

**Figure 28** below gives calculations based on Australian Standard AS4970-2009 Protection of trees on development sites.



**ITEM 4 (continued)**



**Figure 28:** Location of trees on adjoining properties and associated Tree Protection Zones

*AS4970-2009 states that an encroachment of less than 10% it is considered a Minor Encroachment. The Encroachment of the driveway on Tree A is calculated at 11.75%, slightly more than the 10%, however mitigating factors include:*

- *A retaining wall along the boundary that has been there for many years and would have restricted root growth into the development site.*
- *Large area of undisturbed soil in the adjoining property where the tree is located This forms an area more than 11.75% compensation and is contiguous with the Tree Protection Zone*



#### ITEM 4 (continued)

*For the above reasons it is considered the driveway will have little effect on Tree A. A condition of consent specifying that any excavation or regrading within the identified TPZs of these two trees shall be carried out by hand using manual hand tools (see **Condition 54**).*

#### **Landscape Plan**

*The Landscape plan is satisfactory as following has been provided:*

- *A physical connection has been provided by way of stairs between the outdoor paved area and the private yard.*
- *Less than 40% of the front garden will be hard paved*
- *Pathway between front and rear yards has been provided*
- *Trees and shrubs are in scale with the development*
- *Front garden has at least one tree that can grow to a minimum height of 10 metres (the proposed *Banksia integrifolia*).*
- *Private open space has been provided.*

*However the backyard does not have a tree with a mature height of at least 15 metres. This is considered acceptable given the reduced rear setback and planting provided in Bell Park.*

#### **Stormwater Plan**

*Generally on-site detention tanks should not be located in the front setback, the tank should be located under the driveway. This has been achieved with underground tanks under the driveway.*

*The stormwater pipes are generally compatible with retention of the existing trees to be retained.”*

Conditions have been imposed under **Conditions 52, 53, 54, 55, 56, 57, 70, 71, 72 and 73.**

#### **11. 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, LDA2018/0107, is recommended to be approved for the following reasons:

1. The development complies with the relevant provisions of RLEP 2014 with minimal impact to adjoining properties.

#### ITEM 4 (continued)

2. 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 Zones.
3. The proposal is considered to respond to existing and desired future character of the area through enhancing the characteristics of the streetscape.
4. The development results in breaches to the RDCP 2014 as follows:
  - a) Rear setback. However, the proposed setback does not result in any adverse privacy impacts on the adjoining neighbours, and sufficient deep soil area is provided, and the setback is therefore considered acceptable.
  - b) Rear deep soil area. However, the proposal still allows for suitable Stormwater absorption and mature tree planting, and therefore, this non-compliance is acceptable.
  - c) External garage width. This non-compliance is minor, and the proposed garages do not dominate the streetscape.
  - d) Tree Planting. The proposal does not include a mature tree with a height of 15m in the rear setback, however, the proposed landscaping still ensures the appearance of the development is enhanced.
  - e) Overshadowing. The proposal fails to comply with respect to overshadowing of the north facing window of the adjoining property to the south. This non-compliance is acceptable given the amenity of adjoining neighbour will not be unreasonably compromised.
5. The issues raised in the submissions have been adequately addressed in the assessment report.

#### 12. RECOMMENDATION:

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

1. The Local Planning Panel grant consent to the following development application LDA2018/0107 for the demolition of the existing dwelling and construction of a new two storey dual occupancy (attached), subject to conditions of consent outlined in **Attachment 1** of this report.
2. The objectors be advised of the decision.

**ITEM 4 (continued)**

**ATTACHMENTS**

- 1** Draft Conditions of Consent
- 2** Compliance Check
- 3** Amended Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Madeline Thomas**  
**Assessment Officer - Town Planner**

Report Approved By:

**Tony Collier**  
**Senior Coordinator - Major Development**

**Sandra Bailey**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 4 (continued)**

**ATTACHMENT 1**

**Draft conditions of consent – 5 Farnell Street, West Ryde**

**LDA2018/0107**

**GENERAL**

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

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

Document Description	Date	Plan No/Reference
Site Plan	06/11/2018	227, Sheet 2 of 22, Issue 4
Lower Floor Plan	06/11/2018	227, Sheet 3 of 22, Issue 4
Ground Floor Plan	06/11/2018	227, Sheet 4 of 22, Issue 4
First Floor Plan	06/11/2018	227, Sheet 5 of 22, Issue 4
Elevations	06/11/2018	227, Sheet 6 and 7 of 22, Issue 4
Section	06/11/2018	227, Sheet 9 of 22, Issue 4
Roof Plan	06/11/2018	227, Sheet 10 of 22, Issue 4
Window Schedule	06/11/2018	227, Sheet 8 of 22, Issue 4
Landscape Plan	06/11/2018	227, Sheet 12 of 22, Issue 4
Demolition Plan	06/11/2018	227, Sheet 13 of 22, Issue 4
Stormwater Management Plan	29/11/2018	17060, D1 – D10, Revision E
Arboricultural Impact Assessment	8/08/2018	4513
Geotechnical Investigation prepared by Ground Technologies	09/11/2017	17GTE-1402
Site Waste Minimisation and Management Plan	16/02/2018	-

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **BASIX.** Compliance with all commitments listed in BASIX Certificate numbered 909740M\_03, dated 8 August 2018.
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:

**ITEM 4 (continued)**

**ATTACHMENT 1**

- 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) A hoarding or fence must be erected between the work site and any adjoining public place.
  - (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
7. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
8. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
9. **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.
10. **Roads Act.** Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.
11. **Geotechnical Report.** All design and construction works are to be executed in full compliance with all of the recommendations as contained in the Ground Technologies report dated 9 November 2017.
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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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 Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) required within the road reserve. No works shall be carried out on the footpath without this permit being paid and a copy kept on the site.
16. **Flooding – fencing.** All fences across the overland flow path are to provide a 200mm clear gap (measured from finished ground level) at the base of the fence, which may be covered by mesh.
17. **Overland Flow Path.** No raised garden beds are allowed across the existing overland flow path. Allowance shall be made for surface runoff from adjacent properties, and to retain existing surface flow path system draining the site (if any).
18. **Drainage Infrastructure.** The applicant is required to provide a 600 x 600mm or a larger pit at the eastern boundary of the Unit 1 and a 375mm diameter stub from the pit through the eastern side boundary. Careful consideration must be given to the location of this pit so that there will be no adverse effects on the trees due to the construction of the pipeline through Bell Park. Council will extend the pipeline from the stub to a new grated pit located in Bell Park adjacent to No. 11B Farnell Street. Council will undertake the construction work and all associated costs shall be borne by the applicant.

**DEMOLITION CONDITIONS**

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

A Construction Certificate is not required for Demolition.

**ITEM 4 (continued)**

**ATTACHMENT 1**

19. **Provision of contact details/neighbour notification.** At least 7 days before any demolition work commences:
  - (a) Council must be notified of the following particulars:
    - (i) The name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
    - (ii) The date the work is due to commence and the expected completion date
  - (b) A written notice must be placed in the letter box of each property identified in the attached locality plan advising of the date the work is due to commence.
20. **Compliance with Australian Standards.** All demolition work is to be carried out in accordance with the requirements of the relevant Australian Standard(s).
21. **Excavation**
  - (a) All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent the activities from being dangerous to life or property and, in accordance with the design of a structural engineer.
  - (b) A Demolition Work Method Statement must be prepared by a licensed demolisher who is registered with Safework NSW in accordance with AS 2601-2001: *The Demolition of Structures*, or its latest version. The applicant must provide a copy of the Statement to Council prior to commencement of demolition work.
22. **Asbestos.** Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by Safework NSW.
23. **Asbestos – disposal.** All asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be retained by the person performing the work for at least 3 years and be submitted to Council on request.
24. **Waste management plan.** Demolition material must be managed in accordance with the approved waste management plan.
25. **Disposal of demolition waste.** All demolition waste must be transported to a facility or place that can lawfully be used as a waste facility for those wastes.



**ITEM 4 (continued)**

**ATTACHMENT 1**

26. **Imported fill – type.** All imported fill must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.

**PRIOR TO CONSTRUCTION CERTIFICATE**

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

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

27. **Section 7.11.** 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	\$4,227.74
Open Space & Recreation Facilities	\$10,407.74
Civic & Urban Improvements	\$3,539.91
Roads & Traffic Management facilities	\$482.86
Cycleways	\$301.62
Stormwater Management Facilities	\$958.70
Plan Administration	\$81.32
<b>The total contribution is</b>	<b>\$20,000.00</b>

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in Section 7.11 Development Contributions Plan 2007 Interim Update (2014), effective from 10 December 2014.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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

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 7.11 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>.

28. **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**.
29. **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**. **If it is proposed to retain the retaining wall** located along the southern boundary, it must be certified by a suitably qualified Structural Engineer to ensure that the wall will not be affected by the development. To ensure this, the engineer is to submit structural details and certification of the retaining wall with the application for a **Construction Certificate**.
30. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(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**. (dwelling houses with delivery of bricks or concrete or machine excavation)
31. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
  - (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy

**ITEM 4 (continued)**

**ATTACHMENT 1**

32. **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**.

33. **Dilapidation Survey.** A dilapidation survey is to be undertaken that addresses all properties (including any public place) that may be affected by the construction work namely No. 7 Farnell Street, West Ryde. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*) prior to the release of the **Construction Certificate**.

Note: In the event that all reasonable attempts (to the satisfaction of Council) have been made to obtain access to the relevant properties to undertake the dilapidation survey required by this Condition 33, and such access has been denied, then compliance is not required with this Condition 33.

34. **Sydney Water – Building Plan Approval.** The plans approved as part of the Construction Certificate must also be approved by Sydney Water prior to excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Please go to [www.sydneywater.com.au/tapin](http://www.sydneywater.com.au/tapin) to apply.
35. **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**.
36. **Drop-edge beams.** Drop-edge beams must be provided around both dwellings. Details are to be shown in documentation submitted with the **Construction Certificate**.
37. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, carparking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.

**ITEM 4 (continued)**

**ATTACHMENT 1**

38. **Driveway Grades.** The maximum grade of all internal driveways and vehicular ramps shall be 1 in 4 and in accordance with the relevant section of AS 2890.1. The maximum change of grade permitted is 1 in 8 (12.5%) for summit grade changes and 1 in 6.7 (15%) for sag grade changes. Any transition grades shall have a minimum length of 2.0m. The driveway design is to incorporate Council's issued footpath and gutter crossing levels where they are required as a condition of consent. A driveway plan, longitudinal section from the centreline of the public road to the garage floor, and any necessary cross-sections clearly demonstrating that the driveway complies with the above details, and that vehicles may safely manoeuvre within the site without scraping shall be submitted with the Construction Certificate application.
39. **Driveway Location.** The proposed driveway to Unit 2 shall be minimum of 500mm from the existing stormwater pit & the power pole in Farnell Street.
40. **Provision of Pedestrian Sight Lines.** To allow for adequate sight distance from a vehicle exiting the property to pedestrians in the footpath area, the driveway entry at the property boundary must have clear sight through a splayed region defined by Figure 3.3 of AS 2890.1 (2004) and Council's DCP. Ideally the region is to be free of all obstructions, otherwise any solid obstructions are to be no greater than 900mm above finished surfaces. These amendment(s) must be clearly marked on the plans submitted with the application for a Construction Certificate to demonstrate compliance with this condition.
41. **Extension of Drainage Infrastructure in Public Reserve/ Park.** To permit discharge of stormwater from the development to the Council's Stormwater drainage system in Bell Park, the Council drainage line is to be extended to be in proximity to the subject site. To achieve this, Council's City Works is to construct these works in accordance with the approved plans and details, upon payment of \$105,933.00 provided to Council prior to issue of a Construction Certificate. A copy of the receipt of this payment shall be forwarded to Council's City Works/Development Engineer.
42. **On-Site Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the Council pipe at rear, generally in accordance with the plans prepared by Quantum Engineers Job No 170600 Dwg D1 & D6 I Revision E dated 29/11/18 subject to any variations marked in red on the approved plans and noted following;
- Provision of a surface inlet pit within the lowest point within the front yard of Unit 2 and connect this pit to the pit SP3
  - Any overflows from the grated drains within the driveways are to be directed away from the garages,
  - Ensure consistency between the architectural plans & the stormwater plans

**ITEM 4 (continued)**

**ATTACHMENT 1**

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) 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.
- The submitted design shall include long sections through the proposed stormwater pits and pipes in line with the requirements set out within Council's Stormwater and Floodplain Management Technical Manual and submitted to Council for written approval.

43. **Water Tank First Flush.** A first flush mechanism is to be designed and constructed with the water tank system. Details of the first flush system are to be submitted with the construction certificate application.

44. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

45. **Fibre-ready facilities and telecommunications infrastructure.** Prior to the issue of any Construction Certificate satisfactory evidence is to be provided to the Certifier that arrangements have been made for:

- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

And

- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in Section 372Q of the Telecommunications Act).

**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.

**46. 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.

**47. 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.

**48. 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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

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).

**49. 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.

**50. 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.

**51. 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. Any doors/gates on the boundary must be installed so they do not open onto any footpath.

**52. Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless identified in the Arborist Assessment prepared by Redgum Horticultural dated 8/09/2018.

**53. Tree Work.** The Arborist Report was prepared to an earlier stormwater plan which showed the pipeline inside the TPZs. The Arborist required “thrust boring or direct drilling of the pipeline”. The pipeline has since being repositioned outside the TPZs and these special excavation methods are no longer required.

**54. Excavation within Tree Protection Zone.** Any excavation or grading/re-grading for the Unit 2 driveway within the identified TPZs of the adjoining Cedus dedara tree on No. 3 Farnell Street 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 4 (continued)**

**ATTACHMENT 1**

55. **Tree Protection Fencing.** Tree protective fencing is to be installed before demolition and construction commences around the Tree Protection Zones (TPZs) as show on the Tree Protection Plan in Appendix F Arborist Report prepared by Redgum Horticultural dated 8/09/2018.
56. **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.
57. **Project Arborist.** A Level 5 Project Arborist be appointed to inspect and document with Certificates of Compliance to the certifying authority as stipulated in SECTION 5 MONITORING AND CERTIFICATION of AS4970-2009.

PROJECT PHASE	ACTIVITIES	PROJECT ARBORIST to
Initial Site Preparation	Establish/delineate TPZ Install protective measures and undertake soil rehabilitation for all trees to be retained.	Project Arborist to mark Tree Protection Zones and install fences, mulch, irrigation and signage  <b>Issue a Certification of Compliance</b> of tree protection measures being in place and soil rehabilitation undertaken
Construction work	Liaison with site manager, compliance and any deviation from approved plan	Maintain or amend protective measures  Supervision and monitoring formal notification of any deviation from approved tree protection plan
Stormwater connection installation through TPZ, Implement hard and soft landscape works	<b>Supervise</b> Installation of pipes within tree TPZ	Excavate trench through TPZ under Arborist supervision, install pipework, remove selected protective measures as necessary and perform remedial tree works  <b>Issue a Certificate of Compliance</b>

**ITEM 4 (continued)**

**ATTACHMENT 1**

<b>PROJECT PHASE</b>	<b>ACTIVITIES</b>	<b>PROJECT ARBORIST to</b>
Practical Completion	Tree vigour and structure Assessment and undertake soil rehabilitation for all retained trees	Remove all remaining tree Protection measures  <b>Certification of tree protection and soil rehabilitation for Protected Trees</b>
Defects liability / maintenance period	Tree vigour and structure	Undertake any required remedial tree works  <b>Certification of tree protection if necessary</b>

**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.

58. **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*.
59. **Noise from construction and demolition work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from demolition and construction work.
60. **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.
61. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.

**ITEM 4 (continued)**

**ATTACHMENT 1**

62. **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.
63. **Construction materials.** All materials associated with construction must be retained within the site.
64. **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.
65. **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.
66. **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".
67. **Drainage Construction.** The stormwater drainage on the site is to be constructed in accordance with plan the Construction Certificate version of Job No 170600 Dwg D1 to D 6 Revision E dated 29/11/18 prepared by Quantum Engineers and as amended in red by Council and condition with the heading "**On-Site Stormwater Management**".
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.

**ITEM 4 (continued)**

**ATTACHMENT 1**

69. **Traffic Management.** Traffic management procedures and systems must be in place and practised during the construction period to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These 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.
70. **Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.
71. **Tree works – arborist supervision.** A Consultant Arborist must be appointed to oversee all works, including demolition and construction, in relation to the trees identified for retention on the site.
72. **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.

**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.

73. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate numbered 909740M\_03, dated 8 August 2018.
74. **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.
75. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of any **Occupation Certificate**.

**ITEM 4 (continued)**

**ATTACHMENT 1**

76. **Post-construction dilapidation report.** The submission of a post-construction dilapidation report which clearly details the final condition of all property, infrastructure, natural and man-made features that were recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining and private properties, prior to the issue of any **Occupation Certificate**.
77. **Disused Gutter Crossing.** All disused gutter and footpath crossings shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
78. **Damaged Footpath Paving Construction.** The applicant shall, at no cost to Council, construct any damaged concrete footpath paving across the frontage of the property in Farnell Street. A compliance certificate from the Council's City Works & Infrastructure shall be obtained upon completion of concrete footpath paving works indicating that all works have been completed to Council's satisfaction and submitted to the Principal Certifying Authority.
79. **Vehicle Footpath Crossings.** Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements of Council. Crossings are to be constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's City Works & Infrastructure Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.
80. **On-Site Stormwater Detention System - Marker Plate.** Each on-site detention system basin shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in City of Ryde, Development Control Plan 2014: - Part 8.2; Stormwater & Floodplain Management. An approved plate may be purchased from Council's Customer Service Centre on presentation of a completed City of Ryde OSD certification form.
81. **Work-as-Executed Plan.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and the date, the stormwater drainage, including the on-site stormwater detention system if one has been constructed and finished ground levels **is to be submitted to the Principal Certifying Authority (PCA)** and to Ryde City Council if Council is not the nominated PCA.

**ITEM 4 (continued)**

**ATTACHMENT 1**

82. **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 Principal Certifying Authority 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.
- Confirming that the driveway & associated parking areas are constructed in accordance with the construction plan requirements, AS 2890.1 and Ryde City Development Control Plan 2014: - Part 8.3; Driveways.
  - Confirming that the site drainage system (including the on-site detention storage system) servicing the development complies with the construction plan requirements and City of Ryde, Development Control Plan 2014: - Part 8.2; Stormwater & Floodplain Management
  - Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
  - Confirming that the vehicular crossing has been removed and the kerb and gutter have been constructed in accordance with Council's Development Control Plan 2014: - Part 8.3 Driveways
  - Certification from the hydraulic engineer confirming that finished ground and floor levels have been constructed and the overland flow path has been conveyed through the site as designed.
  - Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.
83. **Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.
84. **Restriction as to User, Floodway.** A restriction as to user is to be placed on the property title to prevent the alteration of the ground surface and maintenance within the 100 year Average Recurrence Interval flow path and also not to have any structure placed inside without Council permission. The terms of the restriction shall be generally in accordance with Council's draft terms for provision for overland flow and to the satisfaction of Council.

**ITEM 4 (continued)**

**ATTACHMENT 1**

85. **Probable Maximum Flood.** A certificate from a qualified engineer shall be provided to the Principal Certifying Authority confirming that the building structure is able to withstand the forces of floodwaters having regard to hydrostatic pressure, hydrodynamic pressure, the impact of debris and buoyancy forces up to the Probable Maximum Flood (PMF) event.
86. **Flood Compatibility.** A certificate from a practicing structural engineer shall be provided to the Principal Certifying Authority confirming that all new building components below the 100 year ARI flood plus 0.5m freeboard have been designed to be flood compatible. A certificate from a qualified engineer shall be provided to the Principal Certifying Authority confirming that all new boundary and internal fencing located across the existing overland flow path are permeable up to the 1 in 100 year ARI flood level.
87. **Works-as Executed Drawings – Stormwater Drainage** - Prior to the issue of an Occupation Certificate, Works-As-Executed Drawings for the existing overland flowpath showing ground levels at regular interval shall be submitted to and approved by Council's Stormwater Engineer. The Works-as-Executed Drawings shall be accompanied by a certificate from a registered surveyor, certifying the drawings are a true and accurate representation of the ground levels.
88. **Boundary Fencing.** All boundary fencing is to be located on the boundaries, as defined by a Registered Surveyor. Any existing encroachments are to be rectified prior to the issue of any **Occupation Certificate**.

**OPERATIONAL CONDITIONS**

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

89. **Ancillary Elements – Noise.** Any noise emitted from ancillary elements such as air-conditioning units or the like must not exceed 5dB(A) above the background noise level when measured at any affected residence.
90. **Unit 1, Lower Ground Floor Area.** The lower ground floor area of Unit 1 shall not be used for any habitable purposes.
91. **Dividing Fencing.** All dividing fences are to be constructed in accordance with the *Dividing Fences Act 1991*.

**End of Conditions**



**ITEM 4 (continued)**

**ATTACHMENT 2**

## Compliance Check - Quality Certification

### Assessment of a Dual Occupancy (attached), Single Dwelling House, Alterations & Additions to a Dwelling House and ancillary development.

<b>LDA No:</b> LDA2018/0107	<b>Date Plans Rec'd:</b>
<b>Address:</b> 5 Farnell St West Ryde	
<b>Proposal:</b> Demolition; new two storey dual occupancy (attached) and swimming pool.	
<b>Constraints Identified:</b> Slope Instability, Overland Flow Area, Flood Risk	

### COMPLIANCE CHECK

Ryde LEP 2014	Proposal	Compliance
<b>4.3(2) Height</b>		
9.5m	Ridge RL (min): 64.63 EGL below (min): RL: 57.01 Building Height (max)= 7.62m Ridge RL (max): 64.057 EGL below (max) RL: 55.647 Building Height (max)= 8.41m	Yes
<b>4.4(2) &amp; 4.4A(1) FSR</b>		
0.5:1 Site area= 941.9m <sup>2</sup>	Ground floor: 300.5m <sup>2</sup> First Floor: 201m <sup>2</sup> 501.5m <sup>2</sup> (minus) 36m <sup>2</sup> (garage) Total GFA = 465.5m <sup>2</sup> (or <b>0.494:1</b> )	Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>Part 3.3 - Dwelling Houses and Dual Occupancy (attached)</b>		
<b>Desired Future Character</b>		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is consistent with the desired future character of the low density residential area as detailed further in this table.	Yes
<b>Dwelling Houses</b>		
<ul style="list-style-type: none"> <li>- To have a landscaped setting which includes significant deep soil areas at front and rear.</li> <li>- Maximum 2 storeys.</li> <li>- Dwellings to address street</li> <li>- Garage/carports not visually prominent features.</li> </ul>	Front and rear gardens proposed.	Yes
	Two storeys proposed. The FFL of the ground floor is more than 1.2m above the EGL, however, this is due to flood constraints, and the proposal is considered 2 storeys in height as the space underneath the two storeys is not used any room.	Yes
	Dwelling presents to Farnell Street.	Yes
	Garage not prominent feature as setback in front elevation of building.	Yes
<b>Public Domain Amenity</b>		
<b>Streetscape</b>		
<ul style="list-style-type: none"> <li>- Front doors and windows are to face the street. Side entries to be clearly apparent.</li> <li>- Single storey entrance porticos.</li> <li>- Articulated street facades.</li> </ul>	Front doors and windows face street.	Yes
	Single entrance portico.	Yes
	Articulated street façade.	Yes
<b>Public Views and Vistas</b>		
<ul style="list-style-type: none"> <li>- A view corridor is to be provided along at least one</li> </ul>	No public view or vista is impeded by the proposed development.	Yes

**ITEM 4 (continued)**

## ATTACHMENT 2

DCP 2014	Proposed	Compliance
side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Garages/carports and outbuildings are not to be located within view corridor if they obstruct view. Fence 70% open where height is >900mm.		
<b>Pedestrian &amp; Vehicle Safety</b> <ul style="list-style-type: none"> <li>- Car parking located to accommodate sightlines to footpath &amp; road in accordance with relevant Australian Standard.</li> <li>- Fencing that blocks sight lines is to be splayed.</li> </ul>	No issues have been raised by Council's Senior Development Engineer.	Yes
<b>Site Configuration</b>		
<b>Deep Soil Areas</b> <ul style="list-style-type: none"> <li>- 35% of site area min.</li> <li>- Min 8x8m deep soil area in backyard.</li> <li>- Front yard to have deep soil area (only hard paved area to be driveway, pedestrian path and garden walls).</li> <li>- Dual occupancy developments only need 1 of 8 x 8m area (doesn't have to be shared equally).</li> </ul>	<p>Permeable (deep soil) area: 401.3m<sup>2</sup> approx (42.6% of site area).</p> <p>Rear DSA dimensions: 8m x 8m are not provided due to 6m rear setback. Adequate DSA still provided and significant areas provided in front setback.</p> <p>Front DSA: 100% permeable area in front yard= 246.8m<sup>2</sup>. Hard surface areas have been kept to a minimum in the front yard.</p>	<p>Yes</p> <p>No</p> <p>Yes</p>
<b>Topography &amp; Excavation</b>		Yes
Within building footprint: <ul style="list-style-type: none"> <li>- Max cut: 1.2m</li> </ul>	Within BF Max cut: 700mm	

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>- Max fill: 900mm</li> </ul> Outside building footprint: <ul style="list-style-type: none"> <li>- Max cut: 900mm</li> <li>- Max fill: 500mm</li> <li>- No fill between side of building and boundary or close to rear boundary</li> <li>- Max ht retaining wall 900mm</li> </ul>	Max fill: 850mm  Outside BF Max cut: nil Max fill: nil	
<b>Height</b>		
<ul style="list-style-type: none"> <li>- 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL).</li> </ul>	Two storeys are proposed for the development.	<b>Yes</b>
<ul style="list-style-type: none"> <li>- 1 storey maximum above attached garage incl semi-basement or at-grade garages.</li> </ul>		
Wall plate (Ceiling Height) <ul style="list-style-type: none"> <li>- 7.5m max above FGL or</li> <li>- 8m max to top of parapet</li> </ul> <i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> <i>FGL = Finished Ground Level</i>	TOW (highest) RL: 63.789 FGL below (lowest point): TOW Height (max) = 7.2m	<b>Yes</b>
9.5m Overall Height  <i>NB:</i> <i>EGL = Existing Ground Level</i>	8.41m	<b>Yes</b>
Habitable rooms to have 2.4m floor to ceiling height (min).	2.45m min room height.	<b>Yes</b>
<b>Setbacks</b>		
<b>SIDE</b>  <b>Two storey dwelling</b> <ul style="list-style-type: none"> <li>- 1500mm to wall</li> <li>- Includes balconies etc</li> </ul>	To wall min 1.5m	<b>Yes</b>

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Front</b> <ul style="list-style-type: none"> <li>- 6m to façade (generally)</li> <li>- Garage setback 1m from the dwelling façade</li> <li>- Wall above is to align with outside face of garage below.</li> <li>- Front setback free of ancillary elements eg RWT, A/C</li> </ul>	12m front setback is required given the site is within the West Ryde Special Development Area. A 12m front setback has been provided.	Yes
<b>Rear</b> <ul style="list-style-type: none"> <li>- 8m to rear of dwelling <b>OR</b> 25% of the length of the site, whichever is greater.</li> </ul> <b>Note: 8.89m is 25% of average site length.</b>	A 6m rear setback is proposed. Given the increased front setback, and that the site backs on to a reserve, this is considered acceptable.	<b>No (justifiable)</b>
<b>Sites wider than they are long</b> <ul style="list-style-type: none"> <li>- One side setback of 8m or 20% of allotment width, whichever is greater.</li> <li>- Rear setback 4m min (in addition to 8m side setback).</li> </ul> <p>NB: Side setback on irregular allotments can be measured at the centre line of the site. (must have 8x8m DSA)</p>	Not applicable.	N/A
<b>Car Parking &amp; Access</b>		
<b>General</b> <ul style="list-style-type: none"> <li>- Dwelling: 2 spaces max, 1 space min.</li> <li>- Dual Occupancy (attached): 1 space max per dwelling.</li> <li>- Where possible access off secondary street frontages or laneways is preferable.</li> <li>- Max 6m wide or 50% of frontage, whichever is less.</li> <li>- Behind building façade.</li> </ul>	Number/location of car spaces: 2 spaces in the form of 2 x single garages.  Access from: Farnell Street.  External width: 6.5m (combined).	Yes   Yes  <b>No (justifiable)</b>

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Garages</b> <ul style="list-style-type: none"> <li>- Garages setback 1m from façade.</li> <li>- Total width of garage doors visible from public space must not exceed 5.7m and be setback not more than 300mm behind the outside face of the building element immediately above.</li> <li>- Garage windows are to be at least 900mm away from boundary.</li> <li>- Free standing garages are to have a max GFA of 36m<sup>2</sup></li> <li>- Materials in keeping or complimentary to dwelling.</li> </ul>	Setback from façade: greater than 1m.  Width of opening: 4.8m (combined).  No side garage windows.	Yes  Yes  Yes
<b>Parking Space Sizes (AS)</b> <ul style="list-style-type: none"> <li>o Double garage: 5.4m wide (min)</li> <li>o Single garage: 3m w(min)</li> <li>o Internal length: 5.4m (min)</li> </ul>	Internal measurements: 3.01 x 5.51m and 3m x 6.05m	Yes
<b>Driveways</b> Extent of driveways minimised	Two driveways proposed are not excessive in hardstand area.	Yes
<b>Landscaping</b>		
<b>Trees &amp; Landscaping</b> <ul style="list-style-type: none"> <li>- Major trees retained where practicable</li> <li>- Physical connection to be provided between dwelling and outdoor spaces where the ground floor is elevated above NGL eg. stairs, terraces.</li> <li>- Obstruction-free pathway on one side of dwelling (excl cnr allotments or rear lane access)</li> <li>- Front yard to have at least 1 tree with mature ht of 10m min and a spreading</li> </ul>	All major trees are retained.  Stairs are provided to each raised alfresco area.  Pathway provided.  2 x 15m trees (Coastal Banksia) provided in front yard.	Yes  Yes  Yes  Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<p>canopy.</p> <ul style="list-style-type: none"> <li>- Back yard to have at least 1 tree with mature ht of 15m min and a spreading canopy.</li> <li>- Hedging or screen planting on boundary mature plants reaching no more than 2.7m.</li> <li>- OSD generally not to be located in front setback unless under driveway.</li> </ul>	<p>Trees proposed in backyard do not meet height requirement. However, given the close proximity of trees within Council's reserve at the rear of the site, this is considered acceptable in this instance.</p>	<p><b>No (justifiable)</b></p>
<ul style="list-style-type: none"> <li>- Landscaped front garden, with max 40% hard paving</li> </ul>	<p>Hard Paving: 30%</p>	<p>Yes</p>
<p><b>Landscaping for lots with Urban Bushland or Overland Flow constraints</b></p> <ul style="list-style-type: none"> <li>- Where lot is adjoining bushland protect, retain and use only native indigenous vegetation for distance of 10m from bdy adjoining bushland.</li> <li>- No fill allowed in overland flow areas.</li> <li>- Fences in Overland Flow areas must be of open construction so it doesn't impede the flow of water.</li> </ul>	<p>The lot backs on to a Council reserve where urban bushland is identified. The proposal will not result in the removal of any trees within the reserve.</p> <p>No issues raised by Council's Development Engineer in regard to overland flow.</p>	<p>Yes</p> <p>Yes</p>
<b>Dwelling Amenity</b>		
<p><b>Daylight and Sunlight Access</b></p> <ul style="list-style-type: none"> <li>- Living areas to face north where orientation makes this possible.</li> <li>- 4m side setback for side living areas where north is to the side allotment boundary.</li> </ul>	<p>Living areas face predominately west. However, adequate solar access is provided to these windows.</p> <p>Side boundary is the northern boundary. 4m side setback is not appropriate in this instance.</p>	<p><b>No (justifiable)</b></p> <p><b>No (justifiable)</b></p>



**ITEM 4 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<p><u>Subject Dwelling:</u></p> <ul style="list-style-type: none"> <li>- Subject dwelling north facing windows are to receive at least 3hrs of sunlight to a portion of their surface between 9am and 3pm on June 21.</li> <li>- Private Open space of subject dwelling is to receive at least 2 hours sunlight between 9am and 3pm on June 21.</li> </ul> <p><u>Neighbouring properties are to receive:</u></p> <ul style="list-style-type: none"> <li>- 2 hours sunlight to at least 50% of adjoining principal ground level open space between 9am and 3pm on June 21.</li> <li>- At least 3 hours sunlight to a portion of the surface of north facing adjoining living area windows between 9am and 3pm on June 21.</li> </ul>	<p>N facing windows: at least 3 hours sunlight is achieved for proposed north facing windows.</p> <p>POS: 2 hours sunlight is achieved to at least 50% of POS.</p> <p>2 hours sunlight provided to No. 7 Farnell Street POS.</p> <p>Given the orientation of the site, the north facing kitchen/living room window of No. 7 Farnell Street (to the south) are somewhat overshadowed by the proposed building. North facing kitchen window will receive sunlight to a portion of their surface for 2.5 hours between 9am and 3pm of June 21.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p><b>No (justifiable)</b></p>
<p><b>Visual Privacy</b></p> <ul style="list-style-type: none"> <li>- Orientate windows of living areas, balconies and outdoor living areas to the front and rear of dwelling.</li> <li>- Windows of living, dining, family etc placed so there are no close or direct views to adjoining dwelling or open space.</li> </ul>	<p>Treatment and design of windows (including obscure glass and highlight windows) ensures no overlooking opportunities into neighbouring properties.</p>	<p>Yes</p>

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>- Side windows offset from adjoining windows.</li> <li>- Terraces, balconies etc are not to overlook neighbouring dwellings/private open space.</li> </ul>		
<b>Acoustic Privacy</b> Layout of rooms in dual occupancies (attached) are to minimise noise impacts between dwellings eg: place adjoining living areas near each other and adjoining bedrooms near each other.	Achieved.	Yes
<b>View Sharing</b> <ul style="list-style-type: none"> <li>- The siting of development is to provide for view sharing.</li> </ul>	The proposed development does not restrict views of adjoining dwellings.	Yes
<b>Cross Ventilation</b> <ul style="list-style-type: none"> <li>- Plan layout is to optimise access to prevailing breezes and to provide for cross ventilation.</li> </ul>	Adequate cross ventilation is achieved.	Yes
<b>External Building Elements</b>		
<b>Roof</b> <ul style="list-style-type: none"> <li>- Articulated.</li> <li>- 450mm eaves overhang minimum.</li> <li>- Not to be trafficable Terrace.</li> <li>- Skylights to be minimised and placed symmetrically.</li> <li>- Front roof plane is not to have both dormer windows and skylights.</li> </ul> <b>Attic Dormer Windows</b> <ul style="list-style-type: none"> <li>- Max 2 dormer windows with a max total width of 3m.</li> <li>- Highest point to be 500mm min below roof ridge and</li> </ul>	Adequate roof articulation is achieved. No dormer windows are proposed.	Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
1m min above the top of gutter. - Total roof area of attic dormer: 8m <sup>2</sup> - Front face to be setback 1m min back from external face of wall below. - Balconies set into roof not permitted.		
<b>Fencing</b>		
<b>Front/return:</b> - To reflect design of dwelling. - To reflect character & height of neighbouring fences. - Max 900mm high for solid (picket can be 1m). - Max 1.8m high if 50% open (any solid base max 900mm). - Retaining walls on front bdy max 900mm. - No colorbond or paling Max width of piers 350mm.	No front fencing is proposed.	Yes
<b>Side/rear fencing:</b> - 1.8m max o/a height.	Can be conditioned.	Yes
<b>Part 7.1 - Energy Smart, Water Wise</b>		
<b>Insulation</b>		
Walls: R1.5 Ceiling: R3.0	Suitable BASIX certificate has been provided.	Yes
<b>Hot Water System</b>		
Any hot water system/s installed as part of a development or as a replacement must consider the most efficient option available to minimise greenhouse gas emissions.	Suitable BASIX certificate has been provided.	Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

DCP 2014	Proposed	Compliance
<b>Water Fixtures, Fitting and appliances</b>		
3 star shower heads; 4 star dual flush toilet; 4 star taps (other than bath outlets and garden taps); aerators to bathroom/kitchen taps.	Suitable BASIX certificate has been provided.	Yes
<b>External Clothes Drying Area</b>		
External yard space or sheltered ventilated space for clothes drying	Proposed on rear boundary – satisfactory.	Yes
<b>Water Efficient Labelling &amp; Standards (WELS)</b>		
Minimum WELS rating of 4.5 stars for new or replacement dishwashers & washing machines.	Suitable BASIX certificate has been provided.	Yes
<b>Part 7.2- Waste Minimisation &amp; Management</b>		
Submission of a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	The applicant has submitted a Waste Management Plan in accordance with Part 7.2 of DCP 2014.	Yes
<b>Part 8.2 - Stormwater Management</b>		
<b>Stormwater &amp; Floodplain Management</b>		
Drainage is to be piped in accordance with Part 8.2 - Stormwater & Floodplain Management.	No issues raised by Development Engineer subject to conditions of consent.	
<b>Part 9.2- Access for People with Disabilities</b>		
Accessible path required from the street to the front door, where the level of land permits.	Provided via driveway.	
<b>Part 9.5 – Tree Preservation</b>		
Where the removal of tree(s) is associated with the redevelopment of a site, or a	Trees at rear of site on Council reserve/neighbouring property have been assessed by an arborist and are able to be	Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>DCP 2014</b>	<b>Proposed</b>	<b>Compliance</b>
neighbouring site, the applicant is required to demonstrate that an alternative design(s) is not feasible and retaining the tree(s) is not possible in order to provide adequate clearance between the tree(s) and the proposed building and the driveway.	retained.	

<b>BASIX</b>		
All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans (list) <b>BASIX Cert 909740M_03 dated 08 August 2018</b> <ul style="list-style-type: none"> <li>• RWT 5000L</li> <li>• Swimming Pool               <ol style="list-style-type: none"> <li>1. &lt;28kL</li> <li>2. outdoors</li> </ol> </li> <li>• Thermal Comfort Commitments – Construction.</li> <li>• TCC – Glazing.</li> <li>• Solar Gas Boosted HWS w/41-45 RECS+</li> <li>• HWS Gas Instantaneous 5 star.</li> <li>• Natural Lighting               <ol style="list-style-type: none"> <li>1. kitchen</li> <li>2. bathrooms ()</li> </ol> </li> </ul>	Suitable BASIX certificate has been provided.	Yes
Water Target 40 Energy Target 50	Water: 40 Energy: 50	Yes Yes
Correct description of property/proposal on 1 <sup>st</sup> page of Certificate.	No incorrect details	Yes

**ITEM 4 (continued)**

**ATTACHMENT 2**

<b>Demolition</b>		
Plan showing all structures to be removed	Shown on plans.	Yes
Demolition Work Plan	Provided.	Yes
Waste Management Plan	Provided.	Yes

**Summary of Issues/Non compliances:**

- External garage width (justifiable)
- Rear setback (justifiable)
- Backyard tree planting (justifiable)
- Rear 8m x 8m Deep Soil Area (justifiable)
- Solar Access (justifiable)

**Certification**

I certify that all of the above issues have been accurately and professionally examined by me.

Name Madeline Thomas

Signature .....

Date .....